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Presidential Documents

Title 3—

The President

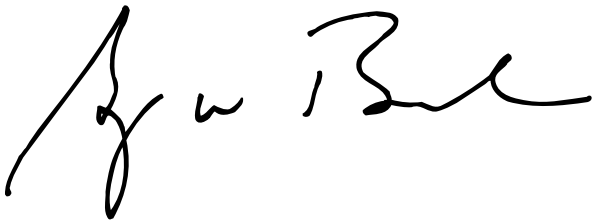
Presidential Determination No. 2003–32 of August 18, 2003

Resumption of U.S. Drug Interdiction Assistance to the Government of Colombia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. section 2291–4), I hereby certify, with respect to Colombia, that: (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register** and to notify the Congress of this determination.



THE WHITE HOUSE,
Washington, August 18, 2003.

[FR Doc. 03–21676
Filed 8–22–03; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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Monday, August 25, 2003

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

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1157]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation Z (Truth in Lending). The Board is required to adjust annually the dollar amount that triggers requirements for certain home mortgage loans bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 (HOEPA) sets forth rules for home–secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. In keeping with the statute, the Board has annually adjusted the $400 amount based on the annual percentage change reflected in the Consumer Price Index that is in effect on June 1. The adjusted dollar amount for 2004 is $499.

DATES: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Minh–Duc T. Le, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601 – 1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions.

In 1995, the Board published amendments to Regulation Z implementing HOEPA, contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, contained in §§ 226.32 and 226.34 of the regulation, impose substantive limitations and additional disclosure requirements on certain closed–end home mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the HOEPA rules if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. (15 U.S.C. 1602(aa)(3) and 12 CFR 226.32(a)(1)(ii)). The Board adjusted the $400 amount to $488 for the year 2003.

The Bureau of Labor Statistics publishes consumer–based indices monthly, but does not''report'' a CPI change on June 1; adjustments are reported in the middle of each month. The Board uses the CPI–U index, which is based on all urban consumers and represents approximately 80 percent of the U.S. population, as the index for adjusting the $400 dollar figure. The adjustment to the CPI–U index reported by the Bureau of Labor Statistics on May 15, 2003, was the CPI–U index ''in effect'' on June 1, and reflects the percentage increase from April 2002 to April 2003. The adjustment to the $400 figure below reflects a 2.22 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

II. Adjustment and Commentary Revision

Effective January 1, 2004, for purposes of determining whether a home mortgage transaction is covered by 12 CFR 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of $499 or 8 percent of the total loan amount. Comment 32(a)(1)(ii)–2, which lists the adjustments for each year, is amended to reflect the dollar adjustment for 2004. Because the timing and method of the adjustment is set by statute, the Board finds that notice and public comment on the change are unnecessary.

III. Regulatory Flexibility Analysis

The Board certifies that this amendment will not have a substantial effect on regulated entities because the only change is to raise the threshold for transactions requiring HOEPA disclosures.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

■ 2. In Supplement I to Part 226, under *Section 226.32—Requirements for Certain Closed–End Home Mortgages,* under Paragraph 32(a)(1)(ii), paragraph 2. ix. is added.

SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed–End Home Mortgages

32(a) Coverage

* * * * *

Paragraph 32(a)(1)(ii)

* * * * *

2. Annual adjustment of $400 amount. * * *

ix. For 2004, $499, reflecting a 2.22 percent increase in the CPI–U from June 2002 to June 2003, rounded to the nearest whole dollar.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, August 18, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21569 Filed 8–22–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL37

Effective Dates of Benefits for Disability or Death Caused By Herbicide Exposure; Disposition of Unpaid Benefits After Death of Beneficiary

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is adding a new provision to its adjudication regulations concerning certain awards of disability compensation and dependency and indemnity compensation (DIC). The new rule explains that certain awards of disability compensation or DIC made pursuant to liberalizing regulations concerning diseases presumptively associated with herbicide exposure may be made effective retroactive to the date of the claim or the date of a previously denied claim, even if such date is earlier than the effective date of the regulation establishing the presumption. The new rule also provides that VA may pay to certain survivors of a deceased beneficiary, or to the beneficiary's estate, any amounts the beneficiary was entitled to receive under the effective-date provisions of this rule, but which were not paid prior to the beneficiary's death. The purpose of this rule is to reflect the requirements of court orders in a class-action case.

DATES: Effective Date: September 24, 2003.

FOR FURTHER INFORMATION CONTACT: David Barrans, Staff Attorney (022), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6332.

SUPPLEMENTARY INFORMATION: On January 28, 2003, VA published in the **Federal Register** (68 FR 4132), a proposed rule to establish provisions at 38 CFR 3.816 explaining certain rules arising from court orders in the class action litigation in *Nehmer* v. *United States Department of Veterans Affairs*, No. CV–86–6160 TEH (N.D. Cal.). As explained in that notice, the rule is intended to explain two exceptions to generally-applicable adjudication rules that have resulted from the *Nehmer* court orders.

First, this rule will clarify the standards governing the effective dates of disability compensation or dependency and indemnity compensation (DIC) awarded to *Nehmer* class members under liberalizing regulations establishing presumptions that certain diseases are associated with herbicide exposure in service. That change is necessary to address an apparent conflict between 38 U.S.C. 5110(g), which generally prohibits VA from awarding retroactive effective dates that precede the date a liberalizing regulation took effect, and the *Nehmer* court orders, which require VA to assign such retroactive effective dates for certain awards to *Nehmer* class members. The new rule explains that, when VA awards disability compensation or DIC to a *Nehmer* class member based on a VA regulation issued under the Agent Orange Act of 1991, Pub. L. 102–4, establishing a presumption that a disease is associated with herbicide exposure, VA will assign an effective date for the award that corresponds to the date the claim was received or to the date of a previously-denied claim based on the same disease, without regard to the provisions of 38 U.S.C. 5110(g).

Second, this rule will clarify that, when a *Nehmer* class member dies before receiving payment to which he or she is entitled under the *Nehmer* court orders, VA will pay the entire amount of such unpaid benefits to certain survivors or to the class member's estate if there are no such survivors. This change is necessary to address an apparent conflict between 38 U.S.C. 5121(a), which, in some circumstances, prohibits VA from paying amounts that had accrued for periods more than two years prior to the beneficiary's death, and the *Nehmer* court orders, which require VA to pay the entire amount of any unpaid benefits to the survivors or estate of a deceased *Nehmer* class member. Further, although section 5121(a) requires payment to the person who bore the expense of the beneficiary's last sickness and burial if there are no surviving members of the decedent's immediate family, the *Nehmer* court orders require payment to the decedent's estate in that circumstance. This rule will provide that, in cases governed by the *Nehmer* court orders, VA will pay the entire amount of such benefits to the specified survivors or to the decedent's estate, without regard to the two-year limit in 38 U.S.C. 5121(a).

We received comments on the proposed rule from three commenters. One commenter expressed unqualified support for the rule. The other commenters expressed general support for the rule, but disagreed with certain aspects of it, as discussed below.

Burial Benefits

Two commenters suggested that we add provisions to the rule specifying that when service connection for the cause of a *Nehmer* class member's death is established under a presumption issued pursuant to the Agent Orange Act, VA may pay a service-connected burial allowance under 38 U.S.C. 2307, even if the death occurred prior to the effective date of the regulation establishing the presumption. Those suggestions are based on a 1995 opinion of VA's General Counsel, designated as VAOPGCPREC 15–95, which stated such a conclusion in the context of a *Nehmer* class member's claim.

We make no change based on these comments. The additional provisions suggested by the commenters do not relate to the effective date of awards of disability compensation or DIC, nor to the manner of paying amounts due and unpaid to a beneficiary at death. Rather, they pertain to a distinct issue concerning entitlement to service-connected burial benefits under 38 U.S.C. 2307. Because these comments relate solely to matters outside the scope of the rule we proposed, we will make no change based on them.

Moreover, unlike the subjects of our proposed rule, the General Counsel's conclusion regarding entitlement to service-connected burial benefits does not rest upon the requirements of the *Nehmer* court orders, nor does it establish an exception to the generally applicable adjudication rules. In our January 2003 notice of proposed rule making, we explained that the purpose of the proposed rule was to explain the requirements of the *Nehmer* court orders, which created exceptions to the general statutory prohibitions in 38 U.S.C. 5110(g) and 5121(a) applicable to *Nehmer* class members. The General

Counsel's conclusion that service-connected burial benefits may be paid for deaths preceding the effective date of a regulatory presumption was based on the interpretation of statutes and regulations; it was not based on the *Nehmer* court orders and did not establish any exception to governing statutory requirements for *Nehmer* class members. Accordingly, we will not incorporate that conclusion in this final rule.

Identifying Prior Claims or Decisions

One commenter suggested a revision to proposed § 3.816(c)(2), which explains when a disability compensation award may be made retroactive to the date of a prior claim for compensation for a covered herbicide disease that was pending on May 3, 1989 or was received by VA between that date and the effective date of the regulation establishing a presumption of service connection for the disease. As proposed, § 3.816(c)(2) would explain that a prior claim will be considered a claim for compensation for a particular covered herbicide disease if the claimant's application and other submissions may reasonably be viewed, under the standards ordinarily governing such claims, as indicating an intent to apply for compensation for the covered herbicide disease. The commenter asserts that the *Nehmer* court orders also require payment of retroactive benefits in cases where the prior claim did not request compensation for a covered herbicide disease, but VA nevertheless denied compensation for such disease in its decision on the veteran's claim.

Longstanding VA policy reflected in VA procedural manuals provides that when disability compensation is claimed, VA must make a formal rating decision as to each disability that was either claimed by the veteran or noted in the veteran's records, subject to certain exceptions for non-claimed conditions that are acute and transitory or recorded by history only. That policy is currently stated in VA Manual M21–1, Part VI, para. 3.09(b), and was previously stated in VA Manual M21–1, para. 46.02 at the time of the 1991 final stipulation and order. Accordingly, VA may have denied disability compensation for conditions not expressly claimed by the veteran.

The 1991 final stipulation and order in *Nehmer* stated effective-date rules governing two kinds of claims: those where VA denied benefits in a decision rendered between September 25, 1985 and May 3, 1989 (which decisions were voided by a 1989 *Nehmer* court order), and those where a claim was filed after May 3, 1989 and may or may not have been denied by VA before VA awarded benefits under an applicable regulatory presumption. With respect to the voided decisions, the stipulation and order provided that an award of benefits for a covered herbicide disease would be retroactive to the date of the previously-denied claim if the basis of the award was the same as the basis of the prior claim. The stipulation and order specified that the ''basis'' of the claim would be determined by reference to the diseases that were coded in the prior decision as required by former paragraph 46.02 of VA Manual M21–1. This requirement is reflected in § 3.816(c)(1) of the proposed regulation, which addresses claims denied by VA between September 25, 1985 and May 3, 1989.

With respect to claims filed after May 3, 1989, the 1991 final stipulation and order merely provides that the effective date of an award will be the later of the date the claim was received or the date disability arose or death occurred. It provided no criteria for determining whether an award related to a previously-filed claim or a prior decision by VA denying benefits. In proposed § 3.816(c)(2), we explained that VA would apply the ordinary standards of claim interpretation to determine whether a claim received after May 3, 1989 was a claim for compensation for the covered herbicide disease for which benefits were ultimately awarded. We believe it is necessary to state guidelines based on the nature of the claim, rather than only the nature of a prior VA decision, because paragraph (c)(2) applies in cases where VA may not have issued any prior decision on the veteran's claim. However, we did not intend to preclude retroactive payments in cases where VA did issue a decision denying compensation for a covered herbicide disease in a decision rendered after May 3, 1989.

As explained above, the 1991 final stipulation and order is ambiguous as to whether retroactive payments may be made where a veteran did not request service connection for a covered herbicide disease but VA expressly denied compensation for such disease in a decision rendered after May 3, 1989. We believe the stipulation may reasonably be construed to allow retroactive payment in those circumstances. Accordingly, we will revise proposed § 3.816(c)(2) to clarify that retroactive payment may be made where a VA decision rendered between May 3, 1989 and the effective date of the relevant statutory or regulatory presumption denied compensation for a disease that reasonably may be construed as the same covered herbicide disease for which compensation was later awarded. As explained in our January 2003 notice of proposed rulemaking, we do not intend to require exact agreement in the terminology or diagnostic codes used to describe the disease at different times, if circumstances reasonably indicate that the same disease is involved.

Payments to Survivors or Estates of Deceased Beneficiaries

We proposed to state, in paragraph (f) of 38 CFR 3.816, that, when a *Nehmer* class member dies before receiving amounts due and unpaid under the *Nehmer* court orders, VA will pay the entire amount of unpaid benefits to the class member's surviving spouse, child(ren), or dependent parents, in that order of preference. In the event no such survivors are in existence, we proposed that VA would pay to the person who bore the expense of the class member's last sickness and burial as much of the unpaid benefits as necessary to reimburse such person for those expenses. Two commenters disagreed with this provision and asserted that the *Nehmer* court orders require VA to release payments to the estates of deceased class members.

In our January 2003 notice of proposed rule making, we stated that we considered it necessary to seek clarification from the district court regarding VA's ability to release payments in the manner proposed. On April 21, 2003, the district court issued an order stating that, in the event a *Nehmer* class member dies, VA must release payments as provided in an August 3, 2001 stipulation between the parties to the *Nehmer* case. Specifically, the Court stated that VA must release the payments to the first of the following individuals or entities who is in existence when payment is made: (a) The class member's spouse; (b) the class member's children (in equal shares); (b) the class member's parents (in equal shares); (d) the class member's estate.

In accordance with the district court's order and the comments, we are revising the proposed rule to provide that VA will release payment to the estate of the deceased class member when there is no surviving spouse, child, or parent. We proposed to caption paragraph (f) of 38 CFR 3.816(f) ''Payment of Benefits to Survivors of Deceased Beneficiaries.'' Based on the court order and the comments, we will change this to ''Payment of Benefits to Survivors or Estates of Deceased Beneficiaries.''

As proposed, the first sentence of paragraph (f)(1)(i) would have stated

that, when a class member dies, VA will pay the full amount of any retroactive benefits owed the class member under the proposed regulation to the living person or persons who, at the time of death, would have been eligible to receive accrued benefits under 38 U.S.C. 5121(a)(2)-(a)(4). The cited statutory provisions authorize payment to a surviving spouse, child(ren), or dependent parent(s), in that order of priority. The second sentence of proposed paragraph (f)(1)(i) would further have stated that a person's status as a surviving spouse, child, or dependent parent would be determined as of the date of the class member's death, irrespective of the person's age or marital status at the time payment is made.

As explained above, the district court's April 2003 order specifies the individuals and entities entitled to payment. Further, the court's order states that the provisions of 38 U.S.C. 5121 do not govern such payments. Accordingly, we will delete the first sentence of paragraph (f)(1)(i), as proposed, and will amend paragraph (f)(1) to list the eligible payees as identified by the court's order. Revised paragraph (f)(1) will specify that VA will release payment to the first of the listed individual or entities that is in existence at the time payment is made.

We will delete the second sentence of paragraph (f)(1)(i), as proposed, because it reflects requirements applicable to 38 U.S.C. 5121(a). For purposes of 38 U.S.C. 5121(a), eligibility for payment as a surviving spouse, child, or parent is limited by a number of statutory provisions. For example, a ''surviving spouse'' is generally defined, with certain exceptions, as one who has not remarried. Eligibility for payment as a ''child'' is limited to unmarried children under the age of 18, or who became permanently incapable of self-support before attaining age 18, or who are under 23 years of age and pursuing a course of education at an approved institution. Eligibility for payment as a parent is subject to dependency. In view of the district court's conclusions that the provisions of the parties' August 2001 stipulation, rather than the provisions of 38 U.S.C. 5121(a), govern payments, we conclude that those restrictions are inapplicable. The August 2001 stipulation does not expressly incorporate the statutory limitations on recognition as a spouse, child, or dependent parent. Further, the provisions of the August 2001 stipulation reflect the view that payments to spouses, children, and parents were authorized because those persons are the usual heirs to a decedent's estate, and that rationale would apply irrespective of age, marital status, or dependency. We will add language to § 3.816(f)(1) to clarify that those limitations do not apply. Specifically, we will provide that payments to a spouse will be made irrespective of current marital status, that payments to a child will be made irrespective of age or marital status, and that payments to a parent will be made irrespective of dependency. We will further explain that a spouse is a person who was married to the class member at the time of the class member's death. We will explain that the term ''child'' includes natural and adopted children, and also includes any stepchildren who were members of the class member's household at the time of the class member's death. We note that stepchildren ordinarily are not entitled to inherit from a stepparent's estate under the laws of intestate succession, and some stepchildren may have no direct relationship with the deceased class member. However, the laws governing veterans' benefits provide that a stepchild who was a member of a veteran's household at the time of the veteran's death is entitled to certain death benefits, including payment of amounts due and unpaid to the deceased veteran. We believe that persons who would be considered children under the laws governing VA benefits should not be excluded from receiving payment pursuant to the court orders in this case. Accordingly, we are defining ''child'' to include such stepchildren. We will also explain that the term ''parent'' includes natural and adoptive parents but that, in the case of successive parents, the persons who last stood in the relationship of parents to the class member will be considered the parents.

The last two sentences of paragraph (f)(1)(i), as proposed, will be deleted because they pertain to matters specific to determinations under 38 U.S.C. 5121.

Paragraph (f)(1)(ii) of 38 CFR 3.816, as proposed, would have stated that, if there is no living person eligible to receive benefits under 5121(a)(2)-(a)(4), VA would pay to the person who bore the expense of the class member's last sickness and burial only such portion of the class member's unpaid benefits as would be necessary to reimburse that person for such expense. We are removing this provision because it is contrary to the district court's order.

The other provisions of proposed 38 CFR 3.816(f) are not affected by the court's order, and we received no comments concerning them. Accordingly, we are adopting them without change.

Presumptions Established Under the Benefits Expansion Act of 2001

We proposed to provide that the nonstatutory adjudication rules flowing from the *Nehmer* court orders would apply only with respect to regulatory presumptions of service connection established pursuant to the Agent Orange Act of 1991, Public Law 102–4, prior to October 1, 2002. We explained that the scope of the *Nehmer* rules is defined by a May 1991 Final Stipulation and Order entered in the *Nehmer* case, which specified that the rules would apply to presumptions of service connection established by VA under the Agent Orange Act of 1991, Public Law 102–4. We noted that, under the terms of the Agent Orange Act of 1991, Public Law 102–4, VA's authority to issue regulatory presumptions of service connection expired on September 30, 2002. Accordingly, we concluded that the *Nehmer* rules applied to awards based on presumptions of service connection established prior to October 1, 2002.

We noted that Congress in 2001 enacted legislation authorizing VA to establish new presumptions of service connection during the additional period from October 1, 2002 to September 30, 2015. Veterans Education and Benefits Expansion Act of 2001, Pub. L. No. 107–103, § 201(d) (Benefits Expansion Act). We concluded that the *Nehmer* rules would not apply to awards based on presumptions established pursuant to the new authority granted by this Act.

Two commenters expressed disagreement with our conclusion and asserted that the *Nehmer* rules should be applied to awards based on presumptions established under the Benefits Expansion Act. We make no change based on these comments, for the reasons explained in our January 2003 notice of proposed rule making and the additional reasons stated below in response to the comments we received.

One commenter asserts that it would be unfair to apply different effective date rules to Vietnam veterans' claims based on presumptions established under the Agent Orange Act of 1991 and those based on presumptions established under the Benefits Expansion Act. Although we agree that a uniform set of effective-date rules would ordinarily be preferable, the prospect of disparate treatment does not provide a basis for changing these rules. VA's obligation to comply with both 38 U.S.C. 5110(g) and the *Nehmer* court orders necessarily requires disparate treatment of claims that are similar in many respects. Section 5110(g)

generally provides that, when benefits are awarded under a liberalizing regulation establishing a presumption of service connection, VA may not pay benefits for any period prior to the effective date of that regulation. Accordingly, any veteran who becomes entitled to service connection pursuant to a presumption, including presumptions relating to radiation exposure, mustard gas exposure, or prisoner of war experience, is subject to this restriction on retroactive payment. The *Nehmer* court orders establish a limited non-statutory exception to this general rule for certain claims based on herbicide exposure, and inevitably require that some veterans will be accorded retroactive benefits that most other veterans cannot receive. In determining where the line must be drawn, we necessarily look to the governing legal authorities.

VA is required to give effect to the clear statutory requirements in 38 U.S.C. 5110(g), in the absence of authority to the contrary. To the extent the *Nehmer* court orders require action seemingly at odds with section 5110(g), we believe they are most reasonably viewed as creating a non-statutory exception to section 5110(g)'s requirements. We believe it would be inappropriate, however, to disregard the clear requirements of section 5110(g) in cases that are not within the scope of the *Nehmer* court orders. The United States Court of Appeals for the Federal Circuit and the United States Court of Appeals for Veterans Claims have held that 38 U.S.C. 5110(g) governs the effective date of awards made pursuant to regulatory presumptions of service connection for diseases associated with herbicide exposure, at least in cases that are not clearly within the scope of the *Nehmer* court orders. *See Williams* v. *Principi,* 15 Vet. App. 189 (2001) (en banc); *aff'd,* 310 F.3d 1374 (Fed. Cir. 2002). As explained in our January 2003 notice of proposed rule making and reiterated below, the 1991 stipulation and order in *Nehmer* provides an exception to 38 U.S.C. 5110(g) that applies by its terms only to certain claims based on presumptions established under the authority granted in Agent Orange Act of 1991, Public Law 102–4.

One commenter asserts that these rules should apply to presumptions established under the Benefits Expansion Act because, when VA and the representatives for the *Nehmer* class entered into the May 1991 Final Stipulation and Order, they intended to incorporate any changes Congress might make in the future to the sunset provisions of the Agent Orange Act of 1991, Public Law 102–4. VA does not agree.

The United States District Court for the Northern District of California has held that the May 1991 stipulation and order must be interpreted in accordance with general principles of contract law. It is well established that, unless the parties provide otherwise, a contract is presumed to incorporate the law that existed at the time the contract was made. *See Norfolk & Western Ry. Co.* v. *American Train Dispatchers' Ass'n,* 499 U.S. 117, 129–30 (1991). The May 1991 stipulation and order specified that it would apply to presumptions established under the Agent Orange Act of 1991, Public Law 102–4. Both the district court and the United States Court of Appeals for the Ninth Circuit have noted that, at the time the parties entered into the May 1991 stipulation and order, the Agent Orange Act of 1991, Public Law 102–4, vested VA with authority to establish presumptions only for a specified 10-year period. *Nehmer* v. *United States Department of Veterans Affairs,* No. CV–86–6160 TEH (N.D. Cal. Dec. 12, 2000); *Nehmer* v. *Veterans' Administration,* 284 F.3d 1158, 1162 n.3. (9th Cir. 2002). The scope of the *Nehmer* rules must be determined with respect to the law existing in 1991, rather than the subsequent changes in law enacted ten years after the final stipulation and order was entered.

The terms of a contract ''do not change with the enactment of subsequent legislation, absent a specific contractual provision providing for such a change.'' *Winstar Corp.* v. *United States,* 64 F.3d 1531, 1547 (Fed. Cir. 1995), *aff'd,* 518 U.S. 839 (1996). A subsequent change in the law cannot retrospectively alter the terms of the agreement. *See Florida East Coast Ry. Co.* v. *CSX Transportation, Inc.,* 42 F.3d 1125, 1129–30 (7th Cir. 1994). The 1991 stipulation and order in *Nehmer* contains no provision providing for subsequent changes in law. Accordingly, the enactment of the Benefits Expansion Act of 2001 cannot expand the Government's authority under the May 1991 stipulation and order.

The commenter asserts that, if Congress had enacted legislation after May 1991 to shorten the 10-year life span of the Agent Orange Act of 1991, the parties would have agreed that VA was relieved from the original agreement made in contemplation of a 10-year life span. The commenter argues that it necessarily follows that the parties intended to incorporate any subsequent legislative changes either limiting or extending VA's authority to establish presumptions. We do not agree, and we believe the hypothetical scenario described by the commenter is inapt. The 1991 stipulation and order in *Nehmer* did not require VA to issue regulations under the Agent Orange Act of 1991, Public Law 102–4. Rather, it established rules for determining the effective dates of benefit awards made pursuant to such regulations as VA would issue under that statute. Accordingly, the hypothetical legislation shortening the life span of the Agent Orange Act of 1991, Public Law 102–4, would not have altered any provision in the 1991 stipulation and order, but would have, at most, resulted in fewer presumptions to which the terms of the stipulation and order would apply. Moreover, even if there were any conflict between the 1991 stipulation and order and the hypothetical legislation described by the commenter, we would still disagree with the commenter's conclusion. Where intervening and unforeseen events interfere with fulfillment of a contract, the performance by one or more parties may be excused under principles of contract law relating to impossibility or impracticability of performance. The hypothetical described by the commenter would likely be governed by that principle rather than any inference that the parties silently intended to incorporate subsequent changes in law.

Two commenters assert that extending the *Nehmer* rules to presumptions established under the Benefits Expansion Act would be consistent with Congress' purpose in that Act. Specifically, the commenters state that Congress extended VA's authority to establish presumptions because the scientific evidence regarding the effects of herbicide exposure continues to develop. As explained above, the 2001 enactment of the Benefits Expansion Act does not bear upon the parties' intent when they entered into the 1991 final stipulation and order. Moreover, nothing in the Benefits Expansion Act suggests a legislative intent to authorize retroactive benefits.

The Benefits Expansion Act, Public Law 107–103, reflects a purpose to require ongoing periodic reviews of the scientific evidence to determine whether additional presumptions of service connection should be established. It does not, however, reflect any purpose to authorize retroactive benefits based on presumptions established under that Act. To the contrary, Congress has expressly limited the retroactive effect of new presumptions established by VA under the Benefits Expansion Act or any other statute. Section 5110(g) of title 38,

United States Code, provides that, when disability compensation, DIC, or pension benefits are awarded pursuant to a new regulation, the effective date of the benefit award may not be earlier than the effective date of the regulation itself. Further, 38 U.S.C. 1116(c), which governs regulations issued under the Benefits Expansion Act, provides that regulations under that Act establishing new presumptions of service connection shall be effective on the date they are issued. Although these statutory provisions alone amply convey Congress' intent, we note that the legislative history of 38 U.S.C. 1116(c) further establishes that Congress was concerned with the possibility that according retroactive effect to new regulatory presumptions would be unfair insofar as it would accord preferential treatment to veterans with disabilities associated with herbicide exposure, as compared with all other veterans who become entitled to benefits under a liberalizing statute or regulation. *See* S. Rep. 379, 101st Cong., 2nd Sess. 105–06 (1990) (expressing disapproval of VA's past actions in issuing retroactive presumptions of service connection according ''preferential treatment'' to certain veterans).

We note further that section 10(e) of the Agent Orange Act of 1991, Public Law 102–4, expressly referenced the *Nehmer* court orders. That provision delayed the effective date of certain changes to preexisting law made by Public Law 102–4 for a period of six months or for a lesser period in the event that the Secretary of Veterans Affairs determined that VA had fulfilled its obligations under the *Nehmer* court orders based on the prior law. If Congress had intended to codify and extend the provisions of the *Nehmer* court orders when it enacted the Benefits Expansion Act, Public Law 107–103, it is reasonable to expect that it would have done so by a similar express reference to *Nehmer*. However, neither the text nor the legislative history of Public Law 107–103 discusses the *Nehmer* court orders. Applying the *Nehmer* court orders to presumptions established under the Benefits Expansion Act, Public Law 107–103, would be contrary to the governing statutory requirements in 38 U.S.C. 1116(c) and 5110(g), and we have found nothing in the language, purpose, or history of the Benefits Expansion Act to suggest that Congress intended VA to ignore those statutory requirements.

For these reasons, we find that Congress has clearly expressed its intent that regulations issued under the Benefits Expansion Act will not provide a basis for awarding benefits for any period prior to the date such regulations are issued. Accordingly, we make no change based on this comment.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries and their survivors could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Herbicides, Veterans, Vietnam.

Approved: July 2, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 3.816 is added to read as follows:

§ 3.816 Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure.

(a) *Purpose.* This section states effective-date rules required by orders of a United States district court in the class-action case of *Nehmer* v. *United States Department of Veterans Affairs,* No. CV–86–6160 TEH (N.D. Cal.).

(b) *Definitions.* For purposes of this section—

(1) *Nehmer class member* means:

(i) A Vietnam veteran who has a covered herbicide disease; or

(ii) A surviving spouse, child, or parent of a deceased Vietnam veteran who died from a covered herbicide disease.

(2) *Covered herbicide disease* means a disease for which the Secretary of Veterans Affairs has established a presumption of service connection before October 1, 2002 pursuant to the Agent Orange Act of 1991, Public Law 102–4, other than chloracne. Those diseases are:

(i) Type 2 Diabetes (Also known as type II diabetes mellitus or adult-onset diabetes).

(ii) Hodgkin's disease.

(iii) Multiple myeloma.

(iv) Non-Hodgkin's lymphoma.

(v) Acute and Subacute peripheral neuropathy.

(vi) Porphyria cutanea tarda.

(vii) Prostate cancer.

(viii) Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea).

(ix) Soft-tissue sarcoma (as defined in § 3.309(e)).

(c) *Effective date of disability compensation.* If a *Nehmer* class member is entitled to disability compensation for a covered herbicide disease, the effective date of the award will be as follows:

(1) If VA denied compensation for the same covered herbicide disease in a decision issued between September 25, 1985 and May 3, 1989, the effective date of the award will be the later of the date VA received the claim on which the prior denial was based or the date the disability arose, except as otherwise provided in paragraph (c)(3) of this

section. A prior decision will be construed as having denied compensation for the same disease if the prior decision denied compensation for a disease that reasonably may be construed as the same covered herbicide disease for which compensation has been awarded. Minor differences in the terminology used in the prior decision will not preclude a finding, based on the record at the time of the prior decision, that the prior decision denied compensation for the same covered herbicide disease.

(2) If the class member's claim for disability compensation for the covered herbicide disease was either pending before VA on May 3, 1989, or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the covered disease, the effective date of the award will be the later of the date such claim was received by VA or the date the disability arose, except as otherwise provided in paragraph (c)(3) of this section. A claim will be considered a claim for compensation for a particular covered herbicide disease if:

(i) The claimant's application and other supporting statements and submissions may reasonably be viewed, under the standards ordinarily governing compensation claims, as indicating an intent to apply for compensation for the covered herbicide disability; or

(ii) VA issued a decision on the claim, between May 3, 1989 and the effective date of the statute or regulation establishing a presumption of service connection for the covered disease, in which VA denied compensation for a disease that reasonably may be construed as the same covered herbicide disease for which compensation has been awarded.

(3) If the class member's claim referred to in paragraph (c)(1) or (c)(2) of this section was received within one year from the date of the class member's separation from service, the effective date of the award shall be the day following the date of the class member's separation from active service.

(4) If the requirements of paragraph (c)(1) or (c)(2) of this section are not met, the effective date of the award shall be determined in accordance with §§ 3.114 and 3.400.

(d) *Effective date of dependency and indemnity compensation (DIC).* If a Nehmer class member is entitled to DIC for a death due to a covered herbicide disease, the effective date of the award will be as follows:

(1) If VA denied DIC for the death in a decision issued between September 25, 1985 and May 3, 1989, the effective date of the award will be the later of the date VA received the claim on which such prior denial was based or the date the death occurred, except as otherwise provided in paragraph (d)(3) of this section.

(2) If the class member's claim for DIC for the death was either pending before VA on May 3, 1989, or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the covered herbicide disease that caused the death, the effective date of the award will be the later of the date such claim was received by VA or the date the death occurred, except as otherwise provided in paragraph (d)(3) of this section. In accordance with § 3.152(b)(1), a claim by a surviving spouse or child for death pension will be considered a claim for DIC. In all other cases, a claim will be considered a claim for DIC if the claimant's application and other supporting statements and submissions may reasonably be viewed, under the standards ordinarily governing DIC claims, as indicating an intent to apply for DIC.

(3) If the class member's claim referred to in paragraph (d)(1) or (d)(2) of this section was received within one year from the date of the veteran's death, the effective date of the award shall be the first day of the month in which the death occurred.

(4) If the requirements of paragraph (d)(1) or (d)(2) of this section are not met, the effective date of the award shall be determined in accordance with §§ 3.114 and 3.400.

(e) *Effect of other provisions affecting retroactive entitlement.* (1) *General.* If the requirements specified in paragraphs (c)(1) or (c)(2) or (d)(1) or (d)(2) of this section are satisfied, the effective date shall be assigned as specified in those paragraphs, without regard to the provisions in 38 U.S.C. 5110(g) or § 3.114 prohibiting payment for periods prior to the effective date of the statute or regulation establishing a presumption of service connection for a covered herbicide disease. However, the provisions of this section will not apply if payment to a *Nehmer* class member based on a claim described in paragraph (c) or (d) of this section is otherwise prohibited by statute or regulation, as, for example, where a class member did not qualify as a surviving spouse at the time of the prior claim or denial.

(2) *Claims Based on Service in the Republic of Vietnam Prior To August 5, 1964.* If a claim referred to in paragraph (c) or (d) of this section was denied by VA prior to January 1, 1997, and the veteran's service in the Republic of Vietnam ended before August 5, 1964, the effective-date rules of this regulation do not apply. The effective date of benefits in such cases shall be determined in accordance with 38 U.S.C. 5110. If a claim referred to in paragraph (c) or (d) of this section was pending before VA on January 1, 1997, or was received by VA after that date, and the veteran's service in the Republic of Vietnam ended before August 5, 1964, the effective date shall be the later of the date provided by paragraph (c) or (d) of this section or January 1, 1997.

(Authority: Public Law 104–275, sec. 505)

(f) *Payment of Benefits to Survivors or Estates of Deceased Beneficiaries.* (1) *General.* If a *Nehmer* class member entitled to retroactive benefits pursuant to paragraphs (c)(1) through (c)(3) or (d)(1) through (d)(3) of this section dies prior to receiving payment of any such benefits, VA shall pay such unpaid retroactive benefits to the first individual or entity listed below that is in existence at the time of payment:

(i) The class member's spouse, regardless of current marital status.

Note to Paragraph (f)(1)(i): For purposes of this paragraph, a spouse is the person who was legally married to the class member at the time of the class member's death.

(ii) The class member's child(ren), regardless of age or marital status (if more than one child exists, payment will be made in equal shares, accompanied by an explanation of the division).

Note to Paragraph (f)(1)(ii): For purposes of this paragraph, the term ''child'' includes natural and adopted children, and also includes any stepchildren who were members of the class member's household at the time of the class member's death.

(iii) The class member's parent(s), regardless of dependency (if both parents are alive, payment will be made in equal shares, accompanied by an explanation of the division).

Note to Paragraph (f)(1)(iii): For purposes of this paragraph, the term ''parent'' includes natural and adoptive parents, but in the event of successive parents, the persons who last stood as parents in relation to the class member will be considered the parents.

(iv) The class member's estate.

(2) *Inapplicability of certain accrued benefit requirements.* The provisions of 38 U.S.C. 5121(a) and § 3.1000(a) limiting payment of accrued benefits to amounts due and unpaid for a period not to exceed 2 years do not apply to payments under this section. The provisions of 38 U.S.C. 5121(c) and

§ 3.1000(c) requiring survivors to file claims for accrued benefits also do not apply to payments under this section. When a *Nehmer* class member dies prior to receiving retroactive payments under this section, VA will pay the amount to an identified payee in accordance with paragraph (f)(1) of this section without requiring an application from the payee. Prior to releasing such payment, however, VA may ask the payee to provide further information as specified in paragraph (f)(3) of this section.

(3) *Identifying payees.* VA shall make reasonable efforts to identify the appropriate payee(s) under paragraph (f)(1) of this section based on information in the veteran's claims file. If further information is needed to determine whether any appropriate payee exists or whether there are any persons having equal or higher precedence than a known prospective payee, VA will request such information from a survivor or authorized representative if the claims file provides sufficient contact information. Before releasing payment to an identified payee, VA will ask the payee to state whether there are any other survivors of the class member who may have equal or greater entitlement to payment under this section, unless the circumstances clearly indicate that such a request is unnecessary. If, following such efforts, VA releases the full amount of unpaid benefits to a payee, VA may not thereafter pay any portion of such benefits to any other individual, unless VA is able to recover the payment previously released.

(4) *Bar to accrued benefit claims.* Payment of benefits pursuant to paragraph (f)(1) of this section shall bar a later claim by any individual for payment of all or any part of such benefits as accrued benefits under 38 U.S.C. 5121 and § 3.1000.

(g) *Awards covered by this section.* This section applies only to awards of disability compensation or DIC for disability or death caused by a disease listed in paragraph (b)(2) of this section.

(Authority: 38 U.S.C. 501)

[FR Doc. 03–21646 Filed 8–22–03; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 98–156; FCC 03–175]

Certification of Equipment in the 24.05–24.25 GHz Band at Field Strengths up to 2500 mV/m

AGENCY: Federal Communications Commission.

ACTION: Final rule; termination.

SUMMARY: In this document, the Commission affirms the decision to allow the unlicensed operation of fixed point-to-point transmitters in the 24.05–24.25 GHz band at field strengths up to 2500 mV/m under amended provisions of the Commission's rules. In the course of taking this action, the Commission also denies the petition for reconsideration filed by the National Association for Amateur Radio (ARRL) that challenged the decision to allow the described operation on an unlicensed basis. Because the MO&O resolves all pending matters in this proceeding, the Commission terminates this proceeding.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gary Thayer, Office of Engineering and Technology, (202) 418–2290, TTY (202) 418–2989, e-mail: *gary.thayer@fcc.gov;* Neal McNeil, Office of Engineering and Technology, (202) 418–2408, e-mail: *neal.mcneil@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, ET Docket No. 98–156, FCC 03–175, adopted July 15, 2003, and released July 21, 2003. The full text of this Commission decision is available on the Commission's Internet site at *www.fcc.gov.* It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the Memorandum Opinion and Order

1. In the Report and Order (R&O) in this proceeding, ET Docket No. 98–156, 67 FR 1,623, January 14, 2002, the Commission amended § 15.249 of the Commission's rules to allow unlicensed operation of fixed point-to-point transmitters in the 24.05–24.25 GHz band with field strengths up to 2500 mV/m. The Commission further decided that such devices must use directional antennas with gains of at least 33 dBi or a main lobe beamwidth not exceeding 3.5 degrees. The Commission also adopted strict frequency stability requirements to limit out-of-band emissions to minimal levels. The Commission concluded that it is in the public interest to allow such operation on an unlicensed basis to supplement the growing demand for licensed point-to-point facilities that satisfy important communications needs. For example, the Commission concluded that increasing the field strength limit would promote greater use of part 15 unlicensed devices for emergency restoration of communications in disaster situations, low-cost telecommunications delivery in rural areas, and other beneficial applications.

2. By this Memorandum Opinion and Order, the Commission affirms the decision made in the R&O to allow the unlicensed operation of fixed point-to-point transmitters in the 24.05–24.25 GHz band at field strengths up to 2500 mV/m under amended provisions of § 15.249 in part 15 of the Rules. The Commission affirms the central technical finding made in the R&O namely, that devices having field strengths up to 2500 mV/m and conforming to the specified directional antenna requirements are suitable for unlicensed operation under part 15 in the 24.05–24.25 GHz band. In particular, the Commission affirms the conclusion that devices operating within these requirements will not increase the interference potential to licensed amateur services in the band.

3. In the course of affirming its decision in the R&O, the Commission also denies the petition for reconsideration filed by the National Association for Amateur Radio (ARRL) that challenged the propriety of the described operation in the 24.05–24.25 GHz band on an unlicensed basis. Because the unlicensed operation provided for by the R&O will not increase the interference potential to licensed amateur services in the band, the Commission finds no merit in ARRL's argument that the Commission violated 47 U.S.C. 301 of the Communications Act in authorizing the unlicensed operation under part 15 of the Commission's rules. Furthermore, the Commission affirms that the rules adopted in the R&O are reasonable for

regulating the unlicensed operation that was authorized under part 15 in this proceeding. Finally, since the MO&O resolves all pending matters in this proceeding, the Commission terminates this proceeding.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21618 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[FCC 02–154]

2000 Biennial Regulatory Review: International Telecommunications Service, Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: In this document the Commission amends a reference to a section that has been removed from the Commission's rules.

DATES: Effective on August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Telecommunications Division, International Bureau, (202) 418–1499.

SUPPLEMENTARY INFORMATION: The Commission published a document in the **Federal Register** on July 9, 2002, (67 FR 45387).

■ In the FR Doc. 02–16738, the final rule removed § 63.18(e)(3) and redesignated paragraph (e)(4) as paragraph (e)(3). Redesignating paragraph (e)(4) as paragraph (e)(3) resulted in an incorrect reference in § 63.11(d). This document corrects § 63.11(d) to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that are or propose to become affiliated with a foreign carrier.

* * * * *

(d) *Cross-Reference*: In the event a transaction requiring a foreign carrier notification pursuant to this section also requires a transfer of control of assignment application pursuant to § 63.24, the foreign carrier notification shall reference in the notification the transfer of control of assignment application and the date of its filing.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21617 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; FCC 03–112]

Telecommunication Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission rules pertaining to mandatory minimum standards, and other regulations, for Telecommunications Relay Services (TRS) and speech-to-speech services for individuals with hearing and speech disabilities. The amended rules are intended to improve the overall effectiveness of TRS to ensure that persons with hearing and speech disabilities have access to telecommunications networks that is consistent with the goal of functional equivalency mandated by Congress.

DATES: Effective September 24, 2003 except § 64.604 (a)(3) and (c)(2) of the Commission's rules, which contains information collection requirements under the Paperwork Reduction Act (PRA), that are not effective until approved by Office of Management and Budget (OMB). Written comments by the public on the new and modified information collections are due October 24, 2003. The Commission will publish a document in the **Federal Register** announcing the effective date for that section.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC, 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Cheryl King, of the Consumer & Governmental Affairs Bureau at (202) 418–2284 (voice), (202) 418–0416 (TTY), or e-mail *Cheryl.King@fcc.gov*. For additional information concerning the information collection(s) contained in this document, contact Leslie Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This *Second Report and Order, Order on Reconsideration* contains new and modified collections subject to the PRA of 1995, Public Law 104–13. These will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new and modified information collections contained in this proceeding. This document contains a *Second Report and Order* addressing issues arising from the Further Notice of Proposed Rulemaking contained in *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking*, (*Improved TRS Order and FNPRM*), CC No. Docket 98–67, FCC No. 00–56, 15 FCC Rcd 5140, March 6, 2000; published at 65 FR 40093, June 21, 2000, and comments received in response thereto. This document also contains an *Order on Reconsideration* which resolves petitions for reconsideration filed against the *Improved TRS Order and FNPRM*. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (tty). This *Second Report and Order, Order on Reconsideration* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Paperwork Reduction Act

The *Second Report and Order, Order on Reconsideration* contains either new and/or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information

collection(s) contained in this *Second Report and Order, Order on Reconsideration* as required by the PRA of 1995, Public Law 104–13. Public and agency comments are due October 24, 2003.

Synopsis

In this *Second Report and Order,* the Commission establishes new rules and amends existing rules governing TRS to further advance the functional equivalency mandate of section 225 of the Communications Act of 1934, 47 U.S.C. 225. First, the Commission requires that TRS providers offer certain improved services and features where technologically feasible, as well as several additional types of TRS calls. In addition, the Commission requires that all TRS providers implement 711 dialing access for STS users. Further, the Commission revises the requirements for handling emergency calls and provides guidance for public access to TRS-related information. In the *Order on Reconsideration,* the Commission addresses certain requirements for communications assistants and other matters relating to TRS.

Final Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 603 *et seq,* an Initial Regulatory Flexibility (IRFA) was incorporated in the further notice of proposed rule making to which this *Second Report and Order* responds. *See Improved TRS Order and FNPRM.* The Commission sought written public comment on the proposals in the *Improved TRS Order and FNPRM,* including comment on the IRFA incorporated in that proceeding. The comments we have received discuss only the general recommendations, not the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604. We also expect that we could certify the *Second Report and Order* under 5 U.S.C. 605, because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore, there is not a substantial number of small entities that may be affected by our action.

Need for, and Objective of This Report and Order

This proceeding was initiated to address the requirement that telecommunications relay services (TRS) users have access to telephone services that are functionally equivalent to those available to individuals without hearing or speech disabilities. Our specific concerns were to examine the mandatory minimum standards for TRS with regard to enhanced features available to the non-disabled telecommunications consumer, and to address emergency call handling and Speech-to-Speech (STS) services. The Commission issued the *Improved TRS FNPRM* to further develop the record with the goal of making the full range of telecommunications services and features available to TRS users, consistent with Congress' direction that TRS regulations encourage the use of existing technology and not discourage or impair the development of improved technology. *See* 47 U.S.C. 225(d)(2). The *Improved TRS FNPRM* also sought comment on outreach programs, the accessibility of emergency services to TRS, and whether SS7 technology should be made available to TRS facilities.

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

No comments were filed directly in response to the IRFA in this proceeding. The Commission has nonetheless considered potential significant economic impact of the rules on small entities and as discussed below has concluded that the rules adopted may imposed some economic burden on at least one small entity that is a TRS provider.

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. 5 U.S.C. 694(a)(3). The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' 15 U.S.C. 632). Pursuant to the 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 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 an additional criterion established by the Small Business Administration (SBA). 15 U.S.C. 632. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. The term ''small governmental jurisdiction'' is defined as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' 5 U.S.C. 601(5). As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. U.S. Census Bureau, *Statistical Abstracts of the United States: 2000*, Section 9 pages 299–300, Tables 490 and 492. This number includes 39,044 county governments, municipalities, and townships of which 37,546 (approximately 96.2%) have populations of fewer than 50,000 and 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

Below, we further describe and estimate the number of small entity licensees and regulatees that, in theory, may be affected by these rules. For some categories, the most reliable source of information available at this time is data the Commission publishes in its *Trends in Telephone Service Report.* FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5-5 (May 2002) (*Trends in Telephone Service*). FCC Web site location (see online page 24): *http://www.fcc.gov/Bureaus/CommonCarrier/Reports/FCC-StateLink/IAD/trend502.pdf.*

Local Exchange Carriers. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the

RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201 NAICS Code 517110. This provides that such a carrier is a small entity if it employs no more than 1,500 employees. *Id.* Commission data from 2000 indicate that there are 1,329 incumbent local exchange carriers, total, with approximately 1,024 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 1,024 ILECS that are small businesses possibly affected by our action.

Interexchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is a small entity if it employs no more than 1,500 employees. Commission data from 2000 indicate that there are 229 interexchange carriers, total, with approximately 181 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 181 interexchange carriers that are small businesses possibly affected by our action.

TRS Providers. Neither the Commission nor the SBA has developed a definition of ''small entity'' specifically directed towards providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. The Commission estimates that at least one TRS provider is a small entity. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities. MCI WorldCom, for example, provides TRS in only a few states but is not a small business. Consequently, the FCC estimates that at least one TRS provider is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

Reporting and Recordkeeping. This *Second Report and Order* involves no new mandatory reporting requirements. These rules require a speed dialing feature that may require TRS providers to maintain a list of telephone numbers. The *Second Report and Order* adopts a rule to require that TRS facilities provide speed dialing functionality on an intrastate and interstate basis; however, it does not adopt specific requirements for speed dialing functionality at this time.We anticipate that TRS providers will develop customized speed dialing and expect that consumers' needs will be addressed as this feature matures. The *Second Report and Order* also establishes voluntary reporting requirements associated with certain waivers available for certain TRS providers. Consistent with the *IP Relay Order on Reconsideration, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling and Second Further Notice of Proposed Rule Making,* FCC 02–121, 17 FCC Rcd 7779, April 22, 2002; published at 67 FR 39863 and 67 FR 39929, June 11, 2002 (*IP Relay Declaratory Ruling and FNPRM*), Order on Reconsideration, FCC 03–46, 18 FCC Rcd 4761, March 14, 2003; published at 68 FR 18825, April 16, 2003 (*IP Relay Order on Reconsideration*), this *Report and Order* establishes waivers for TRS providers that provide Internet Protocol (IP) Relay and video relay service (VRS). The waivers set forth in the *Second Report and Order* are contingent on annual reports filed with the Commission detailing the technological changes in these areas, the progress made, and the steps taken to resolve the technologically problems that prevent IP Relay and VRS providers from offering these types of TRS calls. This requirement has very little economic impact on the TRS providers because it merely requires an annual submission of an annual report to the Commission and the reports are voluntary because IP Relay and VRS are not mandatory forms of TRS under our rules.

Other Compliance Requirements. The rules adopted in this *Second Report and Order* require that all TRS providers provide several types of TRS calls including: Two-line VCO and two-line HCO, HCO-to-TTY and HCO-to-HCO, and VCO-to-TTY and VCO-to-VCO. The rules also require that TRS facilities route emergency TRS calls to the designated PSAP to which a direct voice call from a non-TRS number would be delivered. Furthermore, the rules require that TRS facilities provide certain technological features, including call release and three-way calling. The *Order on Reconsideration* clarifies certain reporting requirements for contact persons. These rules will affect TRS providers.

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

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. 5 U.S.C. 603 (c)(1)–(c)(4). One of the main purposes of this *Second Report and Order* is to clarify many of the current requirements for TRS providers. The annual reports associated with the waivers for IP Relay and VRS providers have been made to expire at the same time as previous waivers so that TRS providers have one deadline instead of multiple deadlines to which they must adhere if providing those non-mandatory forms of TRS. Any

new requirements that are imposed are similar to services currently being offered and therefore the Commission expects a minimal impact on small business. Currently, most TRS providers are not small entities, and are either interexchange carriers or local exchange carriers, with very few exceptions. This *Second Report and Order* adopts rules that will improve the effectiveness of TRS and ensure access to telecommunications networks for persons with hearing and speech disabilities while imposing the least necessary regulation.

Report to Congress

The Commission will send a copy of the *Second Report and Order, Order on Reconsideration* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order* including this FRFA, to the Chief of Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order, Order on Reconsideration* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i) and 4(j), 201–205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, 218 and 225, this *Second Report and Order, Order on Reconsideration are adopted* and Part 64 of Commission's rules is *amended* as set forth in the rule changes.

It is further ordered that the amendments to §§ 64.601 through 64.605 of the Commission's rules as set forth *are adopted,* effective September 24, 2003 except §§ 64.604 (a)(3) and (c)(2), that contains information collection requirements under the PRA, that are not effective until approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date for that section.

It is further ordered that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Report Order, Order on Reconsideration,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telecommunications, Individuals with disabilities, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); sections. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Section 64.601 is revised to read as follows:

§ 64.601 Definitions.

As used in this subpart, the following definitions apply:

(1) *711.* The abbreviated dialing code for accessing all types of relay services anywhere in the United States.

(2) *American Sign Language (ASL).* A visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body.

(3) *ASCII.* An acronym for American Standard Code for Information Interexchange which employs an eight bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher.

(4) *Baudot.* A seven bit code, only five of which are information bits. Baudot is used by some text telephones to communicate with each other at a 45.5 baud rate.

(5) *Call release.* A TRS feature that allows the CA to sign-off or be ''released'' from the telephone line after the CA has set up a telephone call between the originating TTY caller and a called TTY party, such as when a TTY user must go through a TRS facility to contact another TTY user because the called TTY party can only be reached through a voice-only interface, such as a switchboard.

(6) *Common carrier or carrier.* Any common carrier engaged in interstate Communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act.

(7) *Communications assistant (CA).* A person who transliterates or interprets conversation between two or more end users of TRS. CA supersedes the term ''TDD operator.''

(8) *Hearing carry over (HCO).* A form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation. Two-line HCO is an HCO service that allows TRS users to use one telephone line for hearing and the other for sending TTY messages. HCO-to-TTY allows a relay conversation to take place between an HCO user and a TTY user. HCO-to-HCO allows a relay conversation to take place between two HCO users.

(9) *Non-English language relay service.* A telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language.

(10) *Qualified interpreter.* An interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(11) *Public Safety Answering Point (PSAP).* A facility that has been designated to receive 911 calls and route them to emergency services personnel as provided in 47 CFR 64.3000(c).

(12) *Speech-to-speech relay service (STS).* A telecommunications relay service that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.

(13) *Speed dialing.* A TRS feature that allows a TRS user to place a call using a stored number maintained by the TRS facility. In the context of TRS, speed dialing allows a TRS user to give the CA a short-hand'' name or number for the user's most frequently called telephone numbers.

(14) *Telecommunications relay services (TRS).* Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not

use such a device, speech-to-speech services, video relay services and non-English relay services. TRS supersedes the terms ''dual party relay system,'' ''message relay services,'' and ''TDD Relay.''

(15) *Text telephone (TTY).* A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TTY supersedes the term ''TDD'' or ''telecommunications device for the deaf,'' and TT.

(16) *Three-way calling feature.* A TRS feature that allows more than two parties to be on the telephone line at the same time with the CA.

(17) *Video relay service (VRS).* A telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller.

(18) *Voice carry over (VCO).* A form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation. Two-line VCO is a VCO service that allows TRS users to use one telephone line for voicing and the other for receiving TTY messages. A VCO-to-TTY TRS call allows a relay conversation to take place between a VCO user and a TTY user. VCO-to-VCO allows a relay conversation to take place between two VCO users.

■ 3. Section 64.604 is amended by revising paragraphs (a)(1), (a)(3), (b), (c)(2) and (c)(6)(v)(A)(*1*) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) *Operational standards.*—(1) *Communications assistant (CA).*

(i) TRS providers are responsible for requiring that all CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities.

(ii) CAs must have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. CAs must possess clear and articulate voice communications.

(iii) CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed.

(iv) TRS providers are responsible for requiring that VRS CAs are qualified interpreters. A ''qualified interpreter'' is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(v) CAs answering and placing a TTY-based TRS or VRS call must stay with the call for a minimum of ten minutes. CAs answering and placing an STS call must stay with the call for a minimum of fifteen minutes.

(vi) TRS providers must make best efforts to accommodate a TRS user's requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.

(vii) TRS shall transmit conversations between TTY and voice callers in real time.

* * * * *

(3) *Types of calls.* (i) Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services.

(ii) Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call.

(iii) Relay service providers are permitted to decline to complete a call because credit authorization is denied.

(iv) Relay services shall be capable of handling pay-per-call calls.

(v) TRS providers are required to provide the following types of TRS calls: (1) Text-to-voice and voice-to-text; (2) VCO, two-line VCO, VCO-to-TTY, and VCO-to-VCO; (3) HCO, two-line HCO, HCO-to-TTY, HCO-to-HCO.

(vi) TRS providers are required to provide the following features: (1) Call releasefunctionality; (2) speed dialing functionality; and (3) three-way calling functionality.

(vii) Voice mail and interactive menus. CAs must alert the TRS user to the presence of a recorded message and interactive menu through a hot key on the CA's terminal. The hot key will send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been encountered. Relay providers shall electronically capture recorded messages and retain them for the length of the call. Relay providers may not impose any charges for additional calls, which must be made by the relay user in order to complete calls involving recorded or interactive messages.

(viii) TRS providers shall provide, as TRS features, answering machine and voice mail retrieval.

(4) *Handling of emergency calls.* Providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to an appropriate Public Safety Answering Point (PSAP). An appropriate PSAP is the designated PSAP to which a direct call from the particular number would be delivered. In addition, a CA must pass along the caller's telephone number to the PSAP when a caller disconnects before being connected to emergency services.

(5) *STS called numbers.* Relay providers must offer STS users the option to maintain at the relay center a list of names and telephone numbers which the STS user calls. When the STS user requests one of these names, the CA must repeat the name and state the telephone number to the STS user. This information must be transferred to any new STS provider.

(b) *Technical standards.* (1) *ASCII and Baudot.* TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

(2) *Speed of answer.* (i) TRS providers shall ensure adequate TRS facility staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(ii) TRS facilities shall, except during network failure, answer 85% of all calls within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold. The ten seconds begins at the time the call is delivered to the TRS facility's network. A TRS facility shall ensure that adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(A) The call is considered delivered when the TRS facility's equipment accepts the call from the local exchange carrier (LEC) and the public switched network actually delivers the call to the TRS facility.

(B) Abandoned calls shall be included in the speed-of-answer calculation.

(C) A TRS provider's compliance with this rule shall be measured on a daily basis.

(D) The system shall be designed to a P.01 standard.

(E) A LEC shall provide the call attempt rates and the rates of calls blocked between the LEC and the TRS facility to relay administrators and TRS providers upon request.

(3) *Equal access to interexchange carriers.* TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) *TRS facilities.* (i) TRS shall operate every day, 24 hours a day. Relay services that are not mandated by this Commission need not to be provided every day, 24 hours a day.

(ii) TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use.

(5) *Technology.* No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities. TRS facilities are permitted to use SS7 technology or any other type of similar technology to enhance the functional equivalency and quality of TRS. TRS facilities that utilize SS7 technology shall be subject to the Calling Party Telephone Number rules set forth at 47 CFR 64.1600 *et seq.*

(6) *Caller ID.* When a TRS facility is able to transmit any calling party identifying information to the public network, the TRS facility must pass through, to the called party, at least one of the following: the number of the TRS facility, 711, or the 10-digit number of the calling party.

(c) * * *

(2) *Contact persons.* Beginning on June 30, 2000, State TRS Programs, interstate TRS providers, and TRS providers that have state contracts must submit to the Commission a contact person and/or office for TRS consumer information and complaints about a certified State TRS Program's provision of intrastate TRS, or, as appropriate, about the TRS provider's service. This submission must include, at a minimum, the following:

(i) The name and address of the office that receives complaints, grievances, inquiries, and suggestions;

(ii) Voice and TTY telephone numbers, fax number, e-mail address, and web address; and

(iii) The physical address to which correspondence should be sent.

* * * * *

(6) * * *

(v) * * *

(A) * * *

(*1*) *Form.* An informal complaint may be transmitted to the Consumer & Governmental Affairs Bureau by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate a complainant's hearing or speech disability.

* * * * *

[FR Doc. 03–21615 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64

[CG Docket No. 02–278, FCC 03–208]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.

AGENCY: Federal Communications Commission.

ACTION: Final rule; establishment of effective date.

SUMMARY: We recently revised the current Telephone Consumer Protection Act of 1991 (TCPA) rules, and adopted new rules modifying the Federal Communications Commission's (Commission's) unsolicited facsimile advertising requirements. This document establishes an effective date of January 1, 2005 for one provision of those rules. We have also modified the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements and the rule provision requiring that the sender of a facsimile advertisement first obtain the recipient's express permission in writing. The effective date of our amended definition of an ''established business relationship'' is not affected by our determination here.

DATES: Section 64.1200(a)(3)(i) published at 68 FR 44144, July 25, 2003, is effective January 1, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith at 202–418–2512, Consumer & Governmental Affairs Bureau, Federal Communications Commission.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration* in CG Docket No. 02–278, FCC 03–208, adopted on August 18, 2003 and released August 18, 2003. The full text of this document is available at the Commission's Web site *http://www.fcc.gov* on the Electronic Comment Filing System and for public inspection and copying during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice) or (202) 418–7365 (tty). This Order on Reconsideration can also be downloaded in Text or ASCII formats at *http://www.fcc.gov/cgb.*

Synopsis

On July 3, 2003, the Commission released a *Report and Order* revising many of its telemarketing and facsimile advertising rules pursuant to the TCPA. *See* 68 FR 44144, July 25, 2003. Pursuant to Section 1.108 of the Commission's rules, 47 CFR 1.108, on our own motion, we issue this limited reconsideration of the *Report and Order* and extend, until January 1, 2005, the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. We also establish January 1, 2005 as the effective date of amended rule 47 CFR 64.1200(a)(3)(i), which provides that ''a facsimile advertisement is not ''unsolicited'' if the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender.''

In the *Report and Order*, the Commission reversed its prior conclusion that an established business relationship provides companies with the necessary express permission to send faxes to their customers. The Commission determined that the established business relationship would no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. Instead, the Commission concluded that the

recipient's express invitation or permission must be in writing and include the recipient's signature. The recipient must clearly indicate that he or she consents to receiving such faxed advertisements from the company to which permission is given, and must provide the individual's or business's fax number to which faxes may be sent.

On July 25, 2003, the American Society of Association Executives (ASAE) filed a petition for emergency clarification of the rules governing unsolicited facsimile advertisements as they apply to tax-exempt nonprofit organizations. This petition asked the Commission to issue a clarification that unsolicited facsimile communications are not prohibited when issued by tax-exempt nonprofit purposes. In addition, ASAE filed a petition for stay of the unsolicited facsimile rules as they apply to tax-exempt nonprofits in the event the Commission is unable to clarify the rules prior to their effective date. Many of ASAE's members and other organizations have filed comments in support of ASAE's petitions. The National Association of Realtors (NAR) also filed, on August 1, 2003, a Request for Emergency Stay of all of the facsimile advertisement rules, asking the Commission to grant a one-year stay of the recently adopted rules ''to permit NAR and its members sufficient time to review and comply with the Commission's new, unanticipated, and unprecedented, unsolicited fax rules.'' A Request for Stay of the amended rules concerning unsolicited facsimile advertising as they apply to the publishers of Requester Publications, along with a Request for Expedited Clarification of the unsolicited facsimile rules, were filed by Proximity Marketing on August 6, 2003. In addition, on August 8, 2003, a Request for Stay of the amended rules concerning unsolicited facsimile advertising as they apply to political action committees was filed by the National Association of Business Political Action Committees. The Chamber of Commerce of the United States, the Community Association Institute, the National Association of Manufacturers, the National Association of Wholesaler-Distributors, the National Restaurant Association, and the National Federation of Independent Business (Chamber of Commerce of the United States, *et al.*) filed, on August 8, 2003, a Request for Stay of the amended rules that apply to unsolicited commercial faxes. The American Society of Travel Agents, Mortgage Bankers Association of America, National Association of Mortgage Brokers, Consumer Mortgage Coalition, and the Midwest Circulation Association (collectively, the Business Users Coalition) also submitted a Petition for Emergency Stay of at least six (6) months of the rules regarding unsolicited facsimile advertisements. A Petition for Stay of the rules governing the nature of ''express permission'' required to send advertisements by fax was filed by American Business Media. A Petition for Emergency Stay & Clarification of the amended rules governing unsolicited facsimile advertisements as they apply to tax-exempt nonprofit organizations was submitted by the Air Conditioning Contractors of America. A Request for Stay of those rules governing unsolicited fax advertising was filed by the American Dietetic Association. Reed Elsevier Inc. submitted a Motion for Stay of the effective date of the amended fax consent rule at 64.1200(a)(3)(i). The Newspaper Association of America and the National Newspaper Association filed a Petition for Stay of the Commission's amended rules on unsolicited facsimile advertisements.

The American Teleservices Association (ATA) also submitted on July 25, 2003 a Request for Expedited Stay of the Commission's revisions to the rules implementing the TCPA. The ATA requests that the Commission stay the revisions to the rules implementing the TCPA, pending a final decision on judicial review of the new rules. ATA's petition relates primarily to the new telephone solicitation rules, including the national do-not-call registry.

We now, on our own motion, issue this limited reconsideration of the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements, as well as the amended unsolicited facsimile provisions at 47 CFR 64.1200(a)(3)(i). Section 64.1200(a)(3)(i), as amended, requires the sender of a facsimile advertisement to first obtain from the recipient a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender. The comments filed after the release of the *Report and Order* indicate that many organizations may need additional time to secure this written permission from individuals and businesses to whom they fax advertisements. We believe that, in light of this new information, the public interest would best be served by allowing senders of such advertisements additional time to obtain such express permission before the new rules become effective. In addition, this effective date will allow the Commission the opportunity to consider any petitions for reconsideration and other filings that may be made on this issue. We retain the discretion to extend the effective date should circumstances warrant such an action. We emphasize that our existing TCPA rules prohibiting the transmission of unsolicited advertisements to a telephone facsimile machine will remain in effect during the pendancy of this extension. Under these rules, those transmitting facsimile advertisements must have an established business relationship or prior express permission from the facsimile recipient to comply with our rules. In addition, the effective date of the other amended facsimile rules remains unchanged by this *Order on Reconsideration*. *See* 47 CFR 68.318(d) (amending the rules to require any fax broadcaster that demonstrates a high degree of involvement in the transmission of messages to be identified on the facsimile, along with the identification of the sender).

We emphasize that the only effective date of the Commission's *Report and Order* established by this *Order on Reconsideration* is the requirement that the sender of a facsimile advertisement first obtain the recipient's express permission in writing. In addition, as of January 1, 2005, an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. Therefore, until the amended rule at 47 CFR 64.1200(a)(3)(i) becomes effective on January 1, 2005, an established business relationship will continue to be sufficient to show that an individual or business has given express permission to receive facsimile advertisements. The effective date of our amended definition of an ''established business relationship'' is not affected by our determination here.

We have considered and rejected ATA's request to stay the revisions to the rules implementing the TCPA to the extent that such request extends beyond the fax rules discussed above. Although the Commission has declined to adopt a single standard for requests for injunctive relief, we generally consider four criteria: (1) The likelihood of success on the merits, (2) the threat of irreparable harm absent grant of preliminary relief, (3) the degree of injury to other parties if relief is granted, and (4) that a stay will be in the public interest. *See Virginia Petroleum Jobbers Ass'n* v. *Federal Power Commission*, 259

F.2d 921 (D.C. Cir. 1958). We conclude that ATA's request does not satisfy the factors governing the issuance of a stay.

The actions contained herein have not changed our Final Regulatory Flexibility Analysis (FRFA), which is set forth in the *Report and Order.* Thus, no supplemental FRFA is necessary. In addition, the action contained herein imposes no new or modified reporting and/or recordkeeping requirements or burdens on the public.

Ordering Clauses

1. Accordingly, pursuant to sections 1–4, 222, 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 222 and 227; and section 1.108 of the Commission's Rules, 47 CFR 1.108, of the Commission's Rules, this *Order on Reconsideration* in CG Docket No. 02–278 *is adopted* and the *Report and Order*, FCC 03–153, *is modified* as set forth herein.

2. Subject to the effective dates set forth above, the National Association of Realtors' Request for Emergency Stay *is dismissed* without prejudice.

3. Subject to the effective dates set forth above, the American Society of Association Executives' Petition for Stay *is dismissed* without prejudice.

4. Subject to the effective dates set forth above, Proximity Marketing Request for Stay *is dismissed* without prejudice.

5. Subject to the effective dates set forth above, the National Association of Business Political Action Committees' Request for Stay *is dismissed* without prejudice.

6. Subject to the effective dates set forth above, the Chamber of Commerce of the United States *et al.* Request for Stay *is dismissed* without prejudice.

7. Subject to the effective dates set forth above, the Business Users Coalition's Petition for Emergency Stay *is dismissed* without prejudice.

8. Subject to the effective dates set forth above, the American Business Media's Petition for Stay *is dismissed* without prejudice.

9. Subject to the effective dates set forth above, the Air Conditioning Contractors of America's Petition for Emergency Stay *is dismissed* without prejudice.

10. Subject to the effective dates set forth above, the American Dietetic Association's Request for Stay of the Implementation of Regulations *is dismissed* without prejudice.

11. Subject to the effective dates set forth above, Reed Elsevier Inc.''s Motion for Stay *is dismissed* without prejudice.

12. Subject to the effective dates set forth above, the Newspaper Association of America and the National Newspaper Association's Petition for Stay *is dismissed* without prejudice.

13. The American Teleservices Association Request for Expedited Stay *is dismissed* without prejudice to the extent it seeks a stay of the rules affected by the effective dates set forth above, but is *otherwise denied.*

14. The effective date for the Commission's determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements and the requirement that the sender of a facsimile advertisement first obtain the recipient's express permission in writing, as codified at 47 CFR 64.1200(a)(3)(i), IS January 1, 2005, and that this *Order on Reconsideration* is effective upon publication in the **Federal Register**. In light of the need to allow affected entities time to comply with the new faxing rules, we find good cause, pursuant to 5 U.S.C. 553(d), to make this effective on less than 30 days' notice.

List of Subjects

47 CFR Part 64

Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21644 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub–No. 10)]

Regulations Governing Fees For Services Performed in Connection With Licensing and Related Services—2003 Update

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Board adopts its 2003 User Fee Update and revises its fee schedule at this time to recover the costs associated with the January 2003 Government salary increases and to recover increased **Federal Register** costs to the Board.

EFFECTIVE DATE: These rules are effective September 24, 2003.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 565–1551, or Anne Quinlan, (202) 565–1727. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board's regulations in 49 CFR 1002.3 require the Board's user fee schedule to be updated annually. The Board's regulation at 49 CFR 1002.3(a) provides that the entire fee schedule or selected fees can be modified more than once a year, if necessary. The Board's fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d). Also, in some previous years, selected fees were modified to reflect new cost study data or changes in agency fee policy.

Because Board employees received a salary increase of 4.27% in January 2003, we are updating our user fees to recover the increased personnel costs. With certain exceptions, all fees will be updated based on our cost formula contained in 49 CFR 1002.3(d). In addition, the cost to publish data in the **Federal Register** increased last year, so we are revising the fees to give consideration to that increase.

The fee increases involved here result only from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services-1987 Update*, 4 I.C.C.2d 137 (1987). In addition, no new fees are being proposed in this proceeding. Therefore, we find that notice and comment are unnecessary for this proceeding. *See Regulations Governing Fees For Services-1990 Update*, 7 I.C.C.2d 3 (1990); *Regulations Governing Fees For Services-1991 Update*, 8 I.C.C.2d 13 (1991); and *Regulations Governing Fees For Services-1993 Update*, 9 I.C.C.2d 855 (1993).

We conclude that the fee changes adopted here will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write, call, or pick up in person from the Board's contractor, Da-To-Da Legal, Suite 405, 1925 K Street, NW, Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: August 18, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

■ For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

■ 2. Section 1002.1 is amended by revising paragraphs (b), (c), and (e)(1) and the table in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for record search, review, copying, certification, and related services.

* * * * *

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $32.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., incidental thereto, at the rate of $22.00 per hour.

* * * * *

(e) * * *

(1) A fee of $55.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Grade	Rate
GS–1	$ 9.31
GS–2	10.14
GS–3	11.43
GS–4	12.83
GS–5	14.35
GS–6	16.00
GS–7	17.78
GS–8	19.69
GS–9	21.75
GS–10	23.95
GS–11	26.31
GS–12	31.53
GS–13	37.50
GS–14	44.31
GS–15 and over	52.13

* * * * *

■ 3. In § 1002.2, paragraph (f) is revised as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(1) An application for the pooling or division of traffic	$3,300.
(2) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	$1,500.
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703	$20,600.
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	$3,400.
(ii) Minor amendment	$70.
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	$350.
(6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.	$1,300.
(7)–(10) [Reserved]	
PART II: Rail Licensing Proceedings Other than Abandonment or Discontinuance Proceedings:	
(11) (i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	$5,400.
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	$1,400.
(iii) Petition for exemption under 49 U.S.C. 10502	$9,400.
(12) (i) An application involving the construction of a rail line	$55,600.
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	$1,400.
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	$55,600.
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	$2,600.
(14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902.	$4,600.
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	$1,400.
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902.	$4,900.
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24	1,300.
(16)–(20) [Reserved]	
PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings:	
(21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments).	$16,500.
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	$2,800.
(iii) A petition for exemption under 49 U.S.C. 10502	$4,700.
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	$350.
(23) Abandonments filed by bankrupt railroads	$1,400.
(24) A request for waiver of filing requirements for abandonment application proceedings	$1,300.
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	$1,100.
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	$16,800.
(27) A request for a trail use condition in an abandonment proceeding under 16 U.S.C.1247(d)	150.
(28)–(35) [Reserved]	
PART IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	$14,100.
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	$7,600.

Type of proceeding	Fee
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	$1,111,700.
(ii) Significant transaction	$222,300.
(iii) Minor transaction	$5,900.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$1,300.
(v) Responsive application	5,900.
(vi) Petition for exemption under 49 U.S.C. 10502	7,000.
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$1,111,700.
(ii) Significant transaction	$222,300.
(iii) Minor transaction	$5,900.
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	$1,000.
(v) Responsive application	$5,900.
(vi) Petition for exemption under 49 U.S.C. 10502	$7,000.
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	$1,111,700.
(ii) Significant transaction	$222,300.
(iii) Minor transaction	$5,900.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$950.
(v) Responsive application	$5,900.
(vi) Petition for exemption under 49 U.S.C. 10502	$7,000.
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$1,111,700.
(ii) Significant transaction	$222,300.
(iii) Minor transaction	$5,900.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$1,100.
(v) Responsive application	$5,900.
(vi) Petition for exemption under 49 U.S.C. 10502	$4,900.
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	$1,800.
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	$52,000.
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	$9,600.
(ii) Minor amendment	$70.
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	$550.
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered.	$6,000.
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	$150.
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act.	$150.
(49)–(55) [Reserved]	
PART V: Formal Proceedings:	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1).	$62,100.
(ii) All other formal complaints (except competitive access complaints	$6,100.
(iii) Competitive access complaints	$150.
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	$6,600.
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	$1,000.
(ii) All other petitions for declaratory order	$1,400.
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	$5,200.
(60) Labor arbitration proceedings	$150.
(61) Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d).	$150.
(62) Motor carrier undercharge proceedings	$150.
(63)–(75) [Reserved].	
PART VI: Informal Proceedings:	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	$900.
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	$90.
(78) (i) The filing of tariffs, including supplements, or contract summaries	$1 per page. (18 minimum charge.)
(ii) Tariffs transmitted by fax	$1 per page.
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less	$50.
(ii) Applications involving over $25,000	$100.
(80) Informal complaint about rail rate applications	$450.

Type of proceeding	Fee
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	$50.
(ii) Petitions involving over $25,000	$100.
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3).	$150.
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c)	$30 per document.
(84) Informal opinions about rate applications (all modes)	$150.
(85) A railroad accounting interpretation	$850.
(86) An operational interpretation	$1,100.
(87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR 1108:	
(i) Complaint	$75.
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(iii) Third Party Complaint	$75.
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	$150.
(88)–(95) [Reserved]	
PART VII: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	$23 per delivery.
(97) Request for service or pleading list for proceedings	$18 per list.
(98) (i) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that does not require a *Federal Register* notice.	$200.
(ii) Processing the paperwork related to a request for Carload Waybill Sample to be used for reasons other than a Surface Transportation Board or State proceeding that requires a *Federal Register* notice.	$500.
(99) (i) Application fee for the Surface Transportation Board's Practitioners' Exam	$100.
(ii) Practitioners' Exam Information Package	$25.
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	$50.
(ii) Updated URCS PC version Phase III cost file, if computer disk provided by requestor	$10.
(iii) Updated URCS PC version Phase III cost file, if computer disk provided by the Board	$20.
(iv) Public requests for *Source Codes* to the PC version URCS Phase III	$500.
(v) PC version or mainframe version URCS Phase II	$400.
(vi) PC version or mainframe version Updated Phase II databases	$50.
(vii) Public requests for *Source Codes* to PC version URCS Phase II	$1,500.
(101) Carload Waybill Sample data on recordable compact disk (R–CD):.	
(i) Requests for Public Use File on R–CD—First Year	$450.
(ii) Requests for Public Use File on R–CD Each Additional Year	$150.
(iii) Waybill—Surface Transportation Board or State proceedings on R–CD—First Year	$650.
(iv) Waybill—Surface Transportation Board or State proceedings on R–CD—Second Year on same R–CD	$450.
(v) Waybill—Surface Transportation Board of State proceeding on R–CD—Second Year on different R–CD	$500.
(vi) User Guide for latest available Carload Waybill Sample	$50.

* * * * *

[FR Doc. 03–21571 Filed 8–22–03; 8:45 am]

BILLING CODE 4915–00–P

Proposed Rules

Federal Register
Vol. 68, No. 164
Monday, August 25, 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.

FEDERAL TRADE COMMISSION

16 CFR Part 228

Tire Advertising and Labeling Guides

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''Commission'') requests public comments about the overall costs and benefits of and the continuing need for its Tire Advertising and Labeling Guides (''the Tire Guides'' or ''the Guides''), as part of the Commission's systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until October 24, 2003.

ADDRESSES: Mailed comments should be directed to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Mailed comments should be identified as ''Tire Guides, 16 CFR Part 228—Comment.'' E-mail comments will be accepted at [*tireguides@ftc.gov*]. Those who comment by e-mail should give a mailing address to which an acknowledgment can be sent.

FOR FURTHER INFORMATION CONTACT: David Plottner, Investigator, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, Ohio 44114, telephone number (216) 263–3409, E-mail [*dplottner@ftc.gov*].

SUPPLEMENTARY INFORMATION:

I. Tire Advertising and Labeling Guides

The Commission first promulgated Trade Practice Rules for the Tire Industry in 1936. It discarded those Rules as obsolete and adopted new regulations in 1958. Subsequently, those regulations were folded into complete Guides that became effective in January 1968. These 1968 Guides were revised slightly in 1994, with the addition of a provision regarding retreaded tires. Otherwise the 1968 Guides have remained unchanged.

Commission Guides, generally, constitute administrative interpretations of Commission law and are administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. Conduct inconsistent with the Guides may result in corrective action by the Commission under applicable statutory provisions.

The Tire Guides cover tires for use on ''passenger automobiles, station wagons, and similar vehicles.'' They apply to manufacturers of new vehicles, on which these tires are provided as original equipment, and to those who manufacture, sell, distribute, or retread tires. The Tire Guides address labeling, both permanent and removable; advertising, including specific triggering terminology, performance claims, deceptive pricing claims, and guarantee advertising; point-of-sale disclosures regarding use, care and safety; and disclosures relating to used, retreaded tires and snow tires.

II. Regulatory Review Program

The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. The Commission solicits comments on, among other things, the economic impact of and the continuing need for the Tire Guides; possible conflict between the Guides and state, local, or other federal laws; and the effect of any technological, economic, or other industry changes on the Guides.

III. Request for Comment

The Commission solicits written public comments on the following questions:

(1) Is there a continuing need for the Tire Guides?

(a) What benefits have the Guides provided to purchasers of the products affected by the Guides?

(b) Have the Guides imposed costs on purchasers?

(c) How prevalent and widespread is voluntary compliance with the Guides?

(d) Have other Federal regulatory initiatives rendered the Guides unnecessary?

(2) What changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers?

(a) How would these changes affect the costs the Guides impose on firms following their suggestions?

(b) How would these changes affect the benefits to purchasers?

(3) What significant burdens or costs, including costs of compliance, have the Guides imposed on firms following their suggestions?

(a) Have the Guides provided benefits to such firms? If so, what benefits?

(4) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on firms following their suggestions?

(a) How would these changes affect the benefits provided by the Guides?

(5) Do the Guides overlap or conflict with other Federal, state, or local laws or regulations?

(a) To what extent has/will NHTSA tire safety regulations and tire quality grading standards regulations [49 CFR 567, 571, 574, 575, and 597] including those required by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000 , Pub. L. 106—414 supersede the need for this Guide or parts of this Guide?

(b) To what extent has the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.*, and regulations promulgated pursuant to the Act, found at 16 CFR Parts 700–703 and Part 239, superseded the need for the Guides or parts of the Guides?

(c) Have state consumer protection laws or regulations governing tires, tire safety, tire price advertising, tire disposal, retreading, or snow tires affected the need for the Guides or parts of the Guides?

(6) Since 1968 when the main provisions of the Guides were issued, what effects, if any, have the following changes in relevant technology or economic conditions had on the Guides:

(a) The recent increased sales of pickup trucks, sport utility vehicles, and similar new vehicles, the tires of which may not be covered by the Guides?

(b) The shift to radial tires (as opposed to the bias-ply tires popular when the Guides were issued) in today's tire market?

(c) Changes in tire distribution or sales, including use of E-mail, the Internet, Internet advertising or CD–ROM advertising.

(d) The declining market for retreaded passenger car tires.

(7) Are there any abuses occurring in the distribution, promotion, sale or manufacture of tires that are not addressed by the Guides? If so, what mechanisms should be explored to address such abuses (*e.g.*, consumer education, industry self-regulation, Guide amendment)?

List of Subjects in 16 CFR Part 228

Advertising, Automobile tires, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission, Commissioner Harbour not participating.

Donald S. Clark,

Secretary.

[FR Doc. 03–21681 Filed 8–22–03; 8:45 am]

BILLING CODE 6750–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AF62

Amendments to Annual Earnings Test for Retirement Beneficiaries

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We are providing notice of proposed rulemaking to conform to the ''Senior Citizens' Freedom to Work Act of 2000''. This legislation was enacted on April 7, 2000, and became retroactively effective on January 1, 2000. It eliminates the Social Security annual earnings test for retirement beneficiaries, starting from the month in which they reach full retirement age. Before the passage of this legislation, persons reaching full retirement age were subject to an earnings test until the month in which they attained age 70.

DATES: To ensure that your comments are considered, we must receive them no later than October 24, 2003.

ADDRESSES: You may give us your comments by using: our Internet site facility (*i.e.*, Social Security Online) at *http://www.socialsecurity.gov/regulations/,* e-mail to *regulations@ssa.gov,* telefax to (410) 966–2830 or by sending a letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Process and Innovation Management Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

ELECTRONIC VERSION: The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office: *http://www.access.gpo.gov/su_docs/aces/acess/140.html.* It is also available on the Internet site for SSA (*i.e.*, ''Social Security Online'') at *http://www.socialsecurity.gov.*

FOR FURTHER INFORMATION CONTACT: Dorothy Skipwith, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–4231 or TTY (410) 966–5609. For information on eligibility or filing benefits: Call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0078, or visit our Internet web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

In addition to the revisions necessitated by the changes in the ''Senior Citizens' Freedom to Work Act of 2000,'' Pub. L. 106–182, which eliminated the annual earnings test for persons reaching full retirement age, we are proposing changes necessitated by the ''Social Security Amendments of 1983,'' Pub. L. 98–21. This legislation will increase the full retirement age for persons born in 1938 or later in incremental amounts, with a full 2-year increase in full retirement age for persons born in 1960 or later. We are also proposing the revision of the existing regulatory sections, numbered below, to present them in plainer language and to update the examples.

Explanation of Proposed Changes

The following is a brief summary of the sections we propose to revise and the changes to each of them.

Section 404.338 Widow's and widower's benefits amounts. This section describes the benefit amount a widow or widower may expect to receive relative to the benefit amount of the deceased insured spouse. The benefit amount for the widow or widower may include increased benefits based on delayed retirement credit of the deceased insured spouse, or reduced benefits based on the deceased insured spouse retiring before reaching full retirement age. This section also includes discussion on widow or widower benefits based on a special primary insurance amount when the insured died before reaching age 62. We propose to revise this section to reflect the change in full retirement age.

Sections 404.415 and 404.416 Deductions because of excess earnings; annual earnings test. Amount of deduction because of excess earnings. We propose to combine sections §§ 404.415 and 404.416 into a revised section § 404.415, ''*Deductions because of excess earnings*,'' because the topics are closely related and overlapping.

Revised section § 404.415 would explain the effect of excess earnings on the benefits of:

1. An insured person caused by his/her excess earnings.
2. An auxiliary beneficiary because of the excess earnings of the insured person on whose record he/she draws benefits.
3. An auxiliary beneficiary because of his/her own excess earnings, which reduce only that beneficiary's benefits.

This revised section § 404.415 would also reflect the legislated changes in full retirement age and annual earnings test.

Section 404.428 Earnings in a taxable year. This section clarifies the method for calculating a beneficiary's or prospective beneficiary's annual earnings with respect to the annual earnings test. It also clarifies when the claimant may use a taxable year other than a calendar year, and the number of months in a taxable year used in the earnings test calculation for the year of death. This section also defines which reporting year wage earners and self-employed individuals must use relative to the year in which the earnings were earned.

We propose to revise the section to reflect changes in the annual earnings test and full retirement age.

Section 404.429 Earnings; defined. This section defines wages and net earnings from self-employment for earnings test purposes. It also lists the self-employment occupations that are included in ''net earnings from self-employment'' for earnings test purposes. This section also defines the allowable level of a claimant's involvement and performance in an ongoing business in determining whether the claimant's retirement actually has taken place.

We propose to revise the section to reflect the new annual earnings test and full retirement age legislation.

Section 404.430 Excess earnings defined for taxable years ending after December 1972; monthly exempt amount defined. This section defines the maximum monthly and annual

amounts of earnings that can be earned by retirement and survivor beneficiaries without the earnings causing a reduction in their benefits. It then also delineates the reduction if these earning limits are exceeded, as a proportion of the amount of earnings that are above those limits.

We propose to revise this section by changing the section heading to ''Monthly and annual exempt amounts defined; excess earnings defined,'' and deleting obsolete material. This section would also reflect the changes in the annual earnings test and full retirement test, and display annual earnings test exempt amounts for 2000 through 2003.

Section 404.434 Excess earnings; method of charging. This section describes the method of charging estimated excess earnings of an insured person and also the excess earnings of a beneficiary. Although the excess earnings may not completely eliminate the benefits to be paid on the insured's record, all the estimated earnings of the calendar (or fiscal) year are charged to the earlier months of the year. This may eliminate benefits for those earlier months, and may allow full benefits in the later months of the year.

This section also clarifies that the excess earnings of a person receiving benefits on another's record only diminish or eliminate the benefits of that beneficiary; they do not affect the benefits of the insured or those of others receiving benefits on the insured's record.

This section also states that if both the insured and other(s) receiving benefits on an insured's record have excess earnings, the excess earnings of the insured are first charged to the total family benefits payable (or deemed payable), and then the excess earnings of the secondary beneficiary are charged against the insured's remaining benefits. We propose to rewrite this section in plain language.

Section 404.435 Excess earnings; months to which excess earnings cannot be charged. This section lists the situations in which one's excess earnings in a month are not counted to cause reductions in benefits. The section defines the grace year and the termination grace year, and delineates the circumstances where an individual can have more than one grace year. The section cites examples to clarify these concepts.

This section also states the presumption that an individual was engaged in self-employment and/or performing services for wages each month in a taxable year in which such earnings are reported, until the individual provides evidence to us about non-earning months in that year.

We propose to rewrite this section in plain language, change the heading to ''Excess earnings; months to which excess earnings can or cannot be charged; grace year defined,'' to reflect the change in the full retirement age, update outdated examples, and delete obsolete material.

Section 404.437 Excess earnings; benefit rate subject to deductions because of excess earnings. This section delineates the various benefit reduction factors to which a beneficiary may be subjected. We propose to rewrite the section by using simpler, clearer language. We also propose to revise the section heading to ''Excess earnings; benefits subject to deductions because of excess earnings.''

Section 404.452 Reports to Social Security Administration of earnings; wages; net earnings from self-employment. This section contains the reporting requirements and conditions under which Social Security survivor and retirement beneficiaries who have not yet reached full retirement age, are required to report earnings to the Social Security Administration. The purpose of these reports are: (1) To enable the Social Security Administration to adjust the monthly benefit amounts that may have been affected by the earnings test; and (2) to establish whether a grace year has occurred because the earnings of a beneficiary fell below the earnings test amount. This section also conveys what reporting formats are acceptable, the filing deadlines and possible extensions, and the reporting requirements of persons receiving benefits on behalf of others (representative payees).

We propose to rewrite this section to reflect changes in the full retirement age, to reflect section 309(c) of Public Law 103–296, which eliminates any exceptions to the requirement to file an annual report for beneficiaries under age 70 receiving auxiliary or survivors benefits when there are auxiliary or survivor beneficiaries living in a separate household and to delete obsolete material.

Regulatory Procedures

Clarity of These Regulations

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments and suggestions on how to make these proposed rules yet easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under E.O.xecutive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to the Social Security Administration and the Internal Revenue Service, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burden referenced in these rules because the rules were not considered during the clearance of the forms.

Section No.	Number of respondents	Average burden per response	Frequency of response	Estimated annual hour burden
§ 404.428(b)	1	1	1	1
§ 404.429(d)	1	1	1	1
§ 404.435(d)	1	1	1	1
§ 404.435(e)	1	1	1	1
§ 404.452(a)&(c)	1	1	1	1
§ 404.452(b)&(c)	1	1	1	1
§ 404.452(d)	1	1	1	1
§ 404.452(e)(1)	1	1	1	1
§ 404.452(e)(2)	1	1	1	1
Totals	9	9	9	9

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Social Security Administration at the following address: Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6402.

Comments can be received between 30 and 60 days after publication of this notice and will be most useful if received by the Social Security Administration within 30 days of publication.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure in the Federal, old age, survivors and disability insurance program: earnings coverage; insured status; computation of, and eligibility for benefits.

Dated: July 15, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts D and E of part 404 of Chapter III of Title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.338 is revised to read as follows:

§ 404.338 Widow's and widower's benefits amounts.

(a) A widow's or widower's monthly benefit is equal to the insured person's primary insurance amount. If the insured person dies before reaching age 62 and the widow or widower is first eligible after 1984, we may compute a special primary insurance amount to determine the amount of the monthly benefit (see § 404.212(b)).

(b) We may increase the monthly benefit amount if the insured person delays filing for benefits or requests voluntary suspension of benefits, and thereby earns delayed retirement credit (see § 404.313), and/or works before the year 2000 after reaching full retirement age (as defined in § 404.409). The amount of the monthly benefit may change as explained in § 404.304.

(c) The widow's or widower's monthly benefit will be reduced if the insured person chooses to receive old-age benefits before reaching full retirement age. If so, the benefit will be reduced to the amount the insured person would be receiving if alive, or 82½ percent of his or her primary insurance amount, whichever is larger.

Subpart E—[Amended]

3. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5) and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320a–8a.).

4. Section 404.415 is revised to read as follows:

§ 404.415 Deductions because of excess earnings.

(a) *Deductions because of insured individual's earnings.* Under the annual earnings test, we will reduce your monthly benefits (except disability insurance benefits based on the beneficiary's disability) by the amount of your excess earnings (as described in § § 404.434), for each month in a taxable year (calendar year or fiscal year) in which you are under full retirement age (as defined in § 404.409).

(b) *Deductions from husband's, wife's, and child's benefits because of excess earnings of the insured individual.* We will reduce husband's, wife's, and child's insurance benefits payable (or deemed payable—*see* § 404.420) on the insured individual's earnings record because of the excess earnings of the insured individual. However, beginning with January 1985, we will not reduce the benefits payable to a divorced wife or a divorced husband who has been divorced from the insured individual for at least 2 years.

(c) *Deductions because of excess earnings of beneficiary other than the insured.* If benefits are payable to you (or deemed payable—see § 404.420) on the earnings record of an insured individual and you have excess earnings (as described in § 404.430) charged to a month, we will reduce only your benefits for that month under the annual earnings test. Child's insurance benefits payable by reason of being disabled will be evaluated using Substantial Gainful Activity guidelines (as described in § 404.1574 or § 404.1575). This deduction equals the amount of the excess earnings. (*See* § 404.434 for charging of excess earnings where both the insured individual and you, a beneficiary, have excess earnings).

§ 404.416 [Removed]

5. Section 404.416 is removed.

6. Section 404.428 is revised to read as follows:

§ 404.428 Earnings in a taxable year.

(a) When we apply the annual earnings test to your earnings as a beneficiary under this subpart (*see* § 404.415), we count all of your earnings (as defined in § 404.429) for all months of your taxable year even though you may not be entitled to benefits during all months of that year. (*See* § 404.430 for the rule that applies to the earnings of a beneficiary who attains full retirement age (as described in § 404.409)).

(b) Your taxable year is presumed to be a calendar year until you show to our satisfaction that you have a different taxable year. If you are self-employed, your taxable year is a calendar year unless you have a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1986. In either case, the number of months in a taxable year is not affected by:

(1) The time a claim for Social Security benefits is filed;

(2) Attainment of any particular age;

(3) Marriage or the termination of marriage; or

(4) Adoption.

(c) The month of death is counted as a month of the deceased beneficiary's taxable year in determining whether the beneficiary had excess earnings for the year under § 404.430. For beneficiaries who die after November 10, 1988, we use twelve as the number of months to determine whether the beneficiary had excess earnings for the year under § 404.430.

(d) Wages, as defined in § 404.429(c), are charged as earnings for the months and year in which you rendered the services. Net earnings or net losses from self-employment count as earnings or losses in the year for which such earnings or losses are reportable for Federal income tax purposes.

7. Section 404.429 is revised to read as follows:

§ 404.429 Earnings; defined.

(a) *General.* The term ''earnings'' as used in this subpart (other than as a part of the phrase ''net earnings from self-employment'') includes the sum of your wages for services rendered in a taxable year, plus your net earnings from self-employment for the taxable year, minus any net loss from self-employment for the same taxable year.

(b) *Net earnings or net loss from self-employment.* Your net earnings or net loss from self-employment are determined under the provisions in subpart K of this part, except that:

(1) In this section, the following occupations are included in the definition of ''trade or business'' (although they may be excluded in subpart K):

(i) The performance of the functions of a public office;

(ii) The performance of a service of a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order;

(iii) The performance of service by an individual in the exercise of his or her profession as a Christian Science practitioner;

(iv) The performance by an individual in the exercise of his or her profession as a doctor of medicine, lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, or optometrist.

(2) For the sole purpose of the earnings test under this subpart:

(i) If you reach full retirement age, as defined in § 404.409, on or before the last day of your taxable year, you will have excluded from your gross earnings from self-employment, your royalties attributable to a copyright or patent obtained before the taxable year in which you reach full retirement age; and

(ii) If you are entitled to insurance benefits under title II of the Act, other than disability insurance benefits or child's insurance benefits payable by reason of being disabled, we will exclude from gross earnings any self-employment income you received in a year after your initial year of entitlement that is not attributable to services you performed after the first month you became entitled to benefits. In this section, services means any significant work activity you performed in the operation or management of a trade, profession, or business which can be related to the income received. If a part of the income you receive in a year is not related to any significant services you performed after the month of initial entitlement, only that part of your income may be excluded from gross earnings for deduction purposes. We count the balance of the income for deduction purposes. Your royalties or other self-employment income is presumed countable for purposes of the earnings test until it is shown to our satisfaction that such income may be excluded under this section.

(3) We do not count as significant services:

(i) Actions you take after the initial month of entitlement to sell a crop or product if it was completely produced in or before the month of entitlement. This rule does not apply to income you receive from a trade or business of buying and selling products produced or made by others; for example, a grain broker.

(ii) Your activities to protect an investment in a currently operating business or activities that are too irregular, occasional, or minor to be considered as having a bearing on the income you receive, such as—

(A) Hiring an agent, manager, or other employee to operate the business;

(B) Signing contracts where your signature is required, so long as the major contract negotiations were handled by others in running the business for you;

(C) Looking over the company's financial records to assess the effectiveness of those agents, managers, or employees in running the business for you;

(D) Personally contacting an old and valued customer solely for the purpose of maintaining good will when such contact has a minimal effect on the ongoing operation of the trade or business; or

(E) Occasionally filling in for an agent, manager, or other employee or partner in an emergency.

(4) In figuring your net earnings or net loss from self-employment, we count all net income or net loss even though:

(i) You did not perform personal services in carrying on the trade or business;

(ii) The net profit was less than $400;

(iii) The net profit was in excess of the maximum amount creditable to your earnings record; or

(iv) The net profit was not reportable for social security tax purposes.

(5) Your net earnings from self-employment is the excess of gross income over the allowable business deductions (allowed under the Internal Revenue Code). Net loss from self-employment is the excess of business deductions (that are allowed under the Internal Revenue Code) over gross income. You cannot deduct, from wages or net earnings from self-employment, expenses in connection with the production of income excluded from gross income under (b)(2)(ii) of this section.

(c) *Wages.* Wages include the gross amount of your wages rather than the net amount paid after deductions by your employer for items such as taxes and insurance. Wages are defined in subpart K of this part, except that we also include the following types of wages that are excluded in subpart K:

(1) Remuneration in excess of the amounts in the annual wage limitation table in § 404.1047;

(2) Wages of less than the amount stipulated in section § 404.1057 that you

receive in a calendar year for domestic service in the private home of your employer, or service not in the course of your employer's trade or business;

(3) Payments for agricultural labor excluded under § 404.1055;

(4) Remuneration, cash and non-cash, for service as a home worker even though the cash remuneration you received is less than the amount stipulated in § 404.1058(a) in a calendar year;

(5) Services performed outside the United States in the Armed Forces of the United States.

(d) *Presumptions concerning wages.* For purposes of this section, when reports received by us show that you received wages (as defined in paragraph (c) of this section) during a taxable year, it is presumed that they were paid to you for services rendered in that year unless you present evidence to our satisfaction that the wages were paid for services you rendered in another taxable year. If a report of wages shows your wages for a calendar year, your taxable year is presumed to be a calendar year for purposes of this section unless you present evidence to our satisfaction that your taxable year is not a calendar year.

8. Section 404.430 is revised to read as follows:

§ 404.430 Monthly and annual exempt amounts defined; excess earnings defined.

(a) *Monthly and annual exempt amounts.* (1) The earnings test monthly and annual exempt amounts are the amounts of wages and self-employment income which you, as a Social Security beneficiary, may earn in any month or year without part or all of your monthly benefit being deducted because of excess earnings. The monthly exempt amount, (which is 1/12 of the annual exempt amount), applies only in a beneficiary's grace year or years. (*See* § 404.435(a) and (b)). The annual exempt amount applies to the earnings of each non-grace taxable year prior to the year of FRAfull retirement age, as defined in § 404.409. A larger ''annual'' exempt amount applies to the total earnings of the months in the taxable year that precedes the month in which you attain FRAfull retirement age. The full annual exempt amount applies to the earnings of these pre-FRAfull retirement age FRAmonths, even though they are earned in less than a year. For beneficiaries using a fiscal year as a taxable year, the exempt amounts applicable at the end of the ends of their fiscal year apply.

(2) We determine the monthly exempt amounts for each year by a method that depends on the type of exempt amount.:

(i) For the lower exempt amount (the one applicable before the calendar year of reaching the FRAfull retirement age), we multiply $670 (the lower exempt amount for 1994) by the ratio of the national average wage index for the second prior year to that index for 1992. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10 (*i.e.*, if the amount ends in $5 or more, we round up, otherwise we round down). The annual exempt amount is then 12 times the rounded monthly exempt amount.

(ii) The higher exempt amount (the one applicable in months of the year of attaining full retirement age FRA that precede such attainment) was set by legislation (Pub. L. 104–121) for years 1996–2002. To calculate the higher exempt amount for any year after 2002, we will multiply $2,500 (the higher exempt amount for 2002) by the ratio of the national average wage index for the second prior year to that index for 2000. We round the result as described in paragraph (a)(2)(i) of this section for the lower exempt amount.

(iii) The following are the annual and monthly exempt amounts for taxable years 2000 through 2003.

Year	For years through taxable year preceding year of reaching full retirement age		Months of taxable year prior to month of full retirement age	
	Reduction: $1 for every $2 over the exempt amount		Reduction: $1 for every $3 over the exempt amount	
	Annual	Monthly	Annual	Monthly
2000	$10,080	$840	$17,000	$1,417
2001	10,680	890	25,000	2,084
2002	11,280	940	30,000	2,500
2003	11,520	960	30,720	2,560

(b) *Method of determining excess earnings for years after December 1999.* If you have not yet reached your year of full retirement ageFRA, your excess earnings for a taxable year are 50 percent of your earnings (as described in § 404.429) that are above the exempt amount. After December 31, 1999, in the taxable year you will reach full retirement age, the annual (and monthly, if applicable) earnings limit applies to the earnings of the months prior to the month in which you reach full retirement age. Excess earnings are 33⅓% of the earnings above the annual exempt amount. Your earnings after reaching the month of FRAfull retirement age are not subject to the earnings test.

9. Section 404.434 is revised to read as follows:

§ 404.434 Excess earnings; method of charging.

(a) *Months charged.* If you have not yet reached your year of full retirement age, and if your estimated earnings for a year result in estimated excess earnings (as described in § 404.430), we will charge these excess earnings to your full benefit each month from the beginning of the year, until all of the estimated excess earnings have been charged. Excess earnings, however, are not charged to any month described in §§ 404.435 and 404.436.

(b) *Amount of excess earnings charged.* (1) *Insured individual's excess earnings.* For each $1 of your excess earnings we will decrease by $1 the benefits to which you and all others are entitled (or deemed entitled–*see* § 404.420) on your earnings record. (*See* § 404.439 where the excess earnings for a month are less than the total benefits payable for that month.)

(2) *Excess earnings of beneficiary other than insured individual.* We will charge a beneficiary, other than the insured, $1 for each $1 of the beneficiary's excess earnings (*see* § 404.437). These excess earnings, however, are charged only against that beneficiary's own benefits.

(3) *You, the insured individual, and a person entitled (or deemed entitled) on your earnings record both have excess earnings.* If both you and a person

entitled (or deemed entitled) on your earnings record have excess earnings (as described in § 404.430), your excess earnings are charged first against the total family benefits payable (or deemed payable) on your earnings record, as described in paragraph (b)(1) of this section. Next, the excess earnings of a person entitled on your earnings record are charged against his or her own benefits remaining after part of your excess earnings have been charged against his/her benefits (because of the reduction in the total family benefits payable). See § 404.441 for an example of this process and the manner in which partial monthly benefits are apportioned.

(c) *Earnings test applicability.*

Public Law 106–182 eliminated the Social Security earnings test, beginning with the month in which a person attains full retirement age (as defined in § § 404.409), for taxable years after 1999. In the year that you reach full retirement age, the annual earnings test amount is applied to the earnings amounts of the months that precede your month of full retirement age. (*See* § 404.430). The reduction rate for these months is $1 of benefits for every $3 you earned above the earnings limit in these months. The earnings threshold amount will be increased in conjunction with increases in average wages.

10. Section 404.435 is revised to read as follows:

§ 404.435 Excess earnings; months to which excess earnings can or cannot be charged; grace year defined.

(a) *Monthly benefits payable.* We will not reduce your benefits on account of excess earnings for any month in which you, the beneficiary—

(1) Were not entitled to a monthly benefit;

(2) Were considered not entitled to benefits (due to non-covered work outside the United States or no child in care, as described in § 404.436);

(3) Were at full retirement age (as described in § 404.409);

(4) Were entitled to payment of a disability insurance benefit as defined in § 404.315; (*see* § 404.1592 and § 404.1592a(b)) which describes the work test if you are entitled to disability benefits;

(5) Are age 18 or over and entitled to a child's insurance benefit based on disability;

(6) Are entitled to a widow's or widower's insurance benefit based on disability; or

(7) Had a non-service month in your grace year (*see* paragraph (b) of this section). A non-service month is any month in which you, while entitled to retirement or survivors benefits:

(i) Do not work in self-employment (*see* paragraphs (c) and (d) of this section);

(ii) Do not perform services for wages greater than the monthly exempt amount set for that month (*see* paragraph (e) of this section and § 404.430); and

(iii) Do not work in non-covered remunerative activity on 7 or more days in a month while outside the United States. A non-service month occurs even if there are no excess earnings in the year.

(b) *Grace year defined.* (1) A beneficiary's initial grace year is the first taxable year in which the beneficiary has a non-service month (*see* paragraph (a)(7) of this section) in or after the month in which the beneficiary is entitled to a retirement, auxiliary, or survivor's benefit.

(2) A beneficiary may have another grace year each time his or her entitlement to one type of benefit ends and, after a break in entitlement of at least one month, the beneficiary becomes entitled to a different type of retirement or survivors benefit. The new grace year would then be the taxable year in which the first non-service month occurs after the break in entitlement.

(3) For purposes of determining whether a given year is a beneficiary's grace year, we will not count as a non-service month, a month that occurred while the beneficiary was entitled to disability benefits under section 223 of the Social Security Act or as a disabled widow, widower, or child under section 202.

(4) A beneficiary entitled to child's benefits, to spouse's benefits before age 62 (entitled only by reason of having a child in his or her care), or to mother's or father's benefits is entitled to a termination grace year in any year the beneficiary's entitlement to these types of benefits terminates. This provision does not apply if the termination is because of death or if the beneficiary is entitled to a Social Security benefit for the month following the month in which the entitlement ended. The beneficiary is entitled to a termination grace year in addition to any other grace year(s) available to him or her.

Example 1: Don, age 62, will retire from his regular job in April of next year. Although he will have earned $15,000 for January-April of that year and plans to work part time, he will not earn over the monthly exempt amount after April. Don's taxable year is the calendar year. Since next year will be the first year in which he has a non-service month while entitled to benefits, it will be his grace year and he will be entitled to the monthly earnings test for that year only. He will receive benefits for all months in which he does not earn over the monthly exempt amount (May-December) even though his earnings have substantially exceeded the annual exempt amount. However, in the years that follow, up to the year of full retirement age, only the annual earnings test will be applied if he has earnings that exceed the annual exempt amount, regardless of his monthly earnings amounts.

Example 2: Marion was entitled to mother's insurance benefits from 1998 because she had a child in her care under age 18. Because she had a non-service month in 1998, 1998 was her initial grace year. Marion's child married in May 2000 and her entitlement to mother's benefits terminated in April 2000. Since Marion's entitlement did not terminate by reason of her death and she was not entitled to another type of Social Security benefit in the month after her entitlement to a mother's benefit ended, she is entitled to a termination grace year for 2000, the year in which her entitlement to mother's insurance benefits terminated. She applied for and became entitled to widow's insurance benefits effective February 2001. Because there was a break in entitlement to benefits of at least one month before entitlement to another type of benefit, 2001 will be a subsequent grace year if Marion has a non–service month in 2001.

(c) *You worked in self-employment.* You are considered to have worked in self-employment in any month in which you performed substantial services (*see* § 404.446) in the operation of a trade or business (or in a combination of trades and businesses if there are more than one), as an owner or partner even though you had no earnings or net earnings resulting from your services during the month.

(d) *Presumption regarding work in self-employment.* You are presumed to have worked in self-employment in each month of your taxable year until you show to our satisfaction that in a particular month you did not perform substantial services (*see* § 404.446(c)) in any trades and businesses from which you derived your annual net income or loss (*see* § 404.429).

(e) *Presumption regarding services for wages.* You are presumed to have performed services in any month for wages (as defined in § 404.429) of more than the applicable monthly exempt amount in each month of the year, until you show to our satisfaction that you did not perform services for wages in that month that exceeded the monthly exempt amount.

11. Section 404.437 is revised to read as follows:

§ 404.437 Excess earnings; benefit rate subject to deductions because of excess earnings.

We will further reduce your benefits (other than a disability insurance benefit) because of your excess earnings

(*see* § 404.430), after your benefits may have been reduced because of the following:

(a) The family maximum (*see* §§ 404.403 and 404.404), which applies to entitled beneficiaries remaining after exclusion of beneficiaries deemed not entitled under § 404.436 (due to a deduction for engaging in non-covered remunerative activity outside the United States or failure to have a child in one's care);

(b) Your entitlement to benefits (*see* § 404.410) for months before you reach full retirement age FRA (*see* § 404.409) (this applies only to old-age, wife's, widow's, widower's or husband's benefits);

(c) Your receipt of benefits on your own earnings record, which reduces (*see* § 404.407), your entitlement (or deemed entitlement; *see* § 404.420) to benefits on another individual's earnings record; and

(d) Your entitlement to benefits payable (or deemed payable) to you based on the earnings record of an individual entitled to a disability insurance benefit because of that individual's entitlement to worker's compensation (*see* § 404.408).

12. Section 404.452 is revised to read as follows:

§ 404.452 Reports to Social Security Administration of earnings: wages; net earnings from self-employment.

(a) *Reporting requirements and conditions under which a report of earnings, that is, wages and/or net earnings from self-employment, is required.* (1) If you have not reached full retirement age (*see* § 404.409) and you are entitled to a monthly benefit, other than only a disability insurance benefit, you are required to report to us the total amount of your earnings (as defined in § 404.429) for each taxable year. This report will enable SSA to pay you accurate benefits and avoid both overpayments and underpayments.

(2) If your wages and/or net earnings from self-employment in any month(s) of the year are below the allowable amount (*see* §§ 404.446 and 404.447), your report should include this information in order to establish your grace year (*see* § 404.435) and possible eligibility for benefits for those months.

(3) Your report to us for a taxable year should be filed on or before the 15th day of the fourth month following the close of the taxable year; for example, April 15 when the beneficiary's taxable year is a calendar year. An income tax return or form W–2, filed timely with the Internal Revenue Service, may serve as the report required to be filed under the provisions of this section, where the income tax return or form W–2 shows the same wages and/or net earnings from self-employment that must be reported to us. Although we may accept W–2 information and special payment information from employers, you still have primary responsibility for making sure that the earnings we use for deduction purposes are correct. If there is a valid reason for a delay, we may grant you an extension of up to four (4) months to file this report.

(4) You are not required to report to us if:

(i) You reached full retirement age before the first month of your entitlement to benefits; or

(ii) Your benefit payments were suspended under the provisions described in § 404.456 for all months of a taxable year before the year of full retirement age, or for all months prior to your full retirement age in the full retirement age year, unless you are entitled to benefits as an auxiliary or survivor and your benefits are reduced for any month in the taxable year because of earnings and there is another person entitled to auxiliary or survivor's benefits on the same record, but living in a different household.

(b) *Report required by person receiving benefits on behalf of another.* When you receive benefits as a representative payee on behalf of a beneficiary (*see* subpart U of this part), it is your duty to report any earnings of the beneficiary to us.

(c) *Information required.* If you are the beneficiary, your report should show your name, address, Social Security number, the taxable year for which the report is made, and the total amount of your wages and/or net earnings from self employment during the taxable year. If you are a representative payee, your report should show the name, address, and Social Security number of the beneficiary, the taxable year for which the report is made, and the total earnings of the beneficiary, as well as your name, address, and Social Security number.

(d) *Requirement to furnish requested information.* You, the beneficiary (or the person reporting on his/her behalf) are required to furnish any other information about earnings and services that we request for the purpose of determining the correct amount of benefits payable for a taxable year (*see* § 404.455).

(e) *Extension of time for filing report.* (1) *Request for extension to file report.* Your request for an extension of time, or the request of your authorized agent, must be in writing and must be filed at a Social Security Administration office before your report is due. Your request must include the date, your name, the Social Security number of the beneficiary, the name and Social Security number of the person filing the request if other than the beneficiary, the year for which your report is due, the amount of additional time requested, the reason why you require this extension (*see* § 404.454), and your signature.

(2) *Evidence that extension of time has been granted.* If you do not receive written approval of an extension of time for making your report of earnings, it will be presumed that no extension of time was granted. In such case, if you do not file on time, you will need to establish that you had good cause (§ 404.454) for filing your report after the normal due date.

[FR Doc. 03–21613 Filed 8–22–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 356

[Docket No. 81N–033P]

RIN 0910–AA01

Oral Health Care Drug Products for Over-the-Counter Human Use; Antigingivitis/Antiplaque Drug Products; Establishment of a Monograph; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to November 25, 2003, the comment period for an advance notice of proposed rulemaking (ANPR) for over-the-counter (OTC) antigingivitis/antiplaque drug products. The ANPR was published in the **Federal Register** of May 29, 2003. FDA is taking this action in response to a request for extension of the comment period to allow interested persons additional time to submit comments and information on the conditions under which OTC antigingivitis/antiplaque drug products are generally recognized as safe and effective and not misbranded. FDA is also extending the reply comment period to February 23, 2004.

DATES: Submit written or electronic comments by November 25, 2003.

Submit reply comments by February 23, 2004.

ADDRESSES: Submit written and reply comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Robert L. Sherman, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 29, 2003 (68 FR 32232), FDA published an ANPR based on the recommendations of the Dental Plaque Subcommittee (the Subcommittee) of the Nonprescription Drugs Advisory Committee (NDAC). FDA issued this notice to establish conditions under which OTC drug products for the reduction or prevention of dental plaque and gingivitis are generally recognized as safe and effective and not misbranded.

II. Request for Extension of Time

On July 15, 2003, the Consumer Healthcare Products Association (CHPA), a trade association of manufacturers of nonprescription drugs and dietary supplements, and the Cosmetic, Toiletry, and Fragrance Association (CTFA), a trade association of manufacturers of personal care products, requested a 90-day extension in which to file comments and new information (Ref. 1). CHPA/CTFA also requested that FDA accept reply comments up to 180 days after the closing date for the comment period. The request stated that the closing date for the original comment period would not allow CHPA/CTFA time to adequately assess the implications of the Subcommittee's proposed rulemaking. The request noted that, because this is the first time FDA published the Subcommittee's recommendations, industry needs sufficient time to provide additional data and perspectives on inclusion of several of the Subcommittee's proposed Category III (insufficient data) active ingredients in a tentative final monograph, and to support a Category I (safe and effective) status for these ingredients. In addition, CHPA/CTFA stated that because FDA specifically requested information on testing protocols, statistical methods, and effectiveness criteria, industry needs sufficient time to develop a set of common elements and basic criteria for performance testing.

CHPA/CTFA stated that individual companies are likely to submit relevant data on antigingivitis/antiplaque active ingredients and on drug products in which antigingivitis/antiplaque active ingredients are combined with other oral health care active ingredients. Further, these companies are considering additional clinical studies that would involve time for FDA's review of submitted protocols and likely require 12 to 18 months to complete.

III. FDA's Decision

FDA has carefully considered the request and acknowledges its request for information on effectiveness criteria for antigingivitis/antiplaque active ingredients, performance testing, and the statistical approaches used to evaluate these tests. Manufacturers and CTFA/CTFA may require additional time to develop and review information to fully respond to the agency's request. However, FDA believes that extension of the reply comment period from 60 to 90 days should be sufficient time for manufacturers to respond to comments submitted during the comment period. The reply comment period is not intended to remain open for new study results to be submitted. Accordingly, the comment period is extended to November 25, 2003, and the reply comment period is extended to February 23, 2004. FDA considers an extension of time for comments in this case to be in the public interest.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the ANPR. Submit a single paper copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Reference

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. EXT7.

Dated: August 19, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21669 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 4

[USCG–2001–8773]

RIN 1625–AA27 (formerly 2115–AG07)

Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; notice of public meeting; reopening of comment period.

SUMMARY: The Coast Guard is reopening the comment period on the notice of proposed rulemaking for Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents published in the **Federal Register** on February 28, 2003. In response to requests for a public meeting that were submitted to the public docket, the Coast Guard will hold a public meeting in Washington, DC. The purpose of the meeting is to obtain information from the public in addition to the comments already submitted to the docket.

DATES: The meeting will be held Friday, September 19, 2003, from 9 a.m. to 5 p.m. in Washington, DC. This meeting may close early if all business is finished. Comments must reach the docket on or before September 30, 2003.

ADDRESSES: The meeting location is: United States Coast Guard Headquarters, Transpoint Building, 2100 Second Street, SW., Room 2415, Washington, DC 20593. You may submit comments identified by Coast Guard docket number USCG–2001–8773 to the Docket Management Facility at the U.S. Department of Transportation (DOT). To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Federal eRulemaking Portal: *http://www.regulations.gov.*

(3) Mail: Docket Management Facility, DOT, 400 Seventh Street SW., Washington, DC 20590–0001.

(4) Fax: 202–493–2251.

(5) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact Mr. Robert C. Schoening, Drug and Alcohol Program Manager, telephone 202–267–0684; e-mail address: *rschoening@comdt.uscg.mil.* For questions on viewing material in the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, DOT, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the DOT to use the Docket Management Facility even though the Coast Guard has recently transferred to DHS. Please see the DOT's statement on the Privacy Act under the section titled Viewing comments and documents.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking [USCG–2001–8773], indicate the specific section of the proposed rule to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period in developing the final rule.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, or the like). You may review the DOT's statement on the Privacy Act in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov.*

Background Information

The 1998 Coast Guard Authorization Act requires the Coast Guard to establish procedures ensuring alcohol testing is conducted within two hours of a serious marine casualty. The Coast Guard proposes to establish requirements for testing within the statutory time limits, to expand the existing requirements for commercial vessels to have alcohol testing devices on board, and to authorize use of a wider variety of testing devices (Notice of Proposed Rulemaking, [68 FR 9722], February 28, 2003). This rulemaking would also make additional minor procedural changes to Part 4, including a time limit for conducting drug testing following a serious marine incident. The Coast Guard reopened the comment period and scheduled this public meeting in response to comments previously submitted to the docket.

Public Meeting

The public meeting will be held September 19, 2003, from 9 a.m. to 5 p.m., at the United States Coast Guard Headquarters, Transpoint Building, 2100 Second Street, SW., Washington, DC. The building is located adjacent to Army Fort Leslie J. McNair at Buzzard Point. Entry to the Transpoint Building is controlled. All attendees must have a picture identification issued by a U.S. Federal Agency or a State or Territory issued drivers license. Valid Passports and Merchant Mariner Documents are also acceptable. Everyone is subject to a weapons search.

Members of the public may provide oral statements at the meeting. Oral statements may be time limited if there are numerous speakers. Persons wishing to make oral statements should notify Mr. Robert C. Schoening listed under **FOR FURTHER INFORMATION CONTACT** no later than two days before the meeting.

On street public parking in the vicinity of Coast Guard Headquarters is very limited. James Creek Marina, National Park Service, is adjacent to Coast Guard Headquarters and has some parking available for a nominal fee. The closest Metro Station is SEU-Waterfront on the Green Line, about nine blocks from Coast Guard Headquarters. Attendees are encouraged to utilize taxi or public buses serving the Buzzard Point area. (For Bus Schedules, please see the Washington Area Metro Transit Authority-WMATA Web site at *http://www.wmata.com/.* Bus Route 71 serves Coast Guard Headquarters).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request assistance at the meeting, Contact Mr. Robert C. Schoening listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: August 18, 2003.

L.L. Hereth,

Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–21643 Filed 8–22–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 03–112]

Telecommunication Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on technological advancements that may further the statutory goal of functionally equivalent Telecommunications Relay Services (TRS) for persons with hearing and speech disabilities, including comment on whether TRS facilities should have the same National Security Emergency Preparedness (NS/EP) designation as local exchange carriers under the Telecommunications Service Priority (TSP) System to ensure that persons with hearing and speech disabilities have access to telecommunications services during time of local, national, or international crisis.

DATES: Comments are due on or before September 24, 2003 and reply comments are due on or before October 9, 2003. Written comments by the public on the proposed information collection are due September 24, 2003. Written comments must be submitted by the Office of Management and Budget

(OMB) on the proposed information collection on or before October 24, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20054. In addition to filing comments with the Secretary, a copy of any comment on the information collection contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Cheryl King, of the Consumer & Government Affairs Bureau at (202) 418–2284 (voice), (202) 418–0416 (TTY) or e-mail *Cheryl.King@fcc.gov.* For additional information concerning the information collection contained in this document, contact Leslie Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This *Notice of Proposed Rulemaking* (NPRM), *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03–123, FCC 03–112, contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the OMB for review under the Paperwork Reduction Act (PRA). OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection(s) contained in this proceeding. This is a summary of the Commission's *NPRM*, adopted May 15, 2003, and released June 17, 2003. 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. Comments filed through the ECFS can be sent as an electronic file via the Internet to *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, however, 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 get 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. 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. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, 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, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Room 6–C410, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CG Docket No. 03–123, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this *NPRM* may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY). This *NPRM* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Paperwork Reduction Act

This *NPRM* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invited the general public and OMB to comment on the information collection(s) contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. 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) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–xxxx.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123 (NPRM), FCC 03–112.

Form Number: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,053.

Estimated Time per Response: 5.311 hours (average).

Frequency of Responses: Recordkeeping; Annual Reporting requirement; Third Party disclosure.

Total Annual Burden: 26,837 hours.

Total Annual Cost: None.

Needs and Uses: On June 17, 2003, the FCC released a *Notice of Proposed Rulemaking* (NPRM), which proposed rules in § 64.604(c)(5)(iii)(F) regarding certification for TRS providers to be eligible to receive payments from the Interstate TRS Fund. The Commission also proposed to revise § 64.605 of the Commission's rules. On June 17, 2003, the Commission also released a *Second Report and Order, Order on Reconsideration* and is seeking OMB approval for the new collection on the final rule § 64.604(a)(3) and (c)(2) in that *Second Report and Order. See Telecommunication Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, (Report and Order), FCC 03–112.

Synopsis

In this *NPRM*, the Commission seeks comment on whether TRS and TRS facilities should receive a National Security and Emergency Preparedness (NS/EP) Priority Status commensurate with that given to local exchange carrier (LEC) facilities. The Commission also requests comment on TRS mandatory minimum standards regarding confidentiality requirements and encryption for IP Relay TRS calls. The Commission seeks comment on whether TRS should employ a non-shared language translation service, and on amending its call set-up rules for various types of TRS calls. The *NPRM* also seeks comment on technological advances that may improve the functional equivalency of TRS, and on outreach efforts that may benefit TRS consumers. Finally, the *NPRM* seeks comment on whether the Commission should institute a certification process for providers of IP Relay, VRS, and any other technology that does not fit into the statutorily-mandated jurisdictional separation of intrastate and interstate. The intent of these proposed rules is to improve TRS services and the Commission's oversight of certified state TRS programs.

Initial Regulatory Flexibility Analysis (IRFA)

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603 *et seq*, 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. See* 5 U.S.C. 603. We expect that we could certify this action under 5 U.S.C. 605, because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore, there is not a substantial number of small entities that may be affected by our action. 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. *See* 5 U.S.C. 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

The Commission is issuing this *NPRM* to seek comment on technological advances that could improve TRS. In doing so, the Commission intends to improve TRS users consistent with Congress' direction ensure that the Commission's regulations encourage the use of existing technology and not discourage or impair the development of improved technology. 47 U.S.C. 225(d)(2). The Commission also seeks public comment on whether its rules should be modified to provide a federal certification process for providers of IP Relay and VRS.

Legal Basis

The authority for actions proposed in this *NPRM* may be found in sections 1, 4(i) and (j), 201–205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i), 154(j), 201–205, 218 and 225.

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by rules adopted herein. 5 U.S.C. 604(a)(3). The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the 5 U.S.C. 601(3), the statutory definition of small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 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). 15 U.S.C. 632. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration). The term ''small governmental jurisdiction'' is defined as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. 5 U.S.C. 601(5). As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. U.S. Census Bureau, *Statistical Abstracts of the United States: 2000*, Section 9, pages 299–300, Tables 490 and 492. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdiction overall to be 84,098 or fewer.

Below, we further describe and estimate the number of small entity licensees and regulates that, in theory, may be affected by these rules. For some categories, the most reliable source of information available at this time is data the Commission publishes in its *Trends in Telephone Service* Report. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (May 2002) (*Trends in Telephone Service*). FCC Web site location (*see* online page 24): *http://www.fcc.gov/Bureaus/CommonCarrier/Reports/FCC-StateLink/IAD/trends502.pdf*.

Local Exchange Carriers. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business

having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C 632 (a) (Small Business Act); 5 U.S.C. 601 (3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance of a national basis. 13 CFR 121.102 (b). We have therefore included small incumbent LECs in the RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts. NAICS code 513310.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is small entity if it employs no more than 1,500 employees. *Id.* Commission data from 2000 indicate that there are 1,329 incumbent local exchange carriers, total, with approximately 1,024 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 1,024 ILECS that are small businesses possibly affected by our action.

Interexchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is small entity if it employs no more than 1,500 employees. Commission data from 2000 indicate that there are 229 interexchange carriers, total, with approximately 181 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more that 181 interexchange carriers that are small businesses possibly affected by our action.

TRS Providers. Neither the Commission nor the SBA has developed a definition of ''small entity'' specifically directed toward providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. Approximately five or fewer of these entities are small businesses. *See* National Association for State Relay Administration (NASRA) Statistics. These numbers are estimates because of recent and pending mergers and partnerships in the telecommunications industry. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities. MCI WorldCom, for example, provides TRS in approximately only a few states but is not a small business. The FCC estimates that there is at least one TRS provider that is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This *NPRM* seeks comment on a proposal regarding possible certification of TRS providers seeking to provide interstate TRS. The proposed certification process would mirror an existing certification process established for certification of state TRS programs. The proposed certification process for interstate TRS providers, if implemented, would impose a new requirement to file information with the Federal Communications Commission.

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

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: (1) The establishment of differing compliance or reporting requirements or timetables that take (among others) 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 such small entities. 5 U.S.C. 603.

The proposals in the *NPRM*, and the comments the Commission seeks regarding them, are part of the Commission's role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities. *See*, *e.g.*, 47 U.S.C. 225. The guiding principle shaping these proposals is Congress' direction to the Commission to ensure that TRS keeps pace with advancing technology, that the Commission's rules do not discourage the implementation of technological advances or improvements, and that TRS provides functionally equivalent telecommunications services for persons with hearing and speech disabilities. The majority of TRS service is provided by large interexchange carriers and incumbent local exchange carriers, and we believe that the number of small entities impacted by these proposals would be potentially very small. With respect to proposed amendments to the Commission's rules governing TRS, by statute common carriers (including small entities) providing voice transmission services that are subject to the TRS rules may comply with their obligations individually, through designees, through competitively selected vendors, or in concert with other carriers. 47 U.S.C. 225 (c). For this reason, the Commission expects that the proposed rule amendments will have a minimal impact on small entities. We seek comment on our tentative conclusion.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

It is further ordered that, pursuant to the authority contained in sections 1, 2, 4 (i), 4 (j), 225, 303 (r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C 151, 154 (i), 154 (j), 225, 303 (r), and 403, the *notice of proposed rulemaking is adopted*.

It is further ordered that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *notice of proposed rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); sections 403 (b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

2. Amend § 64.604 by adding paragraph (c)(5)(iii)(F)(*4*) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(F) * * *

(*4*) Interstate TRS providers certified by the Commission pursuant to § 64.605.

* * * * *

3. Revise § 64.605 to read as follows:

§ 64.605 State TRS Program Certification and Interstate TRS Providers.

(a) *Documentation.* (1) *State TRS programs.* Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, State TRS Certification Program, Washington, DC 20554, and captioned ''TRS State Certification Application.'' All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing and requirements imposed by the state program. The Commission shall give public notice of state filing for certification including notification in the **Federal Register**.

(2) *Interstate TRS providers.* Any TRS provider desiring to provide TRS on an interstate basis, independent from any state TRS program or any interstate common carrier, and desiring to establish eligibility to provide TRS and receive compensation for providing those services from the Interstate TRS Fund, shall submit documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, Interstate TRS Provider Certification Program, Washington, DC 20554, and captioned ''Interstate TRS Provider Certification Application.'' All documentation shall be submitted in narrative form, and shall clearly describe the forms of TRS to be provided (*i.e.*, VRS, STS, IP Relay, traditional text-to-speech TRS) and any waivers of mandatory minimum standards deemed necessary to provide the aforementioned forms of TRS. The Commission shall give public notice of each interstate TRS provider filing for certification including notification in the **Federal Register**.

(b) *Requirements for certification.* (1) *State TRS programs.* After review of certification documentation, the Commission shall certify, by letter, or order, the state program or interstate TRS provider if the Commission determines that the documentation:

(i) Establishes that the statea program meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program, including that it makes available to TRS users informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints; and;

(iii) Where a state program exceeds the mandatory minimum standards contained in § 64.604, the state establishes that its program in no way conflicts with federal law.

(2) *Interstate TRS providers.* After review of certification documentation, the Commission shall certify, by letter, or order, the interstate TRS provider if the Commission determines that the certification documentation:

(i) Establishes that the interstate TRS provider meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the interstate TRS provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in § 64.604, including the requirement that informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints are made available to TRS users; and

(iii) Where the interstate TRS provider exceeds the mandatory minimum standards contained in § 64.604, the interstate TRS provider establishes that its program and services in no way conflict with federal law.

(c) *Certification period.* (1) *State TRS programs.* State certification shall remain in effect for five years. One year prior to expiration of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

(2) *Interstate TRS providers.* Certification granted under this section shall remain in effect for one year. Providers shall file with the Commission, on an annual basis, a report providing evidence that they are in compliance with § 64.604. Interstate TRS providers shall also file a log of any complaints received, and their disposition of such complaints. An interstate TRS provider may apply for renewal of its certification by filing documentation to the Commission addressed to the Federal Communications Commission, Chief, Disability Rights Office, Consumer & Governmental Affairs Bureau, Washington, DC 20554, and captioned ''Interstate TRS Provider Re-Certification Application,'' as prescribed by paragraphs (a) and (b) of this section.

(d) *Method of funding.* Except as provided in § 64.604, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate TRS, but funding mechanisms, if labeled, shall be labeled in manner that promote national understanding of TRS and do not offend the public.

(e) *Suspension or revocation of certification.* (1) *State TRS programs.*

(i) The Commission may suspend or revoke such certification if, after notice of opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS.

(ii) The Commission may, on its own motion, require a certified state program to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission received evidence that a state program may not be in compliance with the minimum standards.

(2) *Interstate TRS providers.* (i) The Commission may suspend or revoke certification of an interstate TRS provider if, after notice of opportunity for hearing, the Commission determines that such certification is no longer warranted. If such certification has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS.

(ii) The Commission may, on its own motion, require a certified interstate TRS provider to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a certified interstate TRS provider may not be in compliance with the minimum standards.

(f) *Notification of substantive change.* (1) *State TRS Programs.* States must notify the Commission of substantive changes in their TRS programs within 60 days of when they occur, and must certify that the state TRS program continues to meet federal minimum standards after implementing the substantive change.

(2) *Interstate TRS providers.* Interstate TRS providers must notify the Commission of substantive changes in their TRS programs, services and features within 60 days of when such changes may occur, and must certify that the interstate TRS provider continues to meet federal minimum standards after implementing the substantive change.

[FR Doc. 03–21616 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 03–130; DA 03–2639]

Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This decision extends the period for filing public comments and reply comments in this proceeding at the request of commenters.

DATES: Comments are now due on October 6, 2003, and Reply Comments are due on October 21, 2003.

FOR FURTHER INFORMATION CONTACT: Amy Brett, Media Bureau, 202–418–2330.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in MB Docket No. 03–130, DA 03–2639, adopted August 11, 2003, and released August 12, 2003. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at *bmillin@fcc.gov.*

Synopsis of the Order

1. On July 2, 2003, the Commission released its *Notice of Proposed Rule Making* (''NPRM'') in conjunction with its *Report and Order* in this proceeding, completing its third biennial review of its broadcast ownership rules. (*See* NPRM at 68 FR 46359, August 5, 2003, and Report and Order at 68 FR 46286, August 5, 2003.) The current deadlines to file comments and reply comments in this proceeding are September 4, 2003 and September 19, 2003, respectively.

2. In the *Report and Order,* the Commission replaced its current contour-overlap methodology for defining radio markets with a geographic market approach in areas where such markets have been defined by Arbitron. These ''Metro'' markets are used to determine compliance with the local radio ownership rule. The Commission also initiated this proceeding to define radio markets for areas not covered by Metro markets. Until a new definition is developed, the Commission will use a modified contour-overlap methodology in non-Metro markets. The goal of the proceeding is to generate a map or a list of markets for radio stations across the entire country.

3. On August 8, 2003, the National Association of Broadcasters (''NAB'') and Saga Communications, Inc. (collectively, ''Petitioners'') filed a joint motion asking the Commission to extend the comment and reply comment deadlines to October 20, 2003 and November 19, 2003, respectively. Petitioners assert that they need additional time to assess the impact of the options suggested by the Commission as well as to attempt to develop a market definition specific to radio. NAB has contracted with a consultant to study the Commission's options as well as others and requests additional time to accumulate and review the data. Petitioners also argue that additional time is needed for NAB's radio task force and Radio Board to act, and for staff to prepare comments reflecting the Board's decisions.

4. We believe that the public interest would be best served by granting a brief extension of the comment and reply comment filing deadlines so that commenters may assemble data and conduct studies that will inform our decision in this proceeding. At the same time, however, we recognize the importance of completing this proceeding in a timely fashion. Adopting a permanent definition of radio markets outside Metro areas will provide parties with long-term certainty as to the radio market definition and allow them to plan transactions accordingly. Accordingly, we will grant only a thirty-day extension. The new deadline for comments is October 6, 2003. The new deadline for replies is October 21, 2003.

Federal Communications Commission.

Robert Ratcliffe,

Deputy Chief, Media Bureau.

[FR Doc. 03–21652 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[ID 081403B]

RIN 0648–AP57

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Amendment 13 to the Surf Clam and Ocean Quahog Fishery Management Plan

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

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Council (Council) has submitted Amendment 13 to the Atlantic Surf Clam and Ocean Quahog Fishery Management Plan (FMP) for Secretarial review and is requesting comments from the public. Amendment 13 to the FMP (Amendment 13) would establish: A new surf clam overfishing definition; multi-year fishing quotas; a mandatory vessel monitoring system (VMS), when such a system is economically viable; the ability to suspend or adjust the surf clam minimum size limit through a framework adjustment; and an analysis of fishing gear impacts on Essential Fish Habitat (EFH) for surf clams and ocean quahogs. The primary purpose of this proposed action is to rectify the disapproved surf clam overfishing definition and the EFH analysis and rationale contained in Amendment 12 to the FMP in order to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to simplify the regulatory requirements of the FMP.

DATES: Comments must be received on or before October 23, 2003.

ADDRESSES: Comments on the FMP should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Surf Clam Amendment 13.'' Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Amendment, the Final Supplementary Environmental Impact Statement (FSEIS), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Senior Fishery Policy Analyst, 978–281–9252, fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Amendment 12 to the FMP was prepared by the Council to bring the FMP into compliance with the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of 1996. On April 28, 1999, the Council was notified that NMFS partially approved Amendment 12. Specifically, two Amendment 12 measures were disapproved, the surf clam overfishing definition and the analysis and rationale for the status quo alternative for addressing fishing gear impacts to EFH. To rectify these diapprovals, the Council prepared, and NMFS published, a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the **Federal Register**, officially beginning the Council's scoping process for Amendment 13 (66 FR 13694, March 7, 2001). The Council held a scoping hearing on March 21, 2001, and accepted scoping comments on the amendment during the period March 7 through April 6, 2001. In addition to the surf clam overfishing definition and EFH alternatives, other issues identified for inclusion in the FSEIS were multi-year quotas, a mandatory VMS requirement and a permanent suspension of the surf clam minimum size limit. The Council identified a range of alternatives for each of these five issues and approved the alternatives in a public hearing document at its May, 2002 meeting. A Notice of Availability (NOA) on the DSEIS was published in the **Federal Register** on August 30, 2002 (67 FR 55838), with a comment period ending October 15, 2002. There were a series of three public hearings held (one each in the states of Maine, New Jersey and Delaware). After consideration of all public comments, the Council chose the following alternatives at its January, 2003 meeting and voted to submit the Amendment 13 document, including the draft final supplemental environmental impact statement to NMFS. Amendment 13 would establish: A new surf clam overfishing definition; multi-year fishing quotas; a mandatory vessel monitoring system (VMS), when such a system is economically viable; the ability to suspend or adjust the surf clam minimum size limit through a framework adjustment; and an analysis of fishing gear impacts on Essential Fish Habitat (EFH) for surf clams and ocean quahogs.

Public comments are being solicited on Amendment 13 through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 13 may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on the Amendment 13 to be considered in the approval/disapproval decision on the Amendment 13. All comments received by the end of the comment period on Amendment 13, whether specifically directed to Amendment 13 or the proposed rule, will be considered in the approval/disapproval decision on Amendment 13. Any comments received after that date will not be considered in the decision to approve or disapprove Amendment 13.

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

Dated: August 18, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–21609 Filed 8–22–03; 8:45 am]

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Notices

Federal Register

Vol. 68, No. 164

Monday, August 25, 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

Submission for OMB Review; Comment Request

August 19, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806; and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: CCC's Export Enhancement Program (EEP) and CCC's Dairy Export Incentive Program (DEIP).

OMB Control Number: 0551–0028.

Summary of Collection: The Foreign Agricultural Service (FAS) collects information from U.S. exporters in order to determine the exporters' eligibility for the Export Enhancement Program (EEP) and the Dairy Export Incentive Program (DEIP). Program applicants can fax information in or applicants may register over the Internet.

Need and of the Information: FAS will use the information collected from U.S. exporters to determine whether an exporter has the experience necessary to perform under the proposed agreements. Other information is collected to determine compliance during the period of the agreement and to ensure that compensation in the appropriate amount is made. Without the application and related information, FAS would be unable to properly qualify U.S. exporters for EEP and DEIP.

Description of Respondents: Business or other for-profit.

Number of Respondents: 95.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,803.

Farm Service Agency

Title: Power of Attorney.

OMB Control Number: 0560–0190.

Summary of Collection: Individuals or authorized representatives of entities wanting to appoint another to act as their attorney must complete FSA–211, ''Power of Attorney'' form. The FSA–211 serves as evidence that the grantor has appointed another to act on their behalf for certain Farm Service Agency (FSA), Commodity Credit Corporation (CCC), and Risk Management Agency (RMA) programs and related actions giving the appointee legal authority to enter into binding agreements on the grantor's behalf.

Need and use of the Information: FSA will collect information to verify an individual's authority to sign and act or another in the event of errors or fraud that requires legal remedies. The information collected on the FSA–211 is limited to the grantor's name, signature, and identification number, the grantee's name, address, and the applicable FSA, CCC, and RMA programs. Failure to collect and maintain the data collected on the form will limit or eliminate USDA's ability to accept an individual's signature on behalf of another individual or entity.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 519,653.

Frequency of Responses: Reporting: Other (Once).

Total Burden Hours: 129,913.

Forest Service

Title: Forest Industries Data Collection System.

OMB Control Number: 0596–0010.

Summary of Collection: The Forest and Range Renewable Resources Planning Act of 1974 and the Forest and Rangeland Renewable Resources Research Act of 1978 require the Forest Service (FS) to evaluate trends in the use of logs and wood chips, to forecast anticipated levels of logs and wood chips, and to analyze changes in the harvest of the resources. Forest product and other wood-using industries are important to state, regional, and national economies. In most southern states, the value of rounded timber products is ranked either first or second in relation to other major agricultural crops. The importance and value of the timber products industry is significant in other regions of the United States as well.

Need and use of the information: FS will collect information using questionnaires to monitor the types, species, volumes, sources, and prices of the timber products harvested throughout the Nation. The data will be used to develop specific economic development plans for new forest-related industries and to assist existing industries in identifying raw material problems and opportunities. If the information were not collected, data would not be available for sub-state, state, regional, and national policy makers and program developers to make decisions related to the forestland on a scientific basis.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 2,110.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 1,696.

Forest Service

Title: Bid For Advertised Tibmer

OMB Control Number: 0596–0066

Summary of Collection: Individuals, large and small businesses, and corporations who wish to purchase timber or forest products from the National Forest must enter into a timber sale contract or forest product contract with the Forest Service (FS). Information must be collected by FS in order to ensure that: National Forest System timber is sold at not less than appraised value; bidders meet specific criteria when submitting a bid; and anti-trust violations do not occur during the bidding process. Several statutes, regulations, and policies impose requirements on the Government and purchasers in the bidding process. The FS will collect information using several forms.

Need and Use of the Information: FS will collect information to determine bid responsiveness. The sale officer will ensure: the bidder has signed the bid form; provided a tax identification number; completed the unit rate, weighted average, or total sale value bid; entered the bid guarantee amount, type, and ensure the bid guarantee is enclosed with the bid, the bidder has provided the required information concerning Small Business Administration size and Equal Opportunity compliance on previous sales. The Timber Sale Contracting Officers will use the information to complete the contract prior to award to the highest bidder. Failure to include the required information may result in the bid declared non-responsive or the Contracting Officer may be unable to make an affirmative finding of purchaser responsibility and not able to award the contract.

Description of Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 5,500.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 38,672.

Rural Utilities Service

Title: State Telecommunications Modernization Plan.

OMB Control Number: 0572–0104.

Summary of Collection: The Rural Electrification Loan Restructuring Act (RELRA, Pub. L. 103–129), November 1, 1993, amended the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (the RE Act). RELRA requires that a State Telecommunications Modernization Plan (Modernization Plan or Plan), meet all the statutory requirements of RELRA (part 1751, Subpart B). The plan at a minimum must provide for: (1) The elimination of party line service; (2) the availability of telecommunications services for improved business, educational, and medical services; (3) must encourage computer networks and information highways for subscribers in rural areas; (4) subscribers in rural areas to receive through telephone lines; (a) conference calling; (b) video images; and (c) data at a rate of 1 million bits of information per second; and the proper routing of information to subscribers.

Need and Use of the Information: The Rural Utilities Service (RUS) telecommunications program staff will review and approve Modernization Plans, if they comply with the requirements of the regulation. If the proposed Modernization Plan is approved, RUS will notify the developer of the approval. If not, RUS will make specific written comments and suggestion for modifying the proposed Modernization Plan so that it will comply with the requirements of the regulation. If the information is not collected, RUS' authority to make loans under the Rural Electrification Act will be restricted.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 350.

Rural Housing Service

Title: USDA Rural Housing Service—Centralized Servicing Center Loan Servicing Satisfaction Survey.

OMB Control Number: 0575–NEW.

Summary of Collection: The Rural Housing Service (RHS) provides insured loans to low and moderate-income applicants located in rural geographic areas to assist them in obtaining decent, sanitary and safe dwellings. RHS Centralized Servicing Center (CSC) has been in operation since October 1996. The CSC was established to achieve a high level of customer service and operating efficiency that provides its borrowers with convenient access to their loan account information. RHS has developed a survey to measure the results and overall effectiveness of customer services provided.

Need and Use of the Information: RHS will use the outcome of the Customer Satisfaction Survey to determine the general satisfaction level among its customers throughout the nation, highlight areas that need improvement and provide a benchmark for future surveys and improvement in customer service. The survey is administered as part of CSC's on going service quality improvement program.

Description of Respondents: Business or other for profit: Individual or households; Farms; Not-for-profit institutions; State, local, or Tribal government.

Number of Respondents: 23,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,680.

Rural Utilities Service

Title: 7 CFR Part 1786, Prepayment of RUS Guaranteed and Insured Loans to Electric and Telephone Borrowers.

OMB Control Number: 0572–0088.

Summary of Collection: The Rural Electrification (RE) Act of 1936, as amended, authorizes and empowers the Administrator of Rural Utilities Service (RUS) to make loans in the several States and Territories of the United States for rural electrification and for the purpose of furnishing and improving electric and telephone service in rural areas and to assist electric borrowers to implement demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems. 7 CFR 1786, subparts E, F and G provides the authorization for the reporting burden in section 306(C) of the RE Act.

Need and Use of the Information: The information will be collected from borrowers requesting to prepay their notes and to determine that the borrower is qualified to prepay under the authorizing statues. The overall goal of subparts E and F is to allow RUS borrowers to prepay their RUS loan and the overall goal of subpart G is to refinance.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 28.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 62.

Rural Housing Service

Title: 7 CFR 1951–F, Analyzing Credit Needs and Graduation of Borrower

OMB Control Number: 0575–0093

Summary of Collection: Section 333 of the Consolidated Farm and Rural Development Act and section 502 of the Housing Act of 1949, require the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), and the Farm Service Agency (FSA) to graduate their direct loan borrowers to other credit when they are able to do so. Graduation is an integral part of Agency lending, as Government loans beyond a borrower's need for subsidized rates of non-market terms. The notes, security

instruments, or loan agreements of most borrowers require borrowers to refinance their Agency loans when other credit becomes available at reasonable rates and terms. If the borrower finds other credit is not available at reasonable rates and terms, the Agency will continue to review the borrower for possible graduation at periodic intervals. Information will be collected from the borrowers concerning their loans.

Needs and Use of the Information: The information submitted by FSA, RBS, or RHS borrowers to Agency offices is used to graduate direct borrowers to private credit with or without the use of Agency loan guarantees. The data collected will include financial information such as income; farm operating expenses, asset values, and liabilities.

Description of Respondents: Individuals or households; Business or other for-profit; Farms; State, local or Tribal government.

Number of Respondents: 31,975.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 74,419.

Rural Housing Service

Title: 7 CFR 1965–E, ''Prepayment and Displacement Prevention of Multiple Family Housing Loans.''

OMB Control Number: 0575–0155.

Summary of Collection: The Housing and Community Development Act of 1987 required that Rural Rental Housing borrowers wishing to prepay their loans, must first decide if the housing continues to serve low- and moderate-income tenants, if so, Rural Development (RD) must offer the borrower a fair incentive to prepay the loan. If the borrower rejects the incentive, the housing must be offered for sale to a nonprofit organization or public agencies. Only if no nonprofit organization or public agencies can be found to purchase the project at the market value can the loan be prepaid.

Need and Use of the Information: When a request to prepay a rural rental-housing loan is received, RD will collect information to determine the need for the housing to remain in the low-income program. RD will also determine the extent to any incentive offer to keep the housing within the RD program. If RD does not have current and appropriate information, the decision to accept or reject the prepayment request and the amount of an incentive offer would be made inappropriately.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or households; Farms; State, local or Tribal government.

Number of Respondents: 800.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 687.

Agricultural Marketing Service

Title: Livestock Mandatory Reporting Act of 1999.

OMB Control Number: 0581–0186.

Summary of Collection: The Livestock Mandatory Reporting Act of 1999 mandates the reporting of information on prices and quantities of livestock products by packer processing plants meeting certain criteria, including size as measured by annual slaughter. The information is necessary for the proper performance of the functions of Agriculture Marketing Service. USDA's market news provides all market participants, including producers, with the information necessary to make intelligent and informed marketing decisions.

Need and Use of the Information: The information collected and recordkeeping requirements are essential to establishing and implementing a mandatory program of livestock and livestock products reporting. The information is reported up to three times daily and once weekly and is only available directly from those entities required to report under the Act.

Description of Respondents: Business or other for-profit.

Number of Respondents: 119.

Frequency of Response: Reporting; Weekly; Other (Daily).

Total Burden Hours: 24,429.

Rural Utilities Service

Title: Request for Release of Lien and/or Approval of Sale.

OMB Control Number: 0572–0041.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, telecommunications, water and waste facilities in rural areas. RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended (RE Act). A 1949 amendment to the RE Act established the telephone program in RUS with the purpose of making loans to furnish and improve rural telephone service. Section 201 of the RE Act provides that loans shall not be made unless RUS finds and certifies that the security for the loan is reasonably adequate and that the loan will be repaid within the time agreed. In addition to providing loans and loan guarantees, one of RUS' main objectives is to safeguard loan security until the loan is repaid.

Need and Use of the Information: A borrower's assets provide the security for a Government loan. The selling of assets reduces the security and increases the risk of loss to the Government. RUS Form 793 allows the telecommunication program borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's system. RUS telephone borrowers fill out the form to request RUS approval in order to sell capital assets. Specifics to the sale of capital assets, including the use of Form 793 and submission of supporting documentation, are covered in REA Bulletin 415–1, ''Sale of Property by Telephone Borrowers.''

If the information in Form 793 is not collected when capital assets are sold, the capital assets securing the Government's loans could be liquidated and the Government's security either eliminated entirely or diluted to an undesirable level. This increases the risk of loss to the Government in the case of a default.

Description: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 75.

Frequency of Response: Reporting: On occasion.

Total Burden Hours: 206.

Rural Utilities Service

Title: Request for Release of Lien and/or Approval of Sale.

OMB Control Number: 0572–0041.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA) that makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. RUS manages loan programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.,* as amended (RE Act). A 1949 amendment to the RE Act established the telephone program in RUS with the purpose of making loans to furnish and improve rural telephone service. Section 201 of the RE Act provides that loans shall not be made unless RUS finds and certifies that the security for the loan is reasonably adequate and that the loan will be repaid within the time agreed. In addition to providing loans and loan guarantees, one of RUS's main objectives is to safeguard loan security until the loan is repaid.

Need and Use of the Information: A borrower's assets provide the security for a Government loan. The selling of assets reduces the security and increases

the risk of loss to the Government. A borrower seeking permission to sell some of its assets uses RUS Form 793. The form contains detailed information regarding the proposed sale. If the information in Form 793 is not collected when capital assets are sold, the capital assets securing the Government's loans could be liquidated and the Government's security either eliminated entirely or diluted to an undesirable level. This increases the risk of loss to the Government in the case of a default.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal government.

Number of Respondents: 75.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 206.

Rural Housing Service

Title: 7 CFR Part 1924–A, Planning and Performing Construction and other Development.

OMB Control Number: 0575–0042.

Summary of Collection: The Rural Housing Service (RHS) is the credit agency for rural housing and community development within the Rural Development mission area of the United States Department of Agriculture. RHS offers a supervised credit program to build modest housing and essential community facilities in rural areas. Section 501 of Title V of the Housing Act of 1949, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings, farm buildings and/or related facilities to provide decent, safe sanitary living conditions and adequate farm building and other structures in rural areas.

Need and Use of the Information: RHS provides several forms to assist in the collection and submission of information. The information will be used to determine whether a loan/grant can be approved; to ensure that RHS has adequate security for the loans financed; to monitor compliance with the terms and conditions of the agency loan/grant and to monitor the prudent use of Federal funds. If the information is not collected and submitted, RHS would have no control over the type and quality of construction and development work planned and performed with Federal funds.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms.

Number of Respondents: 25,340.

Frequency of Responses: Recordkeeping; Report: On occasion.

Total Burden Hours: 94,924.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–21640 Filed 8–22–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: We are deposting 77 stockyards. These facilities are no longer capable of being used as stockyards and, therefore, are no longer required to be posted.

EFFECTIVE DATE: August 25, 2003.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Section 302 of the P&S Act (7 U.S.C. 202) defines the term ''stockyard'' as follows:

> * * * any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.

Section 302 (b) of the P&S Act requires the Secretary to determine which stockyards meet this definition, and to notify the owner of the stockyard and the public of that determination by posting a notice in each designated stockyard. After giving notice to the stockyard owner and to the public, the stockyard is subject to the provisions of Title III of the P&S Act (7 U.S.C. 201–203 and 205–217a) until the Secretary deposts the stockyard by public notice.

We depost a stockyard after the facility can no longer be used as a stockyard. Some of the reasons a facility can no longer be used as a stockyard include: the facility has been moved and the posted facility is abandoned, the facility has been torn down or otherwise destroyed, such as by fire, the facility is dilapidated beyond repair, or the facility has been converted and its function changed.

This document notifies the public that the following 77 stockyards no longer meet the definition of stockyard and that we are deposting the facilities.

Facility No.	Stockyard name and location	Date posted
AL–106	Athens—Limestone Stockyard, Athens, Alabama	November 16, 1971
AL–127	Geneva County Livestock, Geneva, Alabama	August 27, 1959
AL–162	Barrett Livestock Market, Inc., Wetumpka, Alabama	June 27, 1978
AL–167	Kenneth Hinckle Feeder Pig Sale, Piedmont, Alabama	August 28, 1986
AL–186	Wood's Livestock Market, Ohatchee, Alabama	December 1, 1991
AL–188	Centre Livestock Market, Inc., Centre Alabama	November 9, 1995
AR–102	Atkins Livestock Auction, Atkins, Arkansas	January 13, 1970
AR–112	Eudora Livestock Auction Company, Eudora, Arkansas	August 15, 1958
AR–122	Imboden Concentration Point, Imboden, Arkansas	February 18, 1970
AR–151	S & S Livestock, Paragould, Arkansas	March 6, 1974
AR–165	Beebe Livestock Exchange, Beebe, Arkansas	April 1, 1991
AR–167	Dunn's Horse and Tack Sale, El Dorado, Arkansas	March 19, 1992
AR–171	Roden's Auction Service, DeQueen, Arkansas	May 1, 1996
AZ–103	Layton Livestock Auction, Inc., Tucson, Arizona	October 15, 1957
CA–106	Rebik Auction Yard, Brawley, California	January 11, 1959
CA–115	Dixon Livestock Auction Co., Dixon, California	October 6, 1959
CA–172	Western Auction Co., El Cajon, California	November 8, 1976
CA–179	Martins Dairy Stockyards, Chino, California	February 21, 1986
CA–187	Cash & Carry Livestock Sale, Apple Valley, California	November 20, 1993

Facility No.	Stockyard name and location	Date posted
CO–101	Mile Hi Livestock Auction Co., Broomfield, Colorado	December 28, 1962
CO–130	Limon Cattle Auction, L.L.C., Limon, Colorado	March 6, 1957
CO–150	Monte Vista Livestock Auction, Inc. Ignaco, Colorado	May 8, 1981
IA–188	Monticello Sale Barn, Monticello, Iowa	October 13, 1965
IA–215	Sioux City Stock Yards, Sioux City, Iowa	November 1, 1921
ID–105	Coeur d'Alene Livestock, Inc., Couer d'Alene, Idaho	October 2, 1959
ID–109	Gooding Livestock Commission Co., Inc., Gooding, Idaho	February 28, 1950
KS–125	Emmett Livestock Sales, Emmett, Kansas	June 1, 1959
KS–140	Hiawatha Auction Company, Hiawatha, Kansas	May 25, 1959
KS–147	Iola Community Sale, Iola, Kansas	May 28, 1959
KS–153	D. C. Livestock, Lawerence, Kansas	February 15, 1963
KS–200	Leavenworth Livestock Auction Company, Leavenworth, Kansas	February 7, 1975
KS–206	Sunflower Horse Auction, Chapman, Kansas	February 12, 1986
KY–114	Glasgow Livestock Market, Inc., Glasgow, Kentucky	December 11, 1959
LA–107	Clarks Livestock Auction, Inc., Benton, Louisiana	April 10, 1957
LA–117	Grand Cane Livestock Sales, Inc., Grand Cane, Louisiana	March 11, 1959
LA–127	Dominique's Livestock Market, Inc., Marksville, Louisiana	September 28, 1962
MD–100	Aberdeen Sales Co., Aberdeen, Maryland	October 27, 1959
MN–140	Princeton Livestock Market, Inc., Princeton, Minnesota	October 15, 1959
MS–153	E & E Livestock, Inc., Tupelo, Mississippi	May 17, 1974
MS–166	Granger Trading Barn, Halzlehurst, Mississippi	February 21, 1993
MS–168	S & S Sales, Mantachie, Mississippi	January 8, 1996
MS–169	McDermott Sale Company, Byhalia, Mississippi	October 24, 1996
MT–104	Montana Livestock Auction, Butte, Montana	February 14, 1950
NC–126	Stanley County Livestock Market, Norwood, North Carolina	March 31, 1961
NC–161	Mount Olive Livestock Market, Inc., Faison, North Carolina	February 2, 1990
NY–100	Empire Livestock Adams Sales, Adams, New York	August 4, 1960
NY–106	Sunny Acres Livestock Market, Bombay, New York	September 20, 1960
NY–126	Johnstown Livestock Sales, Inc., Johnstown, New York	June 14, 1965
NY–130	Thomas Commission Company, Malone, New York	December 7, 1960
NY–131	Milford Commission Sales Stables, Inc., Milford, New York	August 17, 1960
NY–133	Newman's Livestock Exchange, Inc., Newport, New York	September 15, 1962
NY–136	Empire Livestock Marketing Cooperative, Inc., Owego, New York	July 11, 1960
NY–162	Englan Select Sales, Inc., Madison, New York	June 30, 1981
NY–165	Angelica Feeder Sales Cooperative, Inc., Angelica, New York	September 5, 1986
NY–169	Baurer Horse and Tack Auction, Lyons, New York	October 24, 1989
NY–172	The Bar W Ranch & Sales, Shushan, New York	November 11, 1994
OK–106	Ardmore Livestock Auction and Ringling Livestock Auction, Ardmore, Oklahoma	November 15, 1949
OK–122	Dewey Stockyards, Dewey, Oklahoma	August 31, 1964
OK–145	Marietta Livestock Auction Sale, Marietta, Oklahoma	April 7, 1959
OK–159	Perkins "Y" Livestock Auction, Inc., Perkins, Oklahoma	April 27, 1959
OK–164	Ringling Livestock Auction, Ringling, Oklahoma	March 6, 1950
OK–197	Alva Sales Company, Inc., Alva, Oklahoma	November 10, 1977
OK–198	Erin Springs Livestock Auction, Erin Springs, Oklahoma	November 25, 1978
OR–103	Corvallis Auction Yard, Inc., Corvallis, Oregon	September 22, 1959
OR–116	Portland Livestock Exchange, North Portland, Oregon	November 1, 1921
OR–126	Mikes Livestock Auction, Eagle Point, Oregon	January 1, 1996
TN–113	Covington Sales Company, Covington, Tennessee	June 19, 1959
TN–157	Scotts Hill Sales Barn, Scotts Hill, Tennessee	May 7, 1959
TN–181	Murfreesboro Livestock Market, Murfreesboro, Tennessee	October 27, 1983
TN–189	Middle Tennessee Horse Sale, Decherd, Tennessee	July 17, 1993
TN–190	H Bar M Horse Auction, Athens, Tennessee	September 13, 1993
UT–101	Delta Livestock Exchange L.L.C., Delta, Utah	January 28, 1955
UT–117	Parker Sales, Logan, Utah	June 18, 1992
UT–118	Ogden Livestock Auction, Inc., Farr West, Utah	January 27, 1994
VT–102	Thomas Hichack Company Commission Sales, Morrisville, Vermont	November 18, 1959
VT–111	Roberts Livestock and Auctioneering—Sales & Auction Barn, Newport, Vermont	March 20, 1986
WA–117	Britton Brothers, Snohomish, Washington	September 22, 1959

Effective Date

This notice is effective upon publication in the **Federal Register** because it relieves a restriction and, therefore, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure.

Authority: 7 U.S.C. 202.

Dated: August 20, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–21664 Filed 8–22–03; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: We propose to post 10 stockyards. We have received information that the stockyards meet the definition of a stockyard under the Packers and Stockyards Act and, therefore, need to be posted. Posted stockyards are subject to the provisions of the Packers and Stockyards Act.

DATES: We will consider comments that we receive by September 9, 2003.

ADDRESSES: Send comments via electronic mail to *comments.gipsa@usda.gov.* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250–3604, or fax to (202) 690–2755. All comments should make reference to the date and page number of this issue of the **Federal Register**, and will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Section 302 of the P&S Act (7 U.S.C. 202) defines the term ''stockyard'' as follows:

* * * any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.

Section 302(b) of the P&S Act requires the Secretary to determine which stockyards meet this definition, and to notify the owner of the stockyard and the public of that determination by posting a notice in each designated stockyard. After giving notice to the stockyard owner and to the public, the stockyard will be subject to the provisions of Title III of the Packers and Stockyards Act (7 U.S.C. 201–203 and 205–217a) until the Secretary deposts the stockyard by public notice.

This document notifies the stockyard owners and the public that the following 10 stockyards meet the definition of stockyard and that we propose to designate the stockyards as posted stockyards.

Facility No.	Stockyard name and location
CA–190	Tulare Sales Yard, Inc., Tulare, California.
CA–191	B and B Livestock Auction, Madera, California.
MN–193	Fergus Falls Livestock Auction Market, Fergus Falls, Minnesota.
MO–283	Cameron Livestock Sales, Warrensburg, Missouri.
MO–284	Southwest City Livestock Auction, L.L.C., Southwest City, Missouri.
MS–174	Solomon's Horse Sale, Belmont, Mississippi.
NY–174	Woods Auction Service, Cincinnatus, New York.
OK–213	Bakers Auction, Butler, Oklahoma.
TX–346	Shamrock Livestock Commission, Shamrock, Texas.
VA–161	Wythe County Livestock Exchange, L.L.C., Wytheville, Virginia.

Authority: 7 U.S.C. 202.

Dated: August 20, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–21665 Filed 8–22–03; 8:45 am]

BILLING CODE 3410–EN–U

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oregon 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 conference call of the Oregon State Advisory Committee in the Western Region will convene at 1 p.m. (PDT) and adjourn at 2 p.m., Tuesday, September 2, 2003. The purpose of the conference call is to discuss the Patriot Act.

This conference call is available to the public through the following call-in number: 1–800–659–8294, access code number 18604119. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez of the Western Regional Office, (213) 894–3437, by 3 p.m. on Monday, September 1, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 14, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–21648 Filed 8–22–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wyoming 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 conference call of the Wyoming State Advisory Committee will convene at 12 p.m. (m.d.t.) and adjourn at 1:15 p.m. (m.d.t.), Wednesday, September 3, 2003. The purpose of the conference call is to discuss strategic planning including plans for possible regional project on discrimination against Native Americans in reservation border towns, and progress of current SAC briefing summary, ''Dropout Rates of Minority

Students in Wyoming Public Secondary Schools.''

This conference call is available to the public through the following call-in number: 1–800–659–8292; access code: 18483692. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Malee Craft, Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049), by 3 p.m. (m.d.t.) on Monday, September 1, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 14, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–21647 Filed 8–22–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[I.D. 081903A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Logbook Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0271.

Type of Request: Regular submission.

Burden Hours: 1,382.

Number of Respondents: 70.

Average Hours Per Response: 13 minutes a day for a catcher vessel Daily Fishing and Cumulative Production Log; 26 minutes a day for a catcher-processor Daily Fishing and Cumulative Production Log; 13 minutes a day for a mothership Daily Fish Received and Cumulative Production Log; 30 minutes a week for a Weekly/Daily Production Report; 20 minutes for a Product Transfer/Offload Log; 1.25 minutes for a Start/Stop Report; and 5 minutes for a notification of intent to offload donation fish.

Needs and Uses: This data collection would require the submission and preparation of logbooks and reports in the Pacific Coast Groundfish Fishery from processing vessels larger than 125 feet in length and from catcher vessels that deliver to them. The collection also includes a requirement that vessels intending to voluntarily donate fish caught in excess of trip limits to hunger relief organizations notify NOAA prior to offloading the fish and that the amount of donated fish be identified in the Product Transfer/Offloading Logbook. The information is necessary to monitor catch, effort, and production for fishery management purposes.

Affected Public: Business or other for-profit organizations; State, Local, or Tribal Government.

Frequency: On occasion, weekly, and quarterly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 14, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–21607 Filed 8–22–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Public Telecommunications Facilities Program (PTFP) Application Form.

Form Number(s): None.

OMB Approval Number: 0660–0003.

Type of Review: Regular submission.

Burden Hours: 37,188.

Number of Respondents: 450.

Average Hours Per Response: 77 hours to prepare online applications; and 86 hours to prepare printed applications. In every grant cycle, NTIA/PTFP requires revised information to be submitted by applicants under serious consideration for funding, this re-submission takes an average of 6 hours for online applications and 9 hours for printed applications.

Needs and Uses: The PTFP is a grant-making program that operates an annual application review process. The applicants submit proposals which describe unique projects intended to provide broadcasting or telecommunications services to the general public. The application forms make possible the required competitive review process for making decisions on which applicants are funded.

Affected Public: Not-for-profit institutions; State, local, or Tribal government.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Kim Johnson, (202) 395–7232.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Kim Johnson, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 19, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–21637 Filed 8–22–03; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 03–00004.'' A summary of the application follows.

Summary of the Application

Applicant: NYVZ Import & Export, Inc., 257 W 10th Street, Suite 3E, New York, New York 10014.

Contact: Jean Carlos Blanco, President.

Telephone: (212) 675–8642.

Application No.: 03–00004.

Date Deemed Submitted: August 12, 2003.

Members (in addition to applicant): Steven Henderson, Vice President.

NYVZ Import & Export, Inc., seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. *Products.*—All products.
2. *Services.*—All services.
3. *Technology Rights.*—Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.
4. *Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights).*—Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to: Government relations; state and Federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

With respect to the sale of Products and Services, licensing of Technology Rights and provisions of Export Trade Facilitation Services, NYVZ Import & Export, Inc., may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Market and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;
4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;
6. Allocate export orders among Suppliers;
7. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;
8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;
9. Enter into contracts for shipping; and
10. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of products for export and coordinating export with distributors.

Definitions

1. ''Supplier'' means a person who produces, provides, or sells a Product and/or Service.

Dated: August 18, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 03–21668 Filed 8–22–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081803D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory bodies will hold public meetings.

DATES: The Council and its advisory bodies will meet September 7–12, 2003. The Council meeting will begin on Monday, September 8, at 4:15 p.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 3:30 p.m. until 4:15 p.m. on Monday, September 8 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188; telephone: 206–575–8220.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280 or 866–806–7204.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order. All items listed are subject to potential Council action.

A. Call to Order

1. Opening Remarks, Introductions
2. Council Member Appointments - Swearing in of New Members
3. Roll Call
4. Executive Director's Report
5. Approve Agenda

B. Administrative and Other Matters

1. Election of Council Chair and Vice Chair
2. April 2003 Council Meeting Minutes
3. Council Input into NOAA Fisheries Constituent Survey
4. Legislative Matters
5. Fiscal Matters
6. Appointments to Advisory Bodies, Standing Committees, and Other Forums for the 2004–06 Term
7. Staff Work Load Priorities and November 2004 Council Meeting Agenda

C. Groundfish Management

1. NMFS Report on Groundfish Management
2. Observer Data Implementation Status
3. Final Harvest Levels for 2004
4. Status of Groundfish Fisheries and Inseason Adjustments
5. Final Criteria for Exempted Fishing Permits and Consideration of Proposals for 2004 Season
6. Groundfish Management Measures for 2004
7. Proposed Monitoring Program for the Shore-based Pacific Whiting Fishery
8. Stock Assessment of Canary Rockfish
9. Groundfish Bycatch Program Environmental Impact Statement
10. Consideration of Individual Quota Programs

D. Habitat

Current Habitat Issues

E. Marine Reserves

1. Update on Marine Reserves Issues
2. Marine Reserves in the Federal Waters Portion of the Channel Islands National Marine Sanctuary

F. Salmon Management

1. Salmon Fishery Update
2. Salmon Methodology Review: Final Prioritization of Modeling Issues for the Scientific and Statistical Committee
3. Mitchell Act Program Update

G. Pacific Halibut Management

1. Status of 2003 Pacific Halibut Fisheries
2. Status of Pacific Halibut Bycatch Estimates for Use by the International Pacific Halibut Commission
3. Proposed Changes to the Catch Sharing Plan and Annual Regulations

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, SEPTEMBER 7, 2003	
Groundfish Management Team	11 a.m.
MONDAY, SEPTEMBER 8, 2003	
Council Secretariat	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Habitat Committee	10 a.m.
Legislative Committee	10:30 a.m.
Budget Committee	1 p.m.
TUESDAY, SEPTEMBER 9, 2003	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Salmon Technical Team	8 a.m.
Model Evaluation Workgroup	1 p.m.
Enforcement Consultants	Immediately following Council Session
WEDNESDAY, SEPTEMBER 10, 2003	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As necessary
THURSDAY, SEPTEMBER 11, 2003	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As necessary
FRIDAY, SEPTEMBER 12, 2003	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As necessary

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503)820–2280 or (866)806–7204 at least 5 days prior to the meeting date.

Dated: August 18, 2003.

Richard W. Surdi,

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

[FR Doc. 03–21608 Filed 8–22–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice; Information collection 3038–0017, Market Surveys.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instruments (if any).

DATES: Comments must be submitted on or before September 24, 2003.

FOR FURTHER INFORMATION OR A COPY CONTACT: Judith Payne at CFTC, (202) 418–5268; FAX: (202) 418–5527; e-mail: *jpayne@cftc.gov* and refer to OMB Control No. 3038–0017.

SUPPLEMENTARY INFORMATION:

Title: Market Surveys, OMB Control No. 3038–0017. This is a request for extension of a currently approved information collection.

Abstract: Sections 8(a)(i) and (ii) of the Commodity Exchange Act provide for the efficient execution of the provisions of the Act and in order to inform Congress, the Commission may make investigations concerning futures markets and may publish general information from such investigations. In certain instances in response to abrupt and substantial changes in market prices, Congressional inquiry or other reasons, the Commission may conduct full market investigations requiring that all persons holding futures positions on the date in question in a specific market to be identified. In such cases, the Commission issues its call for survey information pursuant to Commission Rule 21.02, 17 CFR 21.02.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on June 17, 2003 (68 FR 35870).

Burden statement: The respondent burden for this collection is estimated to average 1.75 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected entities: 400.

Estimated number of responses: 400.

Estimated total annual burden on respondents: 700 hours.

Frequency of collection: Annually.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0017 in any correspondence.

Judith Payne, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Office for CFTC, 725 17th Street, NW., Washington, DC 20503.

Issued in Washington, DC, on August 19, 2003.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–21633 Filed 8–22–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DOD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Friday, September 12th, 2003, from 9 a.m. to 11:45 a.m. The closed Executive Session will be from 11:45 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at the Dirksen Senate Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Domenick Micillo, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, telephone (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of a partially closed meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information, which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), (7) and (9) of title 5, United States Code.

Dated: August 13, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–21632 Filed 8–22–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by September 22, 2003. Interested persons are invited to submit comments on or before September 24, 2003.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, 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 *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: August 19, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Deputy Secretary

Type of Review: New.

Title: Performance Based Data Management Initiative.

Abstract: The Performance Based Data Management Initiative (PBDMI) is in the first phase of a multiple year effort to consolidate the collection of education information about States, Districts, and Schools in a way that improves data quality and reduces paperwork burden for all the national education partners.

Additional Information: The Department is requesting emergency processing of this collection with an OMB approval date of September 22. The Department has spent over four months of internal review of these data elements with federal program managers and analysts and has visited each of the State Education Agencies that will be submitting this data to determine the availability of the data and the amount of effort required to provide this data to the Department. With such an intensive and thorough review of the data elements by the participating partners in this collection, it has been determined that the purpose for the initial sixty day public comment to ED has been fulfilled. It is also important to provide the State Agencies with as much lead time as possible for the development of their data transmission plans so they will be able to provide this data in November 2003.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 8,230.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2335. When you access the information collection, click on ''Download Attachments'' to view. 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 to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or 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 Patrick Sherrill at his e-mail address *Pat.Sherrill@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. 03–21642 Filed 8–22–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Advanced Scientific Computing Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting cancellation.

On July 30, 2003, the Department of Energy published a notice of open meeting announcing a meeting of the Advanced Scientific Computing Advisory Committee 68 FR 44756. Today's notice is announcing the cancellation of the meeting scheduled for August 21–22, 2003, because the committee will not have a quorum of members for the meeting.

Issued in Washington, DC, on August 20, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–21666 Filed 8–21–03; 9:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0280; FRL–7323–4]

Tribal Pesticide Programs Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Tribal Pesticide Program Council (TPPC) will hold a 3–day meeting, beginning on September 17 and ending on September 19, 2003. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Wednesday, September 17, 2003, from 9 a.m. until 5 p.m., including a closed session from 4 p.m. until 5 p.m.;

Thursday, September 18, 2003, from 9 a.m. until 5 p.m., including a closed session from 4 p.m. until 5 p.m.; and Friday, September 19, 2003, from 9 a.m. until noon.

ADDRESSES: The meeting will be held at Miccosukee Resort and Convention Center, 500 SW., 177th Ave., Miami, FL 33194.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *Mcduffie.Georgia@epa.gov*; or Lillian Wilmore, TPPC Facilitator, P.O. Box 470829, Brookline Village, MA 02447–0829; telephone number: (617) 232–5742; fax: (617) 277–1656; e-mail address: *naecology@aol.com.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons interested in TPPC's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0280. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Tentative Agenda

This unit provides tentative agenda topics for the 2–day meeting.

1. TPPC state of the Council Report.
2. Presentation and questions and answers by EPA's Office of Pesticide Programs and Field and External Affairs Division.
3. Reports from working groups and TPPC participation in other meetings: Tribal Strategy and FOSTTA, Pesticide Program Dialogue Committee, Western Region. Pesticide Meeting, Certification and Training Assessment Group, and Worker Protection.
4. *Tribal caucus* (2).
5. Reports from other organizations: State FIFRA Issues Research and Evaluation Group, American Indian Environmental Office, Tribal Operations Committee, Regional Tribal Operations Committee, Intertribal Agricultural Council, and National Tribal Environmental Council, Intertribal Agricultural Council, and Tribal Air Group.
6. Tribal west nile virus concerns.
7. The new interim guidance on pesticides applied to waterways.
8. Spray drift regulation labeling and minimization.
9. EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) tribal strategy update.
10. OECA enforcement priorities.
11. Pesticide-related homeland security concerns.
12. Updates from the subregional lead officer.
13. Worker protection, e-commerce, and tribal enforcement issues.
14. Background checks on inspections.

List of Subject

Environmental protection.

Dated: August 12, 2003.

Kennan Garvey,

Acting Associate Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 03–21663 Filed 8–22–03; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7548–8]

Notice of Availability: Draft Watershed-Based National Pollutant Discharge Elimination System (NPDES) Permitting Implementation Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that the U.S. Environmental Protection Agency is publishing Draft Guidance On Watershed-Based National Pollutant Discharge Elimination System (NPDES) Permitting Implementation. EPA is making the draft guidance available to the public for a period of thirty days during which EPA seeks comments on the document. The purpose of this guidance is to describe the concept of and the process for watershed-based permitting under the NPDES permit program. Watershed-based NPDES permitting is an approach to developing NPDES permits for multiple point sources located within a defined geographic area (*i.e.*, watershed boundaries). This approach, aimed at achieving new efficiencies and environmental results, provides a process for considering all stressors within a hydrologically defined drainage basin or other geographic area, rather than addressing individual pollutant sources on a discharge-by-discharge basis. As outlined in the guidance, EPA will continue to implement the NPDES program through its existing statutory and regulatory authorities. The guidance cannot impose legally binding requirements on EPA, States, Tribes, or the regulated community. It cannot substitute for Clean Water Act (CWA) requirements, EPA's regulations, or the obligations imposed by consent decrees or enforcement orders.

DATES: All public comments on the draft guidance must be received on or before September 24, 2003.

ADDRESSES: Comments should be addressed to Patrick Bradley, U.S. Environmental Protection Agency, EPA East Building (MC 4203M), 1200

Pennsylvania Avenue, NW., Washington, DC 20460. Commenters are also requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. EPA will also accept comments electronically. Comments should be addressed to the following e-mail address: *bradley.patrick@epa.gov*. Electronic comments must be submitted as an ASCII, WordPerfect format file and avoid the use of special characters or any form of encryption.

Interested persons may obtain a copy of the guidance from the Water Permits Division's Web site (*http://cfpub.epa.gov/npdes/wqbasedpermitting/wspermitting.cfm*).

FOR FURTHER INFORMATION CONTACT: Patrick Bradley, Telephone: (202) 564–0729. Facsimile Number: (202) 564–6392. E-mail: *bradley.patrick@epa.gov*. Also visit the Water Permits Division's Web page at *http://www.epa.gov/npdes*.

SUPPLEMENTARY INFORMATION: For nearly a decade, the U.S. Environmental Protection Agency (EPA) has supported and encouraged a watershed approach to addressing water quality problems. Awareness and understanding of this approach has grown over time, but with demonstrated gaps in implementation. In fall 2002 the EPA Office of Water Assistant Administrator issued a policy memo entitled ''Committing EPA's Water Program to Advancing the Watershed Approach.'' This policy memo not only reaffirms EPA's commitment to the watershed approach but also reenergizes efforts to ensure that EPA as a whole fully integrates the approach into program implementation. The memo calls for the creation of a Watershed Management Council (WMC) that will, among other activities, accelerate efforts to develop and issue NPDES permits on a watershed basis.

Following the watershed approach policy memo, EPA's Assistant Administrator for Water released the ''Watershed-Based NPDES Permitting Policy Statement.'' This statement communicates EPA's policy on implementing NPDES permitting activities on a watershed basis, discusses the benefits of watershed-based permitting, presents an explanation of the process and several mechanisms to implement watershed-based permitting, and outlines how EPA will encourage watershed-based permitting. It serves as both a formal commitment and a strategy for fully integrating the watershed approach into the NPDES permitting program and accelerating these efforts, as called for in the watershed approach policy memo. Both the policy memo on advancing the watershed approach and the watershed-based permitting policy statement are available on EPA's Web page at *http://cfpub.epa.gov/npdes/wqbasedpermitting/wspermitting.cfm*.

Dated: August 14, 2003.

James Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03–21660 Filed 8–22–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7547–6]

Preliminary Listing of Additional Waters to Ohio's 2002 List of Waters Under Section 303(d) of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: This notice announces the EPA decision identifying water quality limited segments and associated pollutants in Ohio to be listed pursuant to the Clean Water Act section 303(d)(2), and requests public comment. Section 303(d)(1) requires that states submit lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared. Section 303(d)(2) requires EPA to review and approve or disapprove the lists submitted by the states. If EPA disapproves a state list of waters pursuant to section 303(d)(2), EPA must then identify the impaired waters.

On July 17, 2003, EPA partially approved and partially disapproved Ohio's 2002 section 303(d) list of waters still requiring TMDLs. Specifically, EPA approved Ohio's section 303(d) list of impaired waters at Table 6 of the Ohio 2002 Integrated Water Quality Monitoring and Assessment Report, including associated pollutants and associated priority rankings. EPA disapproved Ohio's decision not to identify 17 additional waters on the 2002 section 303(d) list based upon sport fish consumption advisories. In a July 17, 2003 decision document, EPA identified these additional water bodies and associated pollutants for inclusion on the Ohio 2002 section 303(d) list.

EPA is providing the public the opportunity to review its decision to add the 17 additional water bodies and pollutants to Ohio's 2002 section 303(d) list, as required by EPA's Public Participation regulations. EPA will consider public comments in reaching its final decisions on the additional water bodies and pollutants identified for inclusion on Ohio's final list.

DATES: Comments on this document must be received in writing by September 24, 2003.

ADDRESSES: Written comments on today's notice may be submitted to Jo Lynn Traub, Director, Water Division, Attn: Ohio 303 (d) list, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. As an alternative, EPA will accept comments electronically. Comments should be sent to the following Internet e-mail address: *keclik.donna@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Keclik, Watersheds and Wetlands Branch, at the EPA address noted above or by telephone at (312) 886–6766.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7). On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for states to submit section 303(d) lists in 2000, except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 (65 FR17170).

Consistent with EPA's regulations, Ohio submitted to EPA its listing decision under section 303(d)(2) on October 3, 2002. On July 17, 2003, EPA approved Ohio's 2002 section 303(d) list of impaired waters and associated priority rankings. EPA disapproved Ohio's decision not to list 17 additional waters and associated pollutants on the 2002 section 303(d) list based upon sport fish consumption advisories. EPA solicits public comment on its identification of 17 additional waters

and associated pollutants for inclusion on Ohio's 2002 section 303(d) list.

Dated: August 14, 2003.

Anthony Carrollo,

Acting Director, Water Division, Region 5.

[FR Doc. 03–21659 Filed 8–22–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7548–9]

Public Water System Supervision Program Revision for the State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Oklahoma is revising its approved Public Water System Supervision Program. Oklahoma has adopted an Arsenic Rule, Radionuclides Rule, Long Term 1 Enhanced Surface Water Treatment Rule, Filter Backwash Recycling Rule, Public Notification Rule, Lead and Copper Rule Minor Revisions, and a revised Public Water Supply Definition. The Arsenic Rule is adopted to improve public health by reducing the maximum contaminant level of Arsenic in drinking water from 50 micrograms/Liter to 10 micrograms/Liter. The Radionuclides Rule is adopted to improve public health protection and reduce the risk of cancer by reducing the exposure to radionuclides in drinking water. The Long Term 1 Enhanced Surface Water Treatment Rule will improve control of microbial pathogens, specifically the protozoan Cryptosporidium, in drinking water and address risk trade-offs with disinfection byproducts. The Filter Backwash Recycling Rule is adopted to further protect public health by requiring public water systems, where needed, to institute changes to the return of recycle flows to a plant's treatment process that may otherwise compromise microbial control. The Public Notification Rule is adopted to notify the public anytime a water system violates national primary drinking water regulations or has other situations posing a risk to public health. The Lead and Copper Rule Minor Revisions will eliminate unnecessary requirements, streamline and reduce reporting burden, and promote consistent national implementation of the Lead and Copper Rule. Finally, the revised Public Water Supply Definition will now include other constructed conveyances. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by September 24, 2003, to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 24, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on September 24, 2003. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Oklahoma Department of Environmental Quality, Water Quality Division, Public Water Supply Section, 707 North Robinson, Oklahoma City, Oklahoma 73101 and United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Dawn D. Ison, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665–2162.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: August 18, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 03–21661 Filed 8–22–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

August 18, 2003.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0859.

OMB Approval date: 06/03/2003.

Expiration Date: 06/30/2006.

Title: Suggested Guidelines for Petititons for Ruling Under Section 253 of the Communications Act.

Form No.: N/A.

Estimated Annual Burden: 80 responses; 6,280 total annual hours; 78.5 hours per respondent.

Needs and Uses: The attached Public Notice establishes various procedural guidelines related to the Commission's processing of petitions for preemption pursuant to Section 253 of the Communications Act of 1934, as amended. The Commission will use the information to discharge its statutory mandate relating to the preemption of state or local statutes or other state or local legal requirements.

OMB Control No.: 3060–0876.

OMB Approval date: 06/24/2003.

Expiration Date: 06/30/2006.

Title: USAC Board of Directors Nomination Process (47 CFR Section 54.703) and Review of Administrator's Decision (47 CFR Sections 54.719–54.725).

Form No.: N/A.

Estimated Annual Burden: 1312 responses; 41,840 total annual hours; approximately 32 hours per respondent.

Needs and Uses: Pursuant to 47 CFR Section 54.703 industry and non-industry groups may submit to the Commission for apporoval nominations for individuals to be appointed to the USAC Board of Directors. 47 CFR Sections 54.719–54.725 contain the procedures for Commission review of USAC decisions, including the general filing requirements pursuant to which

parties must file requests for review. The information is used by the Commission to select USAC's Board of directors and to ensure that requests for review are filed properly with the Commission.

OMB Control No.: 3060–0463.

OMB Approval date: 06/24/2003.

Expiration Date: 06/30/2006.

Title: Telecommunications Relay Services and the Americans with Disabilities Act of 1990, 47 CFR Part 64 (Section 64.604 (a)(3).

Form No.: N/A.

Estimated Annual Burden: 5,053 responses; 26,837 total annual hours; 5–6 hours per respondent.

Needs and Uses: The attached Report and Order eliminates the coin sent-paid requirement and encourages specific outreach and education programs to inform TRS users of their options when placing calls from payphones. Because the Commission concludes that it is infeasible to provide coin sent-paid toll relay service through payphones at this time, and the coin sent-paid toll functionality is not necessary to achieve functional equivalence, carriers need not provide coin sent-paid toll TRS calls from payphones. The attached Report and Order requires carriers to continue to provide coin sent-paid local calls free to TRS users. The Report and Order requires carriers via the Industry Team to submit a one time report on the efforts industry has made to educate consumers on how to make toll coin sent-paid calls.

OMB Control No.: 3060–0804.

OMB Approval date: 06/18/2003.

Expiration Date: 06/30/2006.

Title: Universal Service—Health Care Providers Universal Service Program.

Form No.: FCC Forms 465,466,466-A, and 467.

Estimated Annual Burden: 5,605 responses; 8,805 total annual hours; 1–2 hours per respondent.

Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible health care providers. Health care providers who want to participate in the universal service program must file several forms, including FCC Forms 466 and 468. FCC Forms 466 and 468 are being revised and combined into one comprehensive form. The information is used to ensure that telecommunications carriers and eligible providers of information services receive the appropriate credit for providing eligible services.

OMB Control No.: 3060–0824.

OMB Approval date: 07/14/2003.

Expiration Date: 07/31/2006.

Title: Service Provider Identification Number and Contact Form.

Form No.: FCC Form 498.

Estimated Annual Burden: 5,000 responses; 10,000 total annual hours; 2 hours per respondent.

Needs and Uses: The Administrator of the universal service program must obtain contact and remittance information from service providers participating in the universal service high cost, low income, rural health care, and schools and libraries programs. The Administrator uses FCC Form 498 to collect service provider name, phone numbers, other contact information, and remittance information from universal service fund participants to enable the Administrator to perform its universal service disbursement functions under 47 CFR Part 54. FCC Form 498 allows fund participants to direct remittance to third parties or receive payments directly from the Administrator.

OMB Control No.: 3060–0613.

OMB Approval date: 07/23/2003.

Expiration Date: 07/31/2006.

Title: Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91–141, Transport Phase II (Third R & O).

Form No.: N/A.

Estimated Annual Burden: 64 responses; 832 total annual hours; 13 hours per respondent.

Needs and Uses: Tier 1 local excange carriers (except NECA members) are required to make tariff filing to provide certain signalling information to interested parties so that those parties can provide tandem switching services. Tandem swiching providers are required to provide certain billing information to those Tier 1 local exchange carriers.

OMB Control No.: 3060–0853.

OMB Approval date: 08/14/2003.

Expiration Date: 02/29/2004.

Title: Receipt of Service Confirmation Form; Adjustment of Funding Commitment; and Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act—Universal Service for Schools and Libraries.

Form No.: FCC Forms 479, 486, and 500.

Estimated Annual Burden: 40,000 responses; 75,000 total annual hours; 1–2 hours per respondent.

Needs and Uses: Following a district court decision that portions of CIPA were unconstitutional, the Commission modified FCC Forms 479 and 486 to remove certain language from the certifications for libraries (language requiring compliance with the parts of CIPA the district court found unconstitutional). The Supreme Court reversed the district court decision and the Commission must revise the forms to enable libraries to certify their compliance with CIPA. Specifically, the Commission will make a few small changes to the forms in item 6.b and 11 of the Form 486 and Item 6 of the FCC 479. FCC Form 500 remains unchanged. Additionally, the Commission is requesting contact information to conform with the contact information requested in other Schools and Libraries Universal Service forms.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21620 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 18, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility; and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 24, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Telecommunication Relay Services and Speech-to-Speech Services for Individual with Hearing and Speech Disabilities, CC Docket No. 98–67 (Second Report and Order, Order on Reconsideration), FCC 03–112.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,053.

Estimated Time per Response: 5.311 hours (average).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 26,837 hours.

Total Annual Cost: None.

Needs and Uses: On June 17, 2003, the Commission released the *Second Report and Order, (''Report and Order''), Order on Reconsideration, In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC 98–67, FCC 03–112. In the *Report and Order*, the Commission establishes new rules and amends existing rules governing TRS to further advance the functional equivalency mandate of section 225. The *Report and Order* also revises the requirements for handling emergency calls. In the *Order on Reconsideration*, the Commission provides clarify requirements for Communication Assistants, the speed of answer requirement and clarify certain procedural matters regarding TRS-related information to improve the usability of TRS for all Americans. On June 17, 2003, the Commission also released a *Notice of Proposed Rulemaking, In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03–123, FCC 03–112, that proposed rules in section 64.604 (c)(5)(iii) regarding certification for TRS providers to be eligible for receiving payments from the Interstate TRS Fund and proposed to revise section 64.605 of the Commission rules. These proposed rules are also seeking OMB approval for the new collection associated with the *Second Report and Order, Order on Reconsideration*, CC Docket No. 98–67, FCC 03–112.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21621 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 19, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 24, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0465.

Title: Section 74.985, Signal Booster Station.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 6,300.

Estimated Time Per Response: .084—8.25 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 919 hours.

Total Annual Cost: $2,252,500.

Needs and Uses: Section 74.985 requires signal booster stations to: (1) submit engineering data or showings in specified formats to the FCC's duplicating and research contractor for public service records duplication; (2) to serve a copy of the application and accompanying engineering materials on affected co-channel or adjacent channel parties; and (3) to retain a copy of the application at the transmitter site. The data are used to ensure that Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) applicants and licensees have considered properly the potential for harmful interference from their facilities.

OMB Control No.: 3060–0531.

Title: Local Multipoint Distribution Service (LMDS).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 986.

Estimated Time Per Response: .25–20 hours.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 30,423 hours.

Total Annual Cost: $2,025,400.

Needs and Uses: The information requested will be used by FCC personnel to determine the technical, legal and other qualifications of applicants to operate stations in the Local Multipoint Distribution Service (LMDS). There is no change to this information collection (extension of a currently approved collection).

OMB Control No.: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions and State, local, or Tribal government.

Number of Respondents: 250,520.

Estimated Time Per Response: 1.25 hours.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 219,205 hours.

Total Annual Cost: $50,104,000.

Needs and Uses: The FCC Form 601 is a consolidated, multi-part application or ''long form'' for market-based licensing and site-by-site licensing in the Wireless Telecommunications Bureau's (WTB's) Radio Services' Universal Licensing System (ULS).

The WTB is in the process of implementing the Instructional Television Fixed Service (ITFS) and the Multipoint Distribution Service (MDS) into the Universal Licensing System (ULS). These services were transferred to WTB due to the Commission's reorganization on March 25, 2003, as they were previously held in the Broadband Licensing System (BLS). The information is used by the Commission to determine whether the applicant is legally, technically and financially qualified to be licensed.

The estimated average burden and number of respondents have been corrected to reflect the integration of the ITFS and the MDS services into ULS using FCC Form 601.

OMB Control No.: 3060–0947.

Title: Section 101.1327, Renewal Expectancy for EA Licensees.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 18,820.

Estimated Time Per Response: .50–20 hours.

Frequency of Response: Every 10 year reporting requirement.

Total Annual Burden: 284,653 hours.

Total Annual Cost: $18,820,000.

Needs and Uses: The information required in Section 101.1327 is used to determine whether a renewal applicant of a Multiple Address System has complied with the requirements to provide substantial service by the end of the ten-year initial license term. The FCC uses this information to determine whether the applicant's license will be renewed at the end of the license period.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21622 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–2621]

NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the NPCR, Inc. d/b/a Nextel Partners' petition seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in certain rural and non-rural study areas in the state of Georgia.

DATES: Comments are due on or before September 4, 2003. Reply comments are due on or before September 18, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0494.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released August 8, 2003. On July 10, 2003, NPCR, Inc. d/b/a Nextel Partners (Nextel Partners) filed with the Commission a petition under section 214(e)(6) of the Communications Act of 1934, as amended. In particular, Nextel Partners seeks designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in certain rural and non-rural study areas in the state of Georgia.

Nextel Partners contends that the Georgia Public Service Commission has provided an affirmative statement that it does not regulate commercial Mobile radio service (CMRS) carriers; Nextel Partners meets all the statutory and regulatory prerequisites for ETC designation; and designating Nextel Partners as an ETC will serve the public interest.

The petitioner must provide copies of its petition to the Georgia Public Service Commission. The Commission will also send a copy of this Public Notice to the Georgia Public Service Commission by overnight express mail to ensure that the Georgia Public Service Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due September 4, 2003 and reply comments are due September 18, 2003. 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.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *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, however, 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, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get 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.

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. Filings can 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). The Commission's contractor, Vistronix, 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 sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR § 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Paul Garnett,

Acting Assistant Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–21619 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 18, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. BancFirst Corporation, Oklahoma City, Oklahoma; to acquire 100 percent of the voting shares of Lincoln National Bancorporation, Inc., and thereby indirectly acquire Lincoln National Bank, both of Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, August 19, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21667 Filed 8–22–03; 8:45 am]

BylLLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Measures of Patients' Hemodialysis Care Experiences

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request.

SUMMARY: The Agency of Healthcare Research and Quality (AHRQ) is soliciting the voluntary submission of instruments measuring patient perspectives of their experience with hemodialysis facilities from researchers, vendors, stakeholders and other interested parties. AHRQ and the Centers for Medicare & Medicaid Services (CMS) have set as a priority the development of a standardized survey that may be used to make widely available, comparable measurements of hemodialysis patient experiences. Therefore, AHRQ is assessing the feasibility of creating such a standardized instrument and the nature and scope of the work to be done. As part of the feasibility study, AHRQ is reviewing existing instruments that capture patients' treatment experiences and is therefore requesting voluntary submission of such instruments or measures along with documentation for administration of the instruments or measures and, if possible, critical evaluations of particular measures or related survey administration techniques.

DATES: Parties interested in contributing to this endeavor are asked to submit the requested material on or before October 24, 2003 to Beth Kosiak, Ph.D. (see address below). AHRQ will not reply to individual responses, but will consider all submissions and suggestions.

ADDRESSES: Submissions should include a brief cover letter and include copy of the instrument or particular measure(s) for consideration. They may be in the form of a letter or e-mail, preferably with an electronic file in a standard word processing format such as Microsoft Word or Word Perfect on a 3½ inch diskette enclosed or as an e-mail with an e-mail attachment. Electronic submissions are strongly encouraged. Responses to this request should be submitted to: Beth Kosiak, PhD, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850, Phone: (301) 427–1322, Fax: (301) 427–1341, e-mail: *bkosiak@ahrq.gov.*

In order to ease the handling of submissions, please send a copy of the instrument or measure(s), and a cover letter addressing the extent to which the information submitted meats the ''Submission Criteria'' below. A copy or citation of relevant peer-reviewed journal articles is also desirable, but not required. For citations, please include the title of the article, author(s), publication year, journal name, volume, issue, and page numbers where article appears. All submissions must include a statement of willingness to grant to AHRQ the right to use and authorize others to use submitted measures and their documentation as part of a CAHPS®-trademarked instrument. Any CAHPS instrument developed for patient perspectives of experiences of hemodialysis care will be made publicly available for use free of charge. However, a CAHPS instrument bearing the CAHPS trademark may only be administered following CAHPS documentation and instructions. To facilitate our obtaining any other required clarifications, please submit the following information with respect to a knowledgeable contact person: (a) Name, (b) title, (c) organization, (d)

mailing address, (e) telephone number, and (f) e-mail address. For clarity, please do not use acronyms without explanation..

FOR FURTHER INFORMATION CONTACT: Beth Kosiak, PhD, from the Center for Quality Improvement and Patient Safety, Agency for Healthcare Research and Quality (see contact information above).

Submission Criteria

Measures submitted should ideally reflect these elements to be considered: (a) They must capture the patients' perspective on their experience of care in hemodialysis settings; (b) have a high degree of reliability and validity; and (c) have been used widely, not just in one or two research studies or local dialysis settings. It is recommended that submitters provide documentation that the instrument(s) or measure(s) they submit meets these criteria. The following information, if available, should be included in the submission of materials: the name of the instrument, domains assessed, language(s) in which the instrument is available, evidence of cross group/cultural comparability if any, examples of uses of the instrument for quality assessment or improvement, scale, psychometric statistics, such as individual level reliability (*e.g.,* internal consistency, test-retest), group level reliability, item response theory (IRT) statistics, validity (content, construction, criterion), as well as cognitive interviews and field test results, and details about focus groups.

Submitters are also encouraged to submit recommendations regarding, and any evaluations of, administration protocols, including recommended patient contact procedures, recommended sample sizes, mode of administration, any information available about mode effects, and mode specific response rates. Evidence of the criteria may be demonstrated by providing peer-reviewed journal article(s) or citations thereof.

As noted above submitters must indicate a willingness to grant to AHRQ the right to use and authorize others to use the submitted instrument or particular measures or formats therein. The license or assignment of rights will make it possible to apply the CAHPS trademark to a new instrument combining the best features of all the submissions as well as any ideas that may develop from reviewing them. AHRQ will not simply adopt one instrument and apply the CAHPS trademark to it. Rather, AHRQ, in collaboration with its CAHPS grantees, will evaluate all submitted instruments and measures, select several, either in whole or in part, for testing, or more likely devise one or more for testing and, as required, make additional modifications for the final product. AHRQ will assume responsibility for the final measure set as well as any further modifications to the developed instruments. Sources used in developing the final product will be acknowledged by AHRQ in the appropriate forum. In addition, all submissions will be publicly reported in aggregate.

The finalized instrument will bear the CAHPS trademark. As indicated above, it will be made freely available for use by all interested parties. There will be free access to the instrument's supportive/administrative information as well, and as a matter of quality control, there will be warnings that the CAHPS identification may not be used if any changes are made of the instrument or final measure set, without review and permission of the agency. AHRQ will assume responsibility for the final measure set as well as any further modifications to the developed instrument.

SUPPLEMENTARY INFORMATION:

Background

The Agency for Healthcare Research and Quality has been a leading proponent and supporter of the development of instruments for measuring patient experiences within the healthcare system of the United States. Through prior CAHPS patient survey development efforts such as the Consumer Assessment of Health Plan CAHPS®, AHRQ has been able to provide valuable information to consumers and purchasers alike. While the Health Plan CAHPS® tool is highly regarded within the industry and provides valuable information to consumers and purchasers, it does not address hemodialysis patient experiences of care.

Leaders in the healthcare sector have called for a response to this pressing need. In ''Crossing the Quality Chasm'', the National Institute of Medicine (IOM) established patient-centered care as one of the industry's six aims for quality improvement. The dimensions of patient-centered care include: Respect for patients' values, preferences, and expressed needs; coordination and integration of care; information, communication, and education; physical comfort; emotional support, *i.e.,* relieving fear and anxiety; involvement of family and friends (2001). From past experience, AHRQ suggests the addition of two more aims for quality improvement: Continuity and transition; and access to care. To measure these dimensions will require a standardized instrument that produces reliable and valid results.

In an effort to address the concerns of the industry, the Director AHRQ and the Administrator of CMS have established a priority to develop a standardized measure of hemodialysis patients' experiences. The goal of developing the standardized survey and reporting quality data on hemodialysis facilities could be reached within the next few years.

The steps to advance this initiative include:

- *Stakeholder and Technical Expert Panel Meetings:* A series of meetings will be held to identify the issues, concerns and interests of the healthcare community. Summaries of these meetings will be posted on the AHRQ Website: *http://www.ahrq.gov/.*
- *Feasibility Study:* The process to access the feasibility of developing a national standardized survey instrument to measure patient experiences with hemodialysis care. As part of the study, the potential uses of the instrument such as quality improvement, public reporting, or both will be assessed.
- *Research Plan:* The process by which measures will be defined and applicable instruments identified. Instruments submitted will be evaluated to determine if they meet the measurement needs and to identify whether additional measure development is required. The standardized instrument will reside in the public domain.
- *Implementation Plan:* A process to implement the standardized survey will be established to include information related to data collection, analysis, and reporting.

Dated: August 14, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–21555 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of AHRQ SEP Meetings—Change of Time and Date

The original AHRQ Notice of Meetings was published in the **Federal Register** (FR), July 31, 2003, Volume 68, Number 147, Page 44951. However, there are changes that need to be made to the September 4, 2003 meeting. See specifics on changes below:

Change: 4. SEP Meeting on: Sale Practices Implementation Challenge Grants. *Date:* September 4–5, 2003 (open on September 4 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

To: 4. SEP Meeting on: Sale Practices Implementation Challenge Grants. *Date:* September 3, 2003 (open on September 3 from 6 p.m. to 6:15 p.m. and closed for the remainder of the meeting).

There are no changes to the location of this meeting.

Dated: August 14, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–21556 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Annual Survey of Refugees.

OMB No.: 0970–0033

Description: The Annual Survey of Refugees collects information on the economic circumstances of a random sample of refugees, Amerasians, and entrants who arrived in the United States during the previous five years. The survey focuses on their training, labor force participation, and welfare utilization rates. Data are segmented by region of origin, State of resettlement, and number of months since arrival. From their responses, the Office of Refugees Resettlement reports on the economic adjustment of refugees to the American economy. These data are used by Congress in its annual deliberations of refugee admissions and funding and by program managers in formulating policies for the future direction of the Refugee Resettlement Program.

Respondents:

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Form	2,000	1	.6666 (40 minutes) ..	1,333

Estimated Total Annual Burden Hours: 1,333.

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. e-mail address: *rsargis@acf.hhs.gov*. 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: August 19, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–21629 Filed 8–22–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Refugee State-of-Origin Report.

OMB No.: 0970–0043.

Description: The information collection of the ORR–11 (Refugee State-of-Origin Report) is designed to satisfy the statutory requirements of the Immigration and Nationality Act (the Act). Section 412(s) of the Act requires the Office of Refugee Resettlement (ORR) to compile and maintain data on the secondary migration of refugees within the United States (U.S.) after arrival.

In order to meet this legislative requirement, ORR requires each State to submit an annual count of the number of refugees who were initially resettled in another State. The State does this by counting the number of refugees with Social Security numbers indicating residence in another State at the time of arrival in the U.S. (The first three digits of the Social Security number indicate the State of residence of the applicant.)

Data submitted by the States are compiled and analyzed by the ORR statisticians, who then prepare a summary report which is included in ORR's annual Report to Congress. The primary use of the data is to quantify and analyze refugee secondary migration among the 50 States. ORR uses these data to adjust its services formula allocation.

Respondents: State, local or Tribal government.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State of Origin Report	50	1	4.333	217

Estimated Total Annual Burden Hours: 217.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW.,

Washigton, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, E-mail address: *lauren_wittenberg@omb.eop.gov.*

Dated: August 19, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–21630 Filed 8–22–03; 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: Developmental Disabilities Protection and Advocacy Statement of Goals and Priorities.

OMB No.: 0980–0270.

Description: Required by Federal statute and regulation. Each State Protection and Advocacy System must prepare and submit to public comment a Statement of Goals and Priorities (SGP). The final version of this SGP for the coming fiscal year is submitted to the Administration on Developmental Disabilities (ADD). The information in the SGP will be aggregated into a national prospective profile of where Protection and Advocacy Systems are going. It will provide ADD with an overview of program direction, and permit ADD to track accomplishments against objectives/targets, permitting the formulation of technical assistance and compliance with the Government Performance and Results Act. ADD is currently in the process of coordinating with other federal funding agencies to develop a more comprehensive SGP format.

Respondents: State and Tribal Governments.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
P&A SGP	57	1	44	2,508

Estimated Total Annual Burden Hours: 2,508.

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. E-mail address: *rsargis@acf.hhs.gov.* 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: August 19, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–21631 Filed 8–22–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0360]

Agency Information Collection Activities; Proposed Collection; Comment Request; Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Maintaining a Databank

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 collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information contained in the final guidance entitled ''Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Maintaining a Databank,'' dated March 18, 2002.

DATES: Submit written or electronic comments on the collection of information by October 24, 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 Division of Dockets Management (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: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION:

I. Background

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 set forth in this document.

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.

Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Maintaining a Databank—(OMB Control Number 0910–0459)—Extension

Description: In the **Federal Register** of March 18, 2002 (65 FR 12022), FDA issued a final guidance to industry on recommendations for investigational new drug application (IND) sponsors on submitting information about clinical trials for serious or life-threatening diseases to a Clinical Trials Data Bank developed by the National Library of Medicine, National Institutes of Health (NIH). This information is especially important for patients and their families seeking opportunities to participate in clinical trials of new drug treatments for serious or life-threatening diseases. The final guidance describes three collections of information: Mandatory submissions, voluntary submissions, and certifications.

II. Mandatory Submissions

Section 113 of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act) (Public Law 105–115) requires that sponsors shall submit information to the Clinical Trials Data Bank when the clinical trial: (1) Involves a treatment for a serious or life-threatening disease, and (2) is intended to assess the effectiveness of the treatment. The final guidance discusses how sponsors can fulfill the requirements of section 113 of the Modernization Act. Specifically, sponsors should provide: (1) Information about clinical trials, both federally and privately funded, of experimental treatments (drugs, including biological products) for patients with serious or life-threatening diseases; (2) a description of the purpose of the experimental drug; (3) patient eligibility criteria; (4) the location of clinical trial sites; and (5) a point of contact for patients wanting to enroll in the trial.

Senate 1789, ''Best Pharmaceuticals for Children Act'' (BPCA) (Public Law 107–109) established a new requirement for the Clinical Trials Data Bank mandated by section 113 of the Modernization Act. Information submitted to the data bank must now include ''a description of whether, and through what procedure, the manufacturer or sponsor of the investigation of a new drug will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded protocol use of the new drug, particularly in children.'' The final guidance will be updated to include a discussion of how sponsors can fulfill the BPCA requirements.

III. Voluntary Submissions

Section 113 of the Modernization Act also specifies that sponsors may voluntarily submit information pertaining to results of clinical trials, including information on potential toxicities or adverse effects associated with the use or administration of the investigational treatment. Sponsors may also voluntarily submit studies that are not trials to test effectiveness, or not for serious or life-threatening diseases, to the Clinical Trials Data Bank.

IV. Certifications

Section 113 of the Modernization Act specifies that the data bank will not include information relating to a trial if the sponsor certifies to the Secretary of Health and Human Services (the Secretary) that disclosure of the information would substantially interfere with the timely enrollment of subjects in the investigation, unless the Secretary makes a determination to the contrary.

Description of Respondents: A sponsor of a drug or biologic product regulated by the agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act (42 U.S.C. 262) who submits a clinical trial to test effectiveness of a drug or biologic product for a serious or life-threatening disease.

Burden Estimate: The information required under section 113(a) of the Modernization Act is currently submitted to FDA under 21 CFR part 312, and this collection of information is approved under OMB Control No. 0910–0014 until January 31, 2006, and, therefore, does not represent a new information collection requirement. Instead, preparation of submissions under section 113 of the Modernization Act involves extracting and reformatting information already submitted to FDA. Procedures (where and how) for the actual submission of this information to the Clinical Trials Data Bank are addressed in the final guidance.

The Center for Drug Evaluation and Research (CDER) received 3,957 new protocols in 2002. CDER anticipates that protocol submission rates will remain at or near this level in the near future. Of these new protocols, an estimated two-thirds[1] are for serious or life-threatening diseases and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 3,957 protocols per year is 2,638 new protocols per year. An estimated 50 percent[1] of the new protocols for serious or life-threatening diseases submitted to CDER are for clinical trials involving assessment for effectiveness, and are subject to the mandatory reporting requirements under section 113 of the Modernization Act. Fifty percent of 2,638 protocols per year is 1,319 new protocols per year subject to mandatory reporting. The remaining 2,638 new protocols per year are subject to voluntary reporting.

The Center for Biologics Evaluation and Research (CBER) received 910 new protocols in 2002. CBER anticipates that protocol submission rates will remain at or near this level in the near future. An estimated two-thirds[2] of the new protocols submitted to CBER are for clinical trials involving a serious or life-threatening disease, and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 910 new protocols per year is 607 new protocols per year. An

[1]Estimate obtained from a review of 2,062 protocols submittted to CDER between January 1, 2002, and September 30, 2002.

[2]Estimate obtained from a review of 2,062 protocols submitted to CDER between January 1, 2002, and September 30, 2002.

estimated 50 percent[2] of the new protocols for serious or life-threatening diseases submitted to CBER are for clinical trials involving assessments for effectiveness. Fifty percent of 607 protocols per year is an estimated 304 new protocols per year subject to the mandatory reporting requirements under section 113 of the Modernization Act. The remaining 606 new protocols per year are subject to voluntary reporting.

The estimated total number of new protocols for serious or life-threatening diseases subject to mandatory reporting requirements under section 113 of the Modernization Act is 1,319 for CDER plus 304 for CBER, or 1,623 new protocols per year. The remainder of protocols submitted to CDER or CBER will be subject to voluntary reporting, including clinical trials not involving a serious or life-threatening disease as well as trials in a serious or life-threatening disease but not involving assessment of effectiveness. Therefore, the total number of protocols (4,867) minus the protocols subject to mandatory reporting requirements (1,623) will be subject to voluntary reporting, or 3,244 protocols.

It was originally estimated that the protocol submissions to the data bank will be updated 2.5 times per year under section 113 of the Modernization Act.

In the **Federal Register** of March 29, 2000 (65 FR 16620), the agency requested comments on the proposed collection of information. One comment was received. The comment stated that FDA greatly underestimated the burden by excluding multicenter studies and not accounting for the quality control review of the data before it is submitted to the data bank. Our final burden estimate incorporated these concerns and included a revised burden estimate.

The number of IND amendments submitted in 2002 for protocol changes (e.g., changes in eligibility criteria) was 4,750 for CDER and 1,646 for CBER. The number of IND amendments submitted in 2002 for new investigators was 9,419 for CDER and 1,773 for CBER. The number of protocol changes and new investigators was apportioned proportionally between mandatory and voluntary submissions. We recognize that single submissions may include information about multiple sites.

Generally, there is no submission to FDA when an individual study site is no longer recruiting study subjects. For this analysis, we assumed that the number of study sites closed each year is similar to the number of new investigator amendments received by FDA (9,419 CDER and 1,773 CBER).

Generally, there is no submission to FDA when the study is closed to enrollment. We estimate the number of protocols closed to enrollment each year is similar to the number of new protocols submitted (3,957 CDER and 910 CBER).

The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted under section 113(a) of the Modernization Act, including the time it takes to extract and reformat the information. FDA has been advised that some sponsors lack information system capabilities enabling efficient collection of company-wide information on clinical trials subject to reporting requirements under section 113(a) of the Modernization Act. The estimation of burden under section 113(a) reflects the relative inefficiency of this process for these firms.

Based on its experience reviewing IND's, consideration of the above information, and further consultation with sponsors who submit protocol information to the Clinical Trials Data Bank, FDA estimated that approximately 4.6 hours on average would be needed per response. The estimate incorporates 2.6 hours for data extraction and 2.0 hours for reformatting based on data collected from organizations currently submitting protocols to the Clinical Trials Data Bank. We considered quality control issues when developing the current burden estimates of 2.6 hours for data extraction and the 2.0 hours estimated for reformatting. Additionally, the internet-based data entry system developed by NIH incorporates features that further decrease the sponsor's time requirements for quality control procedures. The Clinical Trials Data Bank was set up to receive protocol information transmitted electronically by sponsors. Approximately 10 percent of sponsors electronically transmit information to the Clinical Trials Data Bank. If the sponsor chooses to manually enter the protocol information, the data entry system allows it to be entered in a uniform and efficient manner primarily through pull-down menus. As sponsor's familiarity with the data entry system increases, the hourly burden will continue to decrease.

A sponsor of a study subject to the requirements of section 113 of the Modernization Act will have the option of submitting data under that section or certifying to the Secretary that disclosure of information for a specific protocol would substantially interfere with the timely enrollment of subjects in the clinical investigation. FDA has no means to accurately predict the proportion of protocols subject to the requirements of section 113 of the Modernization Act that will be subject to a certification submission. To date, no certifications have been received. It is anticipated that the burden associated with such certification will be comparable to that associated with submission of data regarding a protocol. Therefore, the overall burden is anticipated to be the same, regardless of whether the sponsor chooses data submission or certification for nonsubmission. Table 1 reflects the estimate of this total burden.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

New Protocols	Recruitment Complete	Protocol Changes	New Investigators	Site Closed	Total Responses	Hours per Reponse	Total Hours
CDER (mandatory); 1,306	1,306	1,568	3,108	3,108	10,396	4.6	47,822
CBER (mandatory); 300	300	543	585	585	2,313	4.6	10,640
CDER (voluntary); 2,651	2,651	3,182	6,311	6,311	21,106	4.6	97,088
CBER (voluntary); 610	610	1,103	1,188	1,188	4,699	4.6	21,615
Total							177,165

[1]There are no capital and startup costs, or operation and maintenance costs associated with this collection of information.

We believe the estimate, 177,165 hours per year (38,514 responses × 4.6 hours per response) accurately reflects the burden. We recognize that companies who are less familiar with the data entry system and the Clinical Trials Data Bank will require greater than 4.6 hours per response. However, as sponsor familiarity with the system increases, the hourly estimate will decrease.

Dated: August 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21624 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0200]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Export of Medical Devices—Foreign Letters of Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 24, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Export of Medical Devices—Foreign Letters of Approval (OMB Control Number 0910–0264)—Extension

Section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e)(2)) provides for the exportation of an unapproved device under certain circumstances if the exportation is not contrary to the public health and safety and it has the approval of the foreign country to which it is intended for export.

Requesters communicate (either directly or through a business associate in the foreign country) with a representative of the foreign government to which they seek exportation, and written authorization must be obtained from the appropriate office within the foreign government approving the importation of the medical device. An alternative to obtaining written authorization from the foreign government is to accept a notarized certification from a responsible company official in the United States that the product is not in conflict with the foreign country's laws. This certification must include a statement acknowledging that the responsible company official making the certification is subject to the provisions of 18 U.S.C. 1001. This statutory provision makes it a criminal offense to knowingly and willingly make a false or fraudulent statement, or make or use a false document, in any manner within the jurisdiction of a department or agency of the United States.

FDA uses the written authorization from the foreign country or the certification from a responsible company official in the United States to determine whether the foreign country has any objection to the importation of the device into their country.

The respondents to this collection of information are companies that seek to export medical devices.

In the **Federal Register** of June 3, 2003 (68 FR 33161), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the reporting burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801(e)(2)	20	1	20	2.5	50

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21625 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0038]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Device User Fee Cover Sheet; Form FDA 3601

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Device User Fee Cover Sheet; Form FDA 3601'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 21, 2003 (68 FR 27818), 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 0910–0511. The approval expires on August 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: August 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21627 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 29, 2003, from 8 a.m. to 5 p.m.; and on September 30, 2003, from 8 a.m. to 1 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Kimberly Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX 301–827–6776, or e-mail: topperk@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: On both days, the committee will discuss the proposed systemic lupus erythematosis (SLE) concept paper, a preliminary discussion for creating a guidance document for the development of drugs, biologics, and devices for the treatment of SLE.

On September 29, 2003, the committee will discuss the proposed sections regarding the current state of the art, the claims for treatments, and clinical markers. On September 30, 2003, the meeting will be open to the public from 8 a.m. to 11 a.m., and the committee will discuss the section concerning clinical trial design. From 11 a.m. to 1 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information.

Procedure: On September 29, 2003, from 8 a.m. to 5 p.m.; and on September 30, 2003, from 8 a.m. to 11 a.m., the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 19, 2003. Oral presentations from the public will be scheduled on September 29, 2003, between approximately 12:30 p.m. and 1 p.m., on the topic of claims; between approximately 2:45 p.m. and 3:15 p.m., on the topic of clinical markers; and on September 30, 2003, between approximately 9 a.m. and 9:30 a.m., on the topic of trial design. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 19, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Persons desiring to speak who have not registered in advanced may be recognized from the floor by the Chair.

Closed Committee Deliberations: On September 30, 2003, from 11 a.m. to 1 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Trevelin Prysock at 301–827–7001 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 18, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–21626 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Reproductive Health Drugs; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Reproductive Health Drugs.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 29 and 30, 2003, from 8:30 a.m. to 5 p.m.

Location: Hilton, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Shalini Jain, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *jains@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12537. Please call the Information Line for up-to-date information on this meeting. Background materials for this meeting when available will be posted on the Web site 1 business day before the meeting at: *www.fda.gov/ohrms/dockets/ac/acmenu.htm*.

Agenda: On September 29, 2003, the committee will discuss issues relevant to the conduct of clinical trials and outcome measures for consideration of approval of drug products for the indications of induction of ovulation and pregnancy in anovulatory, infertile women and development of multiple follicles, and pregnancy in ovulatory women participating in assisted reproductive technology (ART) programs. On September 30, 2003, the committee will discuss new drug application (NDA) 21–322, Luveris (lutropin alfa for injection) Serono, Inc., a recombinant human luteinizing

hormone (r–hLH) drug product, proposed for concomitant administration with recombinant human follicle stimulating hormone (r–hFSH), for the proposed indication of induction of ovulation in infertile women with severe luteinizing hormone and follicle stimulating hormone deficiency.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 22, 2003. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. on September 29, 2003, and between approximately 1:30 p.m. and 2:30 p.m. on September 30, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 22, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shalini Jain at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 18, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–21628 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–58]

Notice of Submission of Proposed Information Collection to OMB: Applications for Housing Assistance Payments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act.

Housing owners/agents submit vouchers to HUD or their Contract Administrators (CA)/Performance Based Contract Administrators (PBCA) monthly to receive assistance payments for the difference between the gross rent and the total tenant payment for all assisted tenants. Special claims vouchers are also submitted by owners/agents to HUD or their CA/PBCA to receive an amount to offset unpaid rent, tenant damages, vacancies, and/or debt service losses. This is a proposed revision to the current information collection.

The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 24, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0182) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or through HUD's Information Collection Budget Tracking System at *http://mf.hud.gov:63001/po/i/icbts/*.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Applications for Housing Assistance Payments.

OMB Approval Number: 2502–0182.

Form Numbers: HUD–52670; HUD–52670–A, Part 1; HUD–52670–A, Part 2; HUD–52671–A/B/C/D.

Description of the Need for the Information and Its Proposed Use: Owners/agents submit vouchers to HUD or their Contract Administrators/Performance Based Contract Administrators monthly to receive assistance payments for the difference between the gross rent and the total tenant payment for all assisted tenants. Special claims vouchers are also submitted to receive an amount to offset unpaid rent, tenant damages, vacancies, and/or debt service losses.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, local or tribal government

Frequency of Submission: On occasion, Monthly.

Reporting Burden: Number of Respondents 23,507; Average responses per respondent 16.8; Total annual responses 394,824; Average burden per response 0.81 hrs.

Total Estimated Burden Hours: 319,627.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 15, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–21634 Filed 8–22–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4821–N–03]

Ginnie Mae Mortgage-Backed Securities Guide 5550.3, Revision 1 (Forms and Electronic Data Submissions); Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* October 24, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to:

Sonya Suarez, Office of Program Operations, Department of Housing & Urban Development, 451–7th Street, SW, Room 6206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions).

OMB Control Number, if applicable: New Approval Number.

Description of the need for the information proposed use: Ginnie Mae's Mortgage-Backed Securities Guide 5500.3, Revision 1 (''Guide'') provides instructions and guidance to participants in the Ginnie Mae Mortgage-Backed Securities (''MBS'') programs ''Ginnie Mae I and Ginnie Mae II''). Participants in the Ginnie Mae I program issue securities backed by single-family or multifamily loans. Participants in the Ginnie Mae II program issue securities backed by single-family loans. The Ginnie Mae II MBS are modified pass-through MBS on which registered holders receive an aggregate principal and interest payment from a central paying agent on all of their Ginnie Mae II MBS. The Ginnie Mae II MBS also allow small issuers who do not meet the minimum dollar pool requirements of the Ginnie Mae I MBS to participate in the secondary mortgage market. In addition, the Ginnie Mae II MBS permit the securitization of adjustable rate mortgages (''ARMs''). Any requirement in a document created under a Ginnie Mae MBS program is effective as of the date of the Guide, including amendments. Included in the Guide are Appendices. The Appendices include the forms or documents needed to comply with program requirements.

Agency form numbers, if applicable: 11700, 11702, 11704, 11707, 11710 A–E, 11714, 11714SN, 11705, 11706, 11708, 11709, 11709A, 11715, 11720, 11712–I, 11712–II, 11717, 11717–II, 1724, 11728, 11728–II, 1731, 1734, 11747, 11747–II and 11772–II, 11732, 11711A, 11711B, 11748C, and 11748A.

Members of affected public: For-profit business (mortgage companies, thrifts, savings & loans, etc.).

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION, INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE

Form	Title	No. of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
11700	Letter of Transmittal.	300	4	1,200	0.17	204
11702	Resolution of Board of Directors and Certificate of Authorized Signatures.	300	1	300	0.17	51
11704	Commitment to Guaranty Mortgage-Backed Securities.	300	4	1,200	0.25	300
11705	Schedule of Subscribers and Ginnie Mae Guaranty Agreement.	300	91.4	27,442	0.0166	456
11706	Schedule of Pooled Mortgages.	300	91.4	27,442	0.0166	456
11707	Master Servicing Agreement.	300	1	300	0.17	51
11708	Document Release Request.	300	10	3,000	0.2	600

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION, INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE—Continued

Form	Title	No. of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
11709	Master Agreement for Servicer's Principal and Interest Custodial Account.	30	1	300	0.03	9
11715	Master Custodial Agreement.	300	1	30	0.25	75
11720	Master Agreement for Servicer's Escrow Custodial Account.	300	1	300	0.2	60
11732	Custodian's Certification for Construction Securities.	250	1	250	0.0166	4
11709–A	ACH Debit Authorization.	300	1	300	0.25	75
11710, A, B, C, and E.	Issuer's Monthly Accounting Reports.	300	17,513.57	5,254,071	0.0166	87,218
11710 D	Issuer's Monthly Summary Reports.	300	16.88	5,064	0.0166	84
11711A and 11711B.	Release of Security Interest and Certification and Agreement.	300	91.4	27,442	0.0166	456
11712–I, 11712–II, 11717, 11717–II, 1724, 11728, 11728–II, 1731, 1734, 11747, 11747–II and 11722–II.	Ginnie Mae I and II Prospectus Forms.	300	91.4	27,442	0.25	6,861
11714 and 11714SN.	Issuer's Monthly Remittance Advice and Issuer's Monthly Serial Note Remittance Advice.	300	886.8	266,040	0.0166	4,416
11714 A and C	Addendum to Monthly Accounting Report—Adjustable Rate Mortgage Loan Package and Graduated Payment Mortgage or Growing Equity Mortgage Pool or Loan Package Composition.	300	8	2,406	0.0166	40
	Monthly Loan Level Reporting.	300	12	3,600	4	14,400
	Financial Statements and Audit Reports.	300	1	300	1	300
	Mortgage Bankers Financial Reporting Form.	278	4	1,112	0.5	556
	Soldiers' and Sailors' Quarterly Reimbursement Request and SSCRA Loan Eligibility Information.	173	162	28,026	0.034	953

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION, INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE—Continued

Form	Title	No. of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
	Form Letter for Loan Repurchase.	1,000	1	1,000	0.25	250
	Certification Requirements for the Pooling of Multifamily Mature Loan Program.	14	1	14	0.0166	0
	Request for Reimbursement of Mortgage Insurance Claim Costs.	60	1	60	0.25	15
	Collection of Remaining Principal Balances.	300	12	3,600	91.4	27,442
	Data Verification Form.	300	2	600	0.08	48
	Electronic Data Interchange System Agreement.	300	1	300	0.25	75
	Enrollment Administrator Signatories for Issuers and Document Custodians.	300	1	300	0.25	75
	Corporate Agreement.	10	1	10	0.25	3
	Cross Default Agreement.	10	1	10	0.25	3
	Transfer Agreements and Assignment Agreements.	180	1	15	0.25	4
	Pool Advance Agreement.	10	1	10	0.25	3
	Excess Funds Agreement.	10	1	10	0.25	3
	Acknowledgement Agreement and Accompanying Documents—Pledge of Servicing.	10	1	10	0.25	3
	Supervisory agreement.	10	1	10	0.25	3
Total	.....	246	.....	5,683,879	.....	145,570

Calculations:

Total Annual Responses × Hours per Response = Total Annual Hours

Estimated Cost to Respondents:

1. Mortgage industry employee salary: $25.00 per hour

$25.00 × Total Annual Hours = Cost

Estimated Annual Cost to the Government:

1. Ginnie Mae employee salary: $29.00 per hour

$29.00 × Total Annual Hours = Cost

2. Contractor Expense is based on contract award

Status of the proposed information collection: New Collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 19, 2003.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 03–21635 Filed 8–22–03; 8:45 am]

BILLING CODE 4210–66–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[SGA–03–15]

Notice of Funding Availability (NOFA), Solicitation for Grant Applications (SGA) for Ending Chronic Homelessness Through Employment and Housing Revision To Extend Application Deadline Date for Eligible Applicants

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Extension of Deadline Date.

SUMMARY: On July 18, 2003, HUD and the Department of Labor (DOL) jointly announced the availability of approximately $12.5 million to help address chronic homelessness. This notice advises interested parties that, as a result of the emergency situation caused by the power outages that affected much of the Mid-Atlantic and the Mid-West, HUD and DOL have decided to extend the application submission date for the Notice of Funding Availability/Solicitation for Grant Applications (SGA) to Monday, August 25, 2003.

FOR FURTHER INFORMATION CONTACT: John Garrity, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, (202) 708–4300 (this is not a toll-free number). Persons with hearing or speech impairments access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On July 18, 2003 (68 FR 42818), HUD and DOL jointly published a Solicitation for Grant Applications (SGA)/ Notice of Funding Availability that announced approximately $12.5 million to help address chronic homelessness. Of this amount, the Office of Disability Employment Policy at DOL made available $2.5 million to award up to four cooperative agreements designed to increase and improve employment opportunities for persons who are chronically homeless. HUD announced the availability of approximately $10 million for permanent housing grants from recaptured McKinney Act monies. The deadline for applications established by the July 18, 2003, notice was August 20, 2003.

As a result of the emergency situation caused by the power outages that affected much of Mid-Atlantic and the Mid-West beginning on August 14, 2003, HUD and DOL have decided to extend the application submission date for the Notice of Funding Availability/ Solicitation for Grant Applications (SGA) to Monday, August 25, 2003. This notice is consistent with a similar notice extending the deadline for applications for this joint Solicitation for Grant Applications/ Notice of Funding Availability that will be appear in the **Federal Register** on Thursday, August 21, 2003.

Other than extension of the application due date, no other changes are made to the NOFA. All applications must continue to be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, by the new application deadline—not later than 4:45 pm e.s.t., August 25, 2003.

Dated: August 20, 2003.

John Garrity,

Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development.

[FR Doc. 03–21716 Filed 8–21–03; 10:57 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Handbook for Candidate Conservation Agreements With Assurances and Enhancement of Survival Permit Processing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, are extending the comment period for the Draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permit Processing. This draft document provides internal guidance for conducting the Candidate Conservation Agreement with Assurances permit program under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period, and will be fully considered in the final rule.

DATES: Comments on the Draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permit Processing must be received on or before September 22, 2003, to be considered during preparation of a final guidance document.

ADDRESSES: Persons wishing to review the Draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permit Processing may obtain a copy by contacting the Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203 (telephone 703/358–2105), and may be viewed at: *http://endangered.fws.gov/candidates/ccaahandbook.html.* Written comments and materials regarding the draft guidance should be directed to the same address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Nolin, Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, at the above address (703–358–2105)

SUPPLEMENTARY INFORMATION:

Background

On June 23, 2003, we published in the **Federal Register** a notice of availability for the draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permit Processing (68 FR 37170). This draft handbook provides consistent procedures and policies for the Service's compliance with the enhancement of survival permit provisions of section 10(a)(1)(A) of the Act. Consistency in the section 10(a)(1)(A) program will be achieved by (1) providing national procedural and policy guidance; (2) providing standardized guidance to our offices and personnel who participate in the Candidate Conservation Agreements with Assurances program and review and process enhancement of survival permit applications; (3) ensuring uniform Service compliance with section 10(a)(1)(A) of the Act associated with a Candidate Conservation Agreement with Assurances; (4) providing assistance to applicants in the non-Federal sector who wish to apply for enhancement of survival permits; and (5) providing for conservation of federally proposed, candidate, and other at-risk species. For further information, please refer to the June 23, 2003, **Federal Register** notice and the draft Handbook.

Public Comments Solicited

We intend that a final decision on the Draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permit Processing will take advantage of information and recommendations from all interested parties. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this draft document are hereby solicited. All comments and materials received will be considered prior to the approval of a

final document. Previously submitted comments need not be resubmitted.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 4, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–21623 Filed 8–22–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Information Collection Under the Paperwork Reduction Act; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) invites comments on an information collection request which will be renewed. The collection is: Gaming on Trust Lands Acquired After October 17, 1988, OMB Control No. 1076–0158.

DATES: Submit your comments and suggestions on or before October 24, 2003 to be assured of consideration.

ADDRESSES: Comments should be sent to: George Skibine, Bureau of Indian Affairs, Office of Indian Gaming Management, Mail Stop 4543–MIB, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may get copies of the information collection requests without charge by contacting George Skibine at 202–219–4066 or facsimile number 202–273–3153.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. The Bureau of Indian Affairs, Office of Indian Gaming Management is proceeding with this public comment period as the first step in getting a normal information collection clearance from the Office of Management and Budget (OMB). The request contains (1) type of review, (2) title, (3) summary of the collection, (4) number and type of respondents, (5) frequency of collection, (6) reporting and record keeping requirements.

Please note that we will not sponsor nor conduct, and you need not respond to, a request for information unless we display the OMB control number and the expiration date.

Gaming on Trust Lands Acquired After October 17, 1988

Type of review: Extension of a currently-approved collection.

Title: Gaming on Trust Lands Acquired After October 17, 1988, 25 CFR 292.

OMB Control No. 1076–0158.

Summary: The collection of information will ensure that the provisions of IGRA, Federal law and the trust obligations of the United States are met when federally recognized tribes submit an application seeking a Secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988, and not exempt under one of the other statutory exemptions to the prohibition on gaming contained in Section 20 of the Indian Gaming Regulatory Act (IGRA), would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0158). All information is collected when the tribe makes a request for a Secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988, would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community. Annually, we expect about 2 tribes to apply, seeking a Secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988, would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community. The estimated time to review instructions and complete each application is 2000 hours. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 4,000 hours.

Frequency of Collection: A one time collection.

Description of Respondents: Federally recognized tribes.

Total Annual Responses: 2.

Response Burden Hours per Application: 2000.

Total Annual Burden Hours: 4,000 hours.

Request for Comments

The Bureau of Indian Affairs solicits comments in order to:

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

(2) Evaluate the bureau's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of the information on those who are to respond.

Any public comments received will be addressed in the Bureau of Indian Affairs' submission of the information collect request to the Office of Management and Budget.

All comments will be available for public review during regular business hours. There may be an instance when we decide to withhold information, but if you wish us to withhold your name and address, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowed by law. We will not consider anonymous comments, and we will make public all comments from businesses and from individuals who represent businesses.

Dated: August 13, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–21680 Filed 8–22–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF LABOR

Office of the Secretary

Proposed Collection; Comment Request; Correction

ACTION: Corrected notice.

SUMMARY: Due to an inadvertent error, the document published on August 8, 2003, at 68 FR pp. 47364–47365 did not contain the full text. This revised document will correct and supercede that document.

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and

the impact of collection requirements on respondents can be properly assessed. Currently, the Office of the Secretary is soliciting comments concerning the proposed collection: National Agricultural Workers Survey. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSEE** section below on or before October 24, 2003.

ADDRESSES: Mr. Daniel Carroll, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–2312, Washington, DC 20210, telephone (202) 693–5077, fax (202) 693–5961, e-mail *carroll.daniel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor (DOL) has been continually surveying hired farm workers since 1988 via the National Agricultural Workers Survey (NAWS). The survey's primary focus is to describe the demographic and employment characteristics of hired crop farm workers at the national level. To date, over 36,000 farm workers have been interviewed.

The NAWS provides an understanding of the manpower resources available to U.S. agriculture, and both public and private service programs use the data for planning, implementing, and evaluating farm worker programs. It is the only national data source on the demographic and employment characteristics of hired crop farm workers.

The NAWS samples crop farm workers in three cycles each year to capture the seasonality of agricultural employment. Workers are located and sampled at their work sites. During the initial contact, arrangements are made to interview the respondent at home or at another convenient location. Currently, approximately 4,000 interviews are obtained each year.

The NAWS presently includes a primary questionnaire and four supplements (youth, parent, injury, and health). Beginning with the October 2003 interview cycle, the Department proposed to discontinue the youth, parent and occupational health supplements.

The youth and parent supplements were implemented in fiscal year 2000 as part of the Department's Child Labor Initiative. They were designed to collect information on the demographic and employment conditions of youth farm workers and on the barriers to education experienced by the children of farm workers.

Having collected four years of data under this initiative, the Department will evaluate the effectiveness of these instruments and methodology for obtaining information on youth crop workers. The Department therefore proposes to discontinue the youth and parent supplements at this time.

The occupational health supplement was designed to assess the health status of hired crop farm workers. Funded by the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (CDC/NIOSH), the supplement was implemented in fiscal year 1999 to satisfy research priorities emanating from the Agricultural Occupational Safety and Health Initiative. CDC/NIOSH is proposing to exclude the occupational health supplement in fiscal year 2004. This would provide an opportunity for NIOSH to more thoroughly examine previously collected data and to evaluate the need for updating or modifying the supplement for future inclusion.

The purpose of this notice is to solicit comments regarding the ongoing primary questionnaire and occupational injury supplement, and the discontinuance of the youth, parent and occupational health supplements. The questionnaires are described below.

The NAWS Primary Questionnaire (ongoing)

The primary instrument is administered to crop agricultural workers 14 years and older. It contains a household grid, where the education level and migration history or each member of the respondent's household is recorded, and an employment grid, where a full year of employment and geographic movement of the respondent is detailed. It also contains sections on income, assets, legal status, use of public services, and experience working with and training on the safe use of pesticides.

The employment grid includes the task and crop for agricultural jobs, type and amount of non-agricultural work, periods of unemployment and time spent outside the U.S., and the respondent's location for every week of the year preceding the interview. For the respondent's current job, the NAWS collects information on wages and payment method (piece or hourly), health insurance, workers' compensation and unemployment insurance, housing arrangements, and other benefits and working conditions.

The demographic information collected include age, gender, place of birth, marital status, language ability, education and training, and family history working in U.S. agriculture.

The Occupational Injury Supplement (ongoing)

This CDC/NIOSH-sponsored supplement has been in place since fiscal year 1999. It is administered to all NAWS respondents who had a qualifying occupational injury in U.S. agriculture in the 12-month period before the date of interview. For each qualifying injury, the respondent is asked how, when and where the injury occurred, the body part(s) injured, where medical treatment was received, how the treatment was paid for, and the number of days the respondent couldn't work or worked at a reduced activity level.

The Youth Supplement (to be discontinued)

This supplement contains additional labor and education components and is administered to NAWS respondents ages 14 to 18.

The labor component solicits the respondent's age when he/she first went to an agricultural field in the U.S. (for any reason), and the age when he/she first worked or assisted a relative in a field. The method of payment, if any, for the first working or helping experience in the field is also recorded. This supplement also asks the youth respondent about any implements and equipment used while doing farm work.

The education component solicits school and attendance information for the 12-month period preceding the date of interview. For those youth who did not attend any school in the previous 12 months, the following information is obtained: the date of the last attendance, type and location of school, reasons for no longer attending, and educational aspirations in the U.S.

The Parent Supplement (to be discontinued)

This supplement also contains labor and education components. It is administered to NAWS respondents who are parents of U.S. resident children between the ages of 6 and 18.

For those children who did U.S. farm work in the 12-month period preceding the date of the interview, the labor component asks how many days the child worked in agriculture, if the child received a separate (individual) payment for that work, and why the child worked.

The education component solicits information on school attendance and

performance in the 12-month period preceding the interview, including number and type of schools attended, average grades, number of school days missed and reasons for days absent, number of times the parent met with the child's teacher to discuss the child's educational progress, and the parent's expectations for the child to graduate.

The Occupational Health Supplement (to be discontinued)

This CDC/NIOSH-sponsored supplement is administered to all NAWS respondents. Four types of health information are currently solicited: lifetime history of smoking, a 12-month history of problems with body systems (gastrointestinal, respiratory, musculoskeletal, and dermal), a lifetime history of disease, and access to health care.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond.

Hard copies of the instruments associated with the proposed information collection request may be obtained by contacting the employee listed above in the **ADDRESSES** section of this notice.

III. Current Actions

The Department of Labor seeks approval for the revision of this information collection in order to carry out its responsibility to monitor the hired farm labor market.

Type of Review: Revision.

Agency: Office of the Secretary.

Title: National Agricultural Workers Survey.

OMB Number: 1225–0044.

Affected Public: Farm workers and farm employers.

Total Respondents: 5,500 (4,000 farm workers will receive an interview and 1,500 employees will be briefly interviewed to ascertain the location of the potential worker respondents).

Time per Response: 20 minutes for employers; 60 minutes for workers.

Estimated Total Burden Hours: 4,536 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 18, 2003.

Roland G. Droitsch,

Deputy Assistant Secretary for Policy.

[FR Doc. 03–21674 Filed 8–22–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of The Secretary

Solicitation for Grant Applications (SGA) 03–11; Combating HIV/AIDS in Ugandan Workplaces Through Community/Faith-Based Organizations

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Notice of correction.

SUMMARY: In the **Federal Register**, Vol. 68, No. 138, Friday, July 18, 2003, the competition was announced and the SGA printed in its entirety. The recent power outage in several states has caused the preparation and submission of proposals to be adversely affected. Due to this interruption, the deadline for submission of applications is extended. All applications must now be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. e.d.t., August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, Department of Labor, Telephone (202) 693–4570, e-mail: *harvey-lisa@dol.gov.*

Signed at Washington, DC, this 18th day of August, 2003.

Lawrence J. Kuss,

Director, Procurement Services Center.

[FR Doc. 03–21675 Filed 8–22–03; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL SCIENCE FOUNDATION

DOE/NSF Nuclear Science Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: DOE/NSF Nuclear Science Advisory Committee (1176).

Date and Time: Saturday, September 13, 2003; 8 a.m.—5 p.m.

Place: Room 375, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7377.

Purpose of Meeting: To provide advice and recommendations concerning the scientific programs of the NSF and DOE in the area of basic nuclear physics research.

Agenda:

September 13, 2003:

Introduction (R. Casten)
Report from DOE (D. Kovar)
Report from NSF (B. Keister)
Report from subcommittee on fundamental neutron science (R. Tribble)
Report from subcommittee on nuclear theory (B. Mueller)
Report from subcommittee on education (J. Cerny)
Discussion of recommendations concerning fundamental neutron science
Discussion of recommendations concerning nuclear theory
Public Comment

Dated: August 19, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–21639 Filed 8–22–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the

proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *www.nsf.gov/home/pubinfo/advisory.htm.* This information may also be requested by telephoning 703/292–8182.

Dated: August 19, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–21638 Filed 8–22–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Notice of Receipt of License Amendment Request From the Sequoyah Fuels Corp. To Approve a Ground Water Corrective Action Plan for Its Gore, Oklahoma Facility, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of consideration of license amendment request to approve a ground water action plan, and opportunity to request a hearing.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6629; Fax: (301) 415–5955; and/or by e-mail: *mhf1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated June 16, 2003, a request from Sequoyah Fuels Corp. (SFC) for approval of a license amendment to Materials License SUB–1010 to approve its proposed ground water corrective action plan.

The SFC facility, a nuclear fuel cycle facility located near Gore, Oklahoma, operated from 1970 to 1993. In response to a request from SFC, on December 11, 2002, NRC amended the license to allow possession of 11e.(2) byproduct material, in addition to source material. In its request, SFC proposes a program to clean up ground water at its site to appropriate standards and is designed to meet the requirements in 10 CFR part 40, appendix A.

The staff will review SFC's request for conformance with 10 CFR parts 20 and 40, using NUREG–1620, ''Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act'' and other applicable agency regulations and guidance. If NRC approves SFC's request, the approval will be documented in an amendment to SFC's license. However, before approving the request, NRC will need to make the findings required by the AEA and NRC regulations. These findings will be documented in a Technical Evaluation Report and an Environmental Impact Statement.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also 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.*

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Sequoyah Fuels Corporation, P.O. Box 610, Gore Oklahoma, Attention: Mr. John Ellis; and

(2) The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *OGCMailCenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

III. Further Information

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' details with respect to this action, including the application for amendment and supporting documentation, are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html.* These documents may also be examined, and/or copied for a fee, at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Dated at Rockville, Maryland, this 15th day of August, 2003.

For the Nuclear Regulatory Commission.

Myron H. Fliegel,

Senior Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–21654 Filed 8–22–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Notice of Receipt of License Amendment Request from the Sequoyah Fuels Corp. To Approve a Ground Water Monitoring Plan for Its Gore, Oklahoma Facility, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of consideration of amendment request, and opportunity to request a hearing.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6629; Fax: (301) 415–5955; and/or by e-mail: *mhf1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated June 12, 2003, a request from Sequoyah Fuels Corp. (SFC) for approval of a license amendment to Materials License SUB–1010 to approve its proposed ground water monitoring plan.

The SFC facility, a nuclear fuel cycle facility located near Gore, Oklahoma, operated from 1970 to 1993. In response to a request from SFC, on December 11, 2002, NRC amended the license to allow possession of 11e.(2) byproduct material, in addition to source material. In its request, SFC proposes a plan to monitor the ground water at its site that is designed to meet the requirements in 10 CFR part 40, appendix A.

The staff will review SFC's request for conformance with 10 CFR parts 20 and 40, using NUREG–1620, ''Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act'' and other applicable agency regulations and guidance. If NRC approves SFC's request, the approval will be documented in an amendment to SFC's license. However, before approving the request, NRC will need to make the findings required by the AEA and NRC regulations. These findings will be documented in a Technical Evaluation Report and either an Environmental Assessment or an Environmental Impact Statement.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also 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.*

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Sequoyah Fuels Corporation, P.O. Box 610, Gore, Oklahoma, Attention: Mr. John Ellis; and

(2) The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *OGCMailCenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

III. Further Information

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' details with respect to this action, including the application for amendment and supporting documentation, are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html.* These documents may also be examined, and/or copied for a fee, at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Dated at Rockville, Maryland, this 15th day of August, 2003.

For the Nuclear Regulatory Commission.

Myron H. Fliegel,

Senior Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–21657 Filed 8–22–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of a Standard Review Plan (NUREG–1569) for Staff Reviews for *in Situ* Leach Uranium Extraction License Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has developed a

Standard Review Plan (NUREG–1569) which provides guidance for staff reviews of applications to develop and operate uranium *in situ* leach facilities. Under the provisions of Title 10 of the Code of Federal Regulations, part 40 (10 CFR part 40), Domestic Licensing of Source Material, an NRC Materials License is required to conduct uranium recovery by *in situ* leach extraction techniques. Applicants for a new license and operators seeking an amendment or renewal of an existing license are required to provide detailed information on the facilities, equipment, and procedures used in the proposed activities. In addition, the applicant for a new license also provides an Environmental Report that discusses the effects of proposed operations on the health and safety of the public and assesses impacts to the environment. For amendment or renewal of an existing license, the original Environmental Report is supplemented, as necessary. This information is used by the NRC staff to determine whether the proposed activities will be protective of public health and safety and the environment and to fulfill NRC responsibilities under the National Environmental Policy Act (NEPA). The purpose of the Standard Review Plan (NUREG–1569) is to provide the NRC staff with guidance on performing reviews of information provided by the applicant and to ensure a consistent quality and uniformity of staff reviews. Each section in the review plan provides guidance on what is to be reviewed, the basis for the review, how the staff review is to be accomplished, what the staff will find acceptable in a demonstration of compliance with the regulations, and the conclusions that are sought regarding the applicable sections in 10 CFR part 40, Appendix A. NUREG–1569 is also intended to improve the understanding of the staff review process by interested members of the public and the uranium recovery industry. The review plan provides general guidance on acceptable methods for compliance with the existing regulatory framework. As described in an NRC white paper on risk-informed, performance-based regulation (SECY–98–144), however, the applicant has the flexibility to propose other methods as long as it demonstrates how it will meet regulatory requirements.

A draft of NUREG–1569 was issued in October 1997 and subsequently revised to reflect responses to public comments and the results of Commission policy decisions affecting uranium recovery issues described in NRC Regulatory Issue Summary (RIS) 2000–23, dated November 30, 2000. RIS 2000–23 addressed two issues related to *in situ* leach facilities. In the first, the NRC took the position that all waste water generated during or after the uranium extraction phase of operations at an *in situ* leach facility, and all evaporation pond sludges derived from such waste waters, are 11e.(2) byproduct material. In the second, the NRC reaffirmed its authority to regulate ground water at *in situ* leach facilities, but expressed its intent to continue discussions with the U.S. Environmental Protection Agency (EPA) and appropriate States to try to minimize duplicative ground-water reviews. On February 5, 2002 (FR 5347), the NRC made the revised second draft of NUREG–1569 available for a 75-day public comment.

In preparing the final version of NUREG–1569, the NRC staff reviewed and considered more than 750 written comments received by the close of the public comment period on April 22, 2002. To simplify the analysis, the NRC staff grouped all comments into the following major topic areas:

(1) Editorial and Organizational Comments (322 comments);

(2) Policy Issues (including administrative, quality assurance, and surety/financial issues) (103 comments);

(3) Ground water (123 comments);

(4) Operational (47 comments);

(5) Health Physics (78 comments);

(6) Monitoring (55 comments); and

(7) Environmental aspects related to NRC responsibilities under NEPA (40 comments).

ADDRESSES: Electronic copies of this document are available for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (The Public Electronic Reading Room). NUREG–1569 is under Adams Accession Number ML032250177. The document is also available for inspection or copying for a fee at the NRC's Public Document Room, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852. This guidance document is not copyrighted, and Commission approval is not required to reproduce it.

FOR FURTHER INFORMATION CONTACT: John Lusher, Office of Nuclear Material Safety and Safeguards, Division of Fuel Cycle Safety and Safeguards, Mail Stop T–8 A33, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–7694, or e-mail *jhl@nrc.gov.*

SUPPLEMENTARY INFORMATION: The following provides a more detailed discussion of the NRC evaluation of the major topic areas and the NRC responses to comments.

1. Editorial and Organizational Comments

Issue: The standard review plan has a number of redundancies and editorial errors.

Comment: Several commenters identified editorial concerns, text omissions, or areas where the organization of the standard review plan could be improved. Most of the organizational comments addressed perceived redundancies in the standard review plan or opportunities to streamline the style. Most editorial comments addressed inconsistent terminology, identified typographical and grammatical mistakes, or questioned the accuracy of reference documents.

Response: NUREG–1569 is structured consistent with NRC practice for standard review plan style and format. While this style and format may be considered complex or redundant by some commenters, no substantive changes have been made. This will preserve consistency with other NRC standard review plans. The commenters have provided numerous suggestions for improving the readability and clarity of the review plan. Editorial comments on inconsistent terminology, typographical and grammatical mistakes, or the accuracy of reference documents were accepted and incorporated in preparing the final standard review plan, as appropriate. The individual editorial comments are not addressed in this comment summary document.

An appendix (Effluent Disposal at Licensed *In Situ* Leach Uranium Extraction Facilities) was deleted since the guidance therein was superseded by the Staff Requirements Memorandum for SECY–99–013 which provided staff with direction on classification of liquid wastes at these facilities.

Issue: There is sometimes a lack of agreement between the topics to be reviewed and the corresponding acceptance criteria.

Comment: Commenters stated that in several review plan sections, the areas of review identified at the beginning of the section did not correspond well to the acceptance criteria that would be used to make the evaluation findings.

Response: The staff concurs with this comment. NUREG–1569 was edited to provide correspondence among areas of review, review methods, acceptance criteria, and evaluation findings in each section.

Issue: Chapter 5 (Operations) of the standard review plan has many editorial and technical discrepancies.

Comment: Several commenters identified editorial and technical concerns with Chapter 5 of the draft standard review plan. In some cases, the editorial problems may have made the regulatory guidance difficult to implement.

Resolution: The staff concurs with the commenters. Chapter 5 was rewritten to incorporate editorial and regulatory guidance improvements. The separate section on recordkeeping and reporting was combined with the section on the management control program to more closely match Regulatory Guide 3.46.1 (Standard Format and Content of License Applications, Including Environmental Reports, for *In Situ* Uranium Solution Mining). Editorial comments are not addressed individually in this comment summary document except where they have particular impact on the standard review plan.

Issue: Additional clarifying or background information should be included in NUREG–1569.

Comment: Several commenters suggested that specific additional information related to proceedings for a given site or that would provide general background information on *in situ* uranium extraction techniques and hazards be included.

Resolution: The NRC has elected not to include the suggested information in NUREG–1569 because the standard review plan is not written for application to a specific site, and general information is available in other references on *in situ* uranium extraction operations.

2. Policy Issues (Including Administrative, Quality Assurance, and Surety/Financial Issues)

Issue: NUREG–1569 attempts to apply a risk-informed, performance-based regulatory philosophy without a regulatory basis for doing so.

Comment: Commenters, while noting that risk-informed, performance-based regulatory philosophies could be applied to *in situ* leach uranium extraction facilities, argued that no regulatory basis exists for implementing such philosophies. The commenters stated that 10 CFR part 40 should be modified to incorporate risk-informed, performance-based regulatory concepts before the associated standard review plan is modified in that way, because standard review plans are not to be used to promulgate regulatory policy. Commenters also stated that the NRC should not expect license applicants to conduct the accident analyses, consequence evaluations, and probability determinations associated with risk-informed, performance-based regulation. Finally, the commenters argued that the risk-informed, performance-based approach presented in NUREG–1569 was too cursory, contained undefined terms, assumed the existence of a facility change mechanism, and that the review plan contained highly prescriptive acceptance criteria.

Response: The NRC agrees that standard review plans cannot be used to promulgate regulatory requirements, and has no intent to do so using NUREG–1569. In related action, the Commission considered promulgating a new regulation (10 CFR part 41) that would specifically address regulatory requirements for *in situ* leach uranium extraction facilities and that would formally incorporate risk-informed, performance-based regulatory philosophies. However, considering feedback from the uranium extraction industry and other stakeholders, and taking into account the economic status of the uranium extraction industry which would have to bear the cost of the rulemaking, the Commission determined that rulemaking was not an appropriate action at this time. Instead, in making this decision, the Commission directed the staff to update its regulatory guidance related to *in situ* leach uranium extraction facilities. NUREG—1569 incorporates this direction from the Commission. It outlines risk-informed, performance-based approaches that staff reviewers may apply to *in situ* leach uranium extraction facilities that are also consistent with existing NRC regulations at 10 CFR part 40.

In NUREG/CR–6733 (A Baseline Risk-Informed, Performance-Based Approach for *In Situ* Leach Uranium Extraction Licensees) staff analyses of *in situ* leach uranium extraction facility operations and accidents that consider both likelihood of occurrence and consequence (and therefore, risk) are presented. The analyses in NUREG–6733 are conservative and demonstrate that *in situ* leach uranium extraction facilities operated with properly trained workers and effective emergency response procedures generally pose low levels of radiologic risk. The staff considers analyses similar to, or based on, those in NUREG–6733 to be an appropriate basis for licensee safety analyses. NUREG–1569 is not intended to require applicants to prepare complex accident analyses, consequence evaluations, and probability determinations. However, site-specific conditions and circumstances must be addressed in any application.

For several years, the NRC staff has been approving *in situ* leach uranium extraction facility license renewals that incorporate a performance-based license condition that provides a facility change mechanism using a Safety and Environmental Review Panel. This accepted practice is continued in NUREG–1569.

Finally, the staff has not attempted to implement overly prescriptive acceptance criteria in NUREG–1569. Rather, standard practices that have been found acceptable in demonstrating compliance at *in situ* leach uranium extraction facilities have been placed in the standard review plan as one approach that the staff may use in determining compliance. Other approaches may be found acceptable as long as the staff can determine that such approaches comply with applicable regulations. In addition, the introduction to 10 CFR part 40, Appendix A, allows applicants to propose alternative standards to the specific requirements in the Appendix A to demonstrate compliance, and the staff will review any such alternative standards that are submitted.

NUREG–1569 has been edited to remove inconsistent use of terms or undefined terms. Where useful, acceptance criteria have been modified to be less prescriptive. However, risk-informed, performance-based approaches to determining compliance have been incorporated in the standard review plan to the extent consistent with existing regulations.

Issue: Standard review plan guidance with respect to overlapping jurisdiction is not adequate.

Comment: Commenters were concerned that NUREG–1569 did not provide sufficiently clear guidance on coordinating license application reviews with federal and state agencies. Commenters also stated that the NRC should accept state guidelines in conducting reviews.

Response: NUREG–1569 implements Commission direction in SECY–99–013 regarding ground-water issues at *in situ* leach uranium extraction facilities. While this direction requires the staff to determine the extent to which it can rely on the U.S. Environmental Protection Agency's (EPA) Underground Injection Control program and to work to implement agreements with appropriate states on these issues, it does not suggest that the NRC broadly accept state guidelines. As appropriate, minimizing dual regulation and implementing agreements with affected states remains an objective of the NRC,

and interactions with the EPA and the states continue on these issues. The review plan has been revised to clarify this intent.

Issue: The standard review plan directs the staff to inappropriately seek disclosure of an applicant's primary corporate internal costs.

Comment: Commenters argued that corporate internal costs such as capital costs of land acquisition and improvement, capital costs of facility construction, and other operating and maintenance costs addressed in the draft standard review plan were not appropriate for staff review. The commenters suggested that only the forecast costs for plant decommissioning and site reclamation should be examined by the staff.

Resolution: The staff agrees with the commenters. The standard review plan has been revised to remove guidance that the staff examine costs outside of those associated with plant decommissioning and site reclamation.

Issue: The NRC is exceeding its legal authority by requiring that a determination be made that a proposed licensing action is appropriate prior to allowing construction to proceed.

Comment: The Executive Summary to NUREG–1569 states that ''beginning construction of process facilities, well fields, or other substantial actions that would adversely affect the environment of the site, before the staff has concluded that the appropriate action is to issue the proposed license, is grounds for denial of the application.'' The commenter disagrees with the ''sweeping nature'' of this statement and asserts that the NRC has no jurisdiction over wells in an exempted aquifer until lixiviant injection begins.

Response: The NRC considers this statement to be consistent with the requirements of 10 CFR 40.32(e) and believes it to be appropriate for the agency's responsibilities to protect public health and safety and the environment. The license applicant shall not commence construction activities with a potential for adverse impacts prior to the NRC completing its environmental assessment in accordance with 10 CFR part 51.

3. Ground Water

Issue: Some acceptance criteria for ground-water protection seem overly prescriptive or inconsistent with current practices at specific *in situ* leach uranium extraction facilities.

Comment: Several comments pertained to the use of examples of acceptable methods and approaches cited in the various acceptance criteria for ground-water protection. These comments expressed concern that the examples cited were not consistent with current practices at some *in situ* leach uranium extraction facilities. For example, several comments stated that the examples of acceptable methods for conducting mechanical integrity tests on injection wells are not consistent with methods currently employed or with state-approved practices.

Response: Examples of acceptable practices cited in the review plan acceptance criteria for ground-water protection were obtained from operations plans of currently operating *in situ* leach uranium extraction facilities. These examples refer to methods used to implement ground-water protection requirements that have been considered acceptable in past NRC licensing reviews. The NRC recognizes that an optimal approach to ground-water protection at one facility is not necessarily applicable or appropriate at all *in situ* leach uranium extraction facilities. As stated in the introduction to NUREG–1569, applicants may take approaches to demonstrating compliance that are different from the acceptance criteria in the standard review plan so long as the staff can make the requisite decisions concerning environmental acceptability and compliance with applicable regulations. Where appropriate, these comments were addressed by modifying text to clarify that the given examples are not prescriptive requirements.

Comment: Several comments recommended deletion of constituents from the list of typical baseline water quality indicators in Table 2.7.3–1 of NUREG–1569. In a specific example, a rationale was provided for eliminating radium-228 from the list of baseline water quality indicators to be sampled in each new well field.

Response: The rationales provided by the commenters for elimination of certain chemical constituents from the list of typical baseline water quality indicators are not necessarily applicable for all *in situ* leach uranium extraction facilities. A licensee may provide the rationale for the exclusion of water quality indicators in a license application or amendment request if operational experience or site-specific data demonstrate that concentrations of constituents such as radium-228 are not significantly affected by *in situ* leach operations. NRC reviewers will determine whether proposed exclusions are justified by the information provided. No changes to Table 2.7.3–1 were made for the final standard review plan.

Comment: Two commenters pointed out an apparently new policy that an excursion of lixiviant solutions will be deemed to have occurred if any single excursion indicator exceeds its upper control limit by 20 percent, where previous guidance considered an excursion to have occurred only when two or more excursion indicators exceed their upper control limits by any amount.

Response: Acceptance criterion (5) in Section 5.7.8.3 in the draft NUREG–1569 was revised by deleting the statement regarding a single excursion indicator exceeding its upper control limit by 20 percent for determination of when an excursion has occurred. However, the same acceptance criterion retains the requirement that corrective action for an excursion is deemed complete when all excursion indicators are below their respective upper control limits, or when no single indicator exceeds its control limit by more than 20 percent. Ideally, corrective action for an excursion would be to restore all indicators to below their upper control limits. However, in the past, corrective action has been considered acceptable when a monitor well no longer meets the criteria for being on excursion status. Excursion status criteria allow one indicator to be above the respective upper control limit. However, once an excursion has occurred, the reduction in concentrations of indicator constituents by corrective action may not occur at the same rate. Therefore, corrective action may be terminated prematurely if one of two indicators are brought below upper control limits while another remains substantially above its control limit.

Issue: The NRC is unduly concerned with protection of ground water in aquifers where exemptions have been obtained from the requirements of the Safe Drinking Water Act.

Comment: Several commenters took exception to Acceptance Criterion (4) in Section 6.1.3 of the draft standard review plan, which states that the primary goal for restoration of well fields, following uranium extraction, is to return each well field to its pre-operational baseline water quality conditions. The commenters correctly pointed out that EPA requirements for the Underground Injection Control program result in the uranium production zones being classified as ''Exempted Aquifers.'' This means they are not considered a potential source of drinking water and, therefore, are not subject to requirements of the Safe Drinking Water Act.

Response: Acceptance Criterion (4) of Section 6.1.3 in the draft standard review plan was revised to clarify that the goal of ground-water restoration at

in situ leach uranium extraction facilities is to protect present or potential future sources of drinking water outside of the exempted production zone. Generally, if water quality within the production zone is restored to the pre-operational baseline water quality, then protection of water resources outside the exempted zone is assured. Hence, restoration of water quality within the production zone to pre-operational conditions is considered a primary goal whenever degradation of water outside of the exempted zone is a possibility. It is recognized, however, that restoration to pre-operational baseline conditions may not be practicable or feasible, owing to geochemical changes in the production zone during operations. Hence, applicants may propose secondary standards for monitored constituents that are protective of water resources outside of the exempted zone. This has also been clarified in the final standard review plan.

4. Operations

Issue: It is unclear which hazardous chemicals have the potential to impact safety at *in situ* leach uranium extraction facilities.

Comment: Some commenters expressed concern that the standard review plan addressed hazardous chemicals that were not realistic concerns at *in situ* leach uranium extraction facilities.

Response: In 10 CFR part 40, Appendix A, regulations implement EPA Standards at 40 CFR part 192, as required by law. Specifically, 10 CFR part 40, Appendix A, Criterion 13 identifies those hazardous constituents for which standards must be set and complied with if the specific constituent is reasonably expected to be in, or derived from, the byproduct material, and has been detected in ground water. At the same time, the introduction to 10 CFR part 40, Appendix A, allows applicants to submit alternative proposals for meeting the requirements that take into account local or regional conditions. 10 CFR part 40, Appendix A, Criterion 13 also notes that the Commission does not consider the subsequent list of hazardous constituents to be exhaustive. In summary, NUREG–1569 reflects the regulatory requirements but also allows the reviewer to consider any demonstration presented by an applicant that addresses the potential hazardous constituents at a specific site.

Issue: The responsibilities of the Safety and Environmental Review Panel are not well defined.

Comment: Various commenters stated that the responsibilities of the Safety and Environmental Review Panel, and their authority to authorize changes without a license amendment were either not clear or had no regulatory basis.

Resolution: The staff agrees that clarification of Safety and Environmental Review Panel responsibilities and authorities would facilitate use of the standard review plan. These portions of the draft plan were rewritten for clarity. However, consistent with a risk-informed, performance-based licensing approach, use of Safety and Environmental Review Panels has been accepted by NRC staff, and an evaluation of their use was left in NUREG–1569.

Issue: The NRC is placing inappropriate restrictions on use of potentially hazardous process chemicals at *in situ* leach uranium extraction facilities.

Comment: The commenter refers to NUREG/CR–6733 (A Baseline Risk-Informed, Performance-Based Approach for *In Situ* Leach Uranium Extraction Licensees) and states that the analyses in this document were conservative. The commenter concludes that chemical safety must be based on a realistic analysis of the hazards.

Resolution: The NRC staff interpreted the conclusions from the analyses presented in NUREG/CR–6733 differently from the commenter. NUREG/CR–6733 conducted deliberately conservative analyses for the purpose of evaluating whether risks at *in situ* leach uranium extraction facilities were significant. The conclusion presented in NUREG/CR–6733 for chemical hazards was that licensees should follow design and operating practices published in accepted codes and standards that govern hazardous chemical systems. This recommendation leaves licensees flexibility to establish chemical safety measures appropriate for a specific facility and consistent with good engineering and safety practice. NUREG–1569 places no specific strictures on chemical safety practices at *in situ* leach uranium extraction facilities.

5. Health Physics

Issue: The NRC is requesting information on radiation safety programs that is unnecessary, based on the operational record at *in situ* leach uranium extraction facilities, or is outside NRC licensing authority.

Comment: Some commenters expressed a concern that the NRC was requesting information that is not necessary to fulfill the agency mission of protecting the public health and safety and the environment from the effects of radiation. An example cited was information on radiation safety programs, such as the qualifications of those people proposed for the health physics staff.

Response: While the NRC agreed with many of these commenters that some of the information requested was not needed, information on qualifications is necessary. However, much of this information is identified in Regulatory Guide 8.30, ''Health Physics Surveys in Uranium Recovery Facilities'' (May 2002), and Regulatory Guide 8.31, ''Information Relevant to Ensuring That Occupational Radiation Exposures at Uranium Recovery Facilities will be As Low As is Reasonably Achievable'' (May 2002). Chapter 5 of NUREG–1569 was revised to ensure that it is consistent with NRC regulations and regulatory guidance applicable to *in situ* leach uranium extraction facilities by referring to those regulatory guides, rather than repeat the information in the SRP. In addition, the licensees are required by license condition to follow the guidance set forth in Regulatory Guide 8.30, and Regulatory Guide 8.31. This is to ensure protection of the worker, the public health and safety, and the environment.

Issue: NUREG–1569 references regulatory guides that are outdated.

Comment: A number of commenters noted that the standard review plan referenced regulatory guides that have been revised or that are in the process of revision.

Response: The commenters correctly noted that some of the references in the draft standard review plan had been superseded or were in the process of revision. The standard review plan has been edited to reference current guidance. However, NRC has a number of regulatory guides that are being updated, and revised versions may only be referenced when they have been formally approved. This has necessitated retaining reference to some draft regulatory guides.

Issue: NUREG–1569 introduces a new and undefined concept in discussing ''control systems relevant to safety.''

Comment: Several commenters objected to inconsistent use of terms and a lack of definition for terms related to control systems that may affect safety.

Response: NUREG–1569 was edited to incorporate consistent use of terms, and the term ''controls'' was defined consistent with other NRC regulatory guidance.

6. Monitoring

Issue: In situ leach uranium extraction facility licensees are not subject to long-term surveillance costs.

Comment: A commenter stated that including long-term surveillance costs in financial surety requirements, as addressed in the draft standard review plan, is inappropriate.

Response: NRC staff agrees with the commenter. Reference to long-term surveillance costs has been removed from NUREG–1569.

7. Comments Related to NRC Responsibilities Under the National Environmental Policy Act

Issue: The NRC is requesting non-radiological information that is outside its area of regulatory authority.

Comment: Many commenters expressed concern that the NRC was requesting information that is not necessary to fulfill the agency mission of protecting the public health and safety and the environment from the effects of radiation. The areas of concern included information on water quality, air quality, and historical and cultural information.

Response: As a federal agency, the NRC is subject to the NEPA. NEPA requires the NRC to consider impacts to the human environment as a part of its decision making process for licensing actions. The regulations governing NRC implementation of NEPA requirements are in 10 CFR part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions. Guidance to the NRC staff on conducting environmental reviews is also provided in NUREG–1748 ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs.'' In fulfilling its requirements under NEPA, the NRC routinely prepares an environmental impact assessment when evaluating applications for new materials licenses or amendments to such licenses. Areas of potential environmental impact that are investigated include water availability and quality, air quality, historical and cultural resources, ecology, aesthetic resources, and socioeconomic effects. In preparing its environmental impact assessment under NEPA, it is necessary for the NRC to establish background conditions for the affected area. This may require collection of data over a larger geographic area than the licensed area, as well as collection of data in technical and sociological areas that are beyond the traditional scope of radiation safety assessments. The commenters noted that detailed environmental impact assessments may not be necessary for all licensing actions, such as license amendment requests that may be minor in scope or short in duration. The text of the review plan has been modified to clarify those situations where NRC has traditionally performed a detailed environmental impact assessment, but the NRC necessarily reserves the right to determine the nature of the assessment on a site-specific basis in accordance with the requirements of 10 CFR part 51.

Issue: The standard review plan inappropriately examines corporate financial information in evaluating the socioeconomic effects in cost-benefit analyses.

Comment: A number of commenters noted that the standard review plan examines detailed internal corporate financial data as part of the review of cost-benefit analyses for a licensing action. The commenters expressed concern that this information was proprietary and beyond the scope of information necessary for an evaluation of the socioeconomic impact of a facility.

Response: The commenters correctly noted that some of the information identified in the draft standard review plan was beyond the scope of information typically required for cost-benefit analyses. The text of the standard review plan has been revised to eliminate requests for proprietary corporate financial information and to clarify the purpose and use of the financial information that is addressed in the standard review plan.

Issue: Commenters questioned whether the standard review plan applies to facilities planned for private land as well as those on public land.

Comment: Several commenters expressed uncertainty as to whether the review methods and acceptance criteria developed in the standard review plan were also applicable to *in situ* leach facilities wholly located on private lands.

Response: The NRC must consider the environmental impacts of activities on both private and public lands to meet its responsibilities under NEPA, particularly with regard to assessment of direct, indirect, and cumulative impacts of proposed actions. The specific information to be provided by a licensee, and the level of the NRC staff review, will be determined on a site-specific basis considering the nature of the proposed action. The standard review plan is general guidance to the staff on the type of information that is commonly acceptable for evaluating the environmental impact of a proposed licensing action. Consistent with the NRC risk-informed, performance-based licensing philosophy, licensees may use compliance demonstration methods different from those presented in the standard review plan so long as the staff can determine whether public health and safety and the environment are protected. The standard review plan text has been revised for clarity, but it has not been changed to reflect different approaches for facilities operating on private and public lands.

Issue: Licensees should not be required to choose the alternative that has the least impact on the environment.

Comment: Several commenters expressed concern that the standard review plan requires a licensee or applicant to select the alternative that has the least impact on the environment, or requires that the NRC use license conditions to mitigate adverse environmental impacts that are deemed outside the scope of NRC responsibilities.

Response: The NRC agrees that while NEPA requires the agency to identify a preferred alternative, it does not require that the alternative with the least impact on the environment be selected. However, if an environmental impact statement (EIS) is necessary for a proposed action, NEPA requires that all reasonable alternatives be evaluated and that the environmentally preferable alternative be identified in the final EIS. NUREG–1569 does not require the applicant or licensee to select the most environmentally benign alternative. As guidance to the NRC staff, the standard review plan asks the reviewers to determine whether the choice of a particular uranium recovery method has been adequately justified and whether different techniques and processes were evaluated as part of this justification. The standard review plan also directs the staff to evaluate the bases and rationales used by an applicant in evaluating and ranking alternatives.

As stated in Council on Environmental Quality regulations (40 CFR 1502.16), in preparing an EIS, federal agencies are to identify all reasonable mitigation measures that can offset the environmental impacts of a proposed action, even if they are outside the jurisdiction of the lead agency. These mitigation measures are intended to avoid, minimize, rectify, reduce, or compensate for significant impacts of a proposed action. If an environmental assessment identifies potentially significant impacts that can be reduced to less-than-significant levels by mitigation, an agency may issue a mitigated finding of no significant impact (FONSI). In the case of a

mitigated FONSI, the mitigation measures should be specific and tangible, such as may be stated as license conditions. The standard review plan states that the NRC has responsibilities under NEPA to identify and implement measures to mitigate adverse environmental impacts of the proposed action.

Dated at Rockville, Maryland this 15th day of August, 2003.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–21656 Filed 8–22–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of a Standard Review Plan (NUREG–1620) Revision 1 for Staff Reviews of Reclamation Plans for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has revised the Standard Review Plan (NUREG–1620) that was developed to provide guidance for staff reviews of reclamation plans for uranium mill tailings sites covered by Title II of the Uranium Mill Tailings Radiation Control Act. Revision 1 also incorporates information to address new Commission policy on several issues related to uranium recovery, including administrative, quality assurance, surety/financial issues, geotechnical stability, ground-water, and exclusive jurisdication. Under the provisions of Title 10 of the Code of Federal Regulations, part 40 (10 CFR part 40), Domestic Licensing of Source Material, an NRC Materials License is required in conjunction with uranium or thorium milling, or with byproduct material at sites formerly associated with such milling. The licensee's site Reclamation Plan documents how the proposed activities demonstrate compliance with the criteria in Appendix A of 10 CFR part 40. This information, combined with the licensee's Environmental Report, is used by the NRC staff to determine whether the proposed activities will be protective of public health and safety and the environment. The purpose of the Standard Review Plan (NUREG–1620) is to provide the NRC staff with guidance on performing reviews of information provided by licensees. The use of the Standard Review Plan is also intended to ensure a consistent quality and uniformity of staff reviews. Each section in the review plan provides guidance on what is to be reviewed, the basis for the review, how the staff review is to be accomplished, what the staff will find acceptable in a demonstration of compliance with the regulations, and the conclusions that are sought regarding the applicable sections in 10 CFR part 40, appendix A. NUREG–1620 will also assist in improving the understanding of the staff review process by interested members of the public and the uranium recovery industry. The review plan provides general guidance on acceptable methods for compliance with the existing regulatory framework. As described in an NRC white paper on risk-informed, performance-based regulation (SECY–98–144), however, the licensee has the flexibility to propose other methods as long as it demonstrates how it will meet regulatory requirements.

A draft of NUREG–1620 was issued in January 1999 for public comment. A final NUREG–1620, which incorporated NRC staff responses to the comments received on the draft, was issued in June 2000.

On February 5, 2002 (FR5348), the NRC made the draft of NUREG–1620, Revision 1, available for a 75-day public comment period. In preparing the final version of NUREG–1620, Revision 1, the NRC staff carefully reviewed and considered about 120 written comments received by the close of the public comment period on April 22, 2002. To simplify the analysis, the NRC staff grouped all comments into the following major topic areas:

(1) Editorial and Organizational Comments (31 comments);

(2) Policy Issues (including administrative, quality assurance, and surety/financial issues) (51 comments);

(3) Geotechnical Stability (17 comments);

(4) Ground water (15 comments); and

(5) Environmental aspects related to NRC responsibilities under NEPA (4 comments).

ADDRESSES: Electronic copies of this document are available for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (The Public Electronic Reading Room). NUREG 1620 is under ADAMS Accession Number ML032250190. The document is also available for inspection or copying for a fee at the NRC's Public Document Room, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852. This guidance document is not copyrighted, and Commission approval is not required to reproduce it.

FOR FURTHER INFORMATION CONTACT: John Lusher, Office of Nuclear Material Safety and Safeguards, Division of Fuel Cycle Safety and Safeguards, Mail Stop T–8 A33, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–7694, or e-mail *jhl@nrc.gov.*

The following provides a more detailed discussion of the NRC evaluation of the major topic areas and the NRC responses to comments.

1. Editorial and Organizational Comments

Issue: The draft standard review plan has a number of redundancies and editorial errors.

Comment: Several commenters identified editorial concerns, text omissions, or areas where the organization of the draft standard review plan could be improved. Most of the organizational comments addressed perceived redundancies in the standard review plan or opportunities to streamline the style. Most editorial comments addressed inconsistent terminology, identified typographical and grammatical mistakes, or questioned the accuracy of reference documents.

Response: NUREG–1620, Revision 1, is structured consistent with the NRC practice for standard review plan style and format. While the style and format may be considered complex or redundant by some commenters, no substantive changes have been made. This will preserve consistency with other NRC standard review plans. The commenters have provided numerous suggestions for improving the readability and clarity of the review plan. Most editorial comments that addressed inconsistent terminology, typographical and grammatical mistakes, or the accuracy of reference documents were accepted and incorporated in preparing the final standard review plan. The individual editorial comments are not addressed in this comment summary document.

2. Policy Issues (Including Administrative, Quality Assurance, and Surety/Financial Issues)

Issue: The NRC is inappropriately examining economic assessments that are the prerogative of the applicant.

Comment: The draft standard review plan asked the reviewer to examine the

economic benefits when slopes steeper than 5 horizontal: 1 vertical (5h:1v) are proposed by an applicant. The NRC staff should be concerned only with whether the slope design will be stable enough to protect the tailings.

Resolution: The NRC agrees with the commenter. The final standard review plan has been edited to remove consideration of economic factors in slope design.

Issue: Guidance provided on alternate feed materials and non-11e.(2) byproduct material is not informative.

Comment: Commenters stated that information presented in Appendix I [Guidance on Disposal of Alternate Feed Materials and Non-11e.(2) Byproduct Materials in Uranium Mill Tailings Impoundments] of the draft standard review plan was not useful. The commenter suggested that additional guidance was not needed and recommended that the appendix be deleted from the review plan.

Resolution: The NRC staff agrees with the commenters to some extent. Appendix I did not contain sufficient information to assist the reviewers in examining requests for disposal of these materials in mill tailings impoundments. However, recent guidance from the Commission on these subjects is relevant to such reviews. Accordingly, Regulatory Issue Summary 2000–23, which presents Commission guidance on these matters has been included in the appendix to facilitate staff reviews.

Issue: NUREG–1620 should present guidance on examining multi-site problems.

Comment: One commenter noted that guidance on review of multi-site problems should be included in the final standard review plan. The reviewer stated that if a group of licensees raise a common issue, it would be cost effective to address it generically.

Response: The NRC staff agrees that addressing multi-site problems in an integrated manner could be cost effective and potentially beneficial to public health and safety and the environment. Omitting this information from NUREG–1620 is not meant to reflect a lack of staff interest in multi-site problems. Rather, the standard review plan is meant to address licensing reviews that can be completed using well-accepted techniques. The staff believes that the technical and regulatory aspects of multi-site problems are such that it is best to examine them on a case-by-case basis.

Issue: The long-term custodian must accept transfer of property at termination of the specific license.

Comment: One commenter expressed concern regarding language in NUREG–1620 that there must be assurance that the long-term custodian will accept the property necessary to protect public health and safety. The commenter was concerned that the language in the standard review plan implied that the long-term custodian has the option to refuse transfer of the property.

Response: The language in the standard review plan is included to ensure that the reviewer verifies that the long-term custodian is aware of the full extent of required land transfer prior to termination of the specific license. The intent is to avoid delays in license termination because the licensee and the long-term custodian may not have a mutual understanding on the extent of land transfer. The text on this issue has been clarified to avoid any potential misunderstanding.

Issue: NUREG–1620 guidance on consideration of reasonably attainable corrective actions and economic constraints is unclear.

Comment: One commenter was concerned that standard review plan guidance to not eliminate potential corrective actions because of economic constraints is inconsistent with guidance to assess three reasonably attainable, practicable corrective actions. The commenter notes that in some cases there may not be three reasonably attainable, practicable corrective actions to assess.

Resolution: While the NRC understands the commenter's concern, the language in the standard review plan on this matter is appropriate to the intent of the guidance and needs no further detail. The guidance to evaluate three reasonably attainable, practicable corrective actions is not a regulatory requirement. The NRC expects that an applicant will present corrective action alternatives that are reasonable and practicable for a specific site and a specific set of circumstances.

Issue: Guidance that equipment owned by the licensee not be considered in reducing surety cost evaluations is inappropriate.

Comment: One commenter expressed concern that in estimating costs to complete reclamation by a third-party independent contractor, direction that the equipment owned by the licensee and the availability of licensee staff should not be considered in reducing costs was inappropriate. The commenter added that extreme interpretations of this approach could lead to extravagantly expensive or even unattainable surety requirements.

Resolution: It is appropriate not to consider equipment owned by the licensee and the availability of licensee staff in calculating costs for surety. The purpose of the surety is to ensure that there will be adequate funds available to complete site reclamation in the event that the licensee is unable to do so. The most likely circumstance that would result in the licensee being unable to complete reclamation is bankruptcy by the licensee. Unless the licensee can show that the equipment and staff would be available during and after a bankruptcy, credit for such can not be taken. The text has been clarified to address this issue.

Issue: NUREG–1620 should be used as a tool for public education.

Comment: Several commenters suggested that discussions could be expanded in various sections of the standard review plan to improve public understanding of regulatory issues at Title II uranium mill tailings sites.

Response: Discussions in several sections of the standard review plan were revised to improve clarity and to correct editorial errors. Although it is made available to the public, the primary intent of the Standard Review Plan is to provide guidance to the NRC staff, not to serve as a tool for public education. The staff believes that the standard review plan contains the appropriate level of detail for its intended purpose as a guide for staff reviews of reclamation plans for Title II mill tailings sites.

3. Geotechnical Stability

Issue: NUREG–1620 requires additional flexibility in criteria for selection of rock erosion protection materials.

Comment: One commenter suggested that criteria in the standard review plan should provide more flexibility in selecting a less durable rock for erosion protection when obtaining more durable rock is not practical.

Response: Flexibility in selecting rock types for erosion protection is implicitly provided in several locations in NUREG–1620, Revision 1 (*e.g.*, Section 3.5.3), as long as the applicant can demonstrate with reasonable assurance that the radon barrier will be effective for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years. Clarifying text has been added to indicate explicitly that this option is available.

Issue: Terminology for erosion protection covers needs to be clarified.

Comment: One commenter requested clarification in use of the terms ''unprotected soil cover'' and ''vegetative soil cover.''

Response: The staff agrees with the commenter. Section 3.5 of the standard

review plan has been retitled ''Design of Erosion Protection,'' and the review guidance in that section has been clarified to avoid confusion in the use of terms.

Issue: The NRC is requiring detailed seismic hazard analysis, even in zero seismic risk areas identified in the Uniform Building Code.

Comment: One commenter noted that for cases where a given site is located in a ''zero'' seismic risk area, as identified in the Uniform Building Code, no further seismic characterization, explanation, or description should be needed for the licensee or applicant.

Response: Maps for the maximum considered earthquake ground motion for the United States in the most recent version of the building code (2000 International Building Code) are based on probabilistic seismic hazard maps with additional modifications incorporating deterministic ground motions in selected areas and the application of engineering judgement. These maps were prepared for the National Earthquake Hazards Reduction Program by the United States Geological Survey. Because it is based on probabilistic methods, within the new update, the ''zero'' seismic risk areas no longer exist.

The NRC is currently establishing risk-informed and performance-based regulations. One example of this philosophy is the application of a risk-graded approach in developing seismic design requirements for nuclear facilities. Under this approach, for example, nuclear power plants have to meet the most stringent design requirements because they pose the greatest radiological risk to public health and safety. Other nuclear facilities like dry cask and canister storage facilities or uranium mining operations could be designed to less stringent design criteria because they pose substantially less radiological risk to public health and safety. This type of graded approach to radiological hazard is described in U.S. Department of Energy (DOE) Standard 1020–2002, ''Natural Phenomena Hazards Design and Evaluation Criteria for Department of Energy Facilities.'' In that guidance, the DOE developed five performance categories according to the relative risks posed by the potential failure of a structure, system, or components (SSCs) to perform its intended safety function. Performance Category (PC)-2 is intended for occupational safety and the design requirements for this category match those in the IBC–2000. PC–3 SSCs are for hazard confinement and the design requirements go beyond those within IBC–2000. Given the potential radiological hazards posed by Mill Tailing sites, evaluations of seismic hazards should therefore exceed those prescribed in the IBC–2000 for buildings. In addition, the National Earthquake Hazards Reduction Program maps do not take site effects into account. Local site effects, such as soil amplification, can greatly increase the level, spectral frequency content, and duration of vibratory ground motions at a site that is produced during an earthquake. Therefore, these effects need to be understood in order to accurately predict the seismic hazard at any site.

Based on these two considerations (graded risk approach and possible site amplification effects), staff conclude that site-specific seismic evaluations are necessary for all sites.

Issue: The NRC has not provided an adequate definition of the intent of using probabilistic seismic hazard analysis to satisfy the consideration of the maximum credible earthquake.

Comment: One commenter noted that the draft standard review plan indicates that licensees can use an alternative to the maximum credible earthquake, such as probabilistic seismic hazard analysis, but does not indicate whether the intent is to allow probabilistic analyses to satisfy 10 CFR part 40, appendix A, criterion 4(e) or it is being considered as an alternative requirement.

Response: The application of a probabilistic seismic hazard analysis in place of a deterministic approach is not intended to be an alternative requirement to, as defined in the question, but another way of satisfying the existing move toward risk-informed and performance-based regulations. In addition, other NRC regulations clearly recommend the use of a probabilistic approach as an acceptable way to account for uncertainties [*e.g.*, 10 CFR 100.23(d)(1)].

Issue: The NRC has provided only general guidance to seismic hazard analysis, rather than guidance specific to certain geographic provinces.

Comment: One commenter noted that references cited in the standard review plan did not provide useful guidance with regard to site-specific seismicity issues, and suggested other references specific to Wyoming and the intermountain region of the western United States.

Response: The standard review plan is intended to provide general guidance to the NRC staff on reviewing license applications, license renewals, and amendment requests. The standard review plan does not preclude licensees from providing additional site-specific information as necessary in their license application or amendment requests, and identifying how this information supports a specific licensing action.

4. Ground Water

Issue: NUREG–1620 should be consistent in use of terminology related to ground water.

Comment: The term ''constituent of concern'' seems to be used interchangeably with the term ''hazardous constituent.'' Constituents of concern are not necessarily hazardous constituents unless they have migrated into ''non-exempted'' aquifers.

Response: Section 4.2.1 of the standard review plan was revised to delete a sentence equating constituents of concern with hazardous constituents. The term ''hazardous constituent'' is now used consistent with the definition in 10 CFR part 40, appendix A, criterion 5B(2).

Issue: The difference in an As Low As Reasonably Achievable (ALARA) analysis for radiological and nonradiological parameters needs to be more clearly presented.

Comment: An ALARA analysis for a nonradiological parameter differs from that for a radiological parameter in that once the concentration of a nonradiological parameter falls below the maximum concentration limit, the licensee has no obligation to further reduce the parameter's concentration. The NRC should distinguish between the two types of ALARA studies.

Response: The NRC concurs with the commenter. A sentence was added to Section 4.3.3.3 of the standard review plan to indicate that, when a nonradiological hazardous constituent concentration is below its regulatory maximum concentration level, the licensee has no further obligation to reduce the constituent concentrations.

Issue: The benefits of ground-water corrective action requirements at remote sites are questionable.

Comment: Two commenters noted that the NRC should provide further guidance on addressing instances where the benefits of ground-water correction action may not justify the cost. One comment referred to circumstances where restrictions on site access or site-specific physical characteristics may make it infeasible for members of the public to access ground water. Another comment suggested that the future value of the ground water removed and evaporated during corrective actions may exceed any risk posed by the contaminant.

Response: No changes to the standard review plan were made to address these comments. In such site-specific circumstances as described by the

commenters, the burden is on the licensee to demonstrate that termination of ground-water corrective actions would pose no significant threat to human health and the environment. Licensees may propose alternate concentration limits that meet the requirements of 10 CFR part 40, appendix A, criterion 5B(6). Consideration of the remoteness of a site, potential future water uses, and future value may be included in a licensee's basis for determining that alternate concentration limits are protective of human health and the environment, and that limits are as low as reasonably achievable. These and other factors for consideration by the Commission are specifically mentioned in 10 CFR, part 40, appendix A, criterion 5B(6), which is appropriately cited in the standard review plan.

5. Comments Related to NRC Responsibilities Under the National Environmental Policy Act

Issue: The NRC is reviewing information that is outside its areas of regulatory authority.

Comment: Several commenters noted that the NRC is asking for information that appears to be beyond its regulatory authority. This includes information on nonradiological hazardous constituents and review of restoration plans for borrow areas.

Response: As a federal agency, the NRC is subject to the National Environmental Policy Act (NEPA). This requires the NRC to consider impacts to the human environment as a part of its decision making process. The regulations governing the NRC implementation of NEPA are described in 10 CFR part 51. Guidance to the NRC staff on conducting environmental reviews is also provided in NUREG–1748 ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs.'' With regard to NEPA, the NRC must consider the environmental impacts of both radiological and nonradiological aspects of a proposed action, particularly with regard to assessment of direct, indirect, and cumulative impacts of the proposed action. The exact nature of the information to be provided by a licensee and the level of NRC staff review will be determined on a site-specific basis. The standard review plan is intended as general guidance to the staff on the type of information that is commonly acceptable for evaluating the environmental impact of a proposed licensing action. Under the risk-informed, performance-based licensing philosophy used by the NRC, the licensee is free to present alternative approaches for NRC consideration.

With regard to restoration plans for borrow areas, the intent of the section of the standard review plan identified by the commenter is to have staff review restoration plans for borrow areas as part of characterizing the stratigraphy and materials at a given site, and fulfilling NRC requirements under NEPA. The NRC also needs to consider the cumulative impacts of both radiological and nonradiological hazardous constituents to meet its obligations under NEPA. General guidance to the NRC staff for the evaluation of cumulative impacts is provided in Section 4.2.5 of NUREG–1748 ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs.''

Dated at Rockville, Maryland this 15th day of August, 2003.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–21655 Filed 8–22–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26154; 812–12836]

Nuveen Real Estate Income Fund, et al.; Notice of Application

August 20, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

Summary of Application: Applicants request an order to permit certain registered closed-end management investment companies to make periodic distributions of long-term capital gains, as often as monthly, on their outstanding common stock and as often as distributions are specified in the terms of any series of preferred stock.

Applicants: Nuveen Real Estate Income Fund (''NREIF''), Nuveen Real Estate Income Fund 2 (''NREIF2''), Nuveen Real Estate Growth & Income Fund (''NREGIF''), Nuveen Preferred and Convertible Income Fund (''NPCIF''), Nuveen Preferred and Convertible Income Fund 2 (''NPCIF2''), Nuveen Diversified Dividend and Income Fund (''NDDIF'') (together, the ''Current Funds''), Nuveen Institutional Advisory Corp. (''NIAC''), and each registered closed-end management investment company currently advised or to be advised in the future by NIAC (including any successor in interest)[1], or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with NIAC (together with NIAC, the ''Investment Advisers'') that decides in the future to rely on the requested relief (the ''Future Funds'' and together with the Current Funds, the ''Funds'').[2]

Filing Dates: The application was filed on June 16, 2002 and amended on August 15, 2003.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Gifford R. Zimmerman, Nuveen Investments, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each of the Current Funds is organized as a Massachusetts business

[1] A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] All existing Funds currently intending to rely on the requested order are named as applicants, and any Fund that may rely on the order in the future will comply with the terms and conditions of the application.

trust and is registered under the Act as a closed-end management investment company. The primary investment objective of NREIF and NREIF2 is to seek high current income through investment in real estate investment trust (''REIT'') securities. The primary investment objective of NREGIF is total return, and NREGIF has a policy of concentrating its investments in REIT securities. The primary investment objective of both NPCIF and NPCIF2 is high current income through investment in preferred and convertible securities. The primary investment objective of NDDIF is high current income and total return, through investment in income producing and dividend-paying securities. Common shares of NREIF are currently listed and traded on the American Stock Exchange (''AMEX'') and common shares of NPCIF and NPCIF2 are currently listed and traded on the New York Stock Exchange (''NYSE''). It is anticipated that the common shares of NREIF2, NREGIF and NDDIF will also be listed and traded on the AMEX or NYSE. The preferred shares of NREIF (known as taxable auctioned preferred shares or ''TAPS'') and NPCIF and NPCIF2 (known as ''FundPreferred shares'') are not listed on an exchange, but may be purchased and sold by investors at an auction (normally held weekly) with or through a broker-dealer that has entered into an agreement with the auction agent and the respective Current Fund. Applicants state that it is also contemplated that the preferred shares of NREIF2, NREGIF and NDDIF will not be listed on an exchange either, but will trade periodically at auction in the same manner as the TAPS and FundPreferred shares.

2. NIAC, an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''), serves as investment adviser to the Current Funds. Security Capital Research and Management Incorporated (''Security Capital''), an investment adviser registered under the Advisers Act, is or will be the subadviser to NREIF, NREIF2 and NREGIF. Spectrum Asset Management, Inc. and Froley, Revy Investment Co., Inc., investment advisers registered under the Advisers Act, will serve as subadvisers to NPCIF and NPCIF2. Security Capital, NWQ Investment Management Company, LLC, Wellington Management Company, LLP and Symphony Asset Management, LLC, each an investment adviser registered under the Advisers Act, will serve as subadvisers to a portion of the assets of NDDIF.

3. The board of directors of each Current Fund (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), of such Fund, each concluded that the proposed distribution policy of such Fund (''Distribution Policy'') with respect to its common stock would be in the best interests of the Fund's common shareholders.[3] The Distribution Policy would permit each Fund to make periodic long-term capital gains distributions as often as monthly with respect to its common stock, so long as it maintains in effect a Distribution Policy with regard to its common stock of at least a minimum fixed percentage per year of the net asset value (''NAV'') or market price per share of its common stock or at least a minimum fixed dollar amount per year. Although applicants do not currently contemplate implementing a Distribution Policy for the preferred shares of the Current Funds, applicants request relief to permit each Fund to make periodic long term capital gains distributions with regard to any series of its preferred stock as often as distributions are specified in the terms of its preferred stock, so long as it maintains in effect a Distribution Policy with respect to such series of its preferred stock of a specified percentage of liquidation preference of such series of preferred stock, whether such specified percentage is determined at the time the preferred stock is initially issued, pursuant to periodic remarketing or auctions. Applicants believe that the discount at which each Fund's common stock may trade may be reduced if the Funds are permitted to pay capital gains dividends more frequently than permitted under rule 19b-1 under the Act. In addition, applicants state that to the extent that any of the Fund's preferred stock pays dividends less frequently than investors in that type of preferred stock would expect, such Fund is at a competitive disadvantage and, consequently, is likely to be required to pay a higher dividend rate on its preferred stock than issuers who pay at the desired frequency.

4. Applicants state that the Distribution Policy with respect to common stock of the Funds and any Distribution Policy with respect to preferred stock of the Funds will not be related to one another in any way. Applicants state that the Distribution Policy with respect to each Fund's common stock will be initially established and reviewed at least annually in light of the Fund's performance by the Board of the Fund.

5. Applicants request relief to permit each Fund, so long as it maintains in effect a Distribution Policy, to make periodic long-term capital gains distributions, as often as monthly, on its outstanding common stock and as specified by the terms of any preferred stock outstanding.

Applicants' Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(c) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicants assert that rule 19b–1 under the Act, by limiting the number of net long-term capital gains distributions that the Funds may make with respect to any one year, would prevent implementation of the Funds' proposed Distribution Policy. Applicants state that because each Fund expects to realize net long-term capital gains as often as every month, the combination of Revenue Ruling 89–81 and the accounting interpretation relating to rule 19b–1 would cause each Fund to treat a portion of such net long-term capital gains as being distributed each time it has incremental or undistributed long-term capital gains for the current distribution period. Applicants state that Revenue Ruling 89–81 takes the position that if a regulated investment company has two classes of shares, it may not designate distributions made to either class in any

[3] The Boards of the Current Funds made the above determination at meetings held on the following respective dates: NREIF ''October 3, 2001, NREIF2 and NREGIF—January 9, 2002, NPCIF—February 20, 2003, NPCIF2—May 11–15, 2003, and NDDIF—July 28–30, 2003. Applicants state that if, in the future, the Board of each Current Fund decides to implement a Distribution Policy with respect to its preferred shares, such Board, including a majority of Independent Trustees, will make a similar finding prior to implementing such Distribution Policy in reliance on the order. Applicants state that the Board of each Future Fund intending to rely on the requested order, including a majority of its Independent Trustees, will make a similar finding prior to implementing a Distribution Policy with respect to the common or preferred stock of the respective Fund in reliance on the order.

year as consisting of more than such class's proportionate share of particular types of income, such as capital gains. Consequently, applicants state that any payments of long-term capital gains to holders of common stock require proportionate allocations of such long-term capital gains to the preferred stock, which can be extremely difficult to do.

3. Applicants submit that one of the concerns leading to the enactment of section 19(b) and the adoption of the rule was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from net investment income. Applicants state that the proposed Distribution Policies, including the fact that the distributions called for by the policies may include returns of capital to the extent that a Fund's net investment income and net capital gains are insufficient to meet the fixed dividend, will be fully described in the Funds' periodic communications to their shareholders, including the periodic report to shareholders following the institution of any such policy. Applicants state that, in accordance with rule 19a–1 under the Act, a statement showing the source or sources of the distribution would accompany each distribution (or the confirmation of the reinvestment thereof under a Fund's common stock distribution reinvestment plan). Applicants state that, for both the common stock and the preferred stock, the amount and sources of distributions received during the calendar year will be included on each Fund's IRS Form 1099–DIV reports of distributions during the year, which will be sent to each shareholder who received distributions (including shareholders who have sold shares during the year). Applicants state that this information, on an aggregate basis, also will be included in each Fund's annual report to shareholders.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution (''selling the dividend'') where the dividend results in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicants submit that this concern does not apply to closed-end investment companies, such as the Funds, which do not continuously distribute their shares. Applicants also assert that by paying out periodically any capital gains that have occurred, at least up to the fixed periodic payout amount, the Funds' Distribution Policies help avoid the buildup of end-of-the-year distributions and accordingly help avoid the scenario in which an investor acquires shares in the open market that are subject to a large upcoming capital gains dividend. Applicants also state that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to a specific periodic dividend and, like a debt security, is initially sold at a price based on its liquidation preference, credit quality, dividend rate and frequency of payment. In addition, applicants state that any rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the 15-day period immediately following the record date for the declaration of a monthly dividend, or in the six-week period immediately following the record date of a quarterly dividend. Thus, applicants state that, in a rights offering, the abuse of selling the dividend could not occur as a matter of timing. Any rights offering also will comply with all relevant Commission and staff guidelines. In determining compliance with these guidelines, a Fund's Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any offering by a Fund of transferable rights will comply with any applicable National Association of Securities Dealers, Inc. rules regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or class or classes of any persons, securities or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested relief satisfies this standard.

Applicants' Conditions

Applicants agree that the order granting the requested relief with respect to the Funds' common stock shall terminate with respect to a Fund upon the effective date of a registration statement under the Securities Act of 1933, as amended, for any future public offering of common stock of the Fund after the date of the requested order and after the Fund's initial public offering other than:

(i) A rights offering to shareholders of such Fund, provided that (a) shares are issued only within the 15-day period immediately following the record date of a monthly dividend, or within the six-week period following the record date of a quarterly dividend; (b) the prospectus for such rights offering makes it clear that common shareholders exercising rights will not be entitled to receive such dividend with respect to shares issued pursuant to such rights offering; and (c) such Fund has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization; unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21658 Filed 8–22–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48360; File No. SR–NYSE–2003–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Reduce the Original Listing Fee Applicable to Closed-End Funds

August 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on August 15, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NYSE has represented that the proposal meets the criteria of paragraph (f)(6) of Rule 19b–4 and, therefore, may take effect immediately. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes amending Section 902.02 of its Listed Company Manual to reduce the original listing fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

applicable to closed-end funds. Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are bracketed.

* * * * *

Listed Company Manual

902.00 Listing Fees

* * * * *

902.02 Schedule of Current Listing Fees

* * * * *

A. Original Listing Fee

A special charge of $36,800 in addition to initial fees (described below) is payable in connection with the original listing of a company's stock. In any event, each issuer is subject to a minimum original listing fee of $150,000 inclusive of the special charge referenced in the preceding sentence.

The special charge is also applicable to an application which in the opinion of the Exchange is a ''back-door listing''. *See* Para. 703.08(F) for definition.

Original listings of [C]closed-end funds are not subject to either the special charge or to the minimum original listing fee. *Closed-end funds will instead pay an original listing fee based on the number of shares outstanding upon listing. Closed-end funds with up to 10 million shares outstanding will be subject to a $20,000 original listing fee, closed-end funds with greater than 10 million shares up to 20 million shares outstanding will be subject to a $30,000 original listing fee, and closed-end funds with more than 20 million shares outstanding will be subject to a $40,000 original listing fee. Original listings of closed-end funds are also not subject to the initial fees described below.*

Initial Fee

The initial fee schedule applies to original listings,** *other than to original listings of closed-end funds as described above,* and to the listing of additional shares of an already listed class of stock,* new issues of preferred stock, warrants, or similar securities which are the subject of subsequent applications. New issues of additional classes of common stock of listed companies will be charged a fixed initial fee of $5,000 in lieu of the per share schedule.

Each stock or warrant—and in the case of preferred stock, each series—shall be regarded as a separate issue.

Each application must cover the maximum number of shares that may be issued involving the particular transaction in question. However, the initial fee payable at the time of consideration of an application will cover only the determinable number of shares to be issued at or about that time. The balance of any initial fee under this schedule will accrue when subsequent issuance is made of shares not issued and paid for at the time that application is considered. This covers items like future issuances of shares for stock options, employee stock plans, conversion of other securities, contingencies, etc. Billing for such accrued initial fees is made as soon as possible following the close of the calendar year. Payment shall be made within 30 days of date upon receipt of invoice.

The initial fee shall be paid on shares issued at the time of billing by the Exchange. The subsequent reacquisition by the company and/or surrender to it for exchange, cancellation, or retirement shall not reduce this fee. The Exchange should be advised of shares cancelled. The shares authorized for listing on the Exchange should be reduced by the number of shares cancelled as well as by the shares no longer required to be issued under a specific plan for which an application was previously filed with the Exchange.

The pertinent initial fees per million shares are:

Fee bracket	Initial fee
1st and 2nd million shares	$14,750
3rd and 4th million shares	7,400
5th up to 300 million shares ...	3,500
In excess of 300 million shares	1,900

Reduced Initial Fee—A fee of $15,000 will apply to a company which either changes its state of incorporation or reincorporates, forms a holding company which replaces a listed company or has a reverse stock split. This fee will be applicable only if the change in the company's status is technical in nature and providing also that shareholders of the original company receive a share-for-share interest in the new company without any change in their equity position or rights.

Amalgamations are calculated at 25% of the applicable basic initial fee. An amalgamation is defined as the listing of shares resulting from merger or consolidation of two or more listed companies into a new company or into an unlisted company which becomes listed.

Mergers between an unlisted company and a listed company (other than back door listings (as defined in para.703.08(E))—If listing occurs within 12 months of the merger, 25% of the applicable basic initial fee, except during the first year following the listed company's original listing, where the fee shall be the lesser of (1) 25% of the applicable basic initial fee or (2) the full fee less a credit for the fee the listed company paid at the time of its initial listing.

In all other circumstances, the full initial fee rate will apply. For example: where a change in a listed security is effected which in the opinion of the Exchange in effect represents a new issue or class of security, or where the rights or privileges or the identities of previous shareholders are altered.

Minimum Initial Fee—The minimum fee for the consideration of an application is $2,500. Credit against initial fees will be limited to the determinable number of shares to be issued at or about the time the application is processed where the minimum fee applies. The minimum initial fee of $2,500 will apply for changes such as change of name, change of par value, the title of the security, etc., since these require changes in Exchange records.

*Fees on shares issued in conjunction with stock splits are capped at $250,000 per split and at $500,000 for all splits over a rolling three calendar-year period. Fees on shares issued in conjunction with a merger or acquisition (other than amalgamations) are capped at $500,000.

**Fees on shares listed in conjunction with the original listing are limited to $250*,000* [thousand] per company, inclusive of the special charge and encompassing all classes of securities.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Like many other sectors of the industry, closed-end funds have come under considerable cost pressure in

recent years. The cost pressure has been exacerbated by a 1998 accounting interpretation that required funds to cease amortizing the original listing fee over several years, requiring them to recognize the entire amount in the first year. To date in 2003, under the current schedule, the smallest fund listing on the NYSE paid an original listing fee of approximately $44,000, and the largest closed-end funds paid the maximum original listing fee of $250,000.[3]

The Exchange is, therefore, proposing to reduce the original listing fees applicable to closed-end funds. It would establish a three-tiered structure based on the number of shares outstanding. Closed-end funds with up to 10 million shares outstanding would be subject to a $20,000 original listing fee, funds with greater than 10 million shares up to 20 million shares outstanding would be charged $30,000, and funds with more than 20 million shares outstanding would be subject to a $40,000 original fee.

2. Statutory Basis

The NYSE believes that the basis under the Act for the proposed rule change is section 6(b)(4),[4] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NYSE has neither solicited nor received written comments on the proposed rule change.

[3] Currently, the initial fee schedule in 902.02 of the NYSE Listing Company Manual provides changes that are applied to *each* million shares issued. Closed-end fund offerings are often substantial. The Exchange notes that its current listing fees can affect NAV. Therefore, the Exchange believes that the reduction in listing fees will benefit investors because incurred costs are paid from the investor's equity raised for the closed-end fund offering. Telephone conversation among Raymond Bell, Vice President of New Listing and Client Services, AnneMarie Tierney, Senior Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated August 18, 2003.

[4] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that, because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate), it may become effective pursuant to section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

A proposed rule change filed under Rule 19b–4(f)(6) normally would not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Commission believes that lowering the initial listing fees for closed-end funds will benefit those who invest in such funds by reducing the costs associated with the issuance of the shares. Accordingly, the Commission hereby determines to waive the 30-day pre-operative period, and the proposed rule change becomes operative immediately.[8]

Rule 19b–4(f)(6) also requires the self-regulatory organization submitting the proposed rule change to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The NYSE has requested that the Commission waive the five-day pre-filing requirement, and the Commission hereby grants that request.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2003–22 and should be submitted by September 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21641 Filed 8–22–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] *See* 15 U.S.C. 78s(b)(3)(C).

[8] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before September 24, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency

Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Reports to SBA, Provisions of 13 CFR 120.472.

No: N/A.

Frequency: On Occasion.

Description of Respondents: Small Business Lending Companies.

Responses: 14.

Annual Burden: 1,120.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–21672 Filed 8–22–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3526]

State of Indiana; Amendment #3

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective August 18, 2003, the above numbered declaration is hereby amended to include Lake, Porter, and Vanderburgh Counties in the State of Indiana as a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on July 4, 2003 and continuing through August 6, 2003.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Gibson, Pike, Posey, and Warrick Counties in the State of Indiana; Cook and Will Counties in the State of Illinois; and Henderson County in the Commonwealth of Kentucky. All other counties contiguous to the above named primary counties have been previously declared.

For economic injury, the number is 9W7300 for the Commonwealth of Kentucky.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 9, 2003, and for economic injury the deadline is April 12, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 19, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–21673 Filed 8–22–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Delegation of Authority as to Denial of Liability on 7(a) Loans

The Administrator of the U.S. Small Business Administration (SBA), Hector V. Barreto, pursuant to the authority vested in him by the Small Business Act, 72 Stat. 384, as amended, hereby delegates to the Associate Deputy Administrator for Capital Access (ADA/CA), or to anyone Acting in the position of ADA/CA, the following authorities:

1. To make the final Agency decision to deny SBA's liability under its guaranty of a 7(a) loan.

2. To approve the initiation of a lawsuit against a participant lender for recovery of proceeds received by that lender in connection with SBA's guaranty of a 7(a) loan.

Neither the ADA/CA, nor anyone Acting in the position of ADA/CA, is authorized to further delegate these authorities.

Dated: August 4, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–21671 Filed 8–22–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4455]

Bureau of Political-Military Affairs; Denied Persons Pursuant to UN Security Council Resolution

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of an updated list of persons that are subject to an arms embargo in implementation of UN Security Council Resolutions 1390 (2002) and 1455 (2003). This action is being taken pursuant to sections 38 and 42 of the Arms Export Control Act and in accordance with section 5 of the UN Participation Act (UNPA) and E.O. 12918.

EFFECTIVE DATE: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Office of Defense Trade Controls Management, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 633–2700.

SUPPLEMENTARY INFORMATION: UN Security Council Resolutions 1390 (2002) and 1455 (2003) require UN Member States to implement an arms embargo (and other sanctions) against those individuals, groups, undertakings and entities listed in the consolidated list created in accordance with UN Security Council Resolutions 1267 (1999) and 1333 (2000) and maintained by the UN 1267 Sanctions Committee. Specifically, the resolutions require that Member States prevent the direct or indirect supply, sale and transfer, to those on the 1267 Sanctions Committee list, from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related material of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities.

Effective October 24, 2002, U.S. manufacturers and exporters and any other affected parties were notified that the Department imposed a policy of denial for any new license application or other request for approval for the export or transfer of defense articles (including technical data) or defense services (whether or not all the information relied upon by the U.S. person in performing the defense service is in the public domain) if any of the names on the list published on October 24, 2002 appear in connection with the application or other request for approval subject to section 38 of the Arms Export Control Act. Further, that action also precluded the use of any exemptions from licensing or other approval (*e.g.* brokering) requirements available under the International Traffic in Arms Regulations (ITAR) involving any person on the list. A consolidated list created pursuant to UN Security Council Resolutions 1267 (1999), 1333 (2000) and 1390 (2002), updated on September 11, 2002, was published in the **Federal Register** on October 24, 2002, by the Bureau of Political-Military Affairs. This notice contains the list updated as of June 25, 2003, which also reflects UN Security Council Resolution 1455, adopted in January 2003.

Thus, U.S. manufacturers and exporters and any other affected parties are hereby notified the Department has imposed a policy of denial for any new license application or other request for approval for the export or transfer of defense articles or defense services if any of the names on the list below appear in connection with the application or other request for approval subject to section 38 of the Arms Export

Control Act. This action also precludes the use of any exemptions from licensing or other approval (*e.g.* brokering) requirements available under the ITAR involving any person on the list.

The term ''person'', as defined in 22 CFR 120.14 of the ITAR, means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities.

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2778 and 2791) and 126.7 of the International Traffic in Arms Regulations in furtherance of the foreign policy of the United States, and in accordance with section 5 of the UNPA (22 U.S.C. 287(c)) and E.O. 12918.

In accordance with these authorities the following persons are subject to this arms embargo:

A. The list of individuals belonging to or associated with the Taliban.

1. Mullah Mohammad Rabbani, Chairman of the Ruling Council, Head of the Council of Ministers;
2. Mullah Hadji Mohammad Hassan, First Deputy, Council of Ministers; Governor of Kandahar;
3. Maulavi Abdul Kabir, Second Deputy, Council of Ministers; Governor of Nangahar Province; Head of Eastern Zone;
4. Mullah Mohammed Omar, Leader of the Faithful ('Amir ul-Mumineen'), Afghanistan;
5. Mullah Mohammed Tahre Anwari, Administrative Affairs;
6. Maulavi Sayyed Haqqan, Minister of Administrative Affairs;
7. Maulavi Abdul Latif Mansur, Minister of Agriculture;
8. Mullah Shams-ur-Rahman, Deputy Minister of Agriculture;
9. Maulavi Attiqullah Akhund, Deputy Minister of Agriculture;
10. Maulavi Abdul Ghafoor, Deputy Minister of Agriculture;
11. Akhtar Mohammad Mansour, Minister of Civil Aviation and Transportation;
12. Hadji Tahis, Deputy Minister of Civil Aviation;
13. Mullah Mohammad Naim, Deputy Minister of Civil Aviation;
14. Hidayatuallah Abu Turab, Deputy Minister of Civil Aviation;
15. Mullah Yar Mohammad Rahimi, Minister of Communication;
16. Mullah Haji Alla Dad Tayeb, Deputy Minister of Communication;
17. Maulavi Abdul Razaq, Minister of Commerce;
18. Maulavi Faiz Mohammad Faizan, Deputy Minister of Commerce;
19. Maulavi Nik Mohammad, Deputy Minister of Commerce;
20. Mullah Matiullah, Kabul Custom House;
21. Maulavi Dadullah Akhund, Minister of Construction;
22. Mullah Hadji Ubaidullah Akhund, Minister of Defense;
23. Mullah Fazel M. Mazloom, Deputy Chief of Army Staff;
24. Mullah Baradar, Deputy Minister of Defence;
25. Mullah Abdul Rauf, Commander of Central Corpus;
26. Mullah Amir Khan Motaql, Minister of Education;
27. Mullah Mohammad Nasim Hanafi, Deputy Minister of Education;
28. Maulavi S. Ahmed Skahidkhel, Deputy Minister of Education;
29. Mullah Abdul Wasay Aghajan Motasem, Minister of Finance;
30. Mullah Arefullah Aref, Deputy Minister of Finance;
31. Mullah M. Ahmadi, President of Da Afghanistan Bank;
32. Abdul Wakil Mutawakil, Minister of Foreign Affairs;
33. Abdul Rahman Zahed; Deputy Minister of Foreign Affairs;
34. Mullah Abdul Jalil, Deputy Minister of Foreign Affairs;
35. Dr. Abdul Satar Paktis, Protocol Dept., Ministry of Foreign Affairs;
36. Maulavi Faiz, Information Dept., Ministry of Foreign Affairs;
37. Shams-us-Safa Aminzai, Press-Centre, Ministry of Foreign Affairs;
38. Maulavi Abdul Baqi, Consulate Dept., Ministry of Foreign Affairs;
39. M. Jawaz Waziri, UN Dept., Ministry of Foreign Affairs;
40. Maulavi Djallalouddine Haqani, Minister of Frontier Affairs;
41. Maulavi Abdul Hakim Monib, Deputy Minister of Frontier Affairs;
42. Alhaj M. Ibrahim Omari, Deputy Minister of Frontier Affairs;
43. Qari Din Mohammad, Minister Higher Education;
44. Maulavi Hamidullah Nomani, High Ranking Official in the Ministry of Higher Education;
45. Zabihullah Hamidi, Deputy Minister of Higher Education;
46. Maulavi Arsalan Rahmani, Deputy Minister of Higher Education;
47. Maulavi Qudratuallah Jamal, Minister of Information;
48. Mullah Abdul Baqi, Vice-Minister of Information and Culture;
49. Maulavi Abdul Rahman Ahman Hottak, Deputy (Cultural) Minister of Information and Culture;
50. Maulavi Rahimullah Zurmati, Deputy (Publication) Minister of Information and Culture;
51. Abdulhai Motmaen, Information and Culture Dept., Kandahar;
52. Maulavi Mohammad Yaqoub, Head of BIA;
53. Mullah Abdul Razaq, Minister of Interior Affairs;
54. Mullah Abdul Samad Khaksar, Deputy (Security) Minister of Interior Affairs;
55. Mohammad Sharif, Deputy Minister of Interior Affairs;
56. Maulavi Noor Jalal, Deputy (Administrative) Minister of Interior Affairs;
57. Maulavi Saed M. Azim Agha, Passport and Visa Dept.;
58. Mullah Nooruddin Turabi, Minister of Justice;
59. Maulavi Jalaluddine Shinwari, Deputy Minister of Justice;
60. Alhaj Mullah Mohammad Essa Akhund, Minister of Mines and Industries;
61. Maulavi Sayeedur Rahman Haqani, Deputy Minister of Mines and Industries;
62. Mullah Abdul Salam Zaief, Deputy Minister of Mines and Industries;
63. Maulavi Mohammad Azam Elmi, Deputy Minister of Mines and Industries;
64. Qari Din Mohammad Hanif, Minister of Planning;
65. Maulavi Ezatullah, Deputy Minister of Planning;
66. Maulavi M. Musa Hottak, Deputy Minister of Planning;
67. Mullah Mohammad Abbas Akhund, Minister of Public Health;
68. Sher Abbas Stanekzai, Deputy Minister of Public Health;
69 Maulavi Mohammadullah Mati, Minister of Public Works;
70. Maulavi Rostam Nuristani, Deputy Minister of Public Works;
71. Hadji Molla Atiqullah, Deputy Minister of Public Works;
72. Maulavi Najibullah Haqqani, Deputy Minister of Public Works;
73. Maulavi Sayyed Ghiassouddine Agha, Minister of Haj and Religious Affairs;
74. Maulavi Moslim Haqqani, Deputy Minister of Haj and Religious Affairs;
75. Maulavi Qalamudin Momand, Deputy Minister of Haj Afairs;
76. Maulavi Abdul Raqib Takhari, Minister of Repatriation;
77. Ramatullah Wahidyar, Deputy Minister for Martyrs and Repatriation;
78. Mohammad Sediq Akhundzada, Deputy Minister of Martyrs and Repatriation;
79. Maulavi Mohammad Wali, Minister of Department of Preventing Vice and Propagating Virtue;
80. Maulavi Mohammad Salim Haqqani, Deputy Minister of Preventing Vice and Propagating Virtue;

81. Maulavi Sayed Esmatullah Asem, Deputy Minister of Preventing Vice and Propagating Virtue;
82. Qari Ahmadulla, Minister of Security (Intelligence);
83. Maulavi Abdul-Haq-Wasseq, Deputy Minister of Security (Intelligence);
84. Maulavi Ehsanullah, Deputy Minister of Security (Intelligence);
85. Mullah Habibullah Reshad, Head of Investigation Dept.;
86. Mullah Ahmed Jan Akhund, Minister of Water and Electricity;
87. Eng. Mohammad Homayoon, Deputy Minister of Water and Electricity;
88. Maulavi Saiduddine Sayyed, Vice-Minister of Work and Social Affairs;
89. Maulavi Abdul Jabbar, Governor of Baghlan Province;
90. Maulavi Nurullah Nuri, Governor of Balkh Province; Head of Northern Zone;
91. Muhammad Islam, Governor of Bamiyan Province;
92. Mullah Janan, Governor of Fariab;
93. Mullah Dost Mohammad, Governor of Ghazni Province;
94. Maulavi Khair Mohammad Khairkhwah, Governor of Heart Province;
95. Maulavi Abdul Bari, Governor of Helmand Province;
96. Maulavi Walijan, Governor of Jawzjan Province;
97. Mullah M. Hasan Rahmani, Governor of Kandahar Province;
98. Mullah Manan Nyazi, Governor of Kabul Province;
99. Maulavi A. Wahed Shafiq, Deputy Governor of Kabul Province;
100. Alhaj Mullah Sadudin Sayed, Mayor of Kabul City;
101. Maulavi Shafiquallah Mohammadi, Governor of Khost Province;
102. Maulavi Nazar Mohammad, Governor or Kunduz Province;
103. M. Eshaq, Governor of Laghman Province;
104. Maulavi Zia-ur-Rahman Madani, Governor of Logar Province;
105. Maulavi Hamsudin, Governor of Wardak (Msidan) Province;
106. Maulavi A. Kabir, Governor of Nangarhar Province;
107. Mullah M. Rasul, Governor of Nimroz Province;
108. Maulavi Tawana, Governor of Paktia Province;
109. Mullah M. Shafiq, Governor of Samangan Province;
110. Maulavi Aminullah Amin, Governor of Saripul Province;
111. Maulavi Abdulhai Salek, Governor of Urouzgan Province;
112. Maulavi Ahmad Jan, Governor of Zabol Province;
113. Noor Mohammad Saqib, Chief Justice of Supreme Court;
114. Maulavi Sanani, Head of Dar-ul-Efta;
115. Maulavi Samiullah Muazen, Deputy of High Court;
116. Maulavi Shahabuddin Delawar, Deputy of High Court;
117. Abdul Rahman Agha, Chief Justice of Military Court;
118. Mullah Mustasaed, Head of Academy of Sciences;
119. Maulavi Esmatullah Asem, SG of Afghan Red Crescent Society (ARCS);
120. Maulavi Qalamuddin, Head of Olympic Committee;
121. Abdul Salam Zaeef, Taliban Ambassador to Pakistan;
122. Abdul Hakim Mujahid, Taliban envoy to the United Nations;
123. General Rahmatullah Safi, Taliban representative in Europe;
124. Mullah Hamidullah, Head of Ariana Afghan Airlines;
125. Alhaj Mullah Sadruddin, Mayor of Kabul City;
126. Amir Khan Muttaqi, Taliban representative in UN-led talks;
127. Mr Jan Mohmmad Madani, Charge d'Affaires, Taliban Embassy, Abu Dhabi;
128. Mr Shamsalah Kmalzada, Second Secretary, Taliban Embassy, Abu Dhabi;
129. Mr Azizirahman, Third Secretary, Taliban Embassy, Abu Dhabi;
130. Mr Mawlawi Abdul Manan, Commercial Attache, Taliban Embassy, Abu Dhabi;
131. Malawi Abdul Wahab, Taliban Charge d'Affairs in Riyadh; Taliban ''Embassy,'' Islamabad
132. Mullah Abdul Salam Zaeef (Ambassador Extraordinary & Plenipotentiary);
133. Ilabibullab Fauzi (First Secretary/ Deputy Head of Mission);
134. Mohammad Sohail Shaheen (Second Secretary);
135. Mohammad Sarwar Siddiqmal (Third Secretary);
136. Mullah Mohammad Zahid (Third Secretary);
137. General Abdul Qadeer (Military Attache);
138. Maulavi Nazirullah Anafi (Commercial Attache);
139. Maulavi Abdul Ghafar Qurishi (Repatriation Attache);
140. Mohammad Daud (Administrative Attache);

Taliban ''Consulate General,'' Peshawar

141. Maulavi Najibullah (Consul General);
142. Qari Abdul Wali (First Secretary);
143. Syed Allamuddin (Second Secretary);
144. Maulavi Akhtar Mohmmad (Education Attache);
145. Alhaj Maulavi Mohammad Saddiq (Trade Representative);

Taliban ''Consulate General,'' Karachi

146. Maulavi Rahamatullah Kakazada (Consul General);
147. Mufti Mohammad Aleem Noorani (First Secretary);
148. Haji Abdul Ghafar Shenwary (Third Secretary);
149. Maulavi Gul Ahmad Hakimi (Commercial Attache); Taliban

''Consulate General,'' Quetta

150. Maulavi Abdullah Murad (Consul General);
151. Maulavi Abdul Haiy Aazem (First Secretary);
152. Maulavi Hamdullah (Repatriation Attache);

B. The list of entities belonging to or associated with the Taliban.

1. De Afghanistan Momtaz Bank.

C. List of individuals belonging to or associated with Al-Qaida organization.

1. Saiyid Abd Al-Man (a.k.a. Abdul Manan, a.k.a. Agha Haji; a.k.a. Am); Other information: Pakistan;
2. Youssef Abdaoui; (a.k.a. Abu Abdullah, a.k.a. Abdellah, a.k.a. Abdullah); DOB: 4 June 1966; POB: Kairouan, Tunisia; Address: Piazza Giovane Italia n.2, Varese, Italy;
3. Ali Abbas Abdi; Other information: Mogadishu, Somalia;
4. Majeed, Abdul Chaudhry (a.k.a. Majeed, Abdul; a.k.a. Majeed Chaudhry Abdul; a.k.a. Majid, Abdul) DOB: 15 April 1939; alt. DOB 1938; Nationality: Pakistani;
5. Abdullah Ahmed Abdullah (a.k.a. Abu Mariam; a.k.a. Al-Masri, Abu Mohamed; a.k.a. Saleh); DOB: 1963; POB: Egypt; Nationality Egypt; Other information: Afghanistan;
6. Mohamad Iqbal Adburrahman (a.k.a. Rahman, Mohamad Iqbal; a.k.a. A Rahman, Mohamad Iqbal; a.k.a. Abu Jibril Abdurrahman; a.k.a. Fikiruddin Muqti; a.k.a. Fihiruddin Muqti); Nationality Indonesian;
7. Ibrahim Ali Muhammad Abu Bakr (a.k.a. Al-Libi, Abd al-Muhsin); Other information: Affiliated with Afghan Support Committee (ASC) and Revival of Islamic Heritage Society (RIHS);
8. Amin Muhammad Ah Haq (a.k.a. Al-Haq, Amin; a.k.a. Amin, Muhammad; a.k.a. Dr. Amin; a.k.a. Ul-Haq, Dr. Amin); DOB: 1960; POB: Nangahar Province, Afghanistan; Nationality Afghan; Other information: Security coordinator for Usama Bin Laden;
9. Mustafa Muhammad Ahmad (a.k.a. Shaykh Sai'id); POB: Egypt;
10. Mohamed Amine Akli (a.k.a. Akli Amine Mohamed, a.k.a. Killech Shamir,

a.k.a. Kali Sami, a.k.a. Elias); DOB: 30 March 1972; POB: Abordj El Kiffani (Algeria);

11. Mohammad Hamdi Sadiq Al-Ahdal (a.k.a. Al-Hamati, Muhammad; a.k.a. Al-Makki, Abu Asim); Other information: Yemen;

12. Khalid Al-Fawaz (a.k.a. Al-Fauwaz, Khaled; a.k.a. Al-Fauwaz Kaled A.; a.k.a. Al-Fawwaz, Khalid; a.k.a. Al Fawwaz, Khalik; a.k.a. Al-Fawwaz, Khaled; a.k.a. Al-Fawwaz, Khaled; a.k.a. Al Fawwaz, Khaled); DOB: August 25, 1962; 55 Hawarden Hill, Brooke Road, London NW2 7BR, UK;

13. Ahmed Mohammed Hamed Ali (a.k.a. Abdurehman, Ahmed Mohammed; a.k.a. Ahmed Hamed; a.k.a. Ali, Ahmed Mohammed; a.k.a. Ali, Hamed; a.k.a. Hemed, Ahmed; a.k.a. Shieb, Ahmed; a.k.a. Abu Fatima; a.k.a. Abu Islam; a.k.a. Abu Khadiijah; a.k.a. Ahmed The Egyptian; a.k.a. Ahmed, Ahmed; a.k.a. Al-Masri, Ahmad; a.k.a. Al-Surir, Abu Islam; a.k.a. Shuaib); DOB: 1965; POB: Egypt; Nationality: Egypt; Other information: Afghanistan;

14. Jim'ale Ahmed Nur Ali (a.k.a. Jimale, Ahmed Ali; a.k.a. Jim'ale, Ahmad Nur Ali; a.k.a. Jumale, Ahmed Nur; a.k.a. Jumali, Ahmed Ali) P.O. Box 3312, Dubai, UAE; Other information: Mogadishu, Somalia;

15. Abd Al-Hadi Al-Iraqi (a.k.a. Abdal Al-Hadi Al-Iraqi; a.k.a. Abu Abdallah);

16. Saqar Al-Jadawi; DOB: 1965; Thought to be a Yemeni and Saudi national; Other information: Aide to Usama Bin Laden;

17. Abu Bakr Al-Jaziri; Nationality Algerian, Address: Peshawar, Pakistan; Other information: Affiliated with Afghan Support Committee (ASC);

18. Ahmad Sa'id Al-Kadr (a.k.a. Al-Kanadi, Abu Abd Al-Rahman); DOB: 01 March 1948; POB: Cairo, Egypt; Thought to be an Egyptian and Canadian national.;

19. Ibn Al-Shaykh Al-Libi;

20. Yasin Al-Qadi (a.k.a. Kadi, Shaykh Yassin Abdullah; a.k.a. Kahdi, Yasin); Other information: Jeddah, Saudi Arabia.

21. Nazih Abdul Hamed Al-Raghie (a.k.a. Anas Al-Liby; a.k.a. Al-Libi, Anas; a.k.a. Al-Raghie, Nazih; a.k.a. Al-Sabai, Anas); DOB: 30 Mar 1964; Alt. DOB: 14 May 1964; POB: Tripoli, Libya; Nationality: Libya; Other information: Afghanistan;

22. Tariq Anwar Ahmad Al-Sayyid (a.k.a. Hamdi Ahmad Farag, a.k.a. Amr Al-Fatih Fathi); DOB: 15 March 63; POB: Alexandria, Egypt;

23. Sa'd Al-Sharif; DOB: 1969; POB: Saudi Arabia; Other information: Brother-in-law and close associate of Usama Bin Laden. Said to be head of Usama Bin Laden's financial organization;

24. Mahfouz Ould Al-Walid; a.k.a. Abu Hafs the Mauritanian; a.k.a. Khalid Al-Shanqiti; a.k.a. Mafouz Walad Al-Walid; a.k.a. Mahamedou Ouid Slahi) DOB: 1 Jan 75;

25. Aiman Muhammed Rabi Al-Zawahiri (a.k.a. Ayman Al-Zawahari; a.k.a. Ahmed Fuad Salim) DOB: 19 Jun 1951; POB: Giza, Egypt; Nationality: thought to be Egyptian; Other information: Operational and Military Leader of Jihad Group. Thought to be an Egyptian national. Former leader of Egyptian Islamic Jihad, now a close associate of Usama Bin Laden;

26. Mehrez Amdouni (a.k.a. Fabio Fusco, a.k.a. Mohamed Hassan, a.k.a. Abu Thale); DOB: 18 Dec. 1969; POB: Tuni, Tunisia;

27. Muhammed Atif (a.k.a. Subhi Abu Sitta; a.k.a. Sheik Taysir Abdullah; a.k.a. Mohamed Atef; a.k.a. Abu Hafs Al Masri; a.k.a. Abu Hafs Al Masri El Khabir; a.k.a. Taysir) DOB: 1956; Alt. DOB: 1951; Alt. DOB: 1944; POB: Alexandria, Egypt; Thought to be an Egyptian national; Other information: Senior lieutenant to Usama Bin Laden;

28. Muhsin Musa Matwalli Atwah (a.k.a. Al-Muhajir, Abdul Rahman; a.k.a. Al-Namer, Mohammed K.A.; a.k.a. Abdel Rahman; a.k.a. Abdul Rahman); DOB: 19 Jun 1964; POB: Egypt; Nationality: Egypt; Other information: Afghanistan;

29. Chiheb Ben Mohamed Ayari (a.k.a. Hichem Abu Hchem); DOB: 19 Dec 1965; POB: Tunis (Tunisia); Address: Via di Saliceto n. 51/9, Bologna, Italy;

30. Mondher Baazaoui (a.k.a. Hamza); DOB: 18 March 1967; POB: Kairouan (Tunisia); Address: Via di Saliceto n. 51/9, Bologna, Italy;

31. Said Bahaji; DOB: July 15, 1975; POB: Haselunne/Lower Saxony/ Germany; Nationality: Germany; formerly resident at Bunatwiete 23, 21073 Hamburg/Germany;

32. Mahmood Sultan Bashir-Ud-Din (a.k.a. Mahmood, Sultan Bashiruddin; a.k.a. Mehmood, Dr. Bashir Uddin; a.k.a. Mekmud, Sultan Baishiruddin) DOB: 1937; Alt. DOB: 1938; Alt. DOB 1939; Alt. DOB: 1940; Alt. DOB: 1941; Alt. DOB: 1942; Alt. DOB: 1943; Alt. DOB: 1944; Alt. DOB: 1945; Nationality: Pakistani; Address: Street 13, Wazir Akbar Khan, Kabul, Afghanistan;

33. Aouadi, Mohamed Ben Belgacem Ben Abdallah (a.k.a. Aouadi, a.k.a. Mohamed Ben Belkacem); DOB: 12/11/ 1974; POB: Tunis, Tunisia; Nationality: Tunisian; Address: Via A. Masina n. 7, Milan, Italy; Alt. Address: Via Dopini No 3, Gallarati-Italy; Other information: His mother's name is Bent Ahmed Ourida;

34. Charaabi, Tarek Ben Bechir Ben Amara (a.k.a. Sharaabi, Tarek, a.k.a. Haroun; a.k.a. Frank); DOB: 03/31/1970; POB: Tunis, Tunisia; Nationality: Tunisian; Address: Viale Bligny n.42, Milan, Italy; Other information: His mother's name is Charaabi Hedia;

35. Lased Ben Heni; DOB: 02/05/1969; POB: Libya;

36. Ayadi Shafiq Ben Mohamed Ben Mohamed (a.k.a. Bin Muhammad, Ayadi Chafiq, a.k.a. Ayadi Chafik, a.k.a. Ben Muhammad; a.k.a. Aiadi, Ben Muhammad; Aiady, Ben Muhammad; a.k.a. Ayadi Shafig Ben Mohamed; a.k.a. Ben Mohamed, Ayadi Chafig; a.k.a. Abou El Baraa); DOB: 21 March 1963; POB: Sfax, Tunisia; Nationality: Tunisian; Alt. Nationality: Bosnian; Alt. Nationality: Austrian; Address: Helene Meyer Ring 10–1415–80809, Munich, Germany; 129 Park Road, NW8, London, England; 28 Chausse Di Lille, Moscron, Belgium, Darvingasse 1/2/58–60, Vienna, Austria; Other information: Tunisia; He is in Ireland. His mother's name is Medina Abid.;

37. Bouchoucha Mokhtar Ben Mohamed Ben Mokhtar (a.k.a. Bushusha, Mokhtar); DOB: 13 October 1969; POB: Tunis, Tunisia; Nationality: Tunisian; Address: Via Milano n.38, Spinadesco (CR), Italy; Other information: His mother's name is Bannour Hedia;

38. Essid Sami Ben Khemais Ben Salah (a.k.a. Omar El Mouhajer; a.k.a. Saber); DOB: 02/10/1968; POB: Menzel Jemil Bizerte, Tunisia; Nationality: Tunisian; Address: Via Dubini n.3, Gallarate (VA) Italy; Other information: His mother's name is Saidani Beya;

39. Adel Ben Soltane; DOB: July 14, 1970; POB: Tunis, Tunisia; Address: Via Latisana n. 6, Milan, Italy;

40. Nabil Benattia; DOB: May 11, 1966; POB: Tunis, Tunisia;

41. Usama Muhammed Awad Bin Laden (a.k.a. Usama Bin Laden; a.k.a. Usama Bin Muhammed Bin Awad, a.k.a. Osama Bid Laden; a.k.a. Abu Abdallah Abd Al-Hakim); DOB: 30 Jul 57; Alt. DOB: 28 Jul 57; POB: Jeddah, Saudi Arabia; Alt. POB: Yemen; Nationality: Saudi citizenship withdrawn, now officially and Afghan national;

42. Bilal Bin Marwan; DOB: 1947; Other information: Senior lieutenant of Usama Bin Laden;

43. Ramzi Mohamed Abdullah Binalshibh (a.k.a. Binalsheidah, Ramzi Mohamed Abdullah, a.k.a. Bin Al Shibh, Ramzi; a.k.a. Omar, Ramzi Mohamed Abdellah) DOB: May 1st 1972; Alt. DOB: September 16, 1973; POB: Hadramawt/Yemen; Alt. POB:

Khartoum, Sudan; Nationality: Yemen; Alt. Nationality: Sudan;

44. Yassine Chekkouri; DOB: October 6, 1966; POB: Safi, Morocco;

45. Aweys Hassan Dahir (a.k.a. Ali, Sheikh Hassan Dahir Aweys, a.k.a. Awes, Shaykh Hassan Dahir); DOB: 1935; Nationality: Somalia;

46. Mamoun Darkazanli (a.k.a. Abu Ilyas; a.k.a. Abu Ilyas Al Suri; a.k.a. Abu Luz) DOB: August 4, 1958; POB: Damascus/Syria; Nationality: Syrian and German; Uhlenhorster Weg 34, Hamburg, 22085 Germany;

47. Lionel Dumont (a.k.a. Jacques Brougere; a.k.a. Bilal; a.k.a. Hamza); DOB: 21 Jan. 1971; POB: Robaix (France);

48. Mounir El Motassadeq; DOB: April 3, 1974; POB: Marrakesh/Morocco; Address: 21073 Hamburg, Goschenstrasse 13;

49. Abdelkader Mahmoud Es Sayed (a.k.a. Es Sayed, Kader); DOB: 12/26/1962; POB: Egypt; Address: Via del Fosso di Centocelle n.66, Rome, Italy;

50. Moussa Ben Amor Essaadi (a.k.a. Dah Dah, a.k.a. Abdelrahmman, a.k.a. Bechir); DOB: 4 Dec. 1964; POB: Tabarka (Tunisia); Address: Via Milano n. 108, Brescia, Italy;

51. Zakarya Essabar; DOB: April 13, 1977; POB: Essaouria/Morocco; Nationality: Morocco; Address: Dortmunder Strasse 38, 22419 Hamburg/Germany;

52. Mustafa Mohamed Fadhil (a.k.a. Al Masri, Abd Al Wakil; a.k.a. Ali, Hassan; a.k.a. Anis, Abu; a.k.a. Elbishy, Moustafa Ali; a.k.a. Fadil, Mustafa Muhamad; a.k.a. Fazul, Mustafa; a.k.a. Mohammed, Mustafa; a.k.a. Al-Nubi, Abu; a.k.a. Hussein, a.k.a. Jihad, Abu; a.k.a. Khalid; a.k.a. Man, Nu; a.k.a. Yussrr, Abu); DOB: 23 Jun 1976; POB: Cairo, Egypt; Nationality: Egypt; Alt. Nationality: Kenya;

53. Rachid Fettar (a.k.a. Amine del Belgio, a.k.a. Djaffar); DOB: 16 April 1969; POB: Boulogin (Algeria); Address: Via degli Apuli n.5, Milan, Italy;

54. Ahmed Khalfan Ghailani (a.k.a. Ahmed, Abubakar; a.k.a. Ahmed, Abubakar; a.k.a. Ahmed, Abubakar K.; a.k.a. Ahmed, Abubakar Khalfan; a.k.a. Ahmed, Abubakary K.; a.k.a. Ahmed, Ahmed Khalfan; a.k.a. Ali, Ahmed Khalfan; a.k.a. Ghailani, Abubakary Khalfan Ahmed; a.k.a. Ghailani, Ahmed; a.k.a. Ghilani, Ahmad Khalafan; a.k.a. Hussein, Mahafudh Abubakar Ahmed Abdallah; a.k.a. Khalfan, Ahmed; a.k.a. Mohammed, Shariff Omar; a.k.a. Ahmed The Tanzanian; a.k.a. Foopie; a.k.a. Fupi; a.k.a. Ahmed, A.; a.k.a. Al Tanzani, Ahmad; a.k.a. Bakr, Abu; a.k.a. Khabar, Abu); DOB: 14 Mar 1974; Alt. DOB: 13 Apr. 1974; Alt. DOB: 14 Apr 1974; Alt. DOB: 1 Aug 1970; POB: Zanzibar, Tanzania; Nationality: Tanzania;

55. Brahim Ben Hedili Hamami; DOB: 20 Nov. 1971; POB: Goubellat (Tunisia); Address: Via de' Carracci n.15, Casalecchio di Reno (Bologna) Italy;

56. Nasr Fahmi Nasr Hasanayn (a.k.a. Muhammad Salah);

57. Gulbuddin Hekmatyar (a.k.a. Gulabudin Hekmatyar; a.k.a. Golboddin Hikmetyar; a.k.a. Gulbuddin Khekmatiyar; a.k.a. Gulbuddin Hekmatiar; a.k.a. Gulbuddin Hekhmartyar; a.k.a. Gulbudin Hekmetyar) DOB: August 1, 1949; POB: Konduz Province, Afghanistan;

58. Ri'ad (Raed) Muhammad Hasan Muhammad Hijazi (a.k.a. Hijazi, Raed M.; a.k.a. Al-Hawen, Abu-Ahmad; a.k.a. Al-Shahid, Abu-Ahmad; a.k.a. Al-Maghribi, Rashid (The Moroccan); a.k.a. Al-Amriki, Abu-Ahmad (The American)); DOB: 30 December 1968; POB: California, U.S.A.; Nationality: Jordanian; Other information: Originally from Ramlah; place of residence while in Jordan—al-Shumaysani (Sheisani) (area of Amman), behind the trade unions complex;

59. Ali Ghaleb Himmat; DOB: 16 June 1938; POB: Damascus, Syria; Nationality: Switzerland; Address: via Posero 2, ch-6911 Campione D'Italia, Italy;

60. Armand Albert Friedrich Huber (a.k.a. Huber, Ahmed); DOB: 1927; Nationality: Switzerland; Address: Rossmimattstrasse 33, 3074 Muri b. Bern, Switzerland;

61. Zayn Al-Abidin Muhammad Husayn (a.k.a. Abu Zubaida; a.k.a. Abd Al-Hadi Al-Wahab; a.k.a. Zain Al-Abidin Muhahhad Husain; a.k.a. Zain Al-Abidin Muhahhad Husain; a.k.a. Abu Zubaydah; a.k.a. Tariq); DOB: 12 March 71; POB: Riyadh, Saudi Arabia; Nationality: Thought to be a Saudi and Palestinian national; Other information: Close associate of Usama Bin Laden and facilitator of terrorist travel;

62. Nasreddin, Ahmed Idris (a.k.a. Nasreddin, Ahmad I.; a.k.a. Nasreddin, Hadji Ahmed; a.k.a. Nasreddine, Ahmed Idriss; a.k.a. Ahmed Idris Nasreddin); DOB 22 November 1929; POB: Adi Ugri, Ethiopia (now Eritrea); Nationality: Italian; Address: Corso Sempione 69, 20149 Milan, Italy; Atl. Address: Piazzale Biancamano, Milan, Italy; Alt. Address: Rue De Cap Spartel, Tangiers, Morocco; Alt. Address: no. 10, Rmilat, Villa Nasreddin in Tangiers, Morocco; Other information: Mr. Nasreddin left his residence at 1 via della Scuole, 6900 Lugano, Switzerland in 1994 and moved to Morocco;

63. Nurjaman Riduan Isamuddin (a.k.a. Hambali; a.k.a. Nurjaman; a.k.a. Isomuddin, Nurjaman Riduan); DOB: April 4, 1964; POB: Cianjur, West Java, Indonesia; Nationality: Indonesian; Other information: Born: Encep Nurjaman;

64. Khalil Jarraya (a.k.a. Khalil Yarraya, a.k.a. Ben Narvan Abdel Aziz, a.k.a. Amro, a.k.a. Omar, a.k.a. Amr); DOB: 8 Feb. 1969; POB: Sfax (Tunisia); Address: Via Bellaria n.10, Bologna, Italy; Alt. Address: Via Lazio n.3, Bologna, Italy; Other information: Identified as Abdel Aziz Ben Narvan, born in Sereka (ex-Yugoslavia) on 15 August 1970;

65. Mounir Ben Habib Jarraya; (a.k.a. Yarraya); DOB: 25 October 1963; POB: Sfax (Tunisia); Address: Via Mirasole n.11, Bologna, Italy; Alt. Address: Via Ariosto n.8, Casalecchio di Reno (Bologna), Italy;

66. Riadh, Jelassi; DOB: December 15, 1970; POB: Tunisia;

67. Faouzi Jendoubi (a.k.a. Said, a.k.a. Samir); DOB: 30 January 1966; POB: Beja (Tunisia); Address: Via Agucchi n.250, Bologna, Italy; Alt. Address: Via di Saliceto n.51/9, Bologna, Italy;

68. Wa'el Hamza Julaidan (a.k.a. Wa'il Hamza Julaidan; a.k.a. Wa'el Hamza Jalaidan; a.k.a. Wa'il Hamza Jalaidan; a.k.a. Wa'el Hamza Jaladin; a.k.a. Wa'il Hamza Jaladin; a.k.a. Abu Al-Hasan Al Madani); DOB: 22 January 1958; POB: Al-Madinah, Saudi Arabia;

69. Abdullahi Hussein Kahie; Other information: Bakara Market, Dar Salaam Buildings, Mogadishu, Somalia;

70. Mehdi Kammoun; DOB: April 3, 1968; POB: Tunis, Tunisia; Address: Via Masina n. 7, Milan, Italy;

71. Samir Kishk; DOB: May 14, 1955; POB: Gharbia, Egypt;

72. Mufti Rashid Ahmad Ladehyanoy (a.k.a. Ludhianvi, Mufti Rashid Ahmad; a.k.a. Armad, Mufti Rasheed; a.k.a. Wadehyanoy, Mufti Rashid Ahmad); Other information: Karachi, Pakistan;

73. Tarek Ben Habib Maaroufi; DOB: November 23, 1965; POB: Ghardimaou, Tunisia;

74. Abdullkadir Hussei Mahamud; Other information: Florence, Italy;

75. Uthman Omar Mahmoud (a.k.a. Uthman, Al-Samman; a.k.a. Uthman, Umar; a.k.a. Al-Filistini, Abu Qatada; a.k.a. Takfiri, Abu Umr; a.k.a. Abu Umar, Abu Omar; a.k.a. Umar, Abu Umar; a.k.a. Abu Ismail); DOB: 30 December 1960; Atl. DOB: 13 December 1960; Other information: London, England;

76. Fethi Ben Rebai Mnasri (a.k.a. Fethi Alic, a.k.a. Amor, a.k.a. Omar Abu); DOB: 6 March 1969; POB: Nefza (Tunisia); Address: Via Toscana n.46, Bologna, Italy; Alt. Address: Via di Saliceto n. 51/9, Bologna, Italy;

77. Mansour Mohamed (a.k.a. Al-Mansour, Dr. Mohamed), DOB:

30.08.1928; POB: Egypt; Alt. POB: UAE; Nationality: Switzerland; Address: Obere Heslibachstrasse 20, 8700 Kuesnacht, ZH, Switerland; Other information: Zurich, Switzerland;

78. Zia Mohammad (a.k.a. Zia, Ahmad); Address: C/O Ahmed Shah C/O Painda Mohammad Al-Karim Set, Peshawar, Pakistan; Alt. Address: C/O Alam General Store Shop 17, Awami Market, Peshawar, Pakistan; Alt. Address: C/O Zahir Sha S/;

79. Fazul Abdullah Mohammed (a.k.a. Abdalla, Fazul; a.k.a. Adballah, Fazul; a.k.a. Ali, Fadel Abdallah Mohammed; a.k.a. Fazul Abdalla; a.k.a. Fazul Abdallah; a.k.a. Fazul, Abdallah Mohammed; a.k.a. Fazul, Haroon; a.k.a. Fazul, Harun; a.k.a. Haroun, Fadhil, a.k.a. Mohammed, Fazul; a.k.a. Mohammed, Fazul Abdilahi; a.k.a. Mohammed Fouad; a.k.a. Muhamad, Fadil Abdallah; a.k.a. Aisha, Abu; a.k.a. Al Sudani, Abu Seif; a.k.a. Haroon; a.k.a. Harun; a.k.a. Luqman, Abu; DOB: 25 Aug 1972; Alt. DOB: 25 Dec 1974; Alt. DOB: 25 Feb 1974; POB: Moroni, Comoros Islands; Nationality: Comoros; Alt. Nationality: Kenya;

80. Mostafa Kamel Mostafa (a.k.a. Mustafa Kamel Mustafa, a.k.a. Adam Ramsey Eaman, a.k.a. Abu Hamza Al-Masri, a.k.a. Al-Masri, Abu Hamza, a.k.a. Al-Misri, Abu Hamza); DOB: April 15, 1958; Address: 9 Albourne Road, Shepherds Bush, London W12 OLW, UK; Alt. Address: Adie Road, Hammersmith, London W6 OPW, UK;

81. Fahid Mohammed Ally Msalam (a.k.a. Ally, Fahid Mohammed; a.k.a. Msalam, Fahad Ally; a.k.a. Msalam, Fahid Mohammed Ali; a.k.a. Msalam, Mohammed Ally; a.k.a. Musalaam, Fahid Mohammed Ali; a.k.a. Salem, Fahid Muhamad Ali, a.k.a. Al-Kini, Usama;); DOB: 19 Feb 1976; POB: Mombasa, Kenya; Nationality: Kenya;

82. Nada, Youssef Mustafa (a.k.a. Nada, Youssef; a.k.a. Nada, Youssef M.); DOB: 17 May 1931; Alt. DOB: 17 May 1937; POB: Alexandria, Egypt; Address: via Arogno 32, 6911 Campione d'Italia, Italy; Alt. Address: via per Arogno 32, ch-6911 Campione d'Italia, Italy; Alt. Address: via Riasc 4, ch-6911 Campione d'Italia I, Italy;

83. Abdelghani Mzoudi (a.k.a. Abdelghani Mazwati, a.k.a. Abdelghani Mazuti); DOB: 6 December 1972; POB: Marrakesh, Morocco; Nationality: Moroccan; Address: Currently (June 2003) being held in custody in Germany;

84. Najib Ouaz; DOB: 12 April 1960; POB: Hekaima (Tunisia); Address: Vicolo dei Prati n.2/2, Bologna, Italy;

85. Ahmed Hosni Rarrbo (a.k.a. Abdallah o Abdullah); DOB: 12 September 1974; POB: Bologhine (Algeria);

86. Abdelhalim Remadna; DOB: April 2, 1966; POB: Bistra, Algeria;

87. Nedal Saleh (a.k.a. Hitem); DOB: 1 March 1970; POB: Taiz (Yemen); Address: Via Milano n.105, Casal di Principe (Caserta), Italy; Alt. Address: Via di Saliceto n.51/9, Bologna, Italy;

88. Nabil Adbul Salam Sayadi (a.k.a. Abu Zeinab); DOB: 1/1/66; POB: El Hadid, Tripoli, Lebanon; Nationality: Belgian since 18/9/01; Other information: Spouse of Patricia Vinck. Married on 29/5/92 in Peshawar, Pakistan;

89. Sayf-Al Adl (a.k.a. Saif Al-'Adil); DOB: 1963; POB: Egypt; Nationality: Thought to be an Egyptian national; Other information: Responsible for Usama Bin Laden's security;

90. Ahmed Salim Swedan Sheikh (a.k.a. Ally, Ahmed; a.k.a. Suweidan, Sheikh Ahmad Salem; a.k.a. Swedan, Sheikh; a.k.a. Swedan, Sheikh Ahmed Salem a.k.a. Ahmed The Tall; a.k.a. Bahamad; a.k.a. Bahamad, Sheik; a.k.a. Bahamadi, Sheikh); DOB: 9 Apr 1969; Alt. DOB: 9 Apr 1960; POB: Mombasa, Kenya; Nationality: Kenya;

91. Thirwat Salah Shihata (a.k.a. Tarwat Salah Abdallah; a.k.a. Salah Shihata Thirwat; a.k.a. Shahata Thirwat); DOB: 29 Jun 60; POB: Egypt;

92. Mansour Thaer; DOB: March 21, 1974; POB: Baghdad, Iraq;

93. Lazhar Ben Mohammed Tlili; DOB: March 26, 1969; POB: Tunis, Tunisia; Address: Via Carlo Porta n. 97, Legnano, Italy;

94. Yuldashev Tohir (a.k.a. Yuldashev, Takhir); Other information: Uzbekistan;

95. Mohammed Tufail (a.k.a. Tufail, S.M.; a.k.a. Tuffail, Sheik Mohammed); Nationality: Pakistani;

96. Aweys Dahir Ubeldullahi; Address: via Cipriano Facchinetti 84, Rome, Italy;

97. Patricia Rosa Vinck (a.k.a. Souraya P. Vinck); DOB: 4/1/65; POB: Berchem, Antwerp; Nationality: Belgium; Other information: Spouse of Nabil Saydai;

98. Habib Waddani; DOB: June 10, 1970; POB: Tunis, Tunisia; Address: Via unica Borighero n. 1, San Donato M.se(MI), Italy; Other information: Italian;

99. Zelimkhan Ahmedovich Yandarbiev (a.k.a. Abdul-Muslimovich); DOB: 12 September 1952; POB: USSR, Eastern Kazakhstan region, village of Vydriha; Nationality: Russian Federation; Address: formerly Russian Federation, Chechen Republic, Grozny, Derzhavina str. 281–59;

100. Abdul Rahman Yasin (a.k.a. Taha, Abdul Rahman S.; a.k.a. Taher, Abdul Rahman S.; a.k.a. Yasin, Abdul Rahman Said; a.k.a. Yasin, Aboud); DOB: 10 Apr 1960; POB: Bloomington, Indiana, U.S.A.; Nationality: U.S.A.; Abdul Rahman Yasin is in Iraq.

101. Ali Ahmed Yusaf; (a.k.a. Ali Galoul); DOB: 20 November 1974; POB: Garbaharey, Somalia; Nationality: Swedish; Address: Kralingegrand 33 S–16362 Spanga;

102. Mansour Fattouh Zeinab; DOB: 07.05.1933; Address: Obere Heslibachstrasse 20, 8700 Kuesnacht, ZH, Switzerland;

D. The list of entities belonging to or associated with the Al-Qaida organization.

1. Abu Sayyaf Group (a.k.a. Al Harakat Al Islamiyya);

2. Afghan Support Committee (ASC) (a.k.a. Lajnat ul Masa Eidatul Afghaniab, a.k.a. Jamiat Ayat-ur-Rhas al Islamiac, a.k.a. Jamiat Ihya ul Turath al Islamia, a.k.a. Ahya ul Turas); Address: Headquarters–G.T. Road (probably Grand Trunk Road), near Pushtoon Garhi Pabbi, Peshwar, Pakistan; Atl. Address: Cheprahar Hadda, Mia Omar Sabaqah School, Jalabad, Afghanistan;

3. The Aid Organization of the Ulema, Pakistan (a.k.a. Al Rashid Trust; a.k.a. Al Rasheed Trust; a.k.a. Al-Rasheed Trust; a.k.a. Al-Rashid Trust); Addresses: Kitab Ghar, Darul Ifta Wal Irshad, Nazimabad No. 4, Karachi, Pakistan, Phone 6683301, Phone 0300–8209199, Fax 6623814; Alt. Address: 302b–40, Good Earth Court, Opposite Pia Planitarium, Block 13a, Gulshan-I Iqbal, Karachi, Phone 4979263; Alt. Address: 617 Clifton Center, Block 5, 6th Floor, Clifton, Karachi, Phone 587–2545; Alt. Address: 605 Landmark Plaza, 11 Chundrigar Road, Opposite Jang Building, Karachi, Pakistan, Phone 2623818–19; Alt. Address: Jamia Masjid, Sulaiman Park, Begum Pura, Lahore, Pakistan, Phone 042–6812081; Other information: Pakistan;

4. Akida Bank Private Limited; (f.k.a. Akida Islamic Bank, International Limited; f.k.a. Iksir International Bank Limited); Address: c/o Arthur D. Hanna & Company; Alt. Address: 10 Deveaux Street, Nassau, Bahamas; Alt. Address: P.O. Box N–4877, Nassau, Bahamas;

5. Akida Investment Co. Ltd. (a.k.a. Akida Investment Company Limited, f.k.a. Akida Bank Private Limited; Address: c/o Arthur D. Hanna & Company; Alt. Address: 10 Deveaux Street, Nassau, Bahamas; Alt. Address: P.O. Box N–4877, Nassau, Bahamas;

6. Al Baraka Exchange L.L.C.; Address: P.O. Box 3313 Deira Dubai, UAE; Alt. Address: P.O. Box 20066, Dubai, UAE;

7. Al-Barakaat; Address: Mogadishu, Somalia; Alt. Address: Dubai, UAE;

8. Al-Barakaat Bank; Address: Mogadishu, Somalia;
9. Al-Barakaat Wiring Service; Address: 2940 Pillsbury Avenue, Suite 4, Minneapolis, Minnesota 55408;
10. Al-Barakat Bank of Somalia (BSS) (a.k.a. Barakat Bank of Somalia); Address: Mogadishu, Somalia; Alt. Address: Bossaso, Somalia;
11. Al-Barakat Finance Group; Address: Dubai, UAE; Alt. Address: Mogadishu, Somalia;
12. Al-Barakat Financial Holding Co.; Address: Dubai, UAE; Alt. Address: Mogadishu, Somalia;
13. Al-Barakat Global Telecommunications (a.k.a. Barakaat Globetelcompany); Address: P.O. Box 3313, Dubai, UAE; Alt. Address: Mogadishu, Somalia; Alt. Address: Hargeysa, Somalia;
14. A1-Barakat Group of Companies Somalia Limited (a.k.a. Al-Barakat Financial Company); Address: P.O. Box 3313, Dubai, UAE; Alt. Address: Mogadishu, Somalia;
15. A1-Barakat International (a.k.a. Baraco Co.); Address: Box 2923, Dubai, UAE;
16. Al-Barakat Investments; Address: P.O. Box 3313, Deira, Dubai, UAE;
17. Al-Hamati Sweets Bakeries; Address: Al-Mukallah, Hadhramawt, Governorate, Yemen;
18. Al-Haramain Islamic Foundation; Address: Bosnia and Herzegovina;
19. Al-Haramain Islamic Foundation; Address: Somalia;
20. Al-Itihadd Al-Islamiya/AIAI;
21. Al-Jihad/Egyptian Islamic Movement (a.k.a. Egyptian Al-Jihad; a.k.a. Egyptian Islamic Jihad; a.k.a. Jihad Group; a.k.a. New Jihad);
22. Al-Nur Honey Press Shops (a.k.a. Al-Nur Honey Center); Address: Sanaa, Yemen;
23. 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); Address: C/O Asat Trust Reg., Altenbach 8,9490 Vaduz Fl, Liechtenstein;
24. Al Qa'ida/Islamic Army (a.k.a. ''The Base,'' a.k.a Al Qaeda, a.k.a. Islamic Salvation Foundation, a.k.a. the Group for the Preservation of the Holy Sites, a.k.a. The Islamic Army for the Liberation of Holy Places, a.k.a. The World Islamic Front for the Jihad Against Jews and Crusaders, a.k.a. Usama Bin Laden Network, a.k.a. Usama Bin Laden Organization);
25. Al Rashid Trust (a.k.a. Al-Rasheed Trust); Address: Kitas Ghar, Nazimabad 4, Dahgel-Iftah, Karachi, Pakistan; Alt. Address: Jamia Maajid, Sulalman Park, Melgium Pura, Lahore, Pakistan; Alt. Address: Office Dha'rbi-M'unin, Opposite Khyber Bank, Abbottabad Road, Mansehra, Pakistan; Alt. Address: Office Dha'rbi-M'unin ZR Brothers, Katcherry Road, Chowk Yadgaar, Peshawar, Pakistan; Alt. Address: Office Dha'rbi-M'unin, Rm No. 3, Moti Plaza, Near Liaquat 2Bagh, Muree Road, Rawalpindi, Pakistan; Alt. Address: Office Dha'rbi-M'unin, Top Floor, Dr. Dawa Khan Dental Clinic Surgeon, Main Baxae, Mingora, Swat, Pakistan; Other information: Operations in Afghanistan: Heart Jalalabad, Kbul, Kandahar, Mazar Sherif. Also operations in Kosovo, Chechnya;
26. Al-Shifa, Honey Press for Industry and Commerce; Address: P.O. Box 8089, Al-Hasabah, Sanaa, Yemen; Alt. Address: By the Shrine Next to the Gas Station, Jamal Street, Ta'iz, Yemen; Alt. Address: Al-Arudh Square, Khur Maksar, Aden, Yemen; Alt. Address: Al-Nasr Street, Doha, Qatar;
27. Ansar Al-Islam (a.k.a. Devotees of Islam; a.k.a. Jund al-Islam; a.k.a. Soldiers of Islam; a.k.a. Kurdistan Supporters of Islam; a.k.a. Supporters of Islam in Kurdistan; a.k.a. Followers of Islam in Kurdistan; a.k.a. Kurdistand Taliban; a.k.a. Soldiers of God; Other information: Location: The Kurdish-controlled area of northeastern Iraq;
28. Armed Islamic Group (a.k.a. Al Jamm'ah Al-Islamiah Al-Musallah; a.k.a. GIA; a.k.a.; Groupement Islamique Arme);
29. Asat Trust Reg.; Address: Altenbach 8, 9490 Vaduz Fl, Liechtenstein;
30. Asbat Al-Ansar;
31. BA Taqwa for Commerce and Real Estate Company Limited; Address: Vaduz, Liechtenstein; Alt. Address: formerly c/o/ Astat Trust reg;
32. Bank Al Taqwa Limited (a.k.a. Al Taqwa Bank; a.k.a. Bank Al Taqwa); Address, P.O. Box N–4877, Nassau, Bahamas; Alt. Address: C/O Arthur D. Hanna & Company; Alt. Address: 10 Deveaux Street, Nassau, Bahamas;
33. Barakaat Boston; Address: 266 Neponset Avenue, Apt. 43, Dorchester, Massachusetts 02122–3224;
34. Barakaat Construction Company; Address: P.O. Box 3313, Dubai, UAE;
35. Barakaat Group of Companies; Address: P.O. Box 3313, Dubai, UAE; Alt. Address: Mogadishu, Somalia;
36. Barakaat International; Address: Hallbybacken 15, 70 Spanga, Sweden;
37. Barakaat International Foundation; Address: Box 4036, Spanga, Stockholm, Sweden; Atl. Address: Rinkebytorget 1, 04 Spanga, Sweden;
38. Barakaat International, Inc.; Address: 1929 South 5th Street, Suite 205, Minneapolis, Minnesota;
39. Barakaat North America, Inc.; Address: 925 Washington Street, Dorchester, Massachusetts; Alt. Address: 2019 Bank Street, Ottawa, Ontario, Canada;
40. Barakaat Red Sea Telecommunications; Address: Bossaso, Somalia; Address: Nakhiil, Somalia; Address: Huruuse, Somalia; Address: Raxmo, Somalia; Address: Ticis, Somalia; Address: Kowthar, Somalia; Address: Noobir, Somalia; Address: Bubaarag, Somalia; Address: Gufure, Somalia; Address: Xuuxuule, Somalia; Address: Ala Aamin, Somalia; Address: Guureeye, Somalia; Address: Najax, Somalia; Address: Carafaat, Somalia;
41. Barakaat Telecommunications Co. Somalia, Ltd.; Address: P.O. Box 3313, Dubai, UAE;
42. Barakaat Wire Transfer Company; Address: 4419 South Brandon Street, Seattle, Washington;
43. Barakat Banks and Remittances; Address: Mogadishu, Somalia; Address: Dubai, UAE;
44. Barakat Computer Consulting (BCC); Address: Mogadishu, Somalia;
45. Barakat Consulting Group (BCG); Address: Mogadishu, Somalia;
46. Barakat Global Telephone Company; Address: Mogadishu, Somalia; Address: Dubai, UAE;
47. Barakat International Companies (BICO); Address: Mogadishu, Somalia; Address: Dubai, UAE;
48. Barakat Post Express (BPE); Address: Mogadishu, Somalia;
49. Barakat Refreshment Company; Address: Mogadishu, Somalia; Address: Dubai, UAE;
50. Barakat Telecommunications Company Limited (a.k.a. BTELCO), Address: Bakara Market, Dar Salaam Building, Mogadishu, Somalia; Last Known Address: The Netherlands;
51. Baraka Trading Company; Address: P.O. Box 3313, Dubai, UAE;
52. Barako Trading Company, LLC; Address: P.O. Box 3313, Dubai, UAE;
53. Benevolence International Foundation (a.k.a. Al Bir Al Dawalia; a.k.a. BIF; a.k.a. BIF–USA; a.k.a. Mezhdunarodnyj Blagotvoritel'nyl Fond); Address: 8820 Mobile Avenue, IA, Oak Lawn, Illinois, 60453 U.S.A.; Alt. Address: P.O. Box 548, Worth, Illinois, 60482 U.S.A.; Former Address: 9838 S. Roberts Road, Suite 1W, Palos Hills, Illinois, 60465 U.S.A.; Former Address: 20–24 Branford Place, Suite 705, Newark, New Jersey 07102 U.S.A.; Alt. Address: Bashir Safar Ugil 69, Baku, Azerbaijan; Alt. Address: 69 Boshir Safaroglu St., Baku, Azerbaijan; Alt. Address: Sarajevo, Bosnia-Herzegovina; Alt. Address: Zenica, Bosnia-Herzegovina; Last Known Address: 3 King Street, South Waterloo, Ontario,

N2J 3Z6, Canada; Last Known Address: P.O. Box 1508 Station 1, Mississauga, Ontario, L4Y 4G2 Canada; Last Known Address: 2465 Cawthra Rd., #203, Mississauga, Ontario, L5A 3P2 Canada; Alt. Address: Ottawa, Canada; Alt. Address: Grozny, Chechnya; Alt. Address: 91 Paihonggou, Lanzhou, Gansu, China 730000; Alt. Address: Hrvatov 30, 41000, Zagreb, Croatia; Alt. Address: Makhachkala, Daghestan; Alt. Address: Duisi, Georgia; Alt. Address: Tbilisi, Georgia; Alt. Address: Nazran, Ingushetia; Alt. Address: Burgemeester Kessensingel 40, Masstricht, Netherlands; Alt. Address: Stichting Benevolence International Nederaland (a.k.a. Benevolence International Nederland, a.k.a. BIN) Radeborg 14B, 6228 CV Maastricht, Netherlands; Alt. Address: House 111, First Floor, Street 64, F–10/3, Islamabad, Pakistan; Alt. Address: P.O. Box 1055, Peshawar, Pakistan; Alt. Address: Azovshaya 6, km. 3, off. 401, Moscow, Russia 113149; Alt. Address: Ulitsa Oktyabr'skaya, dom. 89, Moscow, Russia 127521; Alt. Address: P.O. Box 1937, Khartoum, Sudan; Alt. Address: P.O. Box 7600, Jeddah 21472, Saudi Arabia; Alt. Address: P.O. Box 10845, Riyadh 11442, Saudi Arabia; Alt. Address: Dushanbe, Tajikistan; Alt. Address: United Kingdom; Alt. Address: Afghanistan; Alt. Address: Bangladesh; Alt. Address: Gaza Strip; Alt. Address: Bosnia-Herzegovina; Alt. Address: Yemen;

54. Benevolence International Fund (a.k.a. Benevolent International Fund); Last Known Address: 2465 Cawthra Rd., Unit 203, Mississauga, Ontario, L5A 3P2 Canada; Last Known Address: P.O. Box 1508, Station B, Mississauga, Ontario, L4Y 4G2 Canada; Last Known Address: P.O. Box 40015, 75 King Street South, Waterloo, Ontario, N2J 4V1 Canada; Last Known Address: 92 King Street, 201, Waterloo, Ontario, N2J 1P5 Canada;

55. Bosanska Idealna Futura (a.k.a. BIF-Bosnia; a.k.a. Bosnia Ideal Future); Address: Salke Lagumdzije 12, 71000 Sarajevo, Bosnia-Herzegovina; Alt. Address: Hadzije Mazica Put 16F, 72000 Zenica, Bosnia-Herzegovina; Alt. Address: Sehidska Street, Breza, Bosnia-Herzegovina; Alt. Address: Kanal 1, 72000 Zenica, Bosnia-Herzegovina; Alt. Address: Hamze Celenke 35, Ilidza, Sarajevo, Bosnia-Herzegovina; Other information: Doing business as BECF Charitable Educational Center, Benevolence Educational Center;

56. The Eastern Turkistan Islamic Movement (a.k.a. The Eastern Turkistan Islamic Party, a.k.a. The Eastern Turkistan Islamic Party of Allah);

57. Global Relief Foundation (GRF) (a.k.a. Foudation Secours Mondial (FSM); a.k.a. Secours mondial de France (SEMONDE); a.k.a. Foundation Secours Mondial—Belgique a.s.b.i.; a.k.a. Foundation Secours Mondial ''World Relief''; Address: 9935 South 76th Avenue, Unit 1, Bridgeview, Illinois 60455, U.S.A.; Alt. Address: P.O. Box 1406, Bridgeview, Illinois 60455, U.S.A.; Alt. Address: 49 rue du Lazaret, 67100 Strasebourg, France; Alt. Address: Vaatjesstraat, 29, 2580 Putte, Belgium; Alt. Address: Rue des Bataves 69, 1040 Etterbeek, Brussels, Belgium; Alt. Address: P.O. Box 6, 1040 Etterbeek 2, Brussels, Belgium; Alt. Address: Mula Mustafe Baseskije Street No. 72, Sarajevo, Bosnia; Alt. Address: Put Mladih Muslimana Street 30/A, Sarajevo, Bosnia; Alt. Address: Rr. Skenderbeu 76, Lagjja Sefa, Gjakova, Kosovo; Alt. Address: Ylli Morina Road, Djakovica, Kosovo; Alt. Address: Rruga e Kavajes, Building No. 3, Apartment No. 61, P.O. Box 2892, Tirana, Albania; Alt. Address: House 267 Street No. 54, Sector F–11/4, Islamabad, Pakistan; Alt. Address: Saray Cad. No. 37 B Blok, Yesilyurt Apt. 2/4, Sirinevler, Turkey; Other information: Other Foreign Locations: Afghanistan, Azerbaijan, Bangladesh, Chechnya (Russia), China, Eritrea, Ethiopia, Georgia, India, Ingushetia (Russia), Iraq, Jordan, Kashmir, Lebanon, West Bank and Gaza, Sierra Leone, Somalia and Syria;

58. Gulf Center S.R.L.; Address: Corso Sempione 69, 20149 Milan, Italy;

59. Harakat Ul-Mujahidin/HUM (a.k.a. Al-Faran, a.k.a. Al-Hadid, a.k.a. Al-Hadith, a.k.a. Harakat Ul-Ansar, a.k.a. HUA, a.k.a. Harakat Ul-Mujahideen);

60. Heyatul Ulya; Address: Mogadishu, Somalia;

61. Islamic Army of Aden;

62. Islamic International Brigade (IIB); (a.k.a. The Islamic Peacekeeping Brigade; a.k.a. The Islamic Peacekeeping Army; a.k.a. The International Brigade; a.k.a. Islamic Peacekeeping Battalion; a.k.a. International Battalion; Islamic Peacekeeping International Brigade;

63. Islamic Movement of Uzbekistan (a.k.a. IMU);

64. Jaish-I-Mohammed (a.k.a. Army of Mohammed); Address: Pakistan;

65. Jam'yah Ta'awun Al-Islamia (a.k.a. Society of Islamic Cooperation, a.k.a. Jam'iyat Al Ta'awun Al Islamiyya, a.k.a. Jit); Address: Qandahar City, Afghanistan;

66. Jemaah Islamiyah (a.k.a. Jema'ah Islamiyah, a.k.a. Jemaah Islamiya, a.k.a. Jemaah Islamiah; a.k.a. Jamaah Islamiyah; a.k.a. Jama'ah Islamiyah; Other information: The network in Southeast Asia. Founded by the late Abdullah Sungkar;

67. Lajnat Al Daawa Al Islamiya (LDI);

68. Lashkar I Jhangvi (LJ);

69. Libyan Islamic Fighting Group;

70. Makhtab Al-Khidamat/Al Kifah;

71. Mamoun Darkazanli Import-Export Company (a.k.a. Darkazanli Company, a.k.a. Darkazanli Export-Import Sonderposten); Address: Uhlenhorsterweg 3411 Hamburg, Germany;

72. Miga-Malaysian Swiss, Gulf and African Chamber (f.n.a. Gulf Office Assoc. Per Lo Sviluppo Comm. Ind. E Turis; f.n.a. Fra Gli Stati Arabi Del Golfo E La Svizzera); Address: Via Maggio 21, 6900 Lugano TI, Switzerland;

73. Moroccan Islamic Combatant Group (a.k.a Groupe Islamique Combattant Marocain;

74. Nada International Anstalt; Address: Vaduz, Liechtenstein; Alt. Address: c/o Asat Trust reg.

75. Nada Management Organization SA (f.k.a. Al Taqwa Management Organization Sa); Address: Viale Stefano Franscini 22, Ch–6900 Lugano Ti, Switzerland;

76. NASCO Business Residence Center SAS DI Nasreddin Ahmed Idris EC; Address: Corso Sempione 69, 20149 Milan, Italy;

77. NASCO Nasreddin Holding A.S.; Address: Zemin Kat, 219 Demirhane Caddesi, Zeytinburnu, Istanbul, Turkey;

78. NASCOSERVICE S.R.L.; Address: Corso Sempione 69, 20149 Milan, Italy;

79. NASCOTEX S.A. (a.k.a. Industrie Generale De Filature Et Tissage; a.k.a. Industrie Generale De Textile); Address: KM 7 Route de Rabat, BP 285, Tangiers, Morocco; Alt. Address: KM 7 Route de Rabat, Tangiers, Morocco;

80. Nasreddin Company NASCO SAS DI Ahmed Idris Nasreddin EC; Address: Corso Sempione 69, 20149 Milan, Italy;

81. Nasreddin Foundation (a.k.a. Nasreddin Stiftung); Address: c/o Rechta Treuhand-Anstalt, Vaduz, Liechtenstein;

82. Nasreddin Group International Holding Limited (a.k.a. Nasreddin Group International Holdings Limited); Address: c/o Arthur D. Hanna & Company; Alt. Address: 10 Deveaux Street, Nassau, Bahamas; Alt. Address: P.O. Box N–4877, Nassau, Bahamas;

83. Nasreddin International Group Limited Holding (a.k.a. Nasreddin International Group Ltd. Holding); Address: c/o Rechta Treuhand-Anstalt, Vaduz, Liechtenstein; Alt. *Address:* Corso Sempione 69, 20149 Milan, Italy;

84. Parka Trading Company; Address: P.O. Box 3313, Deira, Dubai, UAE;

85. Rabita Trust; Address: Room 9a, 2nd Floor, Wahdat Road, Education Town, Lahore, Pakistan; Alt. Address: Wares Colony, Lahore, Pakistan;

86. Red Sea Barakat Company Limited; Address: Mogadishu, Somalia; Alt. Address: Dubai; UAE;

87. Revival of Islamic Heritage Society (RIHS); (a.k.a. Jamiat Ihia Al-Turath Al-

Islamiya, a.k.a. Revival of Islamic Society Heritage on the African Continent, a.k.a. Jamia Ihya ui Turath) Address: Pakistan; Alt. Address: Afghanistan; Other information: Only the Pakistan and Afghanistan offices of this entity will be designated;

88. Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs (RSRSBCM); (a.k.a. Riyadus-Salikhin Reconnaissance and Sabotage Battalion, a.k.a. Riyadh-as-Saliheen, a.k.a. The Sabotage and Military Surveillance Group of the Riyadh al-Salihin Martyrs, a.k.a. Firqat al-Takhrib wa al-Istitla al-Askariyah li Shuhada Riyadh al-Salihin;

89. Salafist Group for Call and Combat/GSPC (a.k.a. Le Groupe Salafiste Pour La Prediction et le Combat);

90. Somali International Relief Organization; Address: 1806 Riverside Avenue, 2nd Floor, Minneapolis, Minnesota;

91. Somali Internet Company; Address: Mogadishu, Somalia;

92. Somali Network Ab; Address: Hallybybacken 15, 70 Spanga, Sweden;

93. Special Purpose Islamic Regiment (SPIR) (a.k.a. The Islamic Special Purpose Regiment, a.k.a. The al-Jihad-Fisi-Sabililah Special Islamic Regiment);

94. Tunisian Combatant Group (a.k.a. Groupe Combattant Tunisien);

95. Ummah Tameer E-Nau (UTN); Address: Street 13, Wazir Akbar Khan, Kabul, Afghanistan; Alt. Address: Pakistan;

96. Wafa Humanitarian Organization (a.k.a. Al Wafa, a.k.a. Al Wafa Organization; a.k.a. Wafa Al-Igatha Al-Islamia); Address: Jordan House No. 125, Street 54, Phase II Hayatabad, Peshawar, Pakistan; Alt. Address: Saudi Arabia; Alt. Address: Kuwait; Alt. Address: UAE;

97. Youssef M. Nada; Address: Via Riasc 4, Ch–6911 Campionie D'Italia I, Switzerland;

98. Youssef M. Nada & Co. Gescellschaft M.B.H.; Address: Kaertner Ring 2/2/5/22, 1010 Vienna, Austria.

Dated: August 13, 2003.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 03–21790 Filed 8–22–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4456]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty-three letters.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202–663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: August 18, 2003.

Terry L. Davis,

Acting Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs.

U.S. Department of State

Washington, DC 20520,
May 28, 2003.

The Honorable Henry J. Hyde, *Chairman, Committee on International Relations, House of Representatives.*

Dear Mr. Chairman: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Japan for the production of AN/ARA–50 Automatic Direction Finder for end-use by the Japanese Defense Agency (JDA) for use on various aircraft in the Japanese inventory.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 040–03.

U.S. Department of State

Washington, DC 20520,
July 24, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the development of 155mm artillery ammunition resulting from the merging of the U.S. Army XM982 Excalibur Guided Projectile and the Swedish Trajectory Correctible Munition Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 060–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the manufacture of Rate Gyros in Sweden for the export to, and end-use by, the Indian Army in the fire control system of the ARJUN Main Battle Tank.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 021–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense articles and assistance to support the sale of the Sensor Fused Weapon to the United Arab Emirates Air Force and Air Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 048–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the overseas launch of two commercial communications satellites, either from Pacific/International waters or from French Guiana.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 050–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense articles, and assistance necessary to provide support and maintenance of the T–6A–1 Aircraft for the NATO Flying Training in Canada Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 057–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification concerns exports of technical data and defense services for delivery of the Estrela do Sul commercial communications satellite to Brazil.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 058–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the installation of ''Group A'' modifications for the Israeli Ministry of Defense's Compact Early Warning System (CAEW) Program, with involvement by the Government of Singapore.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 059–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to Turkey of technical data and assistance for the manufacture, testing and repair of Generation II and Generation III Night Vision Systems for sale to the Turkish Ministry of Defense and return to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 061–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to United Kingdom of technical data and defense services for the design, development, manufacture, testing and delivery of Specified WR–21 Intercooled Recuperated Gas Turbine engine components for possible

use in Surface Ship propulsion systems of the United States, United Kingdom, France and Italy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 062–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the manufacture of a Drogue Rocket Motor and Propellant for end use in an aircraft ejection seat for the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 066–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Haste, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Brazil of technical data and defense services to support the launching of a satellite into orbit.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 068–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Haste, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major defense equipment and defense articles in the amount of $25,000,000 or more.

The transaction contained in the attached certification involves the export to Turkey of two Model S–70A helicopters and one lot of spare parts and ground support equipment to fulfill the helicopter mission requirement of the Special Aviation Regiment Command of the Government of Turkey.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 070–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense articles, and assistance necessary to provide support and manufacture of hydraulic pumps, motors, and control systems for military aircraft and defense applications for end-use by the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 071–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Japan to support the sale of Longbow Apache helicopter to the Government of Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 072–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 of more.

The transaction described in the attached certification involves the production of applique (reactive) armor for the U.S. Army's Bradley Fighting Vehicle using Israeli design and production technology.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 073–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $25,000,000 or more.

The transaction contained in the attached certification involves the export to Greece of five Phalanx Close-In Weapon System Block 0 to 1A upgrades to support the Hellenic Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 074–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major defense equipment and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the temporary export of one AMC 10 and one AMC 11 Commercial Communications Satellite with high purity hydrazine fuel, nitrogen tetroxide oxidizer, ground support and test equipment to Russia. The AMC 10 and AMC 11 are geo-stationary direct broadcast satellites, and will be launched from Baikonur Cosmodrome aboard a Proton M/Breeze M launch vehicle. After launch and separation from the launch vehicle, the satellites are considered returned to the U.S.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 076–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Japan for the manufacture of Propellant Actuated Devices utilized in Crew Escape Systems for the T–4 Aircraft for end-use by the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 077–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Japan to continue supporting the manufacture and assembly of S–70B (SH–60J/K) helicopters (minus avionics and engines) with related support equipment and parts for sale to the Japanese Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 079–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Japan to continue supporting the manufacture and assembly of S–70A (UH–60J) helicopters (minus avionics and engines) with related support equipment and parts for sale to the Japanese Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 080–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5,984 bolt-action and lever-action centerfire sporting rifles for commercial resale in Canada.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 082–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense

articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Taiwan to support the manufacture and maintenance of GRC–171, RT–1272F and/or RT 1272H Ultra High Frequency Receiver Transmitters for Taiwan's Ministry of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 083–03.

[FR Doc. 03–21678 Filed 8–22–03; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 4457]

Determination: Imposing Conditions and Restrictions on the Cuban Interests Section and Its Personnel with Respect to Acquisition and Disposition of Motor Vehicles in the United States

Summary

The United States Interests Section of the Embassy of Switzerland in Havana, Cuba (''the U.S. Interests Section'') is the mission through which the U.S. communicates with the Government and people of Cuba. The Cuban Government's counterpart mission in the United States is the Cuban Interests Section of the Embassy of Switzerland in Washington. For some time, the Cuban Government has imposed a series of impediments, obstructions, denials of service, and unjustifiable costs upon the functioning of the U.S. Interests Section and living conditions of the Interests Section's employees and dependents. The Foreign Missions Act of 1982 as amended (22 U.S. Code 4301, *et. seq.*) provides the domestic legal authority for responding to these restrictions by imposing reciprocal measures such as those set out in this Determination.

Among the many areas in which Cuban authorities impose undue restrictions on the U.S. Interests Section and its personnel is that of motor vehicles. Specifically, Cuban authorities impose a variety of restrictions and impediments which have the net effect of making it inordinately difficult, if not altogether impossible to either purchase a new vehicle or resell a used one in Cuba.

To enable the U.S. Government to respond effectively to the situation described above, as well as to create for the Government of Cuba an incentive to improve the conditions it imposes upon the U.S. Interests Section, the Department of State is hereby invoking its authorities under the Foreign Missions Act to impose a series of reciprocal terms and conditions on the Cuban Interests Section in Washington, DC with respect to motor vehicles. The primary effect of these terms and conditions, which are spelled out in the text below, is to restrict the ability of the Cuban Interests Section and its personnel to purchase, lease, or sell any vehicle in the United States.

It should be noted that, upon publication of this Determination in the **Federal Register**, or upon actual notice to any party, whichever is the earlier, it will be unlawful for any person or business subject to the jurisdiction of the United States to act in a manner contrary to the terms and conditions specified below.

Persons Affected by This Action

This Determination applies primarily to the Cuban Interests Section of the Embassy of Switzerland in Washington, DC, its personnel, and the family members thereof. However, it also applies to any person subject to the jurisdiction of the United States, whether natural person, business, or other entity of any sort, that intends to sell or lease a motor vehicle to, or purchase a motor vehicle from the Cuban Interests Section or its personnel.

Legal Authority

The terms and conditions promulgated by this Determination are done so pursuant to the Foreign Missions Act of 1982, as amended, 22 U.S.C. 4301 *et seq.* (''the Act''). The Act at section 4304 authorizes the Secretary to provide ''benefits'' to foreign missions in the United States and to impose certain terms and conditions upon the provision of such benefits, if such action is reasonably necessary to achieve a statutory purpose identified in the act, including the interests of diplomatic reciprocity. The term ''benefits'' is defined in the Act at section 4302 to include any of a number of specifically enumerated goods and services, as well as ''any other benefits as the Secretary may designate.'' 22 U.S.C. 4302(a)(1).

Pursuant to Department of State Delegation of Authority No. 214, section 14 (September 20, 1994), the authorities that the Act vests in the Secretary of State were delegated by the Secretary to the Assistant Secretary of State for Diplomatic Security, who also functions as Director of the Office of Foreign Missions.

Designation of Benefits, Findings, and Specific Determinations

Pursuant to the authority vested in me by and through the above-cited provisions of law and Designation of Authority, I hereby find and determine as follows:

(1) *Definitions:* Pursuant to the authorities contained in the Act, including the discretion contained at 22 U.S.C. 4302(b) to determine the meaning and applicability of the terms used in section 4301(a), I hereby determine that, for the purposes of this Determination, the following definitions shall apply:

(a) ''Cuban Interests Section'' shall mean the Cuban Interests Section of the Embassy of Switzerland in Washington, DC, including its personnel, and any dependent of such personnel, forming part of the household thereof;

(b) ''motor vehicle'' shall mean any motorized device intended for the purpose of transporting individuals on public streets and highways;

(c) U.S. person shall mean any natural or corporate person or entity physically present within the United States, regardless of nationality or immigration status, *except for* accredited members of foreign diplomatic or consular missions in the United States, and their accredited dependents forming parts of their households, *provided that* the foregoing exclusion shall *not* apply to any employee of such a foreign mission, or any dependent thereof, who is a U.S. citizen, permanent resident alien, or a person regarded as permanently resident'' in the U.S., pursuant to the policies of the Department of State in implementing the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations;

(d) ''acquisition'' shall mean the transfer by any U.S. person whatsoever to the Cuban Interests Section of any interest in a motor vehicle, by any method or means including, but not limited, to purchase, lease, loan, gift, hypothecation, or devise; and

(e) ''disposition'' shall mean the transfer by the Cuban Interests Section to any U.S. person whatsoever of any interest in a motor vehicle by any method or means including, but not limited to, sale, lease, loan, gift, hypothecation, or devise, including sale for scrap or salvage.

(2) *Designation of Benefits:* Pursuant to 22 U.S.C. 4302(a)(1), which authorizes the Secretary, or his

delegatee, to designate as a ''benefit'' under the Act any additional good or service beyond those enumerated in section 4302(a)(1)(A)–(G), I hereby designate as a benefit the privilege of disposing of a motor vehicle to a U.S. person within the United States. This designation of a benefit shall, as of this date, apply to all diplomatic and consular missions accredited to the United States. It is noted that the acquisition of a motor vehicle is already encompassed within the statutory designation of a ''benefit'', pursuant to the existing definitions in 22 U.S.C. 4301(a)(1)(C), ''transportation''.

(3) Based upon the facts and circumstances set forth in the Summary section above, I hereby find that with respect to the acquisition and disposition of motor vehicles, the Cuban Interests Section in Washington, its personnel, and their dependents enjoy significantly more favorable treatment than do the U.S. Interests Section in Havana, its personnel, and their dependents.

(4) I further find that, in the area of motor vehicles, the Cuban Government's treatment of the U.S. Interests Section in Havana, its personnel, and their dependents imposes additional undue and unjustifiable costs on the operation of the United States Interests Section in Havana; that it creates a source of dispute in relations between the United States and Cuba; and that the persistence of such an imbalance in the treatment of United States and Cuban diplomatic personnel in each other's state is contrary to the interests of the United States.

(5) *Determination To Deny Benefits:* In light of the findings discussed in Sections 3 and 4 above and pursuant to the statutory requirements and purposes of the Act, I hereby determine that imposition of the following terms and conditions on the acquisition and disposition of motor vehicles by or on behalf of the Cuban Interests Section in Washington is necessary on the basis of reciprocity:

(a) *Acquisitions of Vehicles:* The Cuban Interests Section shall be denied the benefit of acquiring any motor vehicle in the United States, subject only to the following exceptions:

(i) The rental of a vehicle from an established auto rental business, for a period not to exceed thirty (30) days;

(ii) The direct, duty-free importation of a vehicle from a vendor located outside the United States, utilizing the services of a manufacturer's authorized dealer, *provided that* such vehicle is less than four years old from date of manufacture and complies fully with all applicable Federal safety requirements. In order to be eligible for this exclusion, the acquisition may not be made from any pre-existing dealer stock, and the ownership and importation documentation must clearly indicate the Cuban Interests Section as the consignee/transferee of said vehicle;

(iii) The duty-free importation into the United States from abroad by the Cuban Interests Section of any motor vehicle, the pre-existing ownership of which was already in the hands of the Government of Cuba, any employee thereof, or any dependent of such employee forming part of the employee's household, provided that such vehicle is less than four years old from date of manufacture and complies fully with all applicable Federal safety requirements;

(iv) The continued ownership by the Cuban Interests Section of any vehicles that are owned as of the effective date hereof;

(v) The continued retention and use, until and not beyond the expiration of the lease term, of any motor vehicle leased by the Cuban Interests Section as of the effective date hereof;

(vi) The purchase by the Cuban Interests Section of a motor vehicle from any accredited diplomatic or consular mission in the United States, or any accredited member of such a mission, or accredited dependent thereof, enjoying privileges and immunities in the United States pursuant to international law, provided that such transaction shall constitute a bona fide arms-length purchase not entered into for purposes of collusion or evasion of the general prohibition on vehicle acquisitions being imposed by this Determination. For purposes of ascertaining the bona fide nature of any such acquisition, it shall be presumed that the acquisition of any vehicle which was registered in the name of a foreign mission or accredited member or dependent thereof for longer than 120 days satisfies the requirements of a bona fide acquisition. The present exclusion, however, shall not apply to the purchase of vehicles currently leased by the Cuban Interests Section, its members, or their dependents.

(vii) The acquisition of any motor vehicle by and through the Department of State's Office of Foreign Missions.

(b) *Dispositions of Vehicles:* The Cuban Interests Section shall likewise be denied the benefit of disposing of any motor vehicle in the United States, subject only to the following exceptions:

(i) The return of any rental vehicle to the auto rental entity concerned;

(ii) The return of any prior leased vehicle to the dealership concerned;

(iii) The sale of any vehicle to any diplomatic or consular mission to the United States, any accredited member thereof, or any accredited dependent forming part of the household of such member, provided that such member or dependent is not a ''U.S. person'' as defined in Section 1(C), above; and

(iv) The sale of any vehicle by and through the Department of State's Office of Foreign Missions.

(c) *No Restriction on Exports or Imports of Vehicles:* Nothing in this Determination shall in any way operate to limit or restrict the right of the Cuban Interests Section, its personnel, and dependents thereof to import or export motor vehicles for mission or personal use from or to sources outside the United States.

(6) *Waiver of Recourse:* Pursuant to the Act at section 4304(d) and the Delegation of Authority thereunder, I hereby find and determine that, for the purposes of implementing the present restrictions on motor vehicle benefits, it is reasonably necessary in order to achieve the purposes set forth in the Act at § 4304, to require that the acceptance and use of all motor vehicle license tags issued by the Office of Foreign Missions to the Cuban Interests Section be conditioned, consistent with U.S. international obligations, as follows:

(a) The Cuban Interests Section, shall waive any recourse that the Interests Section, its agents or assigns may have in U.S. courts or administrative tribunals against any person or party with respect to any past, present, or future motor-vehicle-related transaction, whether such transaction is contracted for or has actually been concluded.

(b) Pursuant to the Act at 22 U.S.C. 4304(d) of the Act, I hereby designate the Deputy Director of the Office of Foreign Missions to be the agent for the Cuban Interests Section for purposes of effectuating such a waiver of recourse.

(c) The requirement for such waiver of recourse shall constitute a condition both as regards the continued use of license tags previously issued to the Cuban Interests Section as well as the acceptance and use of license tags in the future.

(7) *Enforcement:* Pursuant to the Act at 22 U.S.C. 4311, provision to the Cuban Interests Section of any motor vehicle-related benefit contrary to the terms and conditions set forth above shall be unlawful. The United States is authorized to bring legal action to obtain compliance with the aforementioned terms and conditions.

(8) *Date of Effect:* The provisions of this Determination shall take effect upon the earlier of (a) its publication in

the **Federal Register**; or (b) actual notice to any party or person affected hereby.

(9) Publication of this Determination in the **Federal Register** constitutes notice to persons subject to the jurisdiction of the United States that terms and conditions on the acquisition and disposition of vehicles by the Cuban Interests Section are hereby imposed. Compliance with such terms and conditions are required by the Act. Persons wishing clarification as to the applicability of this Determination may contact the Office of Foreign Missions, U.S. Department of State, Washington, DC 20520; or by telephone: (202) 647–4554.

Dated: August 8, 2003.

Francis X. Taylor,

Assistant Secretary of State for Diplomatic Security and Director, Office of Foreign Missions, Department of State.

[FR Doc. 03–21677 Filed 8–22–03; 8:45 am]

BILLING CODE 4710–43–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1547).

TIME AND DATE: 9 a.m. (EDT), August 27, 2003; TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on July 30, 2003.

New Business

A—Budget and Financing

A1. Rate change and rate adjustment.

A2. Approval of short-term borrowing from the United States Treasury.

C—Energy

C1. Contract with Tool Smith Company, Inc., for purchase, repair, and rental of power tools.

C2. Contracts with the following companies for construction/modification services for TVA's Facilities Management and River System Operations and Environment organizations: Raines Brothers, Inc.; Schaerer Contracting Company, Inc.; and Vega Corporation, all of Chattanooga, Tennessee; Commercial Contracting Company, Maryville, Tennessee; Stethen-Smith Construction Company, Knoxville, Tennessee; Johnson Contractors, Inc., and Cates & Puckett Construction Company, Inc., both of Muscle Shoals, Alabama; B. H. Craig Construction Company, Inc., Florence, Alabama; Morsey, Inc., Calvert City, Kentucky; and M. P. Lawson Construction, Inc., Paducah, Kentucky.

E—Real Property Transactions

E1. Public auction sale of approximately 1.6 acres of land adjacent to the Singleton Laboratory site on Fort Loudoun Reservoir in Blount County, Tennessee, Tract No. XFL–135.

E2. Abandonment of certain transmission line easement rights affecting approximately 23.0 acres of land, Tract Nos. KDHR–2, KDHR–4, and KDHR–5, to Vulcan Materials, in exchange for transmission line easement rights affecting approximately 24.6 acres of land in Livingston County, Kentucky, Tract No. 2KDHR–1.

E3. Abandonment of certain transmission line easement rights affecting approximately 12.8 acres of land, Tract Nos. WGFL–2, WGFL–3, WGFL–4, TRF–12, and TRF–13, to BP Amoco Chemical Company, in exchange for transmission line easement rights affecting approximately 39.14 acres of land in Morgan County, Alabama, Tract No. MECT–1.

E4. Grant of a 30-year term public recreation easement for use as a public park to the City of Stevenson, Alabama, affecting approximately 122 acres of land on Guntersville Reservoir in Jackson County, Alabama, Tract No. XTGR–83RE.

E5. Grant of permanent and temporary construction easements to the State of Tennessee for a highway improvement project affecting approximately .53 acre of land on the Norton Hill Microwave Repeater Station site in Madison County, Tennessee, Tract No. XTWJRS–1H.

E6. Grant of a permanent easement to the State of Tennessee for a highway improvement project affecting approximately .4 acre of land on Watts Bar Reservoir in Roane County, Tennessee, Tract No. XTWBR–144H.

F—Other

F1. Designation of Edwin W. Small and Michael L. Wills as Assistant Secretaries of TVA.

F2. Approval to file condemnation cases to acquire easements and rights-of-way for a TVA power transmission line project affecting the Leake-Singleton Transmission Line in Leake County, Mississippi.

Information Items

1. Approval to enter into a financial arrangement associated with a call provision which TVA has on its 1993 Series F Power Bonds and for delegations to take related actions.

2. Approval of the issuance, sale, and delivery of TVA Power Bonds.

3. Approval of the appointment of John M. Hoskins to the Board of Directors of the TVA Retirement System.

4. Approval of a contract with KEMA, Inc., to provide project management and engineering support in connection with TVA's Power System Optimization Project.

5. Approval of an amendment to the Business Practice entitled, ''The Acquisition and Disposal of Fossil Fuels and Related Transportation and Storage.''

6. Sale of a permanent easement to Kentucky Utilities Company for a 69kV double circuit transmission line, affecting approximately 4.47 acres of land on Kentucky Reservoir Dam Reservation in Livingston County, Kentucky, Tract No. XGIR–939T.

7. Approval to file condemnation cases to acquire easements and rights-of-way for TVA power transmission line projects affecting the Batesville-Blue Goose Transmission Line in Panola and Tate Counties, Mississippi, and the John Sevier-Alcoa Loop into State Route 160 Substation Transmission Line in Hamblen County, Tennessee.

8. Approval of a revised Business Practice 12 entitled, ''Legal Representation.''

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: August 20, 2003.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 03–21726 Filed 8–21–03; 10:36 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Proposed United States–Bahrain Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to initiate negotiations on a free trade agreement between the United States and Bahrain,

request for comments, and notice of public hearing.

SUMMARY: The United States intends to initiate negotiations with Bahrain on a free trade agreement. The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the United States Trade Representative (USTR) in amplifying and clarifying negotiating objectives for the proposed agreement and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as their testimony, by October 17, 2003. A hearing will be held in Washington, DC, beginning on November 5, 2003 and will continue as necessary on subsequent days. Written comments are due by noon, November 17, 2003.

ADDRESSES: Submissions by electronic mail: *FR0092@ustr.gov* (notice of intent to testify and written testimony); *FR0093@ustr.gov* (written comments). Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. (*See* requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475. All other questions should be directed to Jason Buntin, Director for Western Europe and Middle East Affairs at (202) 395–3320.

SUPPLEMENTARY INFORMATION:

1. Background

Under section 2104 of the Trade Act of 2002 (Trade Act) (19 U.S.C. 3804), for agreements that will be approved and implemented through trade promotion authority (TPA) procedures, the President must provide the Congress with at least 90 days written notice of his intent to enter into negotiations and must identify the specific objectives for the negotiations. Before and after the submission of this notice, the President must consult with appropriate Congressional committees and the Congressional Oversight Group (COG) regarding the negotiations. Under the Trade Act of 1974, as amended, the President must (i) afford interested persons an opportunity to present their views regarding any matter relevant to any proposed agreement, (ii) designate an agency or inter-agency committee to hold a public hearing regarding any proposed agreement, and (iii) seek the advice of the U.S. International Trade Commission (ITC) regarding the probable economic effects on U.S. industries and consumers of the removal of tariffs and non-tariff barriers on imports pursuant to any proposed agreement.

On August 4, 2003, after consulting with relevant Congressional committees and the COG, the USTR notified the Congress that the President intends to initiate free trade agreement negotiations with Bahrain and identified specific objectives for the negotiations. In addition, the USTR has requested that the ITC provide its advice on probable economic effects no later than December 13, 2003. This notice solicits views from the public on these negotiations and provides information on a hearing that will be conducted pursuant to the requirements of the Trade Act of 1974.

2. Public Comments and Testimony

To assist the Administration as it continues to develop its negotiating objectives for the proposed agreement, the Chairman of the TPSC invites written comments and/or oral testimony of interested persons at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of Bahrain, any concession that should be sought by the United States, or any other matter relevant to the proposed agreement. The TPSC invites comments and testimony on all of these matters and, in particular, seeks comments and testimony addressed to:

(a) General and commodity-specific negotiating objectives for the proposed agreement.

(b) Economic costs and benefits to U.S. producers and consumers of removal of tariffs and non-tariff barriers to U.S.-Bahrain trade.

(c) Treatment of specific goods (described by Harmonized System tariff numbers) under the proposed agreement, including comments on

(1) product-specific import or export interests or barriers,

(2) experience with particular measures that should be addressed in the negotiations, and

(3) in the case of articles for which immediate elimination of tariffs is not appropriate, a recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure Bahraini origin of imported goods, and appropriate rules of origin for goods entering the United States under the proposed agreement.

(e) Existing Bahraini sanitary and phytosanitary measures and technical barriers to trade.

(f) Existing barriers to trade in services between the United States and Bahrain that should be addressed in the negotiations.

(g) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(h) Relevant investment issues that should be addressed in the negotiations.

(i) Relevant government procurement issues that should be addressed in the negotiations.

(j) Relevant environmental and labor issues that should be addressed in the negotiations.

Comments identifying as present or potential trade barriers laws or regulations that are not primarily trade-related should address the economic, political and social objectives of such regulations and the degree to which they discriminate against producers of the other country. At a later date, the USTR, through the TPSC, will publish notice of reviews regarding (a) the possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement, and (b) the impact of the proposed agreement on U.S. employment and labor markets.

A hearing will be held on November 5, 2003, in Rooms 1 and 2, 1724 F Street, NW, Washington, DC. If necessary, the hearing will continue on subsequent days. Persons wishing to testify at the hearing must provide written notification of their intention October 17, 2003. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraphs) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact the TPSC Executive Secretary. Interested persons, including persons who participate in the hearing, may submit written comments by noon, November 17, 2003. Written comments may include rebuttal points demonstrating

errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement).

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: ''United States-Bahrain Free Trade Agreement'' followed by (as appropriate) ''Notice of Intent to Testify,'' ''Testimony,'' or ''Written Comments.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-,'' and the file name of the public version should begin with the characters ''P-.'' The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''Business Confidential'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–21679 Filed 8–22–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 12, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 24, 2003 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0011.
Form Number: TTB F 5150.19.
Type of Review: Extension.
Title: Formula and/or Process for Articles Made with Specially Denatured Spirits.
Description: TTB F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. TTB uses the information provided on the form to insure the manufacturing formulas and processes conform to the requirement of 26 U.S.C. 5273.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 2,683.
Estimated Burden Hours Per Respondent: 54 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,415 hours.

OMB Number: 1513–0012.
Form Number: TTB F 5150.186.
Type of Review: Extension.
Title: User's Report of Denatured Spirits.
Description: The information on TTB F 5150.18 is used to pinpoint unusual activities in the use of specially denatured spirits. The form shows a summary of activities at permit premises. TTB examines and verifies certain entries on these reports to identify unusual activities, errors and omissions.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 2,765.
Estimated Burden Hours Per Respondent: 18 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 830 hours.

OMB Number: 1513–0029.
Form Number: TTB F 5120.20.
Type of Review: Extension.
Title: Certification of Tax Determination—Wine.
Description: TTB F 5120.20 supports the exporter's claim for drawback, as the producing winery verifies that the wine being exported was in fact taxpaid.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 500 hours.

OMB Number: 1513–0038.
Form Number: TTB F 5100.16.
Type of Review: Extension.
Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.
Description: TTB F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. TTB uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 300 hours.

OMB Number: 1513–0039.

Form Number: TTB F 5110.11.
Recordkeeping Requirement ID Number: TTB REC 5100/02.
Type of Review: Extension.
Title: Distilled Spirits Plants Warehousing Records, TTB REC 5110/02 and Reports, TTB F 5110.11.
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. It also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis.
Respondents: Business of other for-profit.
Estimated Number of Respondents/Recordkeepers: 230.
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.
Frequency of Response: Monthly.
Estimated Total Reporting/Recordkeeping Burden: 5,520 hours.

OMB Number: 1513–0045.
Recordkeeping Requirement ID Number: TTB REC 5110/06.
Type of Review: Extension.
Title: Distilled Spirits Plants—Excise Taxes.
Description: Collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 133.
Estimated Burden Hours Per Recordkeeper: 26 hours.
Frequency of Response: Weekly.
Estimated Total Recordkeeping Burden: 3,458 hours.

OMB Number: 1513–0046.
Form Number: TTB F 5110.38.
Type of Review: Extension.
Title: Formula for Distilled Spirits under the Federal Alcohol Administration Act (Supplemental).
Description: TTB F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is used by TTB to ensure that a product is made and labeled properly and to audit distilled spirits operations.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 200.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4,000 hours.

OMB Number: 1513–0049.
Form Number: TTB F 5110.43.
Recordkeeping Requirement ID Number: TTB REC 5110/4.
Type of Review: Extension.
Title: Distilled Spirits Plants (DSP Denaturation Records and Reports).
Description: The information collected is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 98.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 1,176 hours.

OMB Number: 1513–0056.
Recordkeeping Requirement ID Number: TTB REC 5110/5.
Type of Review: Extension.
Title: Distilled Spirits Plants (DSP)—Transaction and Supporting Records.
Description: Transaction records provide the source data for accounts of distilled spirits in all DSP operations. They are used by DSP proprietors to account for spirits and by TTB to verify those accounts and consequent tax liabilities.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 278.
Estimated Burden Hours Per Recordkeeper: 22 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 6,060 hours.

OMB Number: 1513–0080.
Recordkeeping Requirement ID Number: TTB REC 5110/12.
Type of Review: Extension.
Title: Equipment and Structures.
Description: Marks, signs and calibrations are necessary on equipment and structures at a distilled spirits plant for the identification of major equipment and the accurate determination of contents.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 281.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1513–0081.
Recordkeeping Requirement ID Number: TTB REC 5110/9.
Type of Review: Extension.
Title: Registration and Records of Vinegar Vaporizing Plants.
Description: Data is necessary to identify persons producing and using distilled spirits in the manufacture of vinegar and to account for spirits so produced and used.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1513–0082.
Recordkeeping Requirement ID Number: TTB REC 5170/7.
Type of Review: Extension.
Title: Alternate Methods of Procedures and Emergency Variations from Requirements for Exports of Liquors.
Description: TTB allows exporters to request approval of alternate methods from those specified in regulations under 27 CFR part 252. TTB uses the information to evaluate need, jeopardy to the revenue, and compliance with law. Also used to identify areas where regulations need change.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 500.
Estimated Burden Hours Per Recordkeeper: 24 minutes.
Estimated Total Recordkeeping Burden: 200 hours.

OMB Number: 1513–0084.
Form Number: None.
Type of Review: Extension.
Title: Labeling of Sulfites in Alcoholic Beverages.
Description: In accordance with our consumer protection responsibilities, as mandated by law, TTB requires label disclosure statements on all alcoholic beverage products released from U.S. bottling premises or customs custody that contain 10 parts per million or more of sulfites.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 4,787.
Estimated Burden Hours Per Respondent: 40 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,159 hours.

OMB Number: 1513–0106.
Form Number: None.
Type of Review: Extension.

Title: Recordkeeping Requirements for Importers of Tobacco Products.

Description: Importers of tobacco products are required to maintain records of physical receipts and disposition of tobacco products to be able to prepare TTB Form 5220.6 a monthly report. Importers of tobacco products will consist of both large and small businesses that operate for a profit.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1,500.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: Monthly.

Estimated Total Recordkeeping Burden: 1 hour.

Clearance Officer: Jacqueline White (202) 927–8930, Alcohol and Tobacco Tax and Trade Bureau, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–21534 Filed 8–22–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 15, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 24, 2003 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0004.

Form Number: PD F 1522.

Type of Review: Extension.

Title: Special Form of Request for Payment of U.S. Savings and Retirement Securities Where Use of a Detached Request is Authorized.

Description: Used to request payment of U.S. Savings Securities.

Respondents: Individuals or households.

Estimated Number of Respondents: 56,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 14,000 hours.

OMB Number: 1535–0005.

Form Number: PD F 3253.

Type of Review: Extension.

Title: Exchange Application for U.S. Savings Bonds of Series HH.

Description: Used by owners of Series EE/E bonds to request exchange for Series HH bonds.

Respondents: Individuals or households.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Per Respondent: 40 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 39,960 hours.

OMB Number: 1535–0006.

Form Number: PD F 2458.

Type of Review: Extension.

Title: Certificate of Entitlement to U.S. Savings Bonds/Checks after Administration of Estate.

Description: Used to establish entitlement of savings bonds after estate is settled.

Respondents: Individuals or households.

Estimated Number of Respondents: 7,000.

Estimated Burden Hours Per Respondent: 8 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 938 hours.

OMB Number: 1535–0008.

Form Number: PD F 1938.

Type of Review: Extension.

Title: Request for Reissue of U.S. Savings Bonds to Remove Name of One or More Living Registrants.

Description: Used to request reissue of savings bonds to remove one or more living registrants.

Respondents: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 460 hours.

OMB Number: 1535–0015.

Form Number: PD F 1022.

Type of Review: Extension.

Title: Report/Application for Relief of Loss, Theft or Destruction of Bearer Securities (Organizations).

Description: Used to obtain relief for lost, stolen or destroyed bearer securities.

Respondents: Business of other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 92 hours.

OMB Number: 1535–0016.

Form Number: PD F 1022–1.

Type of Review: Extension.

Title: Report/Application for Relief of Loss, Theft or Destruction of Bearer Securities (Individuals).

Description: Used to request relief because of the loss, theft or destruction of bearer securities.

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 92 hours.

OMB Number: 1535–0067.

Form Number: PD F 0974.

Type of Review: Extension.

Title: Affidavit of Forgery for United States Savings Bonds.

Description: Used to certify that signature was forged.

Respondents: Individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 750 hours.

OMB Number: 1535–0098.

Form Number: PD F 3062–4.

Type of Review: Extension.

Title: Claim for Relief on Account of the Nonreceipt of United States Savings Bonds.

Description: Application by owner to request a substitute bond in lieu of bond not received.

Respondents: Individuals or households.

Estimated Number of Respondents: 30,000.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 5,010 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public

Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–21535 Filed 8–22–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Government-Owned Invention Available for Licensing

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and 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. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Patrick Hallinan, Department of Veterans Affairs, National Cemetery Administration, Office of Field Programs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–273–5226 (this is not a toll-free number). Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: 60/458,966 ''Mower Trimmer Combination''.

Approved: August 14, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–21645 Filed 8–22–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
August 25, 2003

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 2, et al.

Hydroelectric Licensing Under the Federal Power Act; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 4, 5, 9, 16, 375 and 385

[Docket No. RM02–16–000; Order No. 2002]

Hydroelectric Licensing Under the Federal Power Act

July 23, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations pertaining to hydroelectric licensing under the Federal Power Act. The revisions create a new licensing process in which a potential license applicant's pre-filing consultation and the Commission's scoping pursuant to the National Environmental Policy Act (NEPA) are conducted concurrently, rather than sequentially. The revised rules also provide for increased public participation in pre-filing consultation; development by the potential applicant of a Commission-approved study plan; better coordination between the Commission's processes, including NEPA document preparation, and those of Federal and state agencies with authority to require conditions for Commission-issued licenses; encouragement of informal resolution of study disagreements, followed by dispute resolution, and schedules and deadlines.

The traditional licensing process is being retained, and modified by increased public participation and additional time before an application for water quality certification must be filed. No changes are being made to the Alternative Licensing Process (ALP).

For a period of two years from the date of issuance of the new rule, potential license applicants will be permitted to elect to use the traditional or the integrated licensing process, or to request authorization to use the ALP. Thereafter, the integrated process will become the default, and Commission approval will be required to use the traditional process or the ALP.

Under the revised rules, a new part 5 will be added to Title 18 of the Code of Federal Regulations and 18 CFR parts 2, 4, 9, 16, 375, and 385 will be amended to implement the new procedures.

EFFECTIVE DATE: The rule will become effective October 23, 2003.

FOR FURTHER INFORMATION CONTACT: John Clements, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8070.

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Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

I. Introduction

1. In this final rule, the Federal Energy Regulatory Commission (Commission) amends its regulations for licensing of hydroelectric power projects by establishing a new licensing process. The amendments are the culmination of efforts by the Commission, other Federal and state agencies, Indian tribes, licensees, and members of the public to develop a more efficient and timely licensing process, while ensuring that licenses provide appropriate resource protections required by the Federal Power Act (FPA) and other applicable laws.

2. The new licensing process is designed to create efficiencies by integrating a potential license applicant's pre-filing consultation with

the Commission's scoping pursuant to the National Environmental Policy Act (NEPA).[1] Highlights of this ''integrated'' process include:

- Increased assistance by Commission staff to the potential applicant and stakeholders during the development of a license application;
- Increased public participation in pre-filing consultation;
- Development by the potential applicant of a Commission-approved study plan;
- Opportunities for better coordination between the Commission's processes, including NEPA document preparation, and those of Federal and state agencies and Indian tribes with authority to require conditions for Commission-issued licenses;
- Encouragement of informal resolution of study disagreements, followed by study dispute resolution; and
- Issuance of public schedules.

3. In response to oral and written comments on the Notice of Proposed Rulemaking (NOPR),[2] public drafting workshops, and additional consultations with other Federal agencies, the following significant modifications have been made to the integrated process in the final rule:

- The content and distribution requirements for the Pre-Application Document (PAD) have been changed to make it less burdensome on potential applicants and easier for recipients to use;
- More time has been provided for potential applicants and participants to develop and informally resolve differences concerning study needs;
- A technical conference open to all participants has been added to the formal dispute resolution process;
- The draft license application has been replaced by a less burdensome ''Preliminary Licensing Proposal'';
- The deadline for filing a water quality certification application has been extended to 60 days after the ready for environmental analysis notice;
- The integrated process will become the default process in two years; in the interim license applicants may choose the integrated process or the traditional process as it is currently constituted; and
- We are withdrawing our proposal to permit a cooperating agency for NEPA document preparation to also intervene in the relevant proceeding.

We believe that the changes we are adopting will significantly improve the integrated licensing process.

4. We also proposed in the NOPR to modify the traditional process by increasing public participation in pre-filing consultation, adding mandatory, binding dispute resolution, and extending the deadline for filing an application for water quality certification. We have decided not to include mandatory, binding pre-filing dispute resolution, but are adopting the other proposals.[3]

5. To improve consultation with Indian tribes, we are establishing the position of tribal liaison, providing in the regulations for a meeting between the Commission and interested Indian tribes at the beginning of the licensing process, and issuing simultaneously with this final rule a Tribal Consultation Policy applicable to the hydroelectric, gas, and electric programs.

6. No changes will be made to the alternative licensing procedures (ALP).

7. The Commission appreciates the active participation and thoughtful comments provided by the industry representatives, Federal and state resource agencies, Indian tribes, and members of the public in this proceeding. We believe the provisions of the final rule, discussed below, fully take into consideration the interests of all of the stakeholders and will establish an integrated licensing process that serves the public interest.

II. Background

8. The background of this proceeding was set forth in detail in the NOPR, and need not be repeated here. Since the NOPR was issued on February 21, 2003, the Commission has held public and tribal regional workshops to hear and consider stakeholder concerns about the proposed rule, and to find stakeholder consensus on recommendations to resolve those concerns.[4] Written comments were due by April 21, 2003.[5] Thereafter, we held a four-day stakeholder drafting session from April 29, 2003 to May 2, 2003, at Commission headquarters. At the stakeholder drafting sessions, participants were divided into four groups: Studies, Overall Process, Dispute Resolution, and Tribal issues, with each group including members from all the major stakeholder groups. The goal of the drafting sessions was to develop consensus recommendations on final rule language.

9. Following the drafting sessions, the Commission staff held additional discussion and drafting sessions with other Federal agencies before preparing the final rule.

III. Discussion

A. Need for New Integrated Process Confirmed

10. Many commenters commended the Commission for undertaking the rulemaking and indicated that the proposed integrated licensing process holds strong promise of accomplishing its objectives.[6] The commenters also provided hundreds of general and specific recommendations regarding how the proposed rule might be improved. After careful review of these comments, we affirm the need for the proposed rule and conclude that we should finalize it with certain modifications discussed below.

11. A few commenters[7] question the need for an integrated process. They are not convinced that it will simplify matters or reduce the time needed for licensing, and think it is certain to be more expensive for license applicants. WPSR is disappointed that the rule does not resolve their concerns about the exercise by federal and state agencies of mandatory conditioning authority. WPSR adds that the integrated process will be overly burdensome for small projects and that the dispute resolution provisions and proposed change in the cooperating agencies policy unreasonably diminish the role of the applicant. SCE and Georgia DNR state that the objectives of the integrated process could be achieved by modifying the traditional process, the consensus-based ALP,[8] or both.[9] These concerns are addressed in the following pages.[10]

12. We are committed to making the integrated process a success. Potential applicants who choose this process during the transition period may rest assured that the Commission will

[1] 42 U.S.C. 4321, *et seq.*

[2] 68 FR 13988 (Mar. 21, 2003); IV FERC Stats. & Regs. ¶32,568 (Feb. 20, 2003).

[3] For the convenience of commenters on the proposed rule, a redline/strikeout version of the affected regulatory text will be posted on the hydroelectric page of the Commission's website.

[4] The regional workshops were held in Portland, Oregon; Sacramento, California; Charlotte, North Carolina; Manchester, New Hampshire; Milwaukee, Wisconsin; and Washington, D.C.

[5] Entities that filed comments in response to the NOPR are listed in the Appendix to the preamble. For administrative ease, the commenters' names are abbreviated in the preamble, as indicated on the Appendix. On April 21, 2003, the California Public Utilities Commission filed a notice of intervention. However, rulemaking proceedings do not have parties.

[6] Virginia DEQ, WGA, WPPD, Interior, PCWA, EPA, Advisory Council, VANR, WPPD, Alabama Power, AmRivers, PG&E, Long View, NHA.

[7] SCE, NEU, Xcel, Georgia DNR

[8] *See* 18 CFR 4.34(i).

[9] SCE's detailed recommendations for improvements to the traditional process are discussed in Section III.T.

[10] Some commenters, such as WPSR, state that the rulemaking should have focused on a perceived unreasonable exercise of authority by agencies with mandatory conditioning authority. As we explained in the NOPR, this is a matter that should be addressed elsewhere.

dedicate the resources necessary to meet our goals for the process. To this end, the Office of Energy Projects has established outreach and training teams to promote the integrated process and educate participants in its implementation.

13. It is also our intention to conduct an effectiveness study of the integrated process in order to quantify the resulting reductions in processing time and costs.

B. Number of Processes

14. The NOPR proposed to retain both the traditional process and the ALP in light of comments by industry that a single process is not suitable for all projects and that the integrated process and ALP might be too time constrained or resource intensive for small projects. We also proposed to retain the ALP in light of its demonstrated track record of reducing license application processing times and fostering settlement agreements.[11]

15. We discussed the concerns of environmental groups, and some agencies and Indian tribes, that multiple processes would confuse participants with modest resources, particularly those that rely on volunteers. We concluded that the benefits of having different processes that can be applied to differing circumstances outweighs this concern. We also proposed to require any potential applicant wishing to use the traditional process to obtain Commission authorization to do so, and to provide an opportunity for all stakeholders to comment on the request.[12]

16. Industry commenters and a few others continue to support retaining the traditional process and ALP. They state that flexibility is required by the diversity of project circumstances, issues, and stakeholders; the traditional process and ALP have both been shown to be effective under the right circumstances; the integrated process is too costly and labor-intensive for many small projects and for small stakeholders; and the integrated process is not suitable where stakeholders and the potential applicant are very polarized. They add that the integrated process is untested and that the traditional process needs to be retained as a backstop if an ALP or the integrated process break down.[13]

17. Agency and non-governmental organization (NGO) commenters continue overwhelmingly to favor one integrated process sufficiently flexible to accommodate the diverse circumstances of license applications. They, along with SCE, reiterate that the existing two processes are already confusing, making participants unclear about their rights and duties, and making it difficult for parties with few human and financial resources to effectively participate. A third process, they say, will make matters worse. Some also question the logic of retaining a traditional process which they say stakeholders agree does not achieve the goals of the integrated process.[14] Several note that one process would obviate the need for time in the process to comment on the potential applicant's process proposal.[15]

18. California adds that there is no reason to retain the traditional process because the information requirements and scope and level of analysis are essentially the same as those of the integrated process, so costs should be similar; that polarization is irrelevant if both processes have mandatory, binding study dispute resolution; and project size is no indicator that the issues will be relatively simple or few.

19. SCE also asserts that the revised traditional process, if supplemented by the PAD, more early identification of issues and study design, study request criteria, and study dispute resolution, would differ from the integrated process and the ALP only with respect to the timing of NEPA process. This, says SCE, would make the integrated process needless, so the Commission should just make appropriate modifications to the traditional process.

20. Upon review of the comments, we remain convinced that having three processes is the most effective means of ensuring that the licensing process used is suited to the circumstances of the project, consistent with our intention to reduce the time required for the process without sacrificing resource protection standards. The process selection for each licensing proceeding will be made at the outset, so stakeholders should not be confused about which process they are in. We designed the integrated process to show the steps clearly in sequence from beginning to end and to be as self-contained (*i.e.*, with a minimum of cross-referencing to parts 4 and 16) as is practicable. To the extent stakeholders are concerned about process ambiguities in the ALP, they can negotiate the terms of participation. The Commission staff also stands ready to assist in clearing up any remaining ambiguities about what the regulations may require.

21. We also disagree with those who imply that the traditional process never works well. About one third of traditional license process proceedings are concluded before the existing license expires. The most common reason for delay in the remaining cases is lack of state water quality certification. As discussed below,[16] the integrated licensing process addresses this by providing opportunities and inducements for water quality certification agencies and tribes to participate from the beginning of pre-filing consultation.

22. Some commenters recommend that we consider establishing a sunset provision to eliminate or phase out the traditional process, ALP, or both when the integrated process has become sufficiently established and fine-tuned in light of experience.[17] We agree this idea may have merit. It is our intention to conduct an ongoing review of the progress being made in realizing the goals of the integrated process. If it becomes clear in the future that the integrated process is substantially meeting these goals and the traditional process is not, then it may be appropriate to eliminate the traditional process at that time.

C. Pre-NOI Activity

1. Filing Date for NOI and PAD

23. In the NOPR we rejected California's recommendation that the regulations be modified to move the deadline date for the notification of intent to seek a license (NOI) forward to 6.5 years before license expiration because it would be inconsistent with our goal of developing a more timely process. We stated that in the great majority of cases, a license applicant should be able to complete the pre-filing aspects of the integrated process in the three and one-half year period provided for in the regulations.[18]

24. Several commenters request that we reconsider our position, and specifically authorize licensees to voluntarily issue the NOI and circulate

[11] 68 FR 13988 at p. 13991–992; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,698–699.

[12] The requirement for a consensus to support approval of a request to use the ALP would be unchanged. *See* 18 CFR 4.34(i).

[13] NHA, Idaho Power, EEI, WUWC, SCE, Alabama Power, NEU, WPPD, WPSC, Snohomish, CSWC, FWS, CHI, Maryland DNR, Minnesota DNR. NF Rancheria states that the rules should clarify what would happen if the ALP or integrated process break down, and that any change of process should consider impacts to participants other than the potential applicant.

[14] MDEP, HRC, CRITFC, Nez Perce.

[15] Wisconsin DNR, PFMC, CHRC, Whitewater, SC League, IRU, Interior, CRITFC, RAW, Georgia DNR, HRC.

[16] *See* Sections III.F, G, and M.2.

[17] HRC, AmRivers, Washington, RAW, AMC, NPS, Georgia DNR.

[18] 68 FR 13988 at pp. 13992–993; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,701.

the PAD prior to 5.5 years before license expiration.[19] They reiterate that the FPA requires only that the NOI be filed no later than five years before the license expires and that some cases simply take longer. They cite the diversity of stakeholder interests, development of complex study plans, and unpreventable gaps between approval of a study plan and commencement of studies owing to seasonal considerations and the time needed to negotiate contracts with consultants. They state that adding three to six months at the front end will, in many cases, permit an additional field season of studies before the application deadline, thus increasing the likelihood that the application will be complete when filed. They stress that the goal should be to conclude the licensing proceeding and put into place improved terms and conditions before an existing license expires, and that maintaining an unrealistic time frame for commencing the process will result in the continued issuance of unnecessary annual licenses.[20]

25. NHA and Longview suggest that an alternative would be to permit the applicant to issue the PAD before the earliest date the NOI can be filed if resource agencies and stakeholders approve. They state however that this is much less desirable because stakeholders could decline to participate before the NOI is filed, forcing the potential applicant to repeat steps already completed with some stakeholders after the NOI is filed.

26. These advocates of commencing the licensing process before the NOI is issued are correct that some proceedings will exceed 5.5 years, notwithstanding the best efforts of all participants. They base their comments however on experience under the traditional process, which lacks the crucial features of the integrated process designed to minimize delays. If all stakeholders work together in good faith, the integrated process should minimize the number of instances where a new license application proceeding cannot be concluded before the existing license expires by integrating pre-filing consultation and development of the Commission's NEPA document and resolving study disputes early in the process.

2. Advance Notice

27. In the NOPR we proposed to issue to licensees an advance notice of license expiration. This would be done sufficiently in advance of the NOI deadline date to ensure that the existing licensee is alerted to the requirements for the NOI, PAD, and any potential request to use the traditional process or ALP. We noted that because the advance notice is an administrative action which requires no action on the part of any other entity, and which will be undertaken regardless of the process selected, there is no need to include this action in the regulations. [21]

28. Some commenters state that the advance notice should be included in the regulations because it notifies stakeholders as well as the existing licensee. Barring that, some request publication of a written policy on when the notice will be issued and its contents.[22] Suggestions in this regard include reminding the licensee that seasonal study considerations may be relevant to timely application development [23] and giving directions to contact resource agencies and assemble a list of entities to be consulted and potential issues to address.[24] CHRC and Whitewater similarly recommend that the Commission issue public notice when the advance notice is issued.

29. There is no need to put the advance notice in the regulations. The Commission has for many years published in its annual report and annually in the **Federal Register** a table showing the projects for which the license will expire during the succeeding six years and providing essential information about each project's physical and geographical characteristics.[25] The Commission's annual report is posted on the Commission's Web site.

30. A written policy on the content of the notice would be superfluous. As stated above, the purpose of the notice is to alert licensees to the requirements for the NOI, PAD, and any potential request to use the traditional process or ALP. These requirements are found in the regulations.

31. Recommendations for when the advance notice should be made range from one to three years before the NOI deadline date.[26] We intend to issue the notice approximately 1.5 years before the NOI deadline date. This should provide adequate time for existing licensees to make decisions concerning process selection and to gather existing information for the PAD.

D. Process Selection

1. Default Process

32. The NOPR proposed to make the integrated process the default process. A potential applicant would have to request Commission approval to use the traditional process or ALP when it files the NOI and PAD.[27]

33. Licensee commenters question the need for a default process and Commission approval of the potential applicant's choice of the integrated and traditional process.[28] PG&E, SCE, and WUWC state that no rationale has been offered for eliminating the applicant's existing right to choose the traditional process and others say that applicants should not have to show good cause to use the traditional process because it has been tested and shown to be effective in many cases.[29] Licensee commenters also emphasize that the integrated process is untested, and that the ALP was formally adopted by the Commission only after several years of case-by-case experience based on requests for waiver of the of the traditional process requirements.

34. WPPD suggests that stakeholders will threaten to withhold support for the applicant's potential process proposal in order to pressure potential applicants into making other procedural or substantive concessions, and that there would be more certainty if potential applicants had unfettered process choice.

35. Several licensees state that the potential applicant has the most knowledge of the complexity, level of stakeholder involvement, and the resources available to itself and others, so the Commission should defer to its judgment.[30] Other reasons offered in support of applicant choice are that the applicant bears the cost of the process, a lack of choice will inhibit

[19] California, Long View, MWH, PG&E, VANR, MHW, NOAA Fisheries, Process Group. VANR states that the NOI deadline date should be moved to six years before the license expires.

[20] PG&E adds that in Order No. 513, Hydroelectric Licensing Regulations under the Federal Power Act, 54 FR at p. 31384 (June 2, 1989), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,854 (May 17, 1989), which promulgated the existing time frame for filing the NOI, the Commission specifically encouraged pre-NOI consultation. The rule we are promulgating today does not discourage pre-NOI activity. Indeed, the PAD cannot be prepared without it. Rather, we are declining to require provisions that could be construed to require or encourage consultation before the NOI is filed.

[21] 68 FR at pp. 13992–993; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,700–701.

[22] NOAA, HRC, NHA, NEU, CRITFC, Interior, SCE.

[23] PG&E.

[24] Wisconsin DNR.

[25] *See* 18 CFR 16.3.

[26] Wisconsin DNR, SCE.

[27] 68 FR at pp. 13992, 14009; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,699, 34,730.

[28] Troutman, Snohomish, WPPD, Idaho Power, EEI, Alabama Power, Xcel, NEU, WUWC, SCE, NHA. No commenter appears to advocate a change in the requirements for use of the ALP, and the Process Group at the drafting sessions agreed that the existing criteria are satisfactory.

[29] WUWC, Snohomish, EEI, SCE.

[30] NHA, EEI, SCE, Long View, PG&E, B&B.

commitment of the potential applicant to the success of the process, and the cooperation of stakeholders can be achieved without Commission approval.[31]

36. Several of these commenters suggest that if the integrated process is to be made the default, that it be done only after a 5–6 year test period, during which there would be a presumption that the applicant's choice is appropriate. If the potential applicant chooses the traditional process, proponents of the integrated process would have the burden of showing that the integrated process would be significantly better or significantly disadvantage non-applicant stakeholders. If, at the end of this period, the integrated process appeared successful, it would be made the default process, with any modifications needed in light of experience.[32] In this regard, AEP and GKRSE state that the goal should be to use the process that is likely to yield the best results, procedurally, economically and environmentally, and that if the integrated process appears to satisfy this goal, potential applicants and stakeholders will use it.

37. A few industry commenters assert that the traditional process, either in its current form or with the proposed modifications, should be the default because it has been tested by years of experience and is satisfactory in most cases.[33] They add that it works best for small projects, which are a substantial portion of licensed projects.[34]

38. Several non-industry commenters favor making the integrated process the default with the potential applicant's choice requiring Commission approval.[35] The Minnesota DNR, while not apparently objecting to the integrated process as the default, states that there should also be a means for other entities to oppose an applicant's election to use the default process.

39. We continue to think the integrated process should be the default because it addresses as fully as we can within the confines of the statutory scheme the problems that participants in licensing from every perspective have identified with the traditional process. It merges pre-filing consultation and the NEPA process, brings finality to pre-filing study disputes, and maximizes the opportunity for the Federal and state agencies to coordinate their respective processes.

40. The best means of gaining acceptance for the integrated process however is to demonstrate that it works. We agree with commenters that some period of transition is appropriate. Accordingly, we have decided that the integrated process should become the default process on July 23, 2005. During this two year period, potential license applicants will be able to select the integrated process or the traditional process as it currently exists, or request authorization to use the ALP. At the end of the two-year period, the integrated process will become the default process, and potential applicants will have to obtain approval to use the traditional process.

41. We disagree with those who believe we should defer to the potential applicant's process choice on the ground that it has the most relevant knowledge. The comprehensive development standard of the FPA requires us to consider all issues pertaining to the public interest and establishes important roles and responsibilities for other federal and state agencies. We also have a trust responsibility to Indian tribes. The appropriate process must be selected with the interests of these entities and other members of the public, not simply those of the potential applicant, in mind.

2. Standard for Approval of Traditional Process

42. The NOPR proposed to grant requests to use the traditional process upon a showing of ''good cause.''[36] Several commenters state that this standard should be replaced by specified criteria, or at least that certain factors should be considered before the Director acts on a request to use the traditional process.[37] Alabama Power and WUWC, however, state that ''good cause'' is sufficient if construed liberally and with deference to the potential applicant.

43. The recommended criteria predictably differ depending on whether they come from industry commenters or others. Industry commenters suggest that the traditional process should be readily approved for small projects with relatively few issues. This, they suggest, includes some or all of: a project operated in run-of-river mode; no substantial changes are proposed in operations or structures; there are no anadromous fish; generating capacity is modest; or the existing project boundary includes little or no land above the high water mark.[38] Other recommended criteria for approving the traditional process include where the potential applicant and stakeholders are too polarized to work well together;[39] if, all things considered, it appears likely that the licensing process can be completed before the license expires;[40] and the potential applicant thinks the integrated process would be too costly.[41]

44. Non-licensees contend that the bar for approval of the traditional process should be set high. Criteria for approval recommended by these commenters include: (1) A consensus favoring the traditional process;[42] (2) lack of opposition from any Federal or state agency;[43] (3) the public or resources affected by the project will benefit from using the traditional process compared to the integrated process;[44] (4) the traditional process will maximize coordination of all pertinent regulatory processes and more timely resolve potential disputes;[45] (5) it will be the most efficient process with the highest level of resource protection;[46] (6) the project does not have significant environmental impacts;[47] or (7) the

[31] NHA, EEI, SCE, Long View, PG&E, B&B, M&H.

[32] NHA, Long View, PG&E, B&B.

[33] Xcel, WPSR, Alabama Power. Other industry commenters, while not recommending the traditional process as a default, also assert that it generally works well. GKRSC, AEP, CHI, Long View, Consumers, WPSC.

[34] Approximately half of Commission-licensed projects are 5 MW or less.

[35] RAW, ADK, CHRC, Whitewater, SC League, IRU, California, AmRivers. PFMC recommends that approval of the applicant's process proposal should remain with the full Commission, rather than be delegated to the Director of the Office of Energy Projects. California states that an applicant may show good cause to use the traditional process, yet other reasons may exist to deny the request, so the regulation should read ''may'' approve, instead of ''shall.'' Any good cause determination will take account of any objections raised by commenters.

[36] Proposed 18 CFR 5.2(f)(5). The criteria for approval of the ALP would not change. Proposed 18 CFR 5.2(f)(5) states that requests to use the traditional process or ALP will be granted ''for good cause shown.'' NHA asserts that the good cause standard is something new and unnecessary as applied to the ALP. While the regulatory text of 18 CFR part 4, from which the requirements for support of a request to use the ALP were transposed, do not explicitly state that a good cause standard applies, it should be obvious that good cause is the minimum standard for Commission approval of any authorization not subject to a more specific standard. We are merely making explicit what is plainly implicit.

[37] Interior, PG&E, NF Rancheria, NPS, Washington, AmRivers, Wisconsin DNR, CHRC, Whitewater, NOAA Fisheries, HRC, SC League, TU, VANR, PFMC, AW/FLOW.

[38] GKRSC, AEP, CHI, Long View, Consumers, WPSC.

[39] NHA, Idaho Power, EEI, WUWC, SCE.

[40] Consumers.

[41] M&H.

[42] CHRC, Interior, Whitewater, NOAA Fisheries, AmRivers.

[43] HRC. HRC, consistent with its recommendation for one flexible process, would also apply these criteria to requests to use the ALP.

[44] SC League, Wisconsin DNR.

[45] TU, VANR.

[46] PFMC, HRC.

[47] NOAA Fisheries. California agrees that the bar for using the traditional process should be very

licensing is uncontroversial.[48] Others factors identified by Washington and American Rivers for consideration include the potential for time savings, benefits to the environment, and public participation needs.[49]

45. Regarding original license applications, Consumers contends that the traditional process is appropriate because there is likely to be little relevant data available, which will cause the information gathering and study period to be extended, which is incompatible with the compressed time frames of the integrated process. NOAA Fisheries states that the same circumstances cited by Consumers should bar an applicant from using the traditional process.

46. The Process Group agreed that the ''good cause'' standard is vague, but did not identify criteria that would favor or disfavor use of the traditional process. Instead, they identified various factors for the Director to consider in each case in light of the goal of a timely, well-informed decision that protects the public interest. These factors include:

- Project size;[50]
- Characteristics of the river basin, including the presence or absence of other dams;[51]
- The likely level of controversy, including disputes over studies;
- The level of involvement and interest by resource agencies, any expressed intent on their part to exercise applicable mandatory conditioning authority, and the anticipated resource issues, including ESA;
- Whether there are tribal issues;
- The physical characteristics of the project and known biological impacts of project operations;
- Stakeholder and tribal views on process choice;[52]
- Resource constraints on Commission staff and participants;
- Reasonableness of project costs;[53]
- Whether the potential applicant has a history of positive or negative relationships with stakeholders and Indian tribes; and
- The amount and usefulness of existing, relevant information.

47. Although there was general agreement in the Process Group about which factors should be considered, this does not reflect a consensus on how the factors should be considered. For instance, industry commenters tend to think small projects are better suited to the traditional process because they are likely to have fewer environmental impacts, be less controversial, and be less well able to bear the transaction costs of relicensing. Agencies, NGOs, and Indian tribes, tend to think project size is only coincidently related to environmental impacts and controversy, and view transaction costs as a cost of doing business and a much lower concern than development of a complete record and improvements in environmental protection.

48. This fundamental difference of viewpoints leads us to conclude that the Process Group approach, somewhat modified, is the most sensible approach to this issue. We conclude that five factors are most likely to bear on whether use of the traditional process is appropriate. These are: (1) Likelihood of timely license issuance; (2) complexity of the resource issues; (3) level of anticipated controversy; (4) the amount of available information and potential for significant disputes over studies, and (5) the relative cost of the traditional process compared to the integrated process. The more likely it appears from the participants' filings that an application will have relatively few issues, little controversy, can be expeditiously processed, and can be processed less expensively under the traditional process, the more likely the Commission is to approve such a request. In recognition of the uniqueness of licensing proceedings, participants who comment on requests to use the traditional process may identify other factors they think are pertinent to the proceeding in question.[54]

3. Timing Issues

49. The NOPR proposed to require a potential applicant to serve a copy of its request, if any, to use the traditional process or ALP on all affected resource agencies, Indian tribes, and members of the public likely to be interested in the proceeding, and to give appropriate newspaper notice to the general public. Responses would be due to the Commission within 15 days.[55]

50. Many commenters respond that this is insufficient time to respond on a matter of such importance.[56] We agree that additional time may be appropriate for this step because it relies in part on newspaper notice and occurs at the commencement of the proceeding. Accordingly, we have increased the time allowed to respond to these requests to 30 days.

E. Pre-Application Document

51. The NOPR concluded that NEPA scoping will be greatly assisted by the availability to the participants of as much relevant existing information as possible when scoping begins. To this end, we proposed to supplant the current requirements for existing licensees to make project information available to the public when the NOI is filed, and for all potential license applicants to provide an initial consultation document (ICD) to consulted entities during first stage consultation, with the PAD.[57]

52. The PAD should include all engineering, economic, and environmental information relevant to licensing the project that is reasonably available when the NOI is filed. It is a tool for identifying issues and information needs, including NEPA scoping, developing study requests and study plans, and providing information for the Commission's NEPA document. The PAD would be a precursor to Exhibit E, the environmental exhibit in the license application. In the integrated process, the PAD would evolve directly into a new Exhibit E that has the form and contents of an applicant-prepared draft NEPA document.[58]

53. The PAD proposal was widely supported, and many comments were received concerning the appropriate contents, format, and distribution requirements.[59]

1. In General

54. Industry commenters generally agree that the PAD is a good idea in principle, but that the requirements need to be significantly reduced to ensure that the contents are relevant to the licensing proceeding and useful to the participants. Some industry commenters believe the PAD requires significantly more information and a

high, but makes no specific recommendations in this regard.

[48] AW/FLOW.

[49] Washington, AmRivers.

[50] Also suggested by NF Rancheria and NPS.

[51] Also suggested by Wisconsin DNR.

[52] Also suggested by Washington and AmRivers.

[53] Also suggested by Washington, AmRivers, and PG&E.

[54] *See* 18 CFR 5.3(d)(1). PFMC states that this decision should be made by the Commission rather than delegated to the Office Director.

[55] Proposed 18 CFR 5.1(f).

[56] NPS, NYSDEC, Interior, AmRivers, Wisconsin DNR, Consumers.

[57] 68 FR at pp. 13993–994; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,699, 34,730.

[58] *See* proposed 18 CFR 5.16(b). Applicants using the traditional process would continue to use the existing Exhibit E in their license application, and applicants using the ALP could use the existing Exhibit E or file with their application in lieu thereof an applicant-prepared environmental analysis. As discussed in Section III.U.5, we are changing our policy to permit applicant using the traditional process to file an applicant-prepared environmental assessment.

[59] A great many specific recommendations regarding the detailed requirements of the PAD were filed. All of these have been considered, but it would be needless and impractical to discuss each comment individually.

higher level of effort than the existing public information and ICD requirements,[60] and suggest that the incremental burden on applicants is unnecessary.[61] Several commenters also indicate that much or all of the historical information currently required to be made available to the public is never requested and represents a needless burden and expense.[62]

55. Consumers recommends that we allow any applicant that uses the traditional process to meet only the existing public information and ICD requirements instead of filing the PAD. NEU makes the same recommendation for existing projects of 5 MW or less. Consumers also recommends that information requirements be made flexible to accommodate different types of projects; for instance, some data that is useful for unconstructed projects greater than 5 MW may not be needed to evaluate a smaller existing project. MWH and WPSR similarly indicate the PAD requirements should be reduced for small projects because of the asserted connection between small projects with minor impacts.

56. Various industry commenters also seek affirmation or clarification of our intention that only existing information relevant to project impacts is required, and that the scope of and level of effort to obtain existing data should be commensurate with project impacts.[63]

57. Resource agencies and NGOs support the PAD and state that a high quality PAD is essential to the success of the integrated process in light of the short time frames contemplated in the NOPR, and that an applicant's failure in this connection would interfere with the ability of other parties to timely and effectively participate in licensing.[64]

58. California agencies and a few other commenters believe that the PAD contents should not be limited to existing information, but should include all information needed to evaluate potential effects of project operations, and that the applicant should be required to conduct whatever studies or information searches are necessary to fill in any gaps in the existing information before the PAD is filed. They assert generally that NEPA scoping cannot be done unless there already exists a complete baseline of existing environmental data, and suggest that existing licensees should have acquired such data during the term of the existing license.[65]

59. HRC similarly states that the PAD should include a systematic discussion of the project's resource impacts, so that post-NOI information gathering and studies are minimal, even if that requires potential applicants to conduct environmental monitoring or original studies not required under the existing license.

60. Agency and NGO commenters generally recognize however that complete information on all resource impacts attributable to a project is unlikely to be available when the NOI is issued and the PAD is filed. These commenters recommend that potential applicants be subject to a due diligence standard with respect to obtaining existing information; that is, make a good faith effort to determine what relevant information is available and to obtain it.[66]

61. We agree that a due diligence standard will apply to the development of the PAD. The regulations we are adopting provide some guidance on what constitutes due diligence, but we are not able to provide a detailed definition. Rather, the determination of whether due diligence is exercised will have to be made on case-by-case basis.

2. PAD Contents, Format, and Distribution

a. Contents

62. There is a considerable gap between the industry and other commenters on the range and level of detail that should be required in the PAD. PG&E and Georgia Power for instance, suggest that instead of specific requirements, the content requirements should be stated as broad subject matter categories, with information required to the extent reasonably known, available, and applicable. Troutman similarly recommends that specific requirements in the regulations be replaced by a policy statement or guidance document from which applicants would determine what information is relevant and appropriate.

63. In contrast, agencies and NGOs generally prefer explicit and detailed requirements. For example, Wisconsin DNR and VANR recommend that the PAD include the original license order and all amendment orders and management plans; any document that explains the existing license requirements; a layman's summary of all of the license and management plan requirements; and a list of every entity consulted by the potential applicant prior to filing the NOI and the issues those entities raised. Another recommendation is that the PAD include study plans for restoration of essential fish habitat; data needed for water quality certification; information on cumulative environmental impacts throughout the river basin; and studies of fish passage conditions and plans for improvements thereto, including restoration of historic fish habitat. CHRC states that flow data should be provided on the finest available scale, even to daily or hourly flow for the entire historical record.

64. HRC suggests that licensee compliance with the requirements can best be ensured by having the Commission evaluate whether the PAD meets certain standards for completeness and commiting to taking measures to enforce compliance with the standards beyond finding that an application is deficient. These might include requiring the applicant to file a revised PAD before the proceeding continues, and interim environmental measures in annual licenses, or civil penalties.

65. Because these disagreements relate to how the document is formatted and distributed, we will defer their resolution to the conclusion of the following section concerning those matters.

b. Distribution

66. Several industry commenters made recommendations with respect to the format and distribution requirements for the PAD.[67] NHA proposes that the PAD be reformatted, some of the content requirements be deferred to the license application, and the distribution requirements modified. The PAD itself would contain basic information about the licensee, project description and existing and proposed operations, a general description of the river basin, including pertinent information about land use, other dams, and management plans, a discussion of environmental impacts based on existing information, a list of issues in the form of a scoping document, and a plan and schedule for pre-application activities.[68] Exhibits showing project structures and features, historical information on amendments,

[60] The initial consultation document is required by 18 CFR 4.38(b) and 16.8(b)(1). The public information requirement for existing licensees seeking a new license is at 18 CFR 16.7(d).

[61] SCE, Alabama Power, NEU, Xcel, Consumers, Oroville.

[62] PG&E, SCE, Consumers.

[63] Consumers, Long View, MWH, WPSR, EEI, NHA, Xcel, NEU, SCE, CHI.

[64] VANR, WUWC, Interior, California, CHRC, Whitewater, SC League, IRU, NYSDEC, CSWRCB, Long View, HRC, AmRivers, SC League, Oregon, AMC.

[65] CDWR, Cal A–G, CSWRCB, AMC.

[66] CDFG, HRC. At least one licensee, PG&E, agrees that a due diligence standard is reasonable.

[67] Duke, PG&E, Troutman, WPPD, Xcel, CHI, Sullivan, NHA, SCE.

[68] *See* proposed 18 CFR 5.4(c)(2)(A)–(B), (D)–(G), (J) and (P).

compliance, and generation, and information pertaining to dam and project safety would be located in the potential applicant's project files and would be provided to anyone who requested it at a reasonable cost of production.[69] Distribution of other generally uncontroversial information would be deferred until the license application is filed.[70] NHA contends that these changes would reduce the burden on applicants, make the document better suited to its purpose, and make it more accessible to stakeholders. Georgia Power and Duke support NHA's proposal.

67. NHA's concerns are shared and the essence of its proposal supported by many licensees. They acknowledge the importance of explaining the current license requirements based on the original license and any amendments, existing management plans, and other requirements, but state that the expense of producing, packaging and distributing the underlying licensing documents and existing studies to many recipients will be burdensome in general and enormous in some cases. They say that study results are generally useful only to a few stakeholders with appropriate expertise, such as resource agencies. The common thread of these comments is that general information about existing project facilities and operations would be broadly distributed, while more detailed information would be identified and made available on request, via the internet or another means of distribution.[71]

68. SCE has a somewhat different proposal. It recommends that the PAD be limited to: (1) A general description of the project, similar to existing Exhibit A;[72] (2) monthly energy data for the prior five years;[73] (3) five years of existing streamflow data;[74] (4) a description of existing recreation facilities and use based on the most recent Form 80, and of the applicant's policies, if any, with respect to management of project lands and waters; (5) a single line diagram showing the electrical path between all project components; (6) existing and available environmental data obtainable from resource agencies or in the applicant's possession.[75]

69. Long View and Xcel recommend that the PAD have the same format as license application requirements for the classification of the project; *e.g.*, major unconstructed project, major project-existing dam, or major water power project-5 megawatts or less, with the gaps to be filled in as the prefiling consultation and information gathering process proceeds.[76]

70. Agency and NGO commenters appear to be less concerned with the format of the document than with its contents. They generally contend that the range of data and level of detail set forth in the NOPR should be affirmed in the final rule.

71. WPSR opposes having to provide the PAD at all. It recommends instead that the existing requirement to make public information viewable by the public in various locations, such as company headquarters and public libraries, be retained.

72. AW/FLOW states that internet or CD distribution is good in theory, but that people attending meetings generally have paper, so this means of distribution would unfairly force cash-strapped NGOs to bear the cost of printing materials.

73. The Documents Group agreed that it makes sense for a potential applicant to incorporate into the PAD by reference voluminous information such as raw data and existing studies. They agreed that the substantial effort and expense does not necessarily make the document more useful and may, owing to sheer volume, make it less useful. This information could be summarized in the relevant section of the PAD using appropriate methods. In addition, the PAD would contain an appendix describing all materials summarized in the text, and explaining how to obtain those materials from the potential applicant.

74. The Documents Group agreed that the goal is to target insofar as is practicable the needs of various stakeholders, agencies, and Indian tribes. To that end, the potential applicant would have to deliver the summarized information upon request to any agency, Indian tribe, NGO, or other stakeholder within 20 days of the request, in a mutually agreeable format that does not require conversion by the potential applicant from paper to an electronic format. Potential applicants would have to be able to deliver electronically formatted materials in a variety of formats.

75. We are adopting requirements for the PAD that substantially incorporate the recommendations of the Documents Group. The purpose of the PAD is to provide the Commission and the consulted entities with existing information relevant to the project proposal that is in the potential applicant's possession or that it can obtain with the exercise of due diligence. Distribution of the information will enable the consulted entities to identify issues and related information needs, develop study requests and study plans, and help the Commission to analyze any application that may be filed. We will not require a potential applicant to conduct studies in order to generate information for inclusion in the PAD. The basic content requirements will be a description of the existing and proposed project facilities and operations, a description of the existing environment, existing data or studies relevant to the existing environment, and any known and potential impacts of the proposed project on relevant resources.

76. A potential applicant will not be required to include all of the studies and information sources on which the descriptions in the PAD are based, but will be required to provide these materials upon request to recipients of the PAD. Potential applicants and participants in pre-filing consultation are encouraged to accomplish such distribution by electronic means, including compact disks, but a requester is entitled to receive such materials in hard copy form. The PAD will also be required to include a process plan and schedule, a preliminary issues and studies list, and an appendix summarizing any contacts with agencies, Indian tribes, and others in obtaining relevant information. We think that the foregoing format, content, and distribution provisions should result in PADs that serve the purpose for which this document is established and

[69] *See* proposed 18 CFR 5.4(c)(2)(H), (I), (K), and (L). NHA adds that critical energy infrastructure information (CEII) would be viewable only at the potential applicant's offices. CEII is discussed in Section III. X below.

[70] *See* proposed 18 CFR 5.4(c)(2) (M) and (O), and (G)(xi).

[71] PG&E, Suloway, Normandeau, M&H, Consumers, Long View, Reliant, AEP, Oroville, SCE.

[72] *See e.g.*, 18 CFR 4.41(b).

[73] SCE states that licensee's methods of maintaining information on dependable capacity are not consistent and would therefore be misleading if required to be included. At the least, SCE suggests, the term should be defined if it is required to be reported.

[74] SCE does not specify how the required information would be reported; for instance the vintage of the data or its periodicity (*e.g.*, hourly, daily, monthly).

[75] SCE's rewrite of proposed 18 CFR 5.4 is at pp. 8–18 of its comments. SCE would also have us put language in the regulations encouraging agencies to cooperate in the development of the PAD by providing available environmental data to the applicant. Given the concerns expressed by agency commenters about the potential for an incomplete PAD and, in general, the importance of a quality evidentiary record, we think agencies and other potential participants have sufficient incentive to assist potential applicants in this regard.

[76] Long View, Xcel.

reasonably balance the competing interests of the participants.[77]

F. NEPA Scoping and Study Plan Development

1. In General

77. Most commenters support having a Commission-approved study plan in the integrated process,[78] but many request clarifications of or modifications to the proposed study plan development process. Only Idaho Power objects to this feature. It asserts that the current study planning and dispute resolution provisions generally work well, and are less costly and labor-intensive than what is included in the integrated process. We do not dispute that there are instances where the current study planning and dispute resolution processes are adequate. They undeniably contribute in many cases however to the undue length of the licensing process by deferring identification and resolution of fundamental issues about what information gathering and studies are necessary until after the application is filed. The integrated process is designed to eliminate that problem.

78. HRC requests that we affirm that the purpose of an approved study plan is to develop a record that allows for the adequate evaluation of reasonable alternatives to mitigate ongoing impacts to resources from project operations, and not to prejudge potential mitigation measures. The purpose of an approved study plan is to bring, to the extent possible, pre-filing finality to the issue of what information gathering and studies will be required by the Commission to provide a sound evidentiary basis on which the Commission and other participants in the process can make recommendations and provide terms and conditions. The study plan is developed in conjunction with NEPA scoping, and the latter inevitably involves judgments about which potential alternatives are reasonable to consider, and which alternatives will be eliminated from detailed consideration. It therefore follows that the Commission-approved study plan will reflect those determinations.

79. Washington states that study requests should not be rejected merely because they do not employ generally accepted practices, because new methodologies or techniques may be appropriate in some cases. We agree. As noted elsewhere, with the exception of the establishment of a nexus between the study request and operation of the project, no one criteria establishes a ''litmus test'' for study requests.

80. Georgia DNR states that study plans should be project-specific and that the study criteria should not be interpreted so as to mandate standard form study plans. We agree. Although we would expect specific study plans for projects with features identical or similar to one another to have the same or similar components, every project is likely to have unique features that need to be accounted for in the development of the study plan.

81. NYSDEC states that the unique aspects of individual projects make extrapolated data acceptable, if at all, only if it is technically infeasible to produce site-specific data. We do not agree with blanket assertions of this nature. We agree with Oregon that the appropriateness of extrapolated data is a decision properly made on a case-by-case and issue-by-issue basis.

82. Under the proposed rule, the NEPA scoping meeting and site visit would be followed by an opportunity for participants to make comments and preliminary study requests before the potential applicant files its draft study plan.[79] Interior would insert after the comments and preliminary study requests a six-month period for the participants to negotiate a mutually agreeable study plan. Interior reasons that this might permit elimination of the following steps up to the potential applicant filing a revised study plan for approval,[80] and thereby minimize the need for formal dispute resolution, eliminating as much as 200 days from the pre-filing process. PG&E and SCE think the proposed study plan development process is weighted too heavily toward notice and comment and not enough toward interaction between the participants. PG&E and SCE would also like to see more time for the participants to resolve their study differences. The Process Group agreed in general with these commenters that there should be more time in the process for such interaction.

83. As discussed below, we have modified the process to extend the time for participants to discuss the potential applicant's proposed study plan and to provide more flexibility concerning interactions during that period.[81]

2. Study Criteria

84. The NOPR proposed that an information-gathering or study request be required to address seven criteria:

(1) Describe the goals and objectives of the study and the information to be obtained;

(2) If applicable, explain the relevant resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied;

(3) If the requester is not a resource agency, explain any relevant public interest considerations in regard to the proposed study;

(4) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied;

(6) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate field season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge;

(7) Describe considerations of cost and practicality, and why any proposed alternatives would not be sufficient to meet the stated information needs.[82]

a. General Comments

85. Commenters generally approved of the proposed study criteria subject to various recommendations for minor changes.[83] With the exception of issues concerning what consideration should be given to study costs, few had criterion-specific comments. Commenters also offered a variety of more general comments on how the study criteria should be applied. We consider the general comments first.

86. PG&E, SCE, and Duke request that we affirm in the preamble that the study criteria are not a check list; rather, they need to be considered as a whole, with each criterion addressed, and that no single criterion is determinative. The Studies Group agreed. We so stated in

[77] We cannot do away with the ''library'' requirement, as it is required by FPA Section 15(b)(2). In part 5, it appears at 18 CFR 5.2(a).

[78] *E.g.*, NYSDEC, S–P, California, Interior. S–P states that approved study plans are needed to ensure confidential treatment of tribal cultural practices. This matter is addressed in Section III.N.

[79] Proposed 18 CFR 5.5 and 5.6.

[80] Interior refers to proposed 18 CFR 5.7 through 5.12.

[81] *See* Section III.T below, and 18 CFR 5.12.

[82] *See* proposed 18 CFR 5.10.

[83] VANR, Normandeau, HRC, NHA, Long View, Duke, PG&E, Advisory Council, Oregon. In contrast to the broad expression of support from all stakeholder perspectives, Minnesota DNR states that Criteria (2), (5), (6), and (7) are either exceedingly general or unduly specific and speculates that they were designed to obstruct or limit resource agency study requests.

the NOPR,[84] and affirm that statement here.

87. Long View states that the preamble should clarify that requesters' desires for information must be tempered by practical considerations of relevancy, the value of the information sought in the context of the proceeding, and the complexity and effort required to obtain the information. NHA states that requesters should be required to explain the merits of their requests in the context of the case and the FPA. We think a practical application of the proposed criteria, with the minor modifications we are making in this rule, should result in the adoption of study requests that have merit, and the exclusion of those that do not. As we stated in the NOPR, ''the * * * criteria implicitly require that study requests not be frivolous and add some appreciable evidentiary value to the record.'' [85]

88. HRC asks us to clarify how ongoing environmental impacts will be considered in light of our policy that the baseline for environmental analysis is current conditions.[86] The study criteria should be applied in the same manner regardless of whether an impact from project operations on a resource is characterized as ongoing or otherwise. The requesting party would have to reasonably demonstrate the nexus between project operations and resource impacts and, in the context of addressing the other criteria, show how the proposed study reasonably relates to the development of potential mitigation or enhancement measures.

89. Duke wants us to emphasize that decisions on study requests will be consistent with Commission policy and practice. We think the regulation text is sufficiently clear in this regard.[87]

90. The Advisory Council states that it would be helpful to include a more complete definition of what cultural resources studies are needed. The Advisory Council makes no specific suggestions in this connection, and we continue to believe that the best forum for determining appropriate data needs and study requirements is in individual cases.

91. Oregon suggests, particularly in light of the time frames, that participants' study requests should only need to be general in nature, with the burden on potential applicants to produce detailed study plans. We disagree. As discussed below,[88] we have modified the process in response to comments by moving NEPA scoping, including the issuance of Scoping Document 1, to a place prior to the participants' submittal of their study requests. Under the revised process, these study requests should be as detailed as possible.

92. The NOPR states that judgment calls on study requests will be made ''in light of the principle that the integrated licensing process should to the extent reasonably possible serve to establish an evidentiary record upon which the Commission and all agencies or Indian tribes with mandatory conditioning authority can carry out their responsibilities.''[89] Duke states that this is inconsistent with a prior order in which Duke asserts that the Commission stated that it will not require data that other agencies deem necessary to support the exercise of their mandatory conditioning authority. In fact, in the order cited by Duke, *Curtis/Palmer Hydroelectric Company LP and International Paper Company,*[90] we merely restated our judicially affirmed position that the Commission has no statutory obligation to provide a record to support other agencies' decision making, or to require studies that it does not deem necessary to evaluate the public interest in light of the record evidence and argument provided by other parties.[91] The principle underlying the integrated process expressed above is not inconsistent with that position.

93. No comments were filed on proposed criteria (1), (4), and (6). Comments on the other proposed criteria are considered below.

b. Criterion (2)

(2) *If applicable, explain the relevant resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied.*

94. NYSDEC states that the relationship of a study request to agency management goals should not be the sole or even the primary measure of the need for a study because agencies may request studies that do not relate directly to agency management objectives, but do relate to mandates established in law or regulation or derive from agency policy. A statement by an agency connecting its study request to a legal, regulatory, or policy mandate is, of course, entitled to appropriate consideration. Any requester should however appreciate that the more broadly stated the legal, regulatory, or policy mandate is, the more clearly the requester needs to explain how the mandate relates to the study request and, in turn, project impacts.

95. Massachusetts DER states that only a resource agency may appropriately determine what study requests apply to its management goals, so neither the Commission nor potential applicants should make determinations of applicability. As explained in the NOPR, the Commission does not intend to second guess the appropriateness or applicability of resource agency management goals.[92] A requesting agency is required however to establish the connection, if any, between its study request and its management goals. In the great majority of cases, the connection should be obvious.

c. Criterion (3)

(3) *If the requester is not a resource agency, explain any relevant public interest considerations in regard to the proposed study.*

96. NYSDEC states that the requirement to explain relevant public interest considerations should also apply to agencies. It would be desirable for any entity requesting a study to explain how its study request relates to the public interest, but it should suffice for an agency requester to explain the connection of the study request to its resource management goals.

d. Criterion (5)

(5) *Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied.*

97. EEI requests us to state that a nexus between project operations and effects on the resource in question is a threshold requirement that must be demonstrated in every case.[93] This issue was discussed by the Studies Group, which agreed with EEI's request, as do we. Otherwise, the door would be open

[84] 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,705.

[85] 68 FR at p. 13996; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,706.

[86] S–P and PFMC state that the environmental baseline for studies should be pre-project conditions. Georgia DNR states that pre-project baseline studies may be appropriate in some cases. SCE, Duke, and PG&E ask us to restate in the regulations our policy that the baseline is current conditions. We are not changing our well-established and judicially approved policy, and see no need for it to be written into our procedural regulations.

[87] *See* 18 CFR 5.14(l).

[88] *See* Section III.T and 18 CFR 5.8(c).

[89] 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,705.

[90] 92 FERC ¶ 61,037 (2000).

[91] 92 FERC at p. 61,089.

[92] 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,705.

[93] Duke and PG&E similarly state that the Commission should affirm that it will strictly apply this criterion.

to study requests having nothing to do with project impacts.[94]

98. CHRC counters that a study might be required to establish the existence of a nexus. Taken to its extreme, CHRC's position would have us approving study proposals that amount to mere speculation. We think a common sense approach to demonstrating a nexus between project operations and resource impacts, informed by the professional judgment of qualified agency, Commission, and tribal staff, should ensure that this criterion is reasonably applied.

99. Oregon approaches the nexus issue from a different perspective; that is, if a nexus is demonstrated between project operations and resource impacts (*e.g.*, fish entrainment mortality), then related study requests must be approved. We do not agree. As stated above, the criteria are to be considered as a whole, in light of the circumstances of the individual proceeding, and any applicable Commission policies and practices.

100. NHA and PG&E also request that we add an additional criterion requiring requesters to describe how the information would be used in the proceeding in relation to resource management measures. This proposed criterion appears to be intended to elicit an explanation how the information could be used to develop protection, mitigation, or enhancement measures by the Commission or agencies with conditioning authority. The Studies Group discussed this matter and recommended that the following phrase be added to the end of Criterion (5): ''and how study results would inform the development of license conditions.'' We agree that this is an important aspect of study requests and are adopting the proposed modification.

e. Criterion (7)

(7) *Describe considerations of cost and practicality, and why any proposed alternatives would not be sufficient to meet the stated information needs.*[95]

101. This proposed criterion received the most comments. Several state agencies state that resource agencies should not be required to provide detailed cost estimates of proposed studies because specific knowledge concerning study costs lies with applicants or their contractors. They contend that potential applicants should have the burden of addressing cost and practicality. They also add that this may be a difficult matter on which to reach a merits conclusion, because the value of the information developed is not always known until after a study is completed.[96]

102. NYSDEC states that the criterion should be modified to require a requester to address the proposed study's scope and level of effort. We conclude the proposed modification is not necessary because there is a built-in incentive for requesters to do so. It is implicit that cost and practicality can be addressed only to the extent the study request includes a description of the scope and level of effort. The less specificity a requester provides, the more difficult it will be to apply the criterion in its favor.

103. Finally, various Indian tribes and agencies state that where protection of tribal trust resources is at issue, the Commission's trust responsibility prohibits it from considering factors of cost and practicality, or that such factors are entitled to minimal weight. They state that the only applicable considerations are consistency with treaties, statutes, and case law defining obligations to protect the trust resources. Some add that the FPA requires the Commission to protect non-developmental resources, so matters of study cost and practicality are entitled under that Act to minimum weight.[97] As we stated in the NOPR, our responsibility to balance all aspects of the public interest with respect to any project proposal necessarily encompasses the exercise of independent judgment concerning the relative cost and value of obtaining information.[98]

104. The NOPR also discussed certain additional criteria proposed by NHA and SCE,[99] and requested comments on whether their proposed criterion (3) (''The cost of the study must be justified relative to the value of the incremental information provided'') or the Commission's proposed Criterion (7) more appropriately deals with the issue of study costs.[100]

105. Industry commenters preferred the NHA/SCE language because it requires a conclusion concerning whether the cost of the study is justified by the expected value of the information.[101] Agency and NGO commenters aver that the NHA/SCE language is more theoretical than practical and likely to cause more disputes than it prevents because the full value of a study cannot be known until it is completed. They add that any criterion that purports to measure study results against dollars is an apples to oranges comparison and prejudices everyone's interests but the applicant's. They therefore favor the Commission's Criterion (7).[102] Interior and MPRB state that scientific standards should be paramount. Interior adds that cost and practicality can be assessed by the proposed Advisory Panel, if the study request goes to dispute resolution.

106. California recommends that if Criterion (7) is not adopted, a better alternative than the NHA/SCE language would be to follow California's requirement that the burden of studies, including their costs, must bear a reasonable relationship to the need for the study and the benefits to be obtained therefrom. PG&E and NHA in their comments also attempt to find some middle ground by recommending that NHA/SCE criterion (3) be revised to require the requester to ''Assess the relative value of the anticipated incremental information compared to the effort, including time and cost, required to obtain it.'' There is clearly no agreement between the industry on the one hand, and agencies, Indian tribes, and NGOs on the other hand about how to consider cost and practicality.

107. The Studies Group considered this question at length and agreed that this criterion is not concerned solely with cost, but also generally with the level of effort the potential applicant should have to make to gather information or conduct studies with respect to an issue. They proposed to insert the words ''and/or level of effort'' after the word ''cost'' to reflect that agreement. After considering all the comments, we conclude Criterion (7), modified as recommended by the Studies Group, provides an appropriate basis for consideration of cost and

[94] Geosyntec appears to state that a requester should only have to show a nexus between the study request and an issue, rather than a nexus between a study request and the project. We think this is a distinction without a difference, because the impacts of the project on resources creates the issues, which in turn are the basis for study requests.

[95] *See* proposed 18 CFR 5.10.

[96] Georgia DNR, Minnesota DNR, NCWRC, PFBC, MPRB. MPRB would eliminate this criterion altogether on the ground that once a need for information is established, cost is irrelevant. We rejected such assertions in the NOPR. 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,705.

[97] Menominee, Wisconsin DNR, MPRB, Interior, Skokomish.

[98] 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,705.

[99] 68 FR at pp. 13995–996; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,706.

[100] 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,706.

[101] NHA, Normandeau, WPPD, SCE, PFMC, EEI, NEU, Duke, PG&E, CSWC.

[102] California, Oregon, HRC, NCWRC, Interior, MPRB.

practicality in weighing the merits of any study request.[103]

f. Proposed Additional Criteria

108. Various industry commenters recommend that we add a criterion requiring a requester to discuss whether or a not a resource problem has been identified that relates to the request.[104] This proposed criterion is too subjective. A principal feature of hydroelectric licensing in recent decades has been disagreements between license applicants and others concerning the extent to which proposed or existing projects have negative effects on natural and other resources. Whether an identified impact is or is not a problem, and the extent of the problem, are often matters of perspective. Moreover, the finding of a ''problem'' is not a required predicate for Commission action under the comprehensive development standard of FPA Section 10(a)(1). Rather, that standard contemplates license conditions for the ''protection, mitigation, and *enhancement*'' of fish and wildlife * * *, and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other resources.'' [emphasis supplied] [105]

109. Normandeau suggests that we consider adding a criterion that requires a requester to address the effect the information gathering or study would have on timely completion of the overall process. Criterion (6) requires each proposed study to include a schedule, including appropriate field season(s) and the study duration, so all parties should be able to assess the potential effect of the request on the timeliness of the proceeding. The appropriate length of a proposed study will, of course, be a matter best determined in the context of the specific case.

110. Menominee recommends that we add a criterion to recognize study requests made in connection with the Federal government's trust responsibility to protect the resources of Indian tribes. This does not appear to be necessary because the relationship between a study request and the trust responsibility can be addressed in Criteria (2) or (6).

111. The study criteria, modified in accordance with the foregoing discussion and as set forth in the regulations we are adopting, are set forth here:

(1) Describe the goals and objectives of each study proposal and the information to be obtained;

(2) If applicable, explain the relevant resource management goals of the agencies or Indian tribe with jurisdiction over the resource to be studied;

(3) If the requester is a not resource agency, explain any relevant public interest considerations in regard to the proposed study;

(4) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied, and how the study results would inform the development of license requirements;

(6) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate filed season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge; and

(7) Describe considerations of level of effort and cost, as applicable, and why any proposed alternative studies would not be sufficient to meet the stated information needs.

3. Progress and Study Reports and Additional Study Requests

a. Progress Reports and Initial and Updated Study Reports

112. The proposed rule would have required the potential applicant to file an initial status report with study results and analyses following the first season of studies, or at another appropriate time following the date of the study plan order. The report would be followed by a meeting with parties and Commission staff. The potential applicant would file a meeting summary and, if necessary, a request to modify the study plan and schedule. The request to modify the plan, if any, would be deemed approved unless any party filed a notice of disagreement. Disagreements would be resolved based on written submissions to the Director. Any request for new information or studies following the initial status report would have to address the study criteria and show good cause why the request should be approved.[106]

113. An updated status report would follow after a second season of studies or at another appropriate time. It would be subject to the same review, comment, and disagreement resolution procedures, except that any request for new information or studies must address the study criteria and show extraordinary circumstances why the request should be approved.[107]

114. SCE states that this is unduly burdensome for all participants. It questions the practicality of one report at a specified time because of the likelihood of multiple studies conducted on different schedules, and states that preliminary results could lead participants to false conclusions. SCE also objects to sending study results to entities that have not previously requested to be involved in the issue under study. SCE and NHA would instead require the potential applicant to distribute a status report explaining actions taken to date, any unexpected findings, and a schedule for completing the studies.

115. SCE adds that the meeting following the initial status report would be unworkable because of the large numbers of studies required to be reported in detail, and because most participants will be interested in a limited number of studies. SCE would have the potential applicant determine the need for study review meetings based on comments received on the abbreviated status report, unless a majority of participants requested a meeting with respect to a particular study. NHA would also make the meeting optional for the potential applicant. If participants wanted a meeting not proposed by the potential applicant, they would so request in their comments on the initial status report, and the Commission staff would decide if it is needed.

116. Long View shares NHA's and SCE's concerns about the status reports and meetings. It would modify the rule to allow potential applicants to issue study-specific status reports and hold study-specific meetings at appropriate times with appropriate people.

117. NYSDEC would modify the rule to state that the potential applicant's meeting summary must include a brief statement that the meeting summary is deemed to be approved unless a party files a notice of disagreement.

118. These and other concerns about the status report proposal were considered at length by the Studies Group, including the fundamental issue of whether it makes more sense to have one status report and meeting, or to issue separate reports for each study or group of related studies at different

[103] *See* 18 CFR 5.9(b)(7).

[104] PG&E, SCE, NHA, WPPD, EEI. Other additional criteria were suggested, which were considered above in the context of modifications to the existing proposed criteria.

[105] 16 U.S.C. 803(a)(1).

[106] Proposed 18 CFR 5.14 (Conduct of studies).

[107] *Id.*

times. The Studies Group concluded that it would be best for the participants to negotiate the timing of periodic progress reports on studies,[108] including the manner and extent to which information will be shared, which may include meetings, and sufficient time for technical review of the analysis and results, when the study plan and schedule is developed. The progress reports would have to describe the study progress and data collected to date in a manner that enables participants to determine if the study plan is being followed, and to describe any proposed changes. Documentation of study results would be provided to participants upon request. An annual study report would be issued, but would be in the form of a summary of the overall progress of study plan implementation and would serve as a trigger point for requests, if any, to modify existing studies or conduct additional studies.

119. These modifications should make it easier for individual participants to focus on issues of concern to them, should result in early identification of any implementation issues, and should ease the distribution and consultation burden on the potential applicant. Accordingly, this is a reasonable approach to the matter of study plan implementation and is reflected in the final rules.[109]

120. Finally, the Studies Group and Minnesota DNR recommend that parties have 30 days to respond to the initial and updated study reports, instead of the 15 days proposed. We have so provided.[110]

b. Modified Study Requests

121. NHA also addressed the standard for requesting modifications to the approved study plan in response to the initial study report. NHA would require a requester to address each of the study criteria and subject the request to the same good cause standard as a request for new information or new studies. We think such a requirement is unnecessary. Requests for modifications to an ongoing study are likely to be focused on specific concerns about how the study was conducted, or straight forward matters such as whether to extend the study for an additional field season because of drought conditions. A participant with such concerns should not have to reestablish the need for the study in the first instance. Rather, it should only be required to show good cause for the proposed modification.

122. We also think good cause standard should apply to proposals to modify ongoing studies following the updated study report. The proposed regulation text was not clear on the distinction between the standards applicable to requests for modifications to existing studies versus requests for new information gathering or studies. We have modified the regulation text to make the applicable standards clear.[111]

c. New Study Requests

123. We requested comments on whether participants should be permitted to make new information-gathering or study requests (as opposed to requests for modification of, or disputes concerning the implementation of, existing studies) following the updated study report.[112]

124. NHA and Long View would like the rules to provide more certainty regarding the potential applicant's study obligations. They propose that after the updated study report participants would be permitted to make recommendations regarding the implementation of previously approved studies, but not permitted to make new information gathering or study requests. They state that participants should know when the initial study report is made whether any new studies are needed, and allowing new study requests after the updated study report would make participants less likely to focus their efforts on developing study requests at the beginning of the process.

125. Other licensees share the desire for certainty, but support the ''extraordinary circumstances'' standard as an alternative to a prohibition on new study requests.[113] SCE would permit a new study request only if: first year studies reveal unexpected results that require further review not possible under the current study plan; a change in applicable law that requires another goal to be considered; or there is a valid dispute regarding implementation of the plan.

126. Agencies and NGOs support the opportunity to request new studies at this point.[114] Interior and MPRB state that many unanticipated events could cause a change in circumstances or that study results could show that more information is needed. Oregon and PFBC similarly state that studies may reveal specific sources of project impacts, and that follow-up studies may be needed to determine if negative impacts can be corrected without extensive mitigation.

127. Some agencies and NGOs accept the premise that the standard for new study requests should increase as the proceeding progresses, and do not oppose an extraordinary circumstances standard at this point.[115] Examples of extraordinary circumstances proffered by these entities include:

- A finding late in the study of a listed species in the area affected by the project;[116]
- Initial studies uncover information that must be considered to ensure agency mandates and important management objectives are met.[117]
- A nexus between project impacts and the study request is shown;
- A good reason is offered why the study was not previously requested;
- Circumstances have changed;
- Study results indicate a new study is necessary; or
- There are changes in laws, regulations, or environment.[118]

128. After considering the comments, we have decided to adopt the proposed rule in this regard. We appreciate the desire of potential applicants for certainty when the study plan is approved, but until the study plan is completed, it appears premature to prohibit any additional study requests. An extraordinary circumstances standard, conscientiously applied, is sufficiently strict to provide ample incentive for participants to make their study requests early on, during development of the study plan. We will not attempt to further specify in the rules what constitutes extraordinary circumstances. This is the kind of decision that needs to be made in the context of a specific proceeding.[119]

129. Finally, HRC, apparently fearing that the ''good cause'' standard will be too restrictive, requests clarification of that term. Troutman, apparently fearing that ''good cause'' and ''extraordinary circumstances,'' will be interpreted too broadly, requests clarification of both terms. We think it inadvisable to attempt more specificity at this point. The only practical approach is to apply

[108] For clarification, here and in the regulations we are referring to the potential applicant's comprehensive annual report as the ''study report,'' and to other periodic reports on studies as ''progress reports.''

[109] 18 CFR 5.11 and 5.15.

[110] 18 CFR 5.15.

[111] *See* 18 CFR 5.15.

[112] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,731.

[113] PG&E, Springer, NEU, Idaho Power, EEI.

[114] California, Oregon, PFMC, Menominee, Interior, MPRB, Skagit.

[115] California, HRC, NYSDEC, NCWRC.

[116] NCWRC, PFBC, Georgia DNR.

[117] NCWRC, PFBC, Georgia DNR.

[118] The last five examples were provided by NYSDEC. Minnesota DNR states that study requests should not be foreclosed simply because they may not have been identified early in the consultation process, and MPRB contends that the proposed limitations should be relaxed to ensure that project proposals are fully understood.

[119] New study requests made at later points in the process are considered in Section III.L.2 below.

these standards in the light of case-specific facts.

d. Comments on Study Reports

130. We also requested comments on whether parties should be required to file written comments on the potential applicant's initial and updated study reports prior to the required meeting to discuss the report(s).[120] Most commenters oppose such a requirement. Long View, Oregon, and ADK say that the written comments are likely to reflect misunderstandings or misinterpretations and the best place to clear such things up is in a face-to-face meeting. These parties suggest that written comments be filed after the meeting. California, PFBC, ADK, Georgia DNR also think it would be unproductive and would allow anyone who cannot attend the meeting to file their comments in lieu thereof. On the other hand, HRC, PFMC, and NEU think such a requirement would encourage effective preparation by the potential applicant for the meeting. Interior and Skokomish think pre-meeting comments should be optional.

131. In light of these comments, we will not impose such a requirement. Instead, we will leave it to the parties to determine individually whether they think the time and effort to file comments before the meeting will be beneficial in the circumstances of the proceeding.

132. Finally, S–P seeks assurance that the study development process will include consultation on means of keeping confidential sensitive Indian cultural practices. Our regulations and practices ensure that Indian tribes' confidentiality concerns will be appropriately addressed.[121]

G. Study Dispute Resolution Process

133. The NOPR proposed to establish a dispute resolution process that serves two purposes. In the informal stage, the applicant files a draft study plan for comment; the participants (including Commission staff) meet to discuss the draft plan and attempt to informally resolve differences. The Commission then approves a study plan with any needed modifications after considering the applicant's proposed plan and the participants' comments (study plan order).[122]

134. In the formal dispute resolution process, resource agencies with mandatory conditioning authority under FPA sections 4(e) and 18, and states or Indian tribes with water quality certification authority under Clean Water Act section 401, would be able to file a notice of study dispute with respect to studies pertaining directly to the exercise of their authorities under the aforementioned sections of the FPA or CWA. An Advisory Panel considers the dispute and makes recommendations to the Director of Energy Projects, who resolves the dispute.

135. We also proposed that the applicant, by virtue of the fact that it must conduct any studies required by the Commission and implement the license, has a special interest in the outcome of study dispute resolution, and should be afforded the opportunity to submit to the panel information and arguments with respect to a dispute.[123]

136. The NOPR requested comments on what modifications, if any, should be made to the proposed study dispute resolution process and, in particular, the proposed advisory panel.[124] Responses were received on nearly every aspect of the proposed process. Most commenters supported the proposed study dispute resolution process, but nearly all requested clarifications or modifications to cure perceived deficiencies. A few commenters opposed the panel and made alternative recommendations. All of these comments are considered in this section.

1. Informal Dispute Resolution

137. NHA and WPPD recommend that a peer review process be added for study disagreements prior to issuance of the study plan determination, to provide unbiased expert opinion on establishment of study request goals and objectives, technical design in relation to goals and objectives and the state of the art, and the anticipated utility of the study results to meeting the study goals and objectives. If the disagreement was not resolved as a result of consultation with the peer reviewers, the peer reviewers' comments would become part of the record, which would be available to the panel in formal dispute resolution, if any.

138. We will not adopt this recommendation. A peer review process would add additional time and expense to the process, and would largely replicate the formal dispute resolution process, which would be inconsistent with our goal of having a study plan development process that ensures, as best the Commission can, that the participants come together for the purpose of resolving study disagreements themselves.

2. Formal Dispute Resolution—Subject Matter and Eligibility

139. Many commenters recommend that the formal process be made available to any participant for study requests regarding any matter.[125] California states that the formal process should be available for all study disputes raised by agencies and Indian tribes. Some agencies suggest that the fact that they have a statutorily established role in licensing process, such as making fish and wildlife agency recommendation pursuant to FPA Section 10(j), establishes an obligation on the part of the Commission to ensure that the record contains information to support their recommendations.[126] Others suggest that eligibility for informal dispute resolution only undermines state agency management of state fish and wildlife resources.[127]

140. The NOPR explained that agencies and Indian tribes with mandatory conditioning authority, to extent they are exercising that authority, are differently situated than participants whose role is to make recommendations pursuant to FPA sections 10(a) and 10(j), National Historic Preservation Act (NHPA) Section 106,[128] or other applicable statutes. The former have a duty to make reasoned decisions based on substantial evidence, and their decisions are subject to judicial review. Those making recommendations have no such responsibility.[129] None of the proponents of broadening eligibility for the formal process addresses this fundamental distinction. They also gloss over the fact that the study plan determination is the culmination of the study plan development process in which potential applicants, study requesters, and the Commission staff consult intensively on what information gathering and studies are needed, study requests and responses thereto are accompanied by discussion of the study criteria, and the study plan determination must explain its decision

[120] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,732–733.

[121] *See* discussion of this issue in the NOPR; 68 FR at p.14002; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,717.

[122] This was referred to in the NOPR as the ''Preliminary Determination.'' We have change the name to Study Plan Order to recognize that it is not preliminary with respect to study requests that do not directly involve the exercise by agencies or Indian tribes of mandatory conditioning authority.

[123] Proposed 18 CFR 5.1213(i).

[124] 68 FR at p. 13998; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,711.

[125] Interior, ODFW, Duke, Nez Perce, S-P, AW/FLOW, AMC, MDEP, Washington, AmRivers, ADK, RAW, EPA, MPRB, PFBC, CRITFC, SC League, MPRB, WGA, Skagit.

[126] Interior, IDFG, Oregon, Washington.

[127] Oregon, IDPR, PFMC, WGA, California, IDFG.

[128] 16 U.S.C. 470f.

[129] *See* 68 FR at p. 13998; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,710.

on each disputed study with reference to the study criteria and any applicable Commission policies and practices. We think this provides ample opportunity for development of the record and consideration of study requests related to recommendations.

141. Interior contends that the National Park Service should be eligible for formal dispute resolution with respect to study recommendations that relate to potential project impacts on a unit of the National Park System or other areas of special management concern, such as National Recreation Areas. Interior offers no basis for distinguishing these studies related to FPA Section 10(a) recommendations from those of other entities, and we *see* none.

142. GLIFWC, Menominee, and Nez Perce suggest that the Commission's trust responsibility requires Indian tribes to be eligible for formal dispute resolution with respect to studies related to impacts to reservation lands within the project boundary and ceded lands on which tribes have treaty reserved rights. We do not agree. The study plan development and formal dispute resolution components of the integrated process are not required by any treaty or statute, and are being created solely to provide a means of creating an evidentiary record to support, to the extent reasonably possible, the actions of agencies or Indian tribes with decisional authority.

143. Finally, NHA and PG&E request that the regulations make more clear that the formal process is available only to agencies or Indian tribes with respect to their study requests related directly to exercise of their mandatory conditioning authority, and not for study requests relating to matters wherein these entities may only make recommendations, such as FPA Section 10(j) fish and wildlife agency recommendations. We have clarified the regulatory text in this regard.[130]

3. Advisory Panel

a. Need for Panel

144. Several commenters object to, or express concerns about, the efficacy of, the Advisory Panel. Some licensee commenters assert that the existing dispute resolution provisions work well enough.[131] They assert generally that allowing the disputing agency to be represented on the panel violates fundamental fairness, accepted notions of due process, and the Administrative Procedure Act (APA).[132]

145. Some commenters also fear that the panel proposal is not practical, citing the lack of monetary compensation for the third-party panelist's time and effort; and the short time frames, particularly in light of the panelists' lack of familiarity with the project and background of the issues.[133] They recommend instead a technical conference, narrowly focused on the specific dispute, with input from the potential applicant and any other interested participant, and that the record of the technical conference be filed with Director to inform his decision on the dispute. The Skokomish Tribe fears that the panel process will be unwieldy, take longer than the existing process, and increase costs. VANR recommends that eligible study disputes be resolved by the Director using the existing process and, if the panel is used at all, it be only as a forum for appeals from the Director's decision. Duke recommends instead a modified version of the existing dispute resolution process; written submissions followed by a technical conference including Commission staff, or a panel including a representative of the applicant. PFBC recommends that the formal process be used only after the disputants have first attempted to resolve the matter using the ALP dispute resolution process.

146. These alternative recommendations generally have the virtue of being less complicated than the Advisory Panel proposal. They lack however the presence of a third party technical expert and panelists from Commission staff and the disputing agency who have no prior connection to the proceeding, and must work cooperatively with the third party expert and one another. We have also provided for a technical conference, discussed below, at which the potential applicant may directly address the Advisory Panel. For these reasons, we will adopt the Advisory Panel proposal.

b. Panel Membership

147. Many comments were received on the membership of the Advisory Panel. Various licensee commenters contend that the Advisory Panel is unfair because it includes a panelist from the disputing agency, but not the potential applicant.[134] They assert that requiring the agency representative to be someone not previously involved with the proceeding,[135] or even from another agency, will not obviate an institutional bias that resource agency staff have in favor of other resource agency staff.[136] Others contend that the panel would be more fair without a disputing agency representative because the disputing agency is a party to the dispute, while the Commission is the decisional authority.[137] Troutman expresses skepticism that resource agencies will be able to find qualified representatives who have not been involved in the proceeding and suggests that agency representatives will be unwilling to act independently of higher level agency officials who support the agency's position in the dispute.

148. Suggested remedies for this alleged bias include having two Commission staff members not previously associated with the proceeding and one third party expert,[138] replacing the disputing agency on the panel with a licensee representative,[139] adding a licensee representative to the panel,[140] and replacing the third party expert with a third member designated by the potential applicant.[141]

149. We do not agree that the proposal for panel membership is unfair to potential applicants. Again we remind industry commenters that the purpose of the Advisory Panel is to help resolve a dispute between the Commission staff and an agency or Indian tribe with mandatory conditioning authority concerning the adequacy of the record to support agency decision-making. Potential applicants will have ample opportunity through their written submission and participation in the technical conference to make their case to the Advisory Panel and the Office Director. A potential applicant that believes the Advisory Panel recommendation and study plan determination are not based on substantial evidence or are otherwise improper may file a request for rehearing.

150. EEI states that the agency representatives are not bound by the

[130] *See* 18 CFR 5.14(a). EPA requests that we modify the regulation text to make eligible any agency that has water quality certification authority, so as to permit EPA to file notices of dispute in instances where it, rather than the state, is responsible for issuing water quality certification. We agree to this modification, and modified the regulatory text accordingly.

[131] EEI, Idaho Power, Alabama Power, Xcel, NEU.

[132] 5 U.S.C. 551–559.

[133] Suloway, NPS, Long View, VANR.

[134] Duke, Long View, Xcel, Snohomish. These entities reiterate assertions previously made that the Advisory Panel abdicates the Commission's responsibility to decide the issues before it. The Advisory Panel has no decisional authority; it is limited to making recommendations concerning the consistency of the study request with the study criteria.

[135] This is required by 18 CFR 5.14(d).

[136] WPSC, WPSR.

[137] Duke, Progress, Troutman.

[138] Duke, Progress, Troutman.

[139] WPSR.

[140] Xcel.

[141] Snohomish.

Commission's *ex parte* rules and suggest that they will consult in private with the agency staff who filed the dispute. The Process Group considered this issue and agreed that as a condition of serving on a panel, all panelists would have to agree to be strictly bound by the Commission's prohibition on *ex parte* communications. This is unnecessary however, as the regulations state that all communications to and from the Commission staff concerning the merits of the potential application shall be filed with the Commission.[142]

151. The few agency commenters on panel membership state that fairness and balance require the disputing agency to be on the panel because that is the only way to ensure that its position on biological and technical issues is properly represented.[143] Their principal concern is that the panel members have appropriate technical expertise relative to the specific issues in dispute.[144] NOAA Fisheries, for instance, contends that the expertise must be very specific to the issues; for instance, a study dispute involving gas bubble disease in fish would require experts on that topic, not merely general expertise in fisheries or other related specialized knowledge. Wisconsin DNR similarly argues that regional-specific expertise is needed; for instance, an expert in west coast anadromous fish would be unsuitable for a dispute concerning the study of resident, freshwater fish in Wisconsin.

152. We think it would be a sterile exercise to try to craft regulatory language that more precisely defines the type or degree of expertise that may be necessary for the myriad of potential dispute resolution issues. The most practical approach is to leave the selection of an appropriate third party expert from the list of technical experts to the agency or tribe and Commission staff panel members in light of the facts of the case.

153. Interior requests that the requirement that the Commission and disputing agency panel members be ''not otherwise involved in the proceeding'' [145] be modified to bar only persons not ''directly'' involved. In this way, Interior would make eligible a supervisor in the same office as the agency staff who invoked the formal dispute resolution process. California would exclude only those who have not been ''actively involved in the proceeding as an advocate or negotiator for the agency or tribe's position.'' [146] This, too, would allow supervisory employees with direct responsibility for the agency's participation in the case to serve as a panel member. We decline to add this qualification because it would blur the line between those who are eligible to serve and those who are not, and would undercut the appearance, and probably the reality, that the panel is composed of technical experts using their independent judgment. The best way to ensure acceptance of the Advisory Panel approach is to ensure that the panel members are working on a clean slate with respect to the specific proceeding.

154. Oregon and IDPR state that the Advisory Panel should not be limited to three members because every agency that objects to the study plan determination on a particular study needs to have its own representative. We have limited the panel to three for two reasons. First, we seek to minimize the possibility of deadlock. Second, the larger the panel is, the greater are the logistical challenges associated with the panel convening, meeting, and making a recommendation. To these we add the concern that the panel not appear to be weighted in favor of disputing agencies. We see moreover no reason why two Federal agencies with disputes concerning the same or similar study requests cannot be represented by one individual with the requisite expertise.

155. The NOPR proposed that if there is no timely agreement on a third party expert, the two existing panel members carry out the panel's functions.[147] Mr. Groznik recommends that in such a case the Director should be required to appoint a third party expert. Interior contends that three panel members are needed to ensure that there is either a majority or unanimous recommendation. Oregon states that the panel should not be allowed to proceed in the absence of a technically-qualified third party, principally to ensure that there is appropriate technical expertise on the panel.

156. We expect instances where a third panel member cannot timely be selected by the Commission staff and disputing agency representatives to be rare. We recognize however the importance of the third panel member in providing assurance that the impartiality of the panel's recommendations. We have therefore amended the rule to provide that in such an event, an appropriate third panel member will be selected at random from the list of experts maintained by the Commission.[148]

157. Washington thinks a state agency expert should be able to serve on the Advisory Panel. We agree. A Federal agency or Indian tribe that initiates a dispute resolution could request a state agency expert to represent it on the Advisory Panel. Likewise, for instance, a state water quality certification agency could certainly appoint as its representative a member from its own ranks, or from another state or Federal agency, or Indian tribe. There is also no reason a qualified state agency employee could not serve as a third party expert if that person was selected by the other panel members and the state's regulations and policies permit that person to engage in such activities. We think this flexibility should make it easier to quickly assemble panels with the right expertise.

158. The Studies Group agreed that it would be appropriate for the Commission staff representative to initially organize the Advisory Panel and serve as chair. We think this makes sense because the notice of dispute will first be filed with the Commission, which will maintain the list of eligible technical experts, and some individual needs to be responsible to ensure that the process starts quickly and stays on track. We have so provided in the regulation text.[149]

c. Non-Member Participation

159. Some commenters contend that parties other than the potential applicant should be allowed to respond to the notice of dispute, even if they cannot initiate a dispute resolution, because they may have an interest in the outcome of the process not represented by the disputing agency or the potential applicant.[150] To do otherwise, suggests HRC, violates fundamental due process. SCE asserts that a potential applicant should be permitted to meet face-to-face with the Advisory Panel instead of being limited to written submissions. We believe the concerns of these parties are addressed by our decision in the following section to include the technical advisory meeting in the formal dispute resolution process.

160. The Advisory Council, citing 36 CFR 800.4, seeks assurance that State Historic Preservation Officers (SHPO), Tribal Historic Preservation Officers (THPO), and Indian tribes have an

[142] 18 CFR 5.8(b)(3)(v).

[143] Catawba, SC League, Wisconsin DNR.

[144] Interior, Oregon, NOAA Fisheries.

[145] 18 CFR 5.14(d).

[146] California, p. 13.

[147] Proposed 18 CFR 5.13(d).

[148] 18 CFR 5.14(d).

[149] *See* 18 CFR 5.14(d)(1). To further assist the rapid formation of the panel, the disputing agency is required to identify its panel member in its notice of dispute. 18 CFR 5.14(b).

[150] HRC, CHRC, Whitewater, Advisory Council, TU.

opportunity to participate in formal dispute resolution before any dispute pertaining to implementation of NHPA Section 106 is resolved. Subsection 800.4(a) provides for the action agency to determine whether the action could result in changes to any historic properties located in the area of potential effects. If so, the agency is to review existing information on potentially affected historic properties, request the views of the SHPO or THPO on further action to identify historic properties that may be affected, and seek relevant information from local governments, Indian tribes and others. Based on its assessment, the action agency is to determine the need for further actions, such as field surveys, to identify historic properties. Subsection 800.4(b) requires the action agency to make a good faith effort to identify potentially affected historic properties and to evaluate their eligibility for the National Register in consultation with the SHPO or THPO.

161. The integrated process is fully consistent with this requirement. The study plan and schedule development process discussed above contemplates the active participation of the SHPO or THPO, local governments, Indian tribes, and any interested agency or member of the public in determining what information needs to be gathered or studies conducted with respect to historic properties. Because these entities do not have mandatory conditioning authority, they would not be eligible to initiate the formal dispute resolution process. They would however have the benefit of informal dispute resolution and be eligible to participate in the technical conference.

162. We emphasize in this connection that the study plan development process merely determines, in consultation with the participants in the Section 106 process, which information gathering and studies the potential applicant should undertake. It assists the Commission in obtaining the information needed to identify what historic properties may be present. It makes no determination whether any aspect of the potential license application or reasonable alternatives would have an adverse effect on historic properties. That determination is made later in the context of the environmental document and other elements of the Section 106 process; specifically, the Commission must, when applying the criteria of effect and, if necessary, consult with the SHPO/THPO on ways to avoid or mitigate these effects, usually by entering into a PA.

d. Technical Conference

163. NHA recommended inclusion of an ''Advisory Technical Conference (ATC),'' which would convene just prior to the meeting of the Advisory Panel. The ATC would include representatives of the Commission staff, the agency or Indian tribe with the dispute, the potential applicant, and a neutral expert or experts. It is not clear from NHA's submission how the Advisory Panel would interact with the conferees. Commission staff with appropriate expertise would moderate the ATC,[151] and the Commission staff would be responsible for maintaining a conference record.

164. Prior to the ATC, the potential applicant and the resource agency that filed the dispute would file information and arguments. During the ATC, the agency or Indian tribe would summarize its arguments based on the study criteria, the potential applicant would respond, and the conferees would then discuss the issue in dispute relative to the study criteria. NHA would, to the extent feasible, have all studies in dispute addressed at one ATC. Following the ATC, the Advisory Panel would meet without the applicant, then make its recommendation to the Director, who would also have available the record of the ATC, including the opinions of the third party technical experts.

165. The Studies Group agreed that it would assist the formal dispute resolution process to add a technical conference, to be presided over by the Advisory Panel. This meeting would be held after the written submissions to the Advisory Panel by the disputing agency and the potential applicant are made by disputing agencies and the Commission staff, and just prior to the deliberative meeting(s) of the Advisory Panel. The meeting would be open to all parties, but the topics would be restricted to the specific studies in dispute and the applicability to them of the study criteria. The Advisory Panel would determine how it wished to receive information, but we anticipate that a question and answer format would work well.

166. The NHA proposal has merit in the sense that it would bring in additional technical expertise, but it also would entail additional steps requiring more time, additional Commission resources to provide a moderator and to keep a record, and would add to the overall burden by creating additional written record material of questionable incremental utility. NHA's proposal also does not provide an avenue for other participants with an interest in the outcome of the dispute to participate in the process.

167. We conclude that a technical conference based on the Studies Group's recommendation would benefit the process. The opportunity for the members of the Advisory Panel to hear directly from and be able to question the disputing agency or Indian tribe, the potential applicant, or other participants who have an interest in the outcome of the dispute should enable them to clear up any questions about the written submissions and quickly focus on the most important elements of the dispute. This should, in turn, assist the Advisory Panel to develop its recommendation in a timely fashion.[152]

e. Activities of the Advisory Panel

168. Various comments were received about the role of the Advisory Panel and how it should go about its work. EEI urges us to require the Advisory Panel to specifically address the potential applicant's submissions. An explicit direction in this regard is unnecessary; particularly in light of our decision to include the technical conference.

169. Troutman and Oregon request generally more definition of how the Advisory Panel will do its work, including with whom it will communicate, and how. The technical conference proposal and clarification that strict application of the prohibition on *ex parte* communications will apply should address these commenters' concerns. Also, as discussed above, we have determined that the Commission staff panel member should chair the panel. These provisions provide sufficient guidance to panelists and assurance to others that the panel will make its recommendations through procedures that are fair and reasonable.

170. EEI believes the disputing agency representative should be barred from writing the Advisory Panel's report on the ground that this person is likely to be biased in favor the disputing agency's position and, by having control over the drafting, will wield undue influence. We reject this suggestion. First, we trust that the panelists will apply their expertise in a professional manner consistent with the purpose of the

[151] It is not clear if NHA intends for the Commission staff moderator to be someone other than the Commission staff panel member.

[152] *See* 18 CFR 5.14(j). EEI recommended that we consider turning over disputes to the Commission's Dispute Resolution Service (DRS). The DRS is not an appropriate alternative to the formal dispute resolution process because the DRS is not a decision-making body and cannot ensure a resolution of the dispute through voluntary mediation. The DRS' role as a mediator or facilitator is more appropriate at other points in the process.

panel. We are moreover confident that no single panelist will be able to dictate the recommendation to the other panelists. The panel chair should have the leeway to make this assignment in consultation with the other panelists.

171. California contends that it is important for the Advisory Panel to convene in the vicinity of the project (and perhaps to visit the project) in order for the panel to better understand the disputed issues and so that state agencies and local entities with limited budgets are more likely to be able to appear before the panel. Whether it is necessary for the panel to meet in the project vicinity or visit the project is a matter best determined in light of the facts and circumstances of each case.

5. Timing Issues

172. Some commenters state that some or all of the time frames for the formal dispute resolution process are insufficient.[153] OWRC is particularly concerned that if more than one agency brings the same dispute, insufficient time is allowed for the agencies to agree on who should represent both of them. We disagree. This is a matter that agencies should be able to quickly settle over the telephone.

173. HRC suggests that the response times can be alleviated and the panel's deliberations better focused if the notice of dispute and potential applicant's responsive comments, if any, are required to include proposed findings and recommendations. The agency or Indian tribe's notice of dispute is already required to address the study criteria, which we expect would encompass its proposed findings and recommendations, but only from its own perspective. Any response from the potential applicant is likely to similarly address the criteria from its perspective. The task of the Advisory Panel will be to discuss and attempt to resolve differences between the submissions. The addition of the technical conference is also likely to result in clarifications to the written submissions that will influence the opinions of individual panelists. Thus, the proposed findings and recommendations are largely included in the record. Although we are not inclined to require the disputing agency or Indian tribe, or the potential applicant, to separately state its proposed findings and recommendations, they are encouraged to do so if they think it will benefit the record.

174. The NOPR proposes to require a notice of study dispute resolution to be filed within 20 days of the study plan determination.[154] NYSDEC and Interior state that this is not sufficient time to assemble the supporting evidence. NYSDEC would give the disputing agency at least the 25 days afforded to the potential applicant to submit responsive comments.[155] Interior recommends 30–60 days. Twenty days is not a great deal of time, but a disputing agency will have written out the support for its notice of dispute when it makes its study request prior to the study plan determination.

175. IDEQ recommends a 90-day period for the participants to informally resolve remaining differences after the study plan determination before a notice of dispute must be filed. We decline to adopt this recommendation. As discussed below, we have modified the rules to provide a 90-day period before comments are filed on the potential applicant's draft study plan for this purpose.[156] Participants in the formal dispute resolution process may also try to resolve differences during that process as a result of reviewing one another's written submissions, or following the technical conference.

6. Third Party Technical Expert

176. The principal concern raised about the third party technical expert is whether qualified persons will be willing to serve. Some commenters think the absence of compensation for professional time beyond reimbursement of expenses will make recruiting difficult.[157] Washington states that this is inequitable, but does not explain why, in light of the fact that panelists would be volunteers. Others suggest that unpaid panelists won't invest the necessary time and effort to result in a well-reasoned recommendation. They also think that a compensated third party expert is more likely to be truly neutral. These commenters recommend that third party experts be paid for their services as part of the cost of the hydropower program.[158] SCE recommends that the Commission and the disputing agency share the cost to compensate the third party expert.

177. We believe potential third party technical experts may be motivated to volunteer their services for reasons other than financial gain. One reason would be that service on the panel would enhance that person's professional standing as a technical expert, or in the area of alternative dispute resolution. It would also be an opportunity to provide a public service.

178. IDFG is concerned that there may not be a sufficient number of qualified people in the pool for certain issues due to lack of familiarity with local resources or limited field level experience with the resources. We think the Commission staff and disputing agency panelists will be competent to determine who among the pool of experts is qualified to serve.

179. The other principal concern of commenters is how to ensure that third party experts are truly neutral. Minnesota DNR indicates that technical experts employed by consulting firms are biased in favor of the industry and recommends using only experts from academia who have no recent ties to the industry. EEI, on the other hand, would have us prohibit the use of academics, on the ground that they are biased in favor of expansive and expensive studies. We decline to make any such blanket characterizations about large and very diverse classes of persons. This is the kind of concern that is best dealt with by the Commission staff and agency representatives to the panel in the context of a specific proceeding.

7. Multiple Panels and Multi-Issue Panels

180. A few commenters favor the use of multiple panels. NOAA Fisheries, for instance, states that there should be a separate panel for each issue relating to each study dispute; *e.g.*, if NOAA Fisheries and the U.S. Fish and Wildlife Service each had different issues with respect to the same study, they would file separate notices and there would be separate panels.

181. We hope that the formal dispute resolution process will rarely be invoked, but must take care to structure it so as to ensure that when it is, it can accomplish its purpose of timely bringing finality to study disputes. The regime favored by NOAA Fisheries is simply not practical. A contentious case with multiple study requests and disputes could paralyze the dispute resolution process for months. The more resources, studies, and agencies involved in a proceeding, and the more integrated processes being undertaken in the same general time frame, the more panels would be required, and the more difficult it would be to timely recruit panel members.

[153] OWRC, California, NYSDEC, IDEQ, HRC.

[154] Proposed 18 CFR 5.13(a).

[155] The 25-day period for potential applicants to respond to the notice was not selected to give the potential applicant an advantage, but to provide time following convening of the panel for the service addresses of the panelists to be posted on the Commission's Web site in order that the potential applicant will be able to serve the panel members. *See* proposed 18 CFR 5.13(h).

[156] 18 CFR 5.12 and Section III.T.

[157] Wisconsin DNR, Washington, HRC, Idaho Power, EEI, NEU, SCE.

[158] HRC, Washington.

182. The majority of commenters on this issue, and the Process Group, support the use of a single panel to deal with related resource issues in the same proceeding, subject to various caveats. They indicate that it may be necessary to reduce costs, avoid delay, and prevent sequential disputes over the same study. For instance, one panel would consider all issues relating to fishery studies in a single proceeding or, perhaps, in a multi-project proceeding.[159] A few commenters suggest that one panel ought to suffice for all disputes in a proceeding, without regard to resource differences.[160] In this regard, Troutman likens the role of the panelists to that of judges in a court, and states that expertise is less important than a good record.

183. The most frequent caveat of those who agree that a single panel may consider more than one dispute is that the panelists have appropriate expertise.[161] Interior adds that the decision to have one panel for multiple disputes needs to be made on a case-by-case basis, and that it needs to be clear at the outset what issues the panel will consider so that disputing agencies can appoint an appropriate representative and identify appropriate technical experts. We agree.

184. California would have the panel chair determine which disputes the panel will hear. In light of the goal of expeditious resolution, we think it falls to the Commission staff, under the direction of the Director of Energy Projects, to quickly assess the disputes and determine how many panels are needed and which issues each will consider.

185. Oregon requests clarification as to whether there will be standing panels for various resources that are likely to be the subject of many study requests at many projects, such as anadromous fisheries, or project-specific panels. Oregon does not appear to support this, but rather to recommend project-specific panels in order to help ensure that appropriate technical expertise is brought to bear. We agree.[162]

186. GLIFWC indicates that if a panel is to consider issues pertaining to different resources, it should be supplemented with a technical expert for each resource. We do not envision that the same panel would consider issues relating to, for instance, the need for a requested turbine entrainment study and the need for additional or modified recreational use surveys. The same panel might however consider disputes concerning studies requested on turbine entrainment and bypass reach flows for fishery habitat purposes. It would be a matter for the Commission staff and agency or tribal panel members to determine which persons on the list of potential technical experts are qualified and able to serve with respect to the subject of the dispute(s).

8. Panel Recommendation

187. The proposed rule provides for the Advisory Panel to make a finding ''as to whether the criteria * * * are met or not, and why.''[163] PG&E and GLIFWC state that the Advisory Panel should be required to determine whether each of the study criteria has been met. This is a reasonable recommendation, and we are modifying the regulation text accordingly. We make however two observations. First, not all the criteria necessarily apply to all the requesters. For instance, a requester may not be an agency or Indian tribe with established resource management goals for the relevant resource (Criterion 2). There is moreover no bright line by which to determine if some of the criteria have been met.

188. PG&E also suggests that the Advisory Panel should address, in addition to the study criteria, ''any other relevant consideration.''[164] SCE recommends that panel's recommendation be explicitly limited to whether the criteria have been satisfied. We agree with SCE. The study criteria were carefully developed with the intention that every participant in a dispute resolution proceeding would understand the criteria by which study requests should be formulated and would be judged. PG&E's recommendation would introduce substantial uncertainty into the process.

189. NEU states that if all three panelists do not support a recommendation, the disagreeing panel member should be required to provide a statement of the reason for their disagreement, in order to ensure a more complete record. We think this decision is best left to individual panelists. We could not, in any case, require compliance with such a provision.

9. Director's Determination

190. The Director's determination is to be made ''with reference to the study criteria * * * and any applicable law or Commission policies and practices.''[165] Several commenters think the Director has too much discretion regarding whether or not to accept a panel's recommendation.[166] NOAA Fisheries, Interior, and MPRB would have the Director bound by a majority vote of the panel. GLIFWC indicates that a requirement for deference to panel recommendations should be written into the rules. The commenters identify no deficiency with these requirements or other specific concern, but evince only a desire to make the panel recommendation binding. The Commission cannot delegate its decisional authority to the Advisory Panel. We have however modified the regulations to clarify that the Director will take into account the technical expertise of the panel, and will explain why any panel recommendation was rejected if that occurs.

191. Some licensee commenters suggest that a potential applicant should be permitted to file a response to the panel recommendation before the Director's determination is made.[167] We think that the study plan development process, plus the right in formal dispute resolution to make a written submission to the Advisory Panel and to participate in the technical conference provide sufficient opportunities for potential applicants to plead the merits of their study proposals.

192. Interior recommends that the Director be required to obtain Commission approval before issuing a decision that does not adopt the Advisory Panel's recommendation. We *see* no reason why such a decision needs to be elevated to the full Commission.

193. Interior also states that it does not know which technical experts the Director may consult before the decision is issued, which could result in the Director's objectivity being compromised. The regulations provide that all communications to or from the Commission staff, which includes the Director, related to the merits of the potential application shall be placed into the record.[168]

194. Finally, several states request that we reaffirm that the Commission's dispute resolution process does not bind state water quality certification agencies

[159] HRC, NYSDEC, NCWRC, PFMC, NEU, SCE, Alabama Power, GLIFWC, IDFG, Troutman, Interior, California.

[160] B&B, Troutman, Alabama Power.

[161] Interior, IDFG, NYSDEC, NCWRC.

[162] We note however that the concept of standing panels is worth considering, as it may be more administratively efficient. As experience is gained with the integrated process we will further consider this idea and, if experience indicates that it would be beneficial, will consult with stakeholders concerning whether modifications to the rule are necessary.

[163] Proposed 18 CFR 5.13(j).

[164] PG&E, p. 24.

[165] *See* proposed 18 CFR 5.13(k).

[166] NOAA Fisheries, Interior, MPRB, GLIFWC, FWS.

[167] CWRC, NEU, SCE.

[168] 18 CFR 5.8(b)(3)(v).

in the sense that participation by a such agencies in the Commission's processes does not affect whatever independent authority it has to require a potential license applicant to produce data or information in the context of the water quality certification application.[169] Alaska states that this holds for state CZMA processes as well. We affirm our prior statement.[170]

10. Study Plan Implementation

195. Several commenters [171] state that a dispute resolution panel should be convened to resolve any disagreements over the interpretation of study results, whether study plans need to be modified, and whether any additional studies are needed. They contend that such disagreements are no less important than disputes over what the study plan requirements should be in the first instance. Interior and RAW add that disagreements concerning a matter which was previously the subject of a panel recommendation should be considered by the same panel.

196. Our decision to limit formal study dispute resolution to development of the study plan does not imply that any subsequent decisions with respect to studies are less important. Rather, it reflects the fact that convening an Advisory Panel at every point in the overall process where there are likely to be disagreements would severely hamper the timely conclusion of the proceeding. Subsequent resolution of disagreements over study results, modifications to the approved plan, and additional study needs are also not likely to result in substantial changes to the overall study plan. Interior's and RAW's recommendation to reconvene an Advisory Panel for later disagreements pertaining to matters previously considered by that panel is impractical. There is no assurance that the same panelists would be available in a timely manner, or at all, and it would likely hamper the recruitment of third party technical experts if by committing to serve on one panel they were also committing to serve on an undetermined number of future panels at undetermined times.

H. Compliance With Study Plan

197. As proposed, the study plan order would require the potential applicant to proceed with the approved study plan. The Director's order in formal dispute resolution could amend the study plan order and, if so, would require the potential applicant to carry out the study plan as modified.[172]

198. SCE and others [173] request that we clarify in the rules whether the proposed study plan order (if no dispute resolution is initiated) and the proposed Director's order following formal dispute resolution are final orders to which rehearing applies. SCE seeks certainty on this point so that it may know whether a potential license applicant is subject to the compliance provisions of FPA Section 31. Duke and SCE request that we make these orders non-binding so that potential applicants are not forced to file requests for rehearing or judicial review to protect themselves against the possibility of sanctions under Section 31 [174] or, at least, that we permit the plan and schedule to be modified based on unforeseen circumstances. PG&E suggests that the rules state that an application lacking the required information ''may'' be found deficient, rather than ''will'' be found deficient, since an existing licensee might want to avoid doing pre-filing studies to prevent potential competitors from copying the results. WUWC similarly requests that we make clear that any failure to comply with a study plan determination will not result in civil penalties, but will be treated as a deficiency in the application.

199. California, Interior, and AmRivers request that the rule be amended to ensure that there are consequences for the potential applicant if study requirements, objectives, and expectations are not met. Menominee requests that applicants be required to develop a ''Quality Assurance Project Plan'' prior to implementation of the study plan.

200. Orders regarding studies plans will be binding on potential license applicants, and we expect that they will comply with them. Failure to do so will put potential applicants at risk of having their applications, when filed, found to be deficient or rejected. The question of whether such orders are subject to rehearing and appellate review may have differing answers, based on the facts of individual cases. In addition, review of study plan orders could significantly lengthen the licensing process, and thus is to be avoided to the extent possible.

201. More to the point, it is crucial to the success of the integrated process that issues regarding development of the record be identified and resolved at an early stage in the licensing proceeding. To this end, the process has been designed to give all participants the opportunity to examine existing information, make proposals regarding necessary studies, work with other participants to achieve consensus regarding information-gathering and, on matters that cannot otherwise be resolved, to obtain the opinion of a three-person panel of experts and a determination from the Director based on the record compiled by the participants. It is our hope and expectation that this consensus-building process will succeed, as has the collaborative alternative licensing process, in keeping disputes regarding studies to an absolute minimum, such that all participants can meet their information needs with the study plan as approved by the Director, without the need for further proceedings.

202. Some licensee commenters [175] state that it is unfair that an existing licensee which is a potential applicant could be sanctioned under Section 31 for failing to comply with study plan determinations, while non-licensee potential competitors for the same project license could not.[176] PG&E and others fear that non-licensee potential competitors might fail to comply with the study orders, then submit an application that relies on the studies undertaken by the existing licensee. They recommend that the Commission address this imbalance by specifying that the penalty for failure to comply with the study plan determinations will be the same for licensee and non-licensee potential applicants; that is, the application will be found deficient.[177] Alternatively, SCE states that a non-licensee potential competitor should also be required to have a formal study plan and schedule, and that its

[169] Washington, Massachusetts DER, Georgia DNR, NYSDEC, California, WGA.

[170] California requested that this statement be included in the regulations. We think it is unnecessary to do so, as the authority of states and Indian tribes in this connection is not affected by anything in our regulations.

[171] HRC, AmRivers, Wisconsin DNR, Interior, and RAW.

[172] Proposed 18 CFR 5.13(k).

[173] Long View and PG&E recommend that the Director's decision in formal study dispute resolution be appealable to the Commission or an administrative law judge. PG&E would extend this right to agencies, tribes, and the potential applicant, but states that it should be limited to alleged errors of fact. Long View would allow an appeal in ''extraordinary circumstances,'' which it indicates would include a study recommendation that significantly increases the cost of the study plan over the applicant's budget.

[174] Duke adds that if rehearing is requested, the Commission would have to suspend the study requirements in dispute pending rehearing or judicial review in order to preserve the potential applicant's rights.

[175] Duke, PG&E, NHA, SCE.

[176] SCE evidently has in mind Wolverine Power Co. v. FERC, 963 F.2d 446 (D.C. Cir. 1992), which holds that the civil penalty provisions of FPA section 31 apply only to licensees, permittees, and exemptees, not to unlicensed project operators.

[177] They refer to 18 CFR 4.38(b)(6)(I) and 16.8(b)(6)(I).

application should be found deficient and rejected if it attempts to use the licensee's studies for that purpose.

203. Given that the thrust of Section 31 is the enforcement of Commission requirements with respect to the construction, operation, and maintenance of licensed projects, and not the license application process, it is not clear that the section is applicable to licensees as potential applicants. In any event, we consider imposing civil penalties to be inappropriate in this context and do not propose to do so.

204. With respect to the concern raised by PG&E about the unfair use by a competitor of another competitor's work product, the Commission has pointed out that any improper use of a copyrighted filing is subject to remedy in an appropriate judicial forum.[178] There has not been an instance of a potential competitor copying another applicant's license application since the late 1980s,[179] and since ECPA was enacted in 1986, there have been but two instances of competing applications for a new license.[180] We are aware of only one instance where a potential competitor and an existing licensee have been involved in a dispute over whether an existing licensee should have to share with a potential competitor information required to be made public.[181]

205. In any event, as discussed below, we are requiring non-licensee potential applicants for a new license to file the NOI and PAD no later than the statutory deadline for an existing licensee to file its NOI.[182] Under these circumstances, it will be difficult for a potential non-licensee competitor to game the regulations.

206. NHA similarly requests that we add to the regulations a requirement that as a condition of invoking the formal dispute resolution process agencies must agree to be bound by the Director's decision. This, NHA states, would ensure that the cost and effort of formal dispute resolution is not wasted. As just stated, we cannot bind states or Indian tribes with respect to the administration of their water quality certification programs under the Clean Water Act. NHA does not moreover speak for a united industry on this issue. Several licensee commenters indicate that they may feel compelled to seek rehearing of the Director's decision, and we can see no distinction between a potential applicant, agency, or Indian tribe in this regard.

207. Finally, PG&E and SCE request that we modify the proposed rule to make clear that agencies and Indian tribes with mandatory conditioning authority may not invoke the Commission's dispute resolution processes and then use authorities they have under other statutes to require potential applicants to do information gathering or studies in addition to those the Commission requires. We cannot do this, for we have no authority to control the activities of these entities under other statutes. We do however fully expect these entities to participate in the integrated process in good faith in order that the Commission's decisional record will, to the extent reasonably possible, serve as the basis for the decisions of entities with conditioning authority, and that any additional information these entities may require is known early in the process.

I. Other Uses for Dispute Resolution

208. Washington DNR recommends that the Commission establish a conflict resolution process for disputes between potential applicants and the owners of lands on which a project would be located, and that the license application not be accepted until the conflict resolution process has run its course. Such a conflict is likely to occur only in the case of a new project proposal. We think it is inappropriate to hold processing of the application in abeyance until the concerns of one party are resolved. Affected landowners, like all interested entities, are encouraged to participate in the pre-filing consultation process and to intervene if a license application is filed. If the potential applicant and the landowner are not able to resolve any differences,[183] the Commission will do so in the context of its public interest analysis under the FPA.

209. Skagit recommends that we require tribal approval of consultants engaged by potential applicants for tribal cultural resources analysis. Nez Perce recommends that a dispute resolution process be made available for disagreements between Indian tribes and potential applicants over the identity of consultants engaged by the potential applicant to do information gathering or studies related to tribal cultural resources because potential applicants sometimes engage persons who are not acceptable to the Indian tribe. As discussed in the NOPR, we agree that it is appropriate for potential applicants to consult with interested tribes concerning the identity of consultants and, indeed, it is in their best interest to do so, but we also think that applicants need flexibility in this regard and should not be required to obtain tribal approval before engaging a consultant.[184] We note however that our regulations require potential applicants and those in their service to protect sensitive cultural resources information from disclosure.[185]

J. Evidentiary Hearings

210. A few licensee commenters[186] want the rules to provide that a party is entitled to an evidentiary hearing before an administrative law judge (ALJ) whenever there are disputed issues of fact.[187] They indicate that such hearings would not be for resolving study disputes, but for ''disputed issues of fact material to disputed mandatory terms and conditions.''[188] They state that such hearings would help foster settlements, and improve the quality and probative value of the record by encouraging resource agencies to support their terms and conditions, and help to limit post-license litigation. They add that such hearings should not delay the process because they would be narrowly focused on specified factual disputes and an ALJ decision could be rendered in about six months.

211. Substantially the same recommendation was made by some of the same commenters prior to the NOPR. We there stated that while we do not intend to change our general practice of resolving most hydroelectric licensing matters by means of notice and comment procedures, we are open to setting discrete issues of fact for hearing before an ALJ in appropriate circumstances, and will give due

[178] *See* WV Hydro, Inc. and the City of St. Mary's, WV, 45 FERC ¶ 61,220 (1988).

[179] *Id.*

[180] One case was N.E.W. Hydro, Inc. and City of Oconto Falls, WI, 81 FERC ¶ 1,238 (1997), *order on reh'g*, 85 FERC ¶ 61,222 (1998), *aff'd, sub nom.* City of Oconto Falls, WI v. FERC, 204 F.3d 1154 (D.C. Cir. 2000). The other was Holyoke Water and Power Co., *et al.*, 88 FERC ¶ 61,186 (1999). In neither case did the competitor prevail.

[181] *See* P.U.D. No. 2 of Grant County, WA, 96 FERC ¶ 61,211 (2001) and ¶ 61,362 (2001). In that instance, the non-licensee potential competitor elected not to file a license application.

[182] *See* Section III.S and 18 CFR 5.5(a).

[183] We note that the Commission's Dispute Resolution Service is available to assist willing parties to resolve disagreements.

[184] 68 FR at p. 14003; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,718.

[185] *See* discussion of this issue in the NOPR; 68 FR at p. 14002; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,717.

[186] NHA, WPPD, Idaho Power, EEI, NEU.

[187] EEI recommends that the regulations include the following language from APA Section 556(d): ''a party is entitled to present his case or defense by oral or documentary evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.''

[188] EEI, p.15. Such a rule would however also logically apply to disputed facts pertaining to license conditions originating with the Commission staff.

consideration to such requests.[189] We also included a provision in the proposed rules providing for such hearings.[190]

212. In the Final Rule, we retain the proposed language on this issue. Resolving factual disputes before an ALJ is a time-tested means of decision making; factual records developed in such hearings are useful to courts which may be called upon to review the final decision on the license.

K. Draft License Application Replaced

213. The integrated process was proposed to include the filing for comment of a draft license application containing, insofar as possible, the same contents as a final license application.[191] Exhibit E, the environmental report, would be significantly different from the traditional Exhibit E because it would be prepared following the guidelines for preparation of an applicant-prepared environmental analysis.[192] Any entity requesting additional information or studies in its comments on the draft application would be required to show extraordinary circumstances, and to address in its request certain criteria, as applicable to the facts of that case.[193]

1. Need for Draft Application

214. We requested comments on whether, in lieu of filing a draft license application for comment, it would be a better use of the participants' time to continue informally working on the resolution of any outstanding issues, or whether other considerations weigh for or against a draft license application.[194]

215. Several industry commenters state that the potential applicant should decide if a draft license application is needed, because many potential applicants feel the time and effort devoted to it would be better spent on other matters such as settlement discussions and completing study requirements.[195] They state that the draft application requirement is burdensome and redundant because of the cost of creating, reproducing and distributing the document to many stakeholders, and then quickly revising and again reproducing and distributing a final application. Some state that other Federal agencies, such as the U.S. Army Corps of Engineers, do not require draft applications, and that it causes no problems.

216. These commenters contend that the other participants do not need to see the potential applicant's proposed resource protection, mitigation, and enhancement (PM&E) measures until the application is filed, and that they should have a good general idea of what the potential applicant is likely to propose from the PAD, NEPA scoping, and study plan requirements. NHA would have the potential applicant consult with the parties with the objective of an agreement on whether a draft application should be circulated.[196] NHA and Long View also suggest that the draft license application may be eliminated for relatively simple cases, such as small projects that operate run-of-river or have no anadromous fish issues.

217. Resource agencies and NGOs urge us to retain the draft license application. They state that it is the first time the potential applicant's whole proposal, including PM&E measures, is consolidated and revealed to agencies, which helps them to understand the entire effect of the project and to prepare for filing of the application in final. Some indicate that the draft application is necessary to ensure that potential applicants consider all participants' comments. Others state that it is an important last pre-filing chance to influence the potential applicant's proposed PM&E measures, and to identify areas where additional information may be needed, including for water quality certification purposes. Some also suggest that the draft license application fosters settlement negotiations. Finally, some commenters indicate that the time required to review a draft license application will not prevent parties from continuing to work on outstanding issues, such as settlements or the completion of studies.[197]

218. Agency and NGO commenters also suggest that the cost of a draft application should be modest because it is circulated so close to the filing deadline that the draft must very closely resemble the final application, and some favor permitting control of costs by e-filing.[198] AMC would retain the draft application if there are no settlement negotiations taking place when it would otherwise be due. Interior suggests that the burden entailed by a draft license application could be minimized by permitting the potential application to incorporate by reference information from the PAD or study results that have not changed.

219. As indicated above, much of the disagreement about whether to require a draft license application turns on the contrast between the industry view that it is burdensome and of questionable utility, and the agency and NGO view that it is helpful to the participants. Our task then is to devise a document that reduces the burden imposed on the potential applicant but retains the features of the draft license application that the agencies and NGOs find useful. To that end, we must consider the commenters' views on the appropriate contents of a draft license application.

2. Contents of Draft Application

220. The NOPR requested comments on whether a draft application, if required to be filed, should track the contents of the final license application, or whether it would be preferable to require it only to include a revised Exhibit E or other materials.[199]

221. NHA and others[200] state that if a draft application is required it should be limited to a description and analysis of the potential applicant's proposal, plus Exhibit E or an abbreviated version thereof. They state that most recipients are only interested in those parts of the draft application and rarely comment on any other part of it.[201] They add that any other information in the record will already have been filed with the Commission and served on the parties, and may be incorporated in a draft application or comments by reference.[202] They conclude that the comments are seldom useful because of

[189] 68 FR at p. 13998; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,711.

[190] *See* proposed 18 CFR 5.28(e). The provision is now at 18 CFR 5.29(e).

[191] Proposed 18 CFR 5.15 (Draft license application).

[192] Proposed 18 CFR 5.17 (Application content).

[193] Proposed 18 CFR 5.15.

[194] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,732.

[195] NHA, Suloway, Long View, SCE, Snohomish.

[196] PFBC, viewing the matter from the opposite side of the coin, would eliminate the draft license application only if most or all parties agree.

[197] MDEP, FWS, ADK, Wisconsin DNR, IDFG, VANR, NEU, Oregon, HRC, PFMC, NCWRC, California, Interior, GLIFWC, Skokomish, Skagit. One industry commenter, PG&E recommends against eliminating the draft application, at least Exhibit E. PG&E states that the comment deadline on the draft application tends to focus participants on the matters most important to them.

[198] Oregon, HRC, PFMC, NCWRC, ADK, California, Interior, VANR, GLIFWC, Skokomish.

[199] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,732.

[200] Oregon, HRC, PFMC, NCWRC, ADK, California, Interior, VANR, GLIFWC, Skokomish, Long View, Acres.

[201] Long View, Acres. Acres indicates that Exhibits A (project description) and B (description of proposed project operation and alternatives considered) may also be appropriate if the potential applicant for a new license is proposing material changes in project operation.

[202] Longview, Acres. These commenters state that the contents of Exhibits A, B, C (proposed construction schedule), and G (project map) would already have been circulated in the PAD or a PAD supplement, or already provided for in the study plan and schedule. They recommend reference to the Commission's EA Handbook as the guidance for preparing Exhibit E.

the limited time available to review the draft, but the potential applicant nonetheless must revise the draft application to respond to them before it files the application in final form.[203]

222. Long View states that if a draft license application contains the potential applicant's specific proposal, then commenting agencies should be required to provide preliminary terms and conditions. This, it states, would allow the potential applicant to refine its proposal and help make Commission action more timely.

223. Agencies and NGOs, on the other hand, recommend that the draft license application continue to follow the format and content of the final application. They wish particularly to have a requirement for a specific operating proposal, and stress the need for a quality Exhibit E.[204] They contend that these are essential for a thorough review and opportunity to comment, and emphasize the importance of the potential applicant's response to comments in the final application. One of the few industry proponents of the existing draft license application format, NEU adds that having a consistent format between draft and final license applications will make reading and comprehension of the documents easier than if the draft application is in a different format.

224. Several commenters also state that the draft license application should include all the data and information needed for the state to consider the potential applicant's clean water act certification application.[205] Oregon states that its process is complex and iterative, so this requirement would help to expedite the state process. IDEQ states that if a state has specific information requirements for the application, the information should be included in the draft application, or the potential applicant should be required to explain when the information will be supplied.

225. Clearly, there is no meeting of the minds on this issue in the written comments. The Process Group however discussed this issue at length and agreed that, in lieu of a draft license application, an applicant could be permitted to file a document discussing its proposal for operation of the project facilities, a range of PM&E measures under consideration by the potential applicant,[206] and a summary of the environmental analysis of the impacts of the range of PM&E's and proposed project operations. This document would be called the potential applicant's ''Preliminary Licensing Proposal.''

226. The underlying premise of the Process Group's compromise is that sufficient information is available through the PAD and completion of information gathering and studies under the approved study plan to support development of a range of PM&E measures and a draft environmental document.[207] The Process Group further agreed that, if the participants are amenable, this filing could be waived by the Commission. The issue of whether to request a waiver would be initially considered in the development of the study plan and schedule.[208] A potential applicant would also have the option to prepare a complete draft license application with the format and contents of the final application.

227. We think the Process Group's agreement is by and large a reasonable attempt to bridge the gap between license applicants and other participants because the proposed document should be less burdensome for potential applicants, yet provide the specificity sought by agencies and NGOs with respect to the potential applicant's proposal and environmental impacts analysis. We have two concerns with this recommendation however. First, a document which contains a ''range'' of potential PM&E measures will not be very helpful to commenters, who will not know which of the potential PM&E measures the potential applicant is seriously considering. It would also needlessly complicate commenting on the draft environmental analysis. We will therefore require the Preliminary Licensing Proposal to include one set of proposed PM&E measures. Second, the utility of the Preliminary Licensing Proposal would also be compromised if the potential applicant merely provided a ''summary'' of its draft environmental analysis. The term ''summary'' is quite elastic and we do not intend to further complicate the process by trying to specify the contents of the summary. Instead, we will require the Preliminary Licensing Proposal to include the potential applicant's draft environmental analysis of its preliminary licensing proposal.

3. Preliminary Draft Terms and Conditions

228. The NOPR states that in most cases the updated study report should indicate that all of the information required by the approved study plan, or all of the information required to support the filing of FPA Section 10(j) recommendations or mandatory terms and conditions or fishways, has been collected and distributed to the relevant agencies at the draft application stage. We suggested that in such circumstances, it may be appropriate for the parties to file preliminary draft 10(j) recommendations, terms and conditions, or fishway prescriptions, and for the Commission staff to make a preliminary response, including initial 10(j) consistency findings, to those filings. Modified recommendations, and terms and conditions would be filed in response to the Commission's ready for environmental analysis (REA) notice.[209] In this regard, we requested comments on whether we should in each case make a determination following the updated study report of whether the record is sufficiently complete to require the filing of preliminary draft recommendations and terms and conditions with comments on the draft license application.[210]

229. A few licensee commenters responded affirmatively. SCE states that under these circumstances we should require draft PM&E measures to be filed 45 days after the license application is filed because the record will be complete. SCE would have final PM&E measures filed 60 days after the REA notice. Idaho Power and EEI suggest that if parties are not required to provide recommendations and terms and conditions when the studies are completed, the goals of the integrated process will not be realized. NEU also supports earlier filing of draft PM&E measures.

[203] Long View, NPS, SCE.

[204] HRC, NCWRC, PFBC, Georgia DNR, California, NYSDEC, Interior.

[205] Oregon, HRC, PFMC, NCWRC, ADK, California, Interior, VANR, GLIFWC, Skokomish.

[206] As we understand the Process Group's recommendation, a ''range'' of PM&E measures encompasses measures with respect to each of the affected resources, and could include potential alternative PM&E measures with respect to a particular issue. An example of the latter might be enhancing bypassed reach flows to benefit aquatic resources or, alternatively, providing enhancements to wetlands in the project reservoir.

[207] In recognition of the fact that information gathering and studies will not always be complete at this stage of the proceeding, we have moved acceptance of the application to the point were the study plan is completed.

[208] The Preliminary Licensing Proposal is issued for comments, which could include requests for new or modified studies. The Process Group's expectation appeared to be that this opportunity would be preserved even if the Preliminary Licensing Proposal were waived. We disagree. Since the purpose of that document is to obtain comments with respect to the potential applicant's proposal, waiver of the requirement to distribute that document should likewise eliminate the opportunity to request new or modified studies at this point.

[209] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,732. The proposed regulation test inadvertently states that the modified PM&E measures would be final.

[210] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,732.

230. One state agency, IDFG also supports this idea, at least with respect to fish and wildlife agency recommendations made pursuant to FPA Section 10(j).[211] Under IDFG's proposal, the Commission staff would not respond to the preliminary 10(j) recommendations. IDFG states that this would enable potential applicants to consider the preliminary 10(j) measures without being influenced by the Commission staff's preliminary response. IDFG thinks this might provide an incentive to the parties to enter into settlement negotiations.

231. Nearly all respondents however opposed this idea for various reasons. Wisconsin DNR and NCWRC state that the potential applicant needs to make its licensing proposal, at least in draft, in order for agencies to assess the potential impacts so that they can develop mitigation measures or craft water quality certification conditions.[212] NCWRC adds that the time frames provided in the proposed rule are already too tight, and it would be unreasonable to require another document from the commenters in the same overall time frame.[213]

232. NOAA Fisheries and HRC indicate that completion of the study plan does not complete the record because, at a minimum, the license application including the applicant's proposal needs to be filed.[214] NOAA Fisheries indicates that the lack of complete information would require it to file prescriptions and recommendations based on a worst case scenario. California and PG&E agree that it would be unproductive for parties to file anything before the Commission declares that the application is ready for environmental analysis. California adds that, in any event, if the studies are complete, parties will soon be making the same filing in response to an REA notice and after the Commission has reviewed the application.[215] NHA similarly indicates that agencies would need to respond on a case-by-case basis, depending on their view of whether the record is complete.

233. GLIFWC and Skokomish state that preliminary draft conditions before the REA notice would not afford Indian tribes sufficient time to consult with Federal agencies that have authority pursuant to FPA Section 4(e) to require mandatory conditions for projects located on Indian reservations.

234. Among agencies and NGOs, only NYSDEC and Oregon do not object to filing preliminary draft PM&E measures. Oregon's tentative assent however assumes a period of one year between the draft and final license applications, in contrast to the approximate period of 150 days in the proposed rule.[216] We are not inclined, particularly in light of our decision to adopt the Preliminary Licensing Proposal, to extend the comment period.

235. Finally, Interior states that this might be acceptable, but only at the option of the entity filing the PM&E measures. Interior also questions the purpose of this proposal on the ground that the Commission's draft environmental document is likely to provide significant information and analysis not found in the studies or applicant's proposal. Interior adds that filing preliminary PM&E measures before the REA notice is pointless since modified PM&E measures are not due until 60 days after the comments are due on the draft NEPA document.[217]

236. We conclude that the arguments against requiring preliminary draft PM&E measures are persuasive and will not require them to be filed.

L. License Applications

1. Contents

237. Only a few comments were filed on the contents of the final license application. Long View seeks clarification that Exhibit C (proposed construction schedule) applies only to proposed construction, and need not discuss any previous construction. Long View's understanding is correct.

238. Long View requests an explanation of why the maps required in Exhibit G need to be stamped by a Registered Land Surveyor. This ensures accuracy in the maps because Registered Land Surveyors are accountable for the accuracy of their work.

239. Nez Perce indicates that the license application should include a map showing the political boundaries of any Indian reservation that may be affected, and identifying ceded and non-ceded territories where treaty rights apply. In our view, this is information that can best be provided to a potential applicant by the Indian tribe itself or with the assistance of Interior.

240. Nez Perce also states that the Exhibit E should be prepared after consultation with affected Indian tribes on the scope of cumulative environmental impacts, and should be prepared on a watershed basis. The integrated process provides ample opportunity for Indian tribes to participate in pre-filing consultation and NEPA scoping. In addition, the Commission staff's Scoping Document 1 will state what the Commission staff considers to be the geographical and temporal scope of the analysis.

241. Some commenters requested changes to the license application requirements that touch on economic analysis. Nez Perce and NOAA Fisheries request that Exhibit E include, in addition to discussion of the cost of PM&E measures, a dollar valuation of the benefits of environmental and cultural resources PM&E measures. This analysis would include, among others things, potential increases in revenues from commercial and sport fishing, increased non-fishing recreation, and potential property value increases resulting from better environmental protection.

242. Our views concerning the attachment of dollar values to natural and cultural resource benefits are set forth in *Great Northern Paper, Inc.*[218] and *City of Tacoma, Washington.*[219]

The public-interest balancing of environmental and economic impacts cannot be done with mathematical

[211] 16 U.S.C. 803(j).

[212] Wisconsin DNR, NOAA Fisheries, and HRC also indicate that this would needlessly create an additional step in the process, and Wisconsin DNR states that it does not have the necessary resources.

[213] PFMC suggests that the Commission and the agencies should negotiate dates for filing of PM&E measures. That would be inconsistent with a central goal of the integrated process, reducing the time required to process license applications.

[214] HRC adds that if preliminary PM&E measures are required, then the record should also be complete enough for the Commission staff to provide draft license articles. Draft license articles are however based on the Commission's evaluation of the reasonable alternatives, which may consist largely of the alternatives recommended by agencies, Indian tribes, and NGOs.

[215] California adds that in the context of its water quality certification, state law requires a final environmental document before its final certification conditions can be issued, and that it would have to repeat the entire water quality certification process. We did not however suggest that the state should issue water quality certification at this juncture.

[216] 90 days to comment on the Preliminary Licensing Proposal or draft license application, followed by 60 days for the applicant to file the final application.

[217] Proposed 18 CFR 5.22.

[218] 85 FERC ¶ 61,316 (1998), *reconsideration denied,* 86 FERC ¶ 61,184 (1999), *aff'd,* Conservation Law Foundation v. FERC, 216 F.3d 41 (DC Cir. 2000) (nothing in the FPA requires the Commission to place a dollar value on nonpower benefits; nor does the fact that the Commission assigned dollar figures to the licensee's economic costs require it to do the same for nonpower benefits.). *See also,* Namekegon Hydro Co., 12 FPC 203, 206 (1953), *aff'd,* Namekegon Hydro Co. v. FPC, 216 F.2d 509 (7th Cir. 1954) (when unique recreational or other environmental values are present such as here, the public interest cannot be evaluated adequately only by dollars and cents); and Eugene Water & Electric Board, 81 FERC ¶ 61,270 (1997) *aff'd,* American Rivers v. FERC, 187 F.3d 1007 (9th Cir. 1999) (rejecting request for economic valuation of environmental resources that were the subject of 10(j) recommendations).

[219] 84 FERC ¶ 61,107 (1998), *order on reh'g,* 86 FERC ¶ 61,311 (1999), *appeal pending, City of Tacoma* v. *FERC,* DC Cir. No. 99–1143, *et al.*

precision, nor do we think our statutory obligation to weigh and balance all public interest considerations is served by trying to reduce it to a mere mathematical exercise. Where the dollar cost of enhancement measures, such as diminished power production, can be reasonably ascertained, we will do so. However, for non-power resources such as aquatic habitat, fish and wildlife, recreation, and cultural and aesthetic values, to name just a few, the public interest cannot be evaluated adequately only by dollars and cents.[220]

* * * * *

In the context of public interest balancing for long-term authorizations, it is inappropriate to rely too heavily on the accuracy of current dollar estimates of non-power resource values, calculated using any number of reasonably disputable assumptions and methods.[221]

243. AW/FLOW and FWS state that the final application should include projections of project revenues for the purpose of testing applicant assertions that proposed PM&E measures are too costly. That would be inconsistent with the fundamental determination underlying our policy of using current costs to value project power; that is, the futility of attempts to estimate power values on a long-term basis.[222]

244. Long View and PG&E state that Exhibit E (which is in the form of a draft environmental document) which requires an economic analysis of ''any other action alternative'' [223] would unreasonably require an applicant to conduct an economic analysis of every PM&E measure recommended by any participant in pre-filing consultation. They would like for the applicant to determine which such measures are reasonable to analyze.

245. The action alternatives typically include PM&E measures proposed by agencies, Indian tribes, and NGOs. If such measures are not provided before the application is filed, the potential applicant has little to work with and a commensurately minor obligation in this regard. In such cases Exhibit E then will contain an economic analysis of the existing project as it currently operates and the license applicant's proposal. We expect however there will also be cases in which preliminary action alternatives or individual PM&E measures will exist when the application is filed. We share PG&E's concern about license applicants being held responsible for developing cost information about or analyses of PM&E measures of varying specificity and practicality, or those that involve long-term activity not easily translated into current costs. We would only expect a potential applicant to provide an analysis of preliminary PM&E measures if they were sufficiently specific to make that possible.[224] We have modified the regulation text to reflect this view.[225]

2. Post-Application Study Requests

246. The proposed rule makes no provision for new information-gathering or study requests after a license application is filed, based on the premise that participants are provided ample opportunity before the application is filed and during the study period to make such requests. Industry commenters agree with this proposal.[226]

247. Some agency and NGO commenters do not agree. They appear to concede that if such requests are permitted, the bar should be set high, but assert that to prohibit them entirely would exclude from the record information warranted by unforeseen circumstances. They cite as examples unexpected study results which establish a need for a new study; failure of the applicant to meet document production and disclosure obligations during the pre-filing period or in the application; and material changes in circumstance with respect to the environment, the applicant's license proposal or information contained therein, and applicable laws or regulations.[227]

248. The mere fact that study results are unexpected does not indicate that a new study is needed. It is possible for study results to be so different from what was expected that questions arise concerning whether it was properly conducted, but such events are exceedingly rare in our experience. The failure of an applicant to satisfy the terms of the study plan or filing requirements is not a cause for new study requests. It is rather the cause of a deficiency that must be remedied, and may also raise compliance issues.

249. It is also possible for a material change in circumstances to occur between the completion of the study plan and the conclusion of a licensing proceeding that requires additional information to be provided. That has always been the case, and the Commission has always exercised its authority to require applicants to provide additional information for the record in appropriate cases. We will continue to do so. However, we remain convinced that the multiple opportunities to request information and studies and to resolve any study disputes during the pre-filing phase of the integrated process will ensure that the application will include all information needs.

M. Consultation and Coordination With States

1. General Comments

250. PFMC requests that we clarify the relationship between licensing and other Federal and state processes. The relationships between licensing and state and tribal water quality certification and consistency certification under the Coastal Zone Management Act (CZMA) are discussed in this section.[228]

251. Minnesota DNR asks us to affirm that the changes we are adopting are not designed to weaken the authority of state fish and wildlife agencies. We have carefully developed the final rule to ensure that the rights and views of all participants, including all state agencies, are accorded the full consideration to which they are entitled by law, and in many instances have provided procedural rights exceeding any legal requirements.[229] Indeed, our expansive approach to stakeholder participation in this rulemaking, which greatly exceeds the notice and comment requirements of the APA, is indicative of our approach to stakeholder participation in our processes.

252. Long View requests that the Commission designate specific members of staff to be familiar with the water quality certification requirements of

[220] 85 FERC at p. 62,244–245. Interior states that environmental and cultural resource benefits of PM&E measures need to be better articulated by the Commission to counter the cost arguments of applicants, but does not seek to have them translated into dollar values. We agree that it is important to explain the benefits, economic or otherwise, of the PM&E measures we approve, and believe our NEPA documents and orders do so. By the same token, agencies that provide mandatory conditions or recommendations have the same obligation with respect to the PM&E measures they sponsor.

[221] 84 FERC at pp. 61,571–72.

[222] *See* Mead Corporation, Publishing Paper Division., 72 FERC ¶ 61,027 (1995), *order on reh'g,* 76 FERC ¶ 61,352 (1996).

[223] *See* proposed 18 CFR 5.17(b)(1)(E).

[224] For instance, the cost of a specific recommendation for instream flows in a bypassed reach can be determined. A fishway prescription, on the other hand, may be too vague, particularly as a preliminary measure, for the costs to be reasonably determined. *See* the discussion in Section III.O.2.

[225] 18 CFR 5.18(b)(5)(i)(B).

[226] We infer this from the fact that the only industry member to comment on the matter was NHA, which endorsed the proposal.

[227] NYSDEC, HRC, Interior, MPRB, NJDEP.

[228] The relationship of ESA consultation to the licensing process is discussed in Section III.O.3.

[229] Georgia DNR states that all state agencies should receive equal consideration in the licensing process. If, by this, Georgia DNR means each agency should receive the full consideration to which it is entitled by the law and implementing regulations, we agree.

each state for the purpose of coordinating with the state at various milestones in the process to ensure that its information needs are being met. Long View expects that this would minimize post-application requests by states for additional information. We decline to adopt this recommendation. State or tribal officials are the persons responsible for administering water quality certification programs, and the integrated process we are establishing includes opportunities and inducements for them to participate in the licensing process and make their information gathering and study needs known early. We also expect the water quality certification process will be coordinated with the licensing process through the development of the process plan and schedule.[230]

2. Timing of Water Quality Certification Application

253. The existing regulations require license applicants to file an application for a water quality certification for both the traditional process and ALP no later than the date on which the application is filed.[231] In the NOPR, we noted that this assumes that the potential applicant has consulted with the water quality certification agency, determined what data is required, and obtained that data before the license application is filed.[232] This premise however frequently does not reflect reality.

254. We proposed to make the license application date the deadline date for filing the water quality certification application in the integrated process because the integrated process is designed to better ensure that water quality certification data needs are timely identified and met.[233] We proposed to change the deadline date for the traditional process from the license application date to 60 days after the REA notice is issued because there is less assurance under the traditional process that water quality certification matters will be resolved when the application is filed. We requested comments on that proposal and on an appropriate deadline date for this filing in the ALP.[234]

255. Commenters on this issue seldom distinguished between processes, and opined that it would be confusing for participants to have a different deadline date depending on the process selection. They recommended a deadline date for all processes based on their views of how the Commission's processes should be coordinated with state water quality certification processes.

256. Only PFMC, NEU, and NJDEP recommended that the deadline date continue to be the filing date of the license application. Several commenters recommended that the deadline for filing of the water quality certification application should be 30–60 days following the Commission's REA notice.[235] The rationale for this recommendation is that the REA notice establishes that the record is complete, so there is sufficient data to support the water quality certification application, and the state should be able to act on the application within one year. NHA also suggests that allowing additional time after the license application is filed would afford time for the state and the applicant to work together in ways that may lead to earlier issuance of water quality certification.

257. In this connection, the Process Group agreed that the integrated process will work best when states and Indian tribes recognize and are actively involved throughout the pre-filing process, and that the Commission, state or Indian tribe, and applicant should discuss schedules and procedures for their respective processes early on. We wholeheartedly agree, and if this is done the integrated process should result in all parties knowing what water quality-related data the Commission will require the potential applicant to produce when the study plan determination is issued or, at the latest, the conclusion of any relevant formal dispute resolution process. This should leave ample time before the license application is filed, about two and one-half years, for the potential applicant to consult with the state regarding what, if any, additional data is required for certification, and to collect that data. If the potential applicant and the state or Indian tribe are diligent in this regard, the potential applicant should be able to file the water quality certification application by the time the license application is filed.[236]

258. There may however be instances where the license application is required to be filed, but some information required by the Commission-approved study plan or by the water quality certification agency has not yet been obtained. In these circumstances, the REA notice will not be issued until the study plan is completed, so using the REA notice as the triggering date to file the water quality certification application allows an additional increment of time past the license application date in case there is also outstanding water quality data.[237]

259. California, VANR, and the Process Group propose that the deadline date be negotiated by the state or Tribe and the license applicant. As a default in the event there is no agreement, California proposes a deadline of 60 days following issuance of the Commission's draft NEPA document.[238] EPA thinks there may be merit in California's proposal. This recommendation is based on the concept that one environmental document should serve for all Federal and state authorizations; *e.g.*, water quality certification, CZMA consistency certification, and Clean Water Act Section 404 [239] dredge and fill permits issued by the U.S. Army Corps of Engineers. California explains that it must prepare an environmental document akin to the Federal NEPA document after an opportunity for public notice and comment (SEQA analysis). It does not consider a water quality certification application to be complete until its SEQA analysis is complete, and it would prefer that the SEQA analysis be the same document as the Commission's NEPA document. It states that by waiting until after the Commission's draft NEPA document is issued, it may be able to use the comments filed on that document to satisfy its own public notice and comment requirements, and still have sufficient time to take substantive action on the water quality certification application within a one-year period.[240] Although VANR supports the single environmental document concept, it

[230] *See* 18 CFR 5.8(d)(4).

[231] 18 CFR 4.38(f)(7) and 16.8(f)(7).

[232] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,714.

[233] Proposed 18 CFR 5.17(f) and 68 FR at p. 14000; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,714.

[234] Proposed 18 CFR 4.34(b)(5) and 68 FR 13988 at p. 14000; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,714.

[235] NHA, PG&E, MDEP, SCE, EPA, NYSDEC.

[236] We hasten to add that this is a minimum time. We are aware of no reason why a potential applicant cannot consult with the water quality certification agency when the NOI and PAD are filed and begin collecting required data before the Commission's study plan determination is issued.

[237] The Process Group agreed that the license application should include the information required by the water quality certification agency. That would of course be desirable, but we cannot impose such a requirement since new license applications must be filed on a schedule determined by the FPA, and we cannot control the timing of the state's process. We likewise decline to tie issuance of the REA notice to a state's determination that the record in its separate process is complete. The Commission cannot delegate its procedural or substantive responsibilities to other entities.

[238] Alaska suggests that for projects in that state an even later time may be appropriate if at some time it exercises water quality certification authority, because a CZMA consistency certification in that state would have to precede issuance of water quality certification.

[239] 33 U.S.C. 1344.

[240] California, WGA, EPA.

concludes that either the license application or REA notice deadline should generally be late enough to ensure that its processes can be concluded before an existing license expires.

260. Oregon and HRC similarly recommend that the deadline date should be established by agreement between the participants and the state on a project-by-project basis. They state that the best time to file the water quality certification application is when the studies are sufficiently complete to provide reasonable assurance of a supportable decision, so long as there is sufficient remaining time to complete the Commission's NEPA analysis and other steps and issue a new license before an existing license expires. Other factors Oregon would take into account include whether the state has public participation and SEPA requirements that rely on the federal environmental analysis.

261. We cannot accept an open-ended deadline date to be negotiated in each proceeding. That would introduce an enormous element of uncertainty into the process and subordinate the Commission's license process to the convenience of the parties or the processes of the water quality certification agency. Neither can we accept a deadline of 60 days following issuance of the draft NEPA document. First, this would be well over three years after the Commission-approved study plan is finalized. Second, in some states the potential license applicant may learn from pre-filing consultation with the certifying agency or tribe all of the data it will be required to produce, but in others this is not determined until an application has been filed. The draft NEPA document is issued at a point approximately 14 months prior to expiration of an existing license. Even if the state promptly determines what additional information is required, it is highly unlikely that the data could be gathered and a certification issued within the remaining time before license expiration. If the state does not act promptly, as much as a year could be lost from the remaining time.

262. California does not explain how the Commission's draft NEPA document could serve that state's public notice and comment requirements when there is no application pending for water quality certification. Absent that application, there would be no reason to think the state would consider the evidentiary record complete, or that the alternatives considered in the Commission's NEPA document would resemble the contents of a water quality certification. In this connection, New York states that it requires water quality certification applicants to submit studies or data based on pre-project conditions. Maine states that its water quality certification agency will not participate in the Commission's study dispute resolution process because of state sovereignty concerns and because an unfavorable decision in the Commission's process would make it more difficult to require the requested data through its own processes.

263. California indicates that the Commission need not establish a water quality application deadline because states have an incentive to informally consult with the potential applicant before the water quality application is filed to ensure that they have the data necessary to issue water quality certification before the existing license expires and thereby ensure that the environmental improvements included in the certification will timely go into effect. That incentive exists now, yet the single most common cause of new licenses not being issued prior to expiration of the existing license is the absence of water quality certification.

264. In sum, the latest date we can accept for filing of the water quality certification application is 60 days following the REA notice for all processes. This provides two to two and one-half years following issuance of the Commission-approved study plan for the potential applicant and the state agency or Indian tribe to determine what, if any, additional information will be required for a complete water quality certification application, and for the applicant to collect the data and file an application before the Commission issues its REA notice.[241] If an application is filed at that point and the state has not yet determined what additional information it will require, it is highly unlikely that the certification will be issued before an existing license expires.

265. Since 1991, our policy has been to deem a water quality certification agency to have waived certification if it has not denied or granted a request for certification within one year after the request is filed. A few commenters recommend that we change the policy so that the statutory one-year period for action established by CWA Section 401 is deemed to begin when the state deems the application to be complete.[242] We decline to do so. This was our practice prior to 1991, but it was found to be unduly burdensome because it put the Commission in the frequently difficult posture of trying to ascertain and construe the requirements of many and divergent state statutes and regulations. The existing rule, in contrast, is clear and simple.[243]

3. Coastal Zone Management Act

266. Alaska seeks assurance that our consideration of coordination and consultation with states includes CZMA issues. Coordination with state agencies that issue consistency certifications under the states' approved Coastal Zone Management Plans should begin with development of the process plan and schedule, in the same manner as coordination with the water quality certification process. We have added state agencies with CZMA authorities to the list of agencies with which a potential applicant must consult,[244] and strongly encourage such agencies to participate in the pre-filing consultation process.

N. Tribal Issues

267. In the NOPR we proposed to establish the position of Tribal Liaison as a single, dedicated point of contact and a resource to which Native Americans can turn for assistance in dealing with the Commission regardless of the proceeding or issue. We also proposed to contact Indian tribes likely to be interested in a relicense proceeding in a time frame consistent with the advance notification to initiate discussions concerning consultation procedures.[245]

1. Consultation Policy

268. Indian tribes offered many comments on the Commission's trust responsibility as it relates to treaty rights, legislation, and executive orders. Several tribes state that as sovereign entities, they have government-to-government consultation rights which differ from those applicable to agencies and the general public, because they must be determined by mutual agreement between the Commission and individual tribes in a case-specific and issue-specific context.[246]

[241] As discussed above in this section, this is a minimum time that assumes the certification agency has not previously made its information requirements known to the potential applicant.

[242] VANR, PFBC, IDEQ, EPA.

[243] *See* Order No. 533, Regulations Governing Submittal of Proposed Hydropower License Conditions and other Matters, 55 FR 23108 (May 20, 1991); FERC Stats. & Regs. Regulations Preambles 1991–1996 ¶ 32,921 at p. 30,135 (May 8, 1991).

[244] 18 CFR 5.1(d).

[245] 68 FR at p. 14002; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,717.

[246] S–B, S–P, CRITFC, NW Indians, Nez Perce, Umatilla, GLIFWC, NF Rancheria.

269. Many commenters [247] also noted their appreciation for the Commission's discussion, but stated that the government-to-government consultation process should be specifically defined in the regulations, so as to clarify the role of tribes in the licensing process and to prevent confusion between tribal consultation and consultation with other entities. They state that the rules should be sufficiently flexible to accommodate case-specific circumstances and incorporate recognition of treaty rights into decisions on studies, resource impact analyses, and license conditions.

270. Various specific suggestions were also made regarding tribal consultation. For instance, the Tribal Group indicates that tribal consultation should begin when the Commission sends the licensee the advance notice of license expiration. GLIFWC, citing tribal government decision-making processes, and NF Rancheria, asserting a need for as complete a record as possible when the NOI is filed, support pre-NOI contacts between the Tribal Liaison and the potentially affected tribes. Catawba and Choctaw state that consultation needs to begin with the chief or governing body, rather than other tribal members or employees. Catawba also recommends that Commission staff visit tribal lands in order to understand local issues. The Tribal Group recommends including in the regulations a requirement for a meeting between the Commission, potentially affected tribes, and other concerned Federal agencies shortly after notice of the NOI and PAD is issued. The Tribal Group and others [248] also recommend that certain points in the licensing process be designated at which the Commission and tribes would assess consultation to date and seek agreement on next steps to ensure that appropriate communication takes place throughout the process.[249] Maidu states that the regulations must specifically recognize the tribes' right to comment on cultural and historical resources study proposals.

271. Concerns were also expressed about the timing of consultation. One example is that some tribes require any agreement with another entity to be ratified by an executive board, while some require only the agreement of the tribal chief.[250] Another concern is that tribal councils don't meet according to Commission schedules, but have their own schedules. This may involve meetings on a monthly, quarterly, or other basis, so that advance notice of schedules is very important.[251]

272. S–P states that tribal sovereignty requires issues scoping to be separate for tribes. NW Indians, on the other hand, suggest that tribes need to be in the same scoping process with other entities because they are likely to have overlapping issues and because the interests of other participants (such as recreational users of project lands) may be adverse to those of the tribes.

273. In light of these comments, we have decided to take a three-pronged approach to better fulfill our trust responsibility. The first prong is to publish in our regulations a policy statement on tribal consultation. The policy statement was developed from our review of the written policies of other Federal agencies concerning the trust responsibility and government-to-government consultation.[252] The policy statement is being issued contemporaneous with this final rule in a separate docket [253] and will appear in part 2 of the Commission's regulations, ''General Policy and Interpretations.'' [254] The policy statement will apply to all of the Commission's program areas and, for hydroelectric licensing, to all licensing proceedings, regardless of which process is used.

274. The policy statement recognizes the unique relationship between the Federal government and Indian tribes as defined by treaties, statutes, and judicial decisions. It acknowledges the Commission's trust relationships. It states that the Commission will endeavor to work with the tribes on a government-to-government basis pursuant to trust responsibilities, the FPA, and any other statutes governing the Commission's authority. It notes that the Commission functions as a neutral, quasi-judicial body and as such is bound by the APA and Commission rules regarding off-the-record communications. It states that the Commission will assure tribal issues and interests are considered in making decisions. Specifically to the hydroelectric program, it states that the Commission will notify tribes at the time of the NOI and will consider comprehensive plans prepared by tribes or intertribal organizations.

275. The second prong of our approach is to establish the Tribal Liaison position, discussed below. The third prong is inclusion in the regulations of a meeting with willing Indian tribes no later than 30 days after filing of the NOI.[255]

276. NW Indians and S–B state that the Commission's rules must acknowledge that the trust responsibility supersedes public interest balancing under the FPA. We do not agree. The Commission carries out its trust responsibility towards Indian tribes in the context of the FPA, and the trust responsibility does not require the Commission to afford tribes greater rights than they would otherwise have under the FPA.[256]

277. We will not attempt to further define the government-to-government consultation process in the regulations. The review of tribal comments above makes clear that there is no consensus on what such specific provisions might be. The one consistent comment is that an effective process needs to be established in consultation with individual tribes. Under these circumstances, we conclude that the most effective way to move forward is to issue the policy statement; include a provision in the integrated process regulations to ensure that tribal consultation begins, at the latest, no later than 30 days after issuance of the NOI; and establish the Tribal Liaison.

278. Although some other Federal agencies have done so, we will also not include a more general definition of tribal consultation in the regulations. BIA, for instance, is guided by the definition of the Advisory Council in the latter's regulations governing

[247] Nez Perce, Menominee, NF Rancheria, Maidu, NW Indians, CRITFC, S–P, CRITFC. NHA and Interior agree.

[248] Nez Perce, Umatilla, Interior.

[249] Interior recommends that, in addition to a pre-NOI check, there should be a check point when the parties receive the potential applicant's proposed study plan and another when the application has been filed.

[250] Fort Peck, NF Rancheria.

[251] Catawba, Choctaw.

[252] We reviewed the policies of other independent agencies, including the Federal Communications Commission, FCC No. 00–207 (June 8, 2000), 16 FCC Rcd 4078; 2000 FCC LEXIS 3245; 20 Comm. Reg. (P&F) 1316; the Federal Emergency Management Agency, ''Final Agency Policy for Government-to-Government Relations with American Indian and Alaska Native Tribal Governments (Sept. 25, 1998), 64 Fed. Reg. 2096 (Jan. 12, 1999); the Environmental Protection Agency (EPA), Memorandum to all EPA Employees from Christine Todd Whitman, EPA Administrator, dated July 12, 2001; and the Nuclear Regulatory Commission (NRC), Memorandum to NRC Commissioners from William D. Travers, Executive Director for Operations, dated February 2, 2001.

[253] Order No. 635 Policy Statement on Consultation with Indian Tribes in Commission Proceedings (PL03–4–000), III FERC Stats. & Regs., Regulations Preambles 104 FERC ¶ 61,108 (July 23, 2003).

[254] 18 CFR 2.1(c).

[255] 18 CFR 5.7.

[256] City of Tacoma, WA, 71 FERC ¶ 61,381 at p. 62,493 (1995); Skokomish Indian Tribe, 72 FERC ¶ 61,268 (1995); *See also* FPC v. Tuscarora Indian Nation, 362 U.S. 99 at p. 118 (1960), *reh. denied,* 362 U.S. 956; and City of Tacoma, WA, 89 FERC ¶ 61,275 (1999). In this regard, we note particularly that the Tribal Group agreed that government-to-government consultation must be consistent with the Commission's *ex parte* regulations.

consultation under Section 106 of the NHPA, 36 CFR 800.16(f). This regulation, which is not specific to tribal consultation, defines consultation as ''the process of seeking, discussing and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process.'' It adds that ''[The Secretary of Interior's] 'Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act' provide further guidance on consultation.''

279. In our view, tribal consultation pursuant to our trust responsibility encompasses far more than implementation of NHPA Section 106. It includes every issue of concern to an Indian tribe related to a treaty, statute, or executive order where the Commission can, through the exercise of its authorities under the FPA, fulfill its trust responsibility. That is a very broad concept, and we are convinced that establishing the consultation process with respect to any particular case through direct communications with the affected tribes will be more meaningful than any general language we could put in the regulations.[257]

2. Tribal Liaison

280. Our proposal to establish a Tribal Liaison was supported by all of the commenting tribes and the Advisory Council.[258] There is a consensus among the commenters that the liaison should not be merely a clerical position, but should also not have decisional authority.[259]

281. Commenters suggest various roles and responsibilities for the Tribal Liaison. These include facilitating government-to-government consultation by directing tribes to the right person or persons to deal with substantive or policy issues; ensuring that communications are maintained between tribal representatives and Commission staff throughout the proceeding;[260] assisting tribal knowledge of and participation in the Commission's processes;[261] educating Commission staff about tribes and the trust responsibility and treaty obligations,[262] assisting tribes in learning how to access and effectively use the informational resources of the Commission's Web site;[263] and informing tribes of activities at a project during licensing and throughout the term of a license that may affect tribal resources on or off the reservation.[264]

282. GLIFWC and Menominee state that because the process for government-to-government consultation needs to be developed in agreement with each tribe, the roles and responsibilities of the Tribal Liaison cannot be fully determined at the outset, but must evolve in response to the development of tribal-specific agreements.

283. The Tribal Group essentially endorsed all of these recommended responsibilities and added the following:

- Coordinate with tribal liaisons at other agencies;
- Help determine which tribes may be affected by likely future relicensing applications or original license applications;
- Inform potentially affected tribes about potential future relicensing applications and facilitate tribal participation in rulemaking proceedings;
- Become educated about the rights of Indians;
- Assist tribes in making known their issues and views on compliance with treaties and the trust responsibility;
- Ensure that tribes are informed of studies and information with cultural resources or treaty rights implications;
- Manage communications between the Commission and tribes when the *ex parte* rule is in effect;
- Facilitate communications between applicants and tribes; and
- Facilitate informal dispute resolution between the applicant and a tribe.

284. Only Skokomish and NW Indians suggest that the Tribal Liaison should play an active role in the substantive resolution of licensing proceedings. NW Indians recommend that the Tribal Liaison or Liaisons should be educated about individual tribes and their interests in specific proceedings and act as their advocate within the Commission.

285. We agree with the majority of the commenters that the Tribal Liaison should be a facilitator of government-to-government consultation, and should not be responsible for resolution of substantive issues. The latter requires expertise with specific resources, plus a thorough knowledge of the facts relevant to a specific case. The Commission employs technical experts for such matters, as do many tribes. The Tribal Liaison will provide expertise with respect to matters of process.

286. Regarding the specific responsibilities of the position, the Tribal Liaison will seek to educate Commission staff about tribal governments and cultures and to educate tribes about the Commission's various statutory functions and programs. The Tribal Liaison will work with the tribes during Commission proceedings, to ensure that the tribes' views are appropriately considered at every step of the process. The Tribal Liaison will act as a guide for the tribes to Commission processes, and will strive to ensure that consultation requirements are met The Tribal Liaison will have considerable flexibility in carrying out these responsibilities, consistent with the evolving nature of tribal consultation.

287. Various commenters indicate that there are too many tribes and too many tribe-specific, case-specific, and interrelated regional or watershed issues for one person to understand and act upon. Some suggestions in this regard include multiple liaison positions based on regions of the country, watersheds or river basins, or sub-regions within a state.[265] Pacific Legacy suggests that the efforts of the Commission's liaison should be complemented by a liaison from each tribe for each project, to be funded by the applicant. The Tribal Group stated that the Tribal Liaison should be a regional position, with an overall coordinator position at the Commission's headquarters.

288. Our decision on the number of Commission staff serving as Tribal Liaison involves two basic considerations; the responsibilities of the position and the level of effort necessary to effectively carry out the responsibilities. At this point we can define the responsibilities of the position, but only time and experience will tell us with certainty what level of effort is necessary.

[257] S–P states that the rules should require each license proceeding to include an assessment of treaty rights and an agreement with the tribe on how those rights will be honored. Although treaty rights need to be considered, S–P appears to suggest that the Commission and the tribe must reach agreement on the substantive disposition of the license application. That is something we cannot do consistent with our statutory responsibilities.

[258] S–P, Nez Perce, NW Indians, CRITFC, Umatilla, GLIFWC, HRC, Advisory Council, Menominee, Skokomish, Interior, NF Rancheria.

[259] S–P, Nez Perce, NW Indians, CRITFC, Umatilla, GLIFWC, Menominee.

[260] NW Indians, Nez Perce, Umatilla, GLIFWC, Menominee. They indicate that the correct person would depend on the issues under consideration; *e.g.*, a technical issue dealing with a fisheries study would be dealt with by a fishery biologist, while an issue concerning the appropriate elements of government-to-government consultation with the tribe might be directed to senior Commission staff. We agree.

[261] SCE.

[262] GLIFWC, Menominee.

[263] GLIFWC.

[264] Interior.

[265] Pacific Legacy, GLIFWC, Menominee, CRITFC, S–P, California, Interior.

3. NHPA Section 106

289. In response to licensee requests, the NOPR clarified how the Commission meets its responsibilities to Indian tribes under NHPA Section 106.[266] The Advisory Council states that this discussion is accurate. NHA however states that while the Historic Resources Management Plan (HPMP) guidance document issued jointly by the Commission and the Advisory Council[267] is useful, the documentation requirements for license applications are inconsistently applied. It states that some staff require a draft Programmatic Agreement (PA) when the application is filed, others want the HPMP to be complete before the application and prior to the PA, and in other cases these documents are allowed to be completed after the license is issued. NHA states that the proposed integrated process regulations are clear that a draft HPMP needs to be filed with the application when the potential applicant has been designated as the Commission's non-Federal representative, but that the traditional process and ALP regulations need to provide the same clarity.

290. NHA and others[268] also request that we explain how the Section 106 consultation process relates to the overall licensing process. Section 106 consultation begins at the same time as the licensing process; that is, when the NOI and PAD are filed and distributed. 18 CFR § 5.8(b)(2) provides for the license applicant to request to initiate consultation at the beginning the pre-filing consultation or, if it is not designated as the Commission's representative for this purpose, for the Commission to initiate consultation.[269] The Commission-approved study plan and schedule provided for in 18 CFR 5.11 through § 5.13 should include studies pertaining to issues raised pursuant to Section 106. The PA must be completed prior to license issuance, but the HPMP can be prepared prior to or following issuance of the license.

291. They also request that the Commission undertake in such circumstances to do any necessary studies itself. The fact that a potential applicant does not become the Commission's non-Federal representative, for whatever reason, does not relieve it, as the project proponent, of the responsibility to undertake the information gathering or studies the Commission determines are necessary to provide the evidentiary record to support a reasoned decision.

4. Other Matters

292. The Tribal Group recommended that the regulations require each potential applicant to designate one person as its point of contact for Indian tribes. We think this is a matter best worked out via consultation between potential applicants and individual tribes.

293. Finally, Washington, Maidu, and Skagit indicate that participation in licensing is costly and that the Commission should work with states and tribes to identify and develop sources for funding of tribal participation that will foster consistent, active participation and rapid turn-around times by tribes. CRITFC recommends that the Commission require applicants to fund liaisons under the control and direction of tribes. NW Indians add that even if the Commission cannot require applicants to fund tribal participation, it should encourage them to do so.

294. The Commission is aware that participation in licensing proceedings can entail significant expense. Federal funding for Indian tribes is however the responsibility of other Federal agencies. We note however that some applicants have found such funding to be beneficial in specific circumstances, and we encourage applicants to consider whether it may be beneficial in the context of their potential applications.

O. Environmental Document Preparation

1. Cooperating Agencies Policy

295. The NOPR proposed to modify, as to federal agencies, the Commission's policy that an agency which has served as a cooperator in the preparation of a NEPA document may not thereafter intervene in the same proceeding, and to make conforming revisions to our *ex parte* rule. The rationale for the existing policy is that cooperating agency staff will necessarily engage in off-the-record communications with the Commission staff concerning the merits of issues in the proceeding, so that, if the agency is allowed to become an intervenor, it will then have access to information that is not available to other parties, in violation of the prohibition in the APA and our rule against on *ex parte* communications.[270]

296. In the NOPR, we concluded that the likely benefits of better coordination between federal agencies in the exercise of their responsibilities, a more complete record, and reduced duplication of effort outweighed the potential for prejudice to other parties that would not have access to some information and decisional communications between the Commission and the cooperating agency. To minimize the potential for prejudice to other parties, we proposed to require that any cooperating agency that provides the Commission with study results or other information also serve such materials on parties to the proceeding.

297. State agencies and NGOs generally support this proposal, and request that we also reverse the policy for state agencies, including water quality certification agencies.[271] SCE also supports the proposed change, provided that cooperating agencies are precluded from challenging the content and completeness of a jointly-prepared environmental document.

298. NHA does not take a position on the proposed policy change, but suggests that any change in policy occur after the transition period, so as not to disrupt ongoing proceedings. PG&E and Duke assert that if the policy change is to apply to gas certification proceedings as well, the Commission should first provide public notice and an opportunity for comment.

299. Several commenters strongly oppose the proposed change in policy.[272] They assert that the changed policy would make cooperating agencies who also intervene ''super parties'' with

[266] 68 FR at pp. 14001–003; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,716–718.

[267] This document provides guidance to applicants and licensees for preparing their historic resource management plans. It is available on the Commission's Web site at *http://www.ferc.gov/hydro/docs/hpmp.pdf*.

[268] *E.g.,* Spiegel.

[269] The Advisory Council and NHA requested this provision.

[270] *See, e.g.,* Rainsong Company, 79 FERC ¶ 61,338 at 62,457 n.18 (1997).

[271] Washington, Georgia DNR, Wisconsin DNR, Washington DNR, California, CSWRCB, Interior, NOAA, HRC. California asserts that the prohibition on *ex parte* communications would not be an issue with respect to states if the Commission were to change its practice of preparing NEPA documents that include, in addition to an environmental impact analysis, analysis and recommendations to the Commission concerning which of the reasonable alternatives considered is the preferred alternative. California would have us put all such analysis in a separate document. California further suggests that the *ex parte* issue could be obviated if the Commission staff who process the application and prepare the NEPA document were separate from the decisional staff that advised the Commission. We will not adopt California's suggestions because preparing two environmental documents in each case and requiring that two separate sets of Commission staff be assigned to every proceeding would likely add expense and delay to proceedings, and would place an undue burden on our resources. Moreover, given that decisions about the scope and conduct of the environmental analysis may have a significant bearing on the ultimate outcome of a proceeding, we are unsure that California's proposals would obviate concerns about fairness and *ex parte* requirements.

[272] *See, e.g.,* Alabama, Duke, EEI, Idaho, Spiegel.

access to more information than others, and thus would violate the APA's prohibition against *ex parte* communications.[273] In support of their contentions, these commenters cite the Commission's statement when it amended its *ex parte* rule that ''a hearing is not fair when one party has private access to the decision maker and can present evidence or argument that other parties have no opportunity to rebut,''[274] as well as case law. *See e.g.*, *Home Box Office* v. *FCC*, 567 F.2d 9 (D.C. Cir. 1997) (*HBO*); *Portland Audubon Society* v. *Endangered Species Committee*, 984 F.2d 1534 (9th Cir. 1993) (*Audubon*); *Professional Air Traffic Controllers Organization* v. *Federal Labor Relations Authority*, 685 F.2d 547 (D.C. Cir. 1982) (*PATCO*).[275]

300. We continue to believe strongly that maximizing cooperation between the Commission and the federal resource agencies will lead to optimal results in the licensing process. However, we conclude that precedent indicates that allowing federal agencies to serve both as cooperators and intervenors in the same case would violate the APA. Our proposal to change the existing policy rested on a plain meaning reading of the APA provisions which the courts have not adopted. Rather, the courts have interpreted the APA more broadly on this point in order to ensure that the purposes of the statute are fulfilled. We therefore will not change the policy precluding cooperating agencies from also being intervenors.

2. NEPA Document Contents

301. California and PFBC state that the filing requirements for license applications include information on the costs of the applicant's proposed PM&E measures, but not information on the economic benefits of those measures. They assert that the NEPA document should contain a much expanded discussion of the latter. Our policy concerning this matter was discussed above.[276]

302. NOAA Fisheries recommends that the regulations include a standard methodology ''to calculate project economics.''[277] Economic evaluations in the context of our public interest analysis cannot be reduced to a formula. For example, one component is a comparison of the current cost of project power under each reasonable alternative to the current cost of the most likely alternative source of power. The comparison helps to support an informed decision concerning what is in the public interest.[278] The estimated current cost of project power under each alternative is of course the sum of many other estimates, principally of the costs of PM&E measures proposed by applicants, agencies, Indian tribes, and NGOs. PM&E measures are moreover not standardized in any way, but are made on a site-specific basis, and often require, in addition to capital cost estimates, annualized estimates of long-term operation and maintenance expenses. Such estimates rest on myriad debatable assumptions upon which reasonable people often disagree.

303. The means of determining the current cost of the most likely alternative source of power also cannot be reduced to a formula. It is based on the project-specific operating regime (*e.g.*, run-of-river or peaking) and is made in the context of regional power markets. For instance, the most likely alternative to baseload hydroelectric capacity in some regions is baseload power from a coal-fired plant. The most likely alternative to hydroelectric energy is typically a combined cycle gas-fired combustion turbine. The value of such power varies from region-to-region and time-to-time. Each NEPA document fully explains the determination of the most likely alternative source of power and the basis for its valuation.

304. The NOPR proposed to accompany draft NEPA documents and environmental assessments with draft special license articles (*i.e.*, articles specific to a project).[279] NHA supports this, but states that standard form license articles should also be included in order to enable the U.S. Forest Service to address concerns it purportedly has about the Commission's administration of projects on National Forest lands. The U.S. Forest Service did not raise this issue. In any event, the standard form license articles are a matter of public record[280] and anyone may request the Commission to modify them.

305. The NOPR proposed to revise our practice in preparing NEPA documents to more clearly separate resource impact analysis from decisional analysis.[281] California reiterates its prior assertion that we should issue NEPA documents containing only resource impact analysis on the ground that it would eliminate any *ex parte* problem associated with state agencies acting as cooperating agencies. We rejected this argument in the NOPR[282] and above.[283]

306. NHA, SCE, HRC and others support our proposal to better separate the environmental impact analysis from decisional analysis; that is, decisional analysis will appear only in the comprehensive development section of the NEPA document. NHA and SCE ask that we make clear that discussion of alternatives and potential mitigation measures in the NEPA document is part of the resource impact analysis under NEPA. We are not entirely clear what these commenters are requesting. We think it is self-evident that the environmental impact analysis under NEPA will cover alternatives and potential mitigation measures. These things are however also likely to be considered, or at the least referred to, in the decisional analysis.

307. HRC requests that a NEPA document prepared in cooperation with another agency include in the environmental analysis the views of each agency where there is a disagreement in the agencies' conclusions concerning impacts to resources. We think the cooperating agencies should decide how best to present the resource impact analysis in such a case.

308. RAW continues to assert that the baseline for environmental analysis on relicensing should be pre-project conditions. We rejected such assertions in the NOPR,[284] and RAW offers no new arguments that would cause us to change our well-established and judicially-approved policy in this regard.

309. Finally, VANR opposes our practice of issuing a single

[273] *See* 5 U.S.C. 557(d)(1)(A) & (B).

[274] Order No. 607, Regulations Governing Off-the-Record Communications, 64 FR 51222 (Sept. 22, 1999); FERC Stats. & Regs. ¶ 31,079 at 30,878 (Sept.15, 1999).

[275] APA Section 557(d)(1) bans *ex parte* communications to or from ''interested persons'' outside the agency. The *PATCO* court held that the ban is not intended to have limited application and that ''[t]he term 'interested person' is intended to be a wide, inclusive term covering any individual or other person with an interest in the agency proceeding that is greater than the general interest the public as a whole may have.'' 685 F.2d at 562. *Audubon*, which holds that the President and White House staff are not exempt from Section 557(d)(1), similarly notes that the legislative history of the provision confirms the ban is to be broadly construed in order to achieve the appearance and reality of open decision-making. 984 F.2d at 1543–44. *HBO* holds that all relevant information must be disclosed in order to ensure the efficacy of judicial review. 567 F.2d at 54.

[276] *See* Section III.L.1.

[277] NOAA Fisheries, p. 8.

[278] *See* Mead Corporation, Publishing Paper Division, 72 FERC ¶ 61,027 at pp. 61,068–069 (1995).

[279] 68 FR at pp. 14004–005; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,722.

[280] The current standard form articles are published at 54 FPC 1799–1928 (1975).

[281] 68 FR at p. 14004; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,721–722.

[282] 68 FR p. 14004; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,721.

[283] Section III.O.1.

[284] 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,706.

environmental assessment in some cases. VANR believes this increases the likelihood of process delay in the form of requests for rehearing. A single environmental assessment is issued only when the Commission is able to make a finding of no significant impacts, which is generally in cases where there is little or no controversy. The parties are in any event afforded an opportunity to comment before the order acting on the license application is issued. The integrated process makes no change in this practice.[285]

3. Endangered Species Act Consultation

310. NOAA Fisheries and Interior state that the integrated process regulations should clearly identify points at which ESA consultation occurs, such as initiation of formal and informal consultation.[286] NOAA Fisheries also recommends language to encourage either the potential applicant or the Commission staff to initiate informal or formal consultation when the process begins.

311. The part 5 regulations are replete with references to ESA consultation. The section on the NOI states that the NOI may include a request by the potential applicant to be the Commission's designated non-Federal representative for this purpose.[287] The notice of commencement of proceeding will contain, if appropriate, a request by the Commission to initiate informal consultation and, if applicable, designate a non-Federal representative.[288] The PAD must include existing information on threatened and endangered species.[289] One of the specified topics for the scoping meeting is a schedule for ESA consultation in the process plan and schedule.[290] Study requests following this meeting should include requests related to threatened and endangered species.[291] The application contents include a discussion of the status of ESA consultation.[292] The tendering notice will update the processing schedule, if required, including ESA consultation.[293]

312. In addition, although it is not reflected in the regulations, our well-established practice is to issue a biological assessment with the draft NEPA document, and the joint agency ESA regulations[294] are clear concerning how and when Interior and Commerce are to respond to that document. In sum, we think the regulations we are adopting provide sufficient clarity concerning the interaction between the licensing process and ESA consultation.

313. Interior, citing the Interagency Task Force report on ESA consultation,[295] also implies that information gathering and studies for ESA purposes should be conducted independent of the rules for information gathering and studies in the licensing process. Interior offers no reason why this should be so, and it would be inconsistent with the entire thrust of the integrated process, which is to maximize coordination of Federal, state, and tribal processes.

314. Finally, Washington DNR states a license or license amendment might be inconsistent with an existing Habitat Conservation Plan (HCP) approved by the USFWS and NOAA Fisheries for various species in Washington State and, if that were the case, the HCP would have to be amended.[296] Washington DNR indicates that the Commission should require the licensee in such circumstances to reimburse Washington State for any costs associated with the HCP amendment. Decisions concerning funding of state agencies are however a legislative responsibility.

4. Fish and Wildlife Agency Recommendations

315. The NOPR proposed to modify our regulations which set forth procedures for consideration under FPA Section 10(j)[297] of recommendations made by Federal and state fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act.[298] The proposed modifications would, with one minor exception, not change the existing procedures, but would simply restate the existing practices with more clear reference to the statutory standards. The only change in procedure would be that Federal and state fish and wildlife agencies would no longer receive separate notice by letter of the preliminary consistency determination that is made in the Commission's draft NEPA document (or single environmental assessment). In the future, service of the draft NEPA document would serve as notice.

316. Oregon objects to the proposal to give notice of preliminary consistency determination in the draft NEPA document. Oregon suggests that notice by letter is necessary to ensure that state agencies do not miss the opportunity for 10(j) negotiations.[299] This should not be a matter of concern. We are not aware of any case in which a Federal or state fish and wildlife agency has failed to receive the Commission's draft or final NEPA document.

317. Interior proposes that the regulations include criteria for the acceptance of 10(j) recommendations, based on a ''team'' approach in which the Commission staff and fish and wildlife agencies would confer before issuance of any preliminary consistency determination. However, at the point where the draft NEPA document or single environmental assessment is ready to be issued there has already been substantial consultation on these matters. Interior's proposal would also, for all practical purposes, be a pre-draft NEPA document 10(j) negotiation procedure. It would be inconsistent with our goal of expeditious resolution of licensing applications to provide an additional, duplicative process step.[300]

318. Snohomish states that the regulations should specify the step in the integrated process at which the 10(j) process begins. The regulations state that the process begins when federal and state agencies submit their 10(j) recommendations in response to the REA notice.[301]

319. California asserts that it cannot reasonably be asked to make final 10(j)

[285] *See* 18 CFR 5.24(d).

[286] Washington and Washington DNR state that ESA consultation should begin with the NOI and be completed before the application is accepted for filing.

[287] 18 CFR 5.5(e).

[288] 18 CFR 5.8(b)(2).

[289] 18 CFR 5.6(d)(3)(v).

[290] 18 CFR 5.8(b)(3)(viii).

[291] 18 CFR 5.9(a).

[292] 18 CFR 5.18(b)(3)(ii).

[293] 18 CFR 5.19(b).

[294] 50 CFR part 402.

[295] This report provides guidance for integrating and coordinating the procedural steps of the licensing and ESA Section 7 consultation processes. The intent of the agreement report is to incorporate ESA issues into prefiling consultation on study needs, the filing of a draft biological assessment with the license application when possible, and integrating ESA issues with the NEPA document and 10(j) negotiations, so that all processes are on the same track. The ITF's guidance documents are posted on the Commission's Web site at *http://www.ferc.gov* on the hydro page.

[296] The PAD is required to describe any applicable HCPs, so that any potential conflicts with a license or amendment proposal are brought to light early.

[297] 16 U.S.C. 803(j).

[298] 16 U.S.C. 661 *et seq.*

[299] Oregon also urges us to defer to state agency recommendations instead of requesting additional support for recommendations that the Commission staff believes are not adequately supported on the record. Such deference would be inconsistent with the Commission's obligation to independently analyze all public interest issues. Our approach to consideration of 10(j) recommendations is moreover long-established and judicially approved. *See National Wildlife Federation* v. *FERC,* 912 F.2d 1471 (D.C. Cir. 1990); *accord, American Rivers* v. *FERC,* 187 F.3d 1007 (9th Cir. 1999).

[300] Implementation of section 10(j) has been discussed by the Interagency Task Force on hydropower, which consists of staff from the Commission and other Federal agencies. Additional discussions may be conducted in the future, if necessary.

[301] 18 CFR 5.26(a).

recommendations without the benefit of the Commission's NEPA analysis. It recommends that we provide for preliminary 10(j) recommendations, which would be due 60 days after the REA notice, and final recommendations, which would accompany the agency's comments on the draft NEPA document. The 10(j) process however already includes a response by Commission staff to the 10(j) recommendations (the preliminary consistency determination), which initiates an opportunity for agencies to file responsive comments, including modifications to their 10(j) recommendations.[302] That is not changed. We *see* no need to burden the process with a second opportunity to modify these recommendations.

320. The NOPR proposes that modified mandatory terms and conditions be filed 60 days following the deadline date for comments on the draft NEPA document or environmental assessment. Washington suggests that the time frames for the 10(j) process should be on the same track as the track for mandatory conditions because there may be related issues. It states, for example, that a modified fishway prescription might be inconsistent with an earlier-filed 10(j) recommendation. The 10(j) recommendations and the Commission's preliminary consistency determination are in the public record and served on all parties to the proceeding. If a Federal or state agency or Indian tribe with mandatory conditioning authority elects to impose a condition inconsistent with a state agency's 10(j) recommendation, the mandatory condition would prevail.

321. NOAA Fisheries states that the Commission's determinations that 10(j) recommendations are inconsistent with the FPA often rest on the conclusion that a recommended measure is too costly relative to the expected environmental benefits. NOAA Fisheries states that these determinations appear to be arbitrary because there is no standard formula for determining the cost of 10(j) recommendations. It asks that we establish a standard methodology for these determinations and include it in the regulations. NOAA Fisheries' concerns in this regard were addressed above.[303]

322. In a related vein, Interior recommends that the regulations specify in detail procedures for determining pursuant to the comprehensive development standard of FPA Section 10(a) whether to accept the recommendations of parties to licensing proceedings, including 10(j) recommendations. The procedures for processing all aspects of a license application are set forth in the integrated process rules or in parts 4 and 16, as applicable. To the extent Interior may be requesting the establishment of a formula for determining the public interest, public interest determinations are made with reference to a myriad of statutory and regulatory provisions and case-specific factual circumstances and cannot be reduced to a formula.

323. HRC does not request the establishment of a formula for acceptance or rejection of 10(j) recommendations, but does request that our consistency determinations provide a more specific explanation of how cost figures into each decision. The Commission is committed to providing a full explanation of how all relevant considerations are factored into its decisions.[304]

324. Georgia DNR requests that we include in the integrated process formal guidelines to address state-listed threatened and endangered species. We do not believe there is a need for any additional guidelines concerning state-listed species, as consideration of them is already built into the integrated process. State fish and wildlife agencies should participate in development of the study plan and schedule, including NEPA scoping, then make recommendations concerning protection of state-listed species pursuant to FPA Section 10(j) in response to the REA notice.

P. Time Frame for Integrated Process

325. The NOPR included a detailed, sequential description of the process steps in the proposed integrated process, including time frames for each of the process steps.[305] We requested comments on which process steps might need to be adjusted, and which time frames, if any, should be specified in the regulations for purposes of guiding development of a process plan and schedule (including studies), and which may not be appropriate for specification in the regulations, but should be developed entirely in the context of case-specific facts.[306] Many comments were filed on the proposed time frames. In this section we consider comments on the overall process.[307] Comments on the time frames for specific steps are discussed with the relevant subject matter.

326. Many commenters state that the overall process time frame of 5.5 years is unrealistic.[308] They cite the complex, multi-party, multi-jurisdictional nature of the proceeding; study requirements that often require more than one or two years of data;[309] the likelihood of one or more occurrences that could impair the timely development of the evidentiary record, such as droughts; weather conditions such as heavy snowpack that can cause lengthy delays in the initiation of field work or may force the revision of planned studies; newly listed threatened and endangered species; the possibility that potential applicants may not adequately fulfill the study plan; the likelihood that some applications will be considered in the context of multi-project environmental analyses covering projects in the same river basis with different expiration dates;[310] and potential difficulties melding the integrated process with the processes of Indian tribal governments, particularly those with modest resources.[311]

327. California and others state that strict adherence to a 5.5-year time frame emphasizes speed at the expense of sound science and quality decision-making, will stifle meaningful public and agency participation, and will cause the process to break down, resulting in needless rehearings and appeals.

[302] Although the process has always been conducted in a manner that contemplates modifications to 10(j) recommendations, the regulations may not be entirely clear in this respect. We have therefore clarified the regulation text. *See* 18 CFR 5.25(c).

[303] Section III.O.2.

[304] HRC suggests that not making formal dispute resolution available for study disputes related to possible 10(a) and 10(j) recommendations increases the risk of disputes over the recommendations themselves. It urges us to increase the use of neutrals to resolve such disputes. We have not traditionally used neutrals in disputes between Commission staff and the parties to proceedings following the issuance of draft NEPA documents, but we are not categorically opposed to HRC's suggestion. As experience is developed with the formal pre-filing study dispute resolution process, it may make sense to further consider whether neutral technical experts could play a useful role in this area as well.

[305] NOPR Section III.E.2 and Appendix C.

[306] 68 FR at p. 14011; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,733.

[307] The Commission received several hundred specific recommendations regarding modifications to the regulation text. These recommendations may be discussed in the preamble in the context of a significant issue, but many recommendations are redundant of the recommendations of other commenters, or are technical corrections, or while meritorious and incorporated into revised regulatory text, do not require discussion in the preamble.

[308] California, SCE, Oregon, PFMC, MPRB, PFMC, VANR, Oregon, GLIFWC, NHA, WPPD, S–P, CRITFC, Noe, Wisconsin DNR, Long View, PG&E, Snohomish, Xcel, Washington, ADK, IDEQ, Minnesota DNR, Interior, HRC, Menominee.

[309] California, Oregon, NOAA Fisheries, Interior, PFMC, and CRITFC point to such examples as mortality studies of anadromous fish, which require multiple release groups over as much as five years to obtain data from just one brood year.

[310] California.

[311] S–P, Menominee, GLIFWC, CRITFC.

California recommends that we assume a process requiring at least 6.5 years. Interior agrees and, if we adopt the 5.5-year process, change all of the 15–30 day time frames to 45–90 days. California also recommends that we modify the rule to provide for negotiated schedules.

328. We are aware that there may be instances in which factors such as those cited above or others, such as lack of water quality certification, will prevent a license application from being developed and processed within the 5.5-year time frame, and that there will continue to be cases where annual licenses are issued. That said, we continue to think the best approach the Commission can take is to design a process that, to the greatest extent possible under the existing statutory scheme, addresses the causes of delay and disputes over the sufficiency of the record. The proposed integrated process was designed to do so. We are confident that the integrated process, with modifications based on the post-NOPR comments and consultation activities, offers the best means of meeting our goals.

Q. Settlement Agreements

1. Time Outs

329. Many commenters urge us to reconsider our decision not to include specific provisions in the regulations for a ''time out'' period during which processing of a license application could be suspended while settlement discussions take place.[312] Oregon suggests a period of 12–18 months would be appropriate. HRC similarly suggests that the processing schedule could be developed to include time for settlement discussions, with the schedule for the Commission's NEPA document adjusted upon the request of the parties to ensure that any settlement agreement which may be filed is one of the action alternatives.

330. These commenters do not disagree that the integrated process should help to foster settlements by ensuring early issue identification and production of information. They contend however that the labor intensive nature of the integrated process and settlement discussions, and the tight time frames in the integrated process, will prevent participants from participating simultaneously in both activities. They add that settlement agreements enhance the strength and durability of the license, help to avoid conflicting Federal and state license conditions, and minimize litigation.

331. They also challenge our statement that the pressure a firm processing schedule places on the parties is an incentive to reach settlement. They argue that time outs increase the likelihood of settlements because it often takes significant time for all parties to fully understand the implications of various potential provisions, which is needed for complete buy-in to an agreement. They add that enforcement of strict deadlines, such as for responses to REA notices, will force parties to take adversarial positions.[313] We continue to adhere to our conclusion in this regard, which is based on our experience.

332. In response to the concerns expressed in the NOPR about maintaining timeliness, the commenters indicate that reaching settlement is more important than strict adherence to a schedule, and that the Commission can place reasonable limits on the amount of time that processing will be suspended while the parties negotiate and require periodic status reports. These comments essentially restate comments made prior to the NOPR.

333. We are not inclined to grant requests for regulatory language that guarantees time outs or implies that they should be routinely granted. We think however there is benefit to codifying the considerations that should be addressed by parties who seek suspension of the procedural schedule to pursue settlement agreements. The provisions we are adopting in this connection make clear that a lack of progress toward the timely filing of a settlement agreement may cause the Commission to terminate any suspension of the procedural schedule that it has granted.[314]

2. Other Matters Pertaining to Settlements

334. The NOPR responded to many commenters who requested guidance in the regulations on what kinds of settlement provisions are or are not acceptable, including adaptive management programs, mitigation measures in lieu of additional studies, mitigation measures outside of existing project boundaries, and confidentiality agreements. In declining to adopt this recommendation, we explained our policies and practices in this regard, with citations to relevant orders. We further explained that it is inappropriate to put general guidance in the regulations because each settlement agreement measure must be evaluated individually in light of the entire record and factors identified in the FPA and other relevant legislation.[315]

335. Several commenters renew their requests for guidance. Some essentially repeat their earlier submissions. Others state that the Commission's response in the NOPR, while helpful, is insufficient. Interior and Oregon, for example, request that we provide additional guidance by compiling case studies and examples of successful agreements.[316] Regarding the second point, Interior and Oregon appear to be asking for guidance on the substantive content of settlement agreements. The best general guidance we can give is that we strive to approve and give effect to all uncontested settlement agreements to the maximum feasible extent, within the bounds of the law and consistent with the public interest. Instances where the Commission has rejected a substantive provision of a hydroelectric licensing settlement that is lawful and within our jurisdiction to enforce are quite rare. If there is any question concerning whether a potential settlement provision has been previously rejected by the Commission or is likely to be rejected, we encourage the parties to confer with the Commission staff.

336. HRC acknowledges that decisions on settlement agreements are based on the law and the record of individual cases, but requests periodically updated guidance on the boundaries of the law concerning what is acceptable, formatted similarly to the Council on Environmental Quality's ''Forty Most Asked Questions Concerning CEQ's NEPA

[312] OWRC, Long View, Reliant, Oregon, CRITFC, Xcel, NHA, VANR, IDFG, GKRSE, Interior, Process Group. NYSDEC states that explicit provisions for time outs are not needed, but that the Commission should grant reasonable requests for suspensions that will help advance settlement talks. Georgia DNR supports a brief suspension of the schedule only where the Commission determines it is ultimately likely to expedite the licensing process. Only Alabama Power opposes a time out provision.

[313] Interior states in this connection that it cannot engage in settlement negotiations that compromise its authorities, presumably by causing it to lose its conditioning authority by failing to meet deadlines in the licensing process. It states that if it agrees to participate in settlement discussions, the Commission must agree to accept as mandatory conditions any resulting settlement provisions, or to accept as timely filed any conditions that Interior may file if settlement negotiations fail. We cannot strike such a bargain, which would compromise the Commission's control of its own processes. Interior must weigh the risks of participation in settlement negotiations in each case.

[314] 18 CFR 5.29(g).

[315] 68 FR at p. 14008; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,727–728.

[316] Interior makes the same request with respect to scientific studies and adaptive management plans.

Regulations.'' [317] We think the statements concerning what the law requires are better made in formal orders or regulations than in guidance documents. The Commission staff stands ready to assist parties if there are questions pertaining to a particular case.

337. NHA states that guidance on formats and components of acceptable settlement agreements would be beneficial. As a general matter, the parties are the persons best able to determine what issues they wish to address in a settlement document and to organize the document. Parties may find it particularly useful to review other settlement documents and use as models those which address the same or similar matters to their proceeding and that have a format useful to them. As with other matters pertaining to settlement documents, there have been several instances in which parties have requested informal staff review of draft documents, a practice we encourage.

338. NOAA Fisheries states that the regulations should require a communications protocol and ground rules for settlement discussions, and should prohibit discussions until the record is complete. NYSDEC disagrees. We responded to NOAA Fisheries' comment in the NOPR [318] and it advances no new facts or arguments.

339. The NOPR also explained the various means of dispute resolution available to parties to proceedings before the Commission, including the use of administrative law judges and Commission staff as facilitators, mediators, and neutrals.[319] ADK states that to succeed in these capacities, Commission staff need to be experienced in hydroelectric licensing. While prior licensing experience is unquestionably beneficial to anyone serving in one of these capacities, it is not a prerequisite. What is essential is training and experience in the relevant discipline. Our Alternative Dispute Resolution training program provides the necessary training to Commission staff.

340. We also explained in the NOPR that we include in licenses settlement agreement provisions that are beyond our authority to enforce if they are included in mandatory terms and conditions.[320] Interior states that there is confusion about how such settlement provisions are to be enforced, and that the confusion would be cleared up if each approved settlement provision the Commission can enforce was incorporated into a numbered license article, and other provisions clearly identified. Interior would like to see this done before issuance of the license order, and the parties given time to amend the settlement agreement in the light thereof.

341. In many cases, settlement agreement provisions approved by the Commission are reformatted into numbered license articles.[321] In other cases, however, it makes more sense from the standpoint of license administration to append the settlement agreement to the license order and include numbered license articles which require the licensee to provide plans to implement various components of the settlement agreement. This is most often the case when the settlement agreement is extremely lengthy or complex.[322]

342. In either case, if there are provisions the Commission cannot enforce, they are identified in the body of the license order.[323] Also, as we have pointed out, the parties are free to include in their agreements other means of enforcing those provisions the Commission itself cannot enforce. Some settlement agreements, for instance, include language characterizing the agreement as a contract.

343. We think it would be inadvisable to amend the regulations to add a time period for the parties to renegotiate the settlement agreement if it contains provisions the Commission cannot enforce. As we have stated, such provisions are almost always procedural and involve the conduct of non-jurisdictional entities, and the precedent [324] is clear, so there is little likelihood of the parties being surprised by such a finding. We are also aware of no case where the settling parties in a hydroelectric licensing proceeding have modified the agreement as a result of the Commission's statement that portions of it are not enforceable by the Commission. Nevertheless, the Commission believes that there may be merit in certain cases to allowing parties a limited opportunity to renegotiate before the Commission issues a license that would not include a critical component of a settlement, or that would include a critical settlement component in a mandatory condition, but that the Commission could not enforce. Therefore, the Commission remains open to considering this approach on a case-by-case basis.

344. Finally, we requested comments on whether the integrated process regulations should encourage potential applicants to include with their draft license application a non-binding statement of whether or not they intend to engage in settlement discussions.[325] Most commenters agreed that this would be beneficial because it would confirm the applicant's intentions with respect to settlement negotiations, which would better enable the parties to assess the prospects for settlement.[326] One commenter suggested that it might also help the Commission to determine the appropriate processing schedule. HRC states that the Commission should also require any such statement to be preceded by discussions with the participants so the intentions of all parties are made clear. A few commenters responded that such encouragement would be meaningless, since it requires the applicant to do nothing, a statement of intent does not commit the applicant to anything, or because the applicant cannot unilaterally decide to conduct negotiations.[327]

345. We have concluded that this is a matter best left to the discretion of the potential applicant because it is likely that there will be many situations in which the potential applicant has not discussed the possibility of a settlement with the other participants when the Preliminary Licensing Proposal or draft license application is filed, or is only able to assess the prospects for settlement after receiving comments on that document.

R. Original License Applications

346. We proposed to make the integrated process applicable to original as well as new license applications, and requested comments on that proposal.[328] Most of the few commenters who addressed this issue responded in the affirmative.[329] NHA, California, and NOAA Fisheries state

[317] 55 FR 18026 (Mar. 23, 1981). NYSDEC indicates that generic guidance on such matters unnecessary.

[318] 68 FR at p. 14007; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,727.

[319] 68 FR at p. 14007; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,727.

[320] 68 FR at p. 14008; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,728.

[321] *See, e.g.,* Hudson River-Black River Regulating District, 100 FERC ¶ 61,319 (2002).

[322] *See, e.g.,* Central Nebraska Public Power and Irrigation District and Nebraska Public Power District, 84 FERC ¶ 61,077 (1998).

[323] *See, e.g.,* Avista Corporation, 90 FERC ¶ 61,167 at p. 61,512 n.25 (2000).

[324] Erie Boulevard Hydropower, L.P., 88 FERC ¶ 61,176 (1999).

[325] 68 FR at p. 14007; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,726.

[326] PG&E, Oregon, HRC, IDFG, PFMC, GLIFWC, Menominee, NCWRC, PFBC, Georgia DNR, NYSDEC.

[327] NHA, Long View, NEU, Interior.

[328] 68 FR at p. 14009; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,729.

[329] NHA, California, HRC, PFBC, PFMC, GLIFWC, Interior. NEU would, however, only apply the integrated process to projects greater than 5 MW, which is about one third of all projects.

that it is important for the integrated process to be coordinated with the issuance of preliminary permits, and offer specific proposals for doing so.

347. NHA's proposal is detailed. An applicant for a permit for a project at an existing non-federal dam would be required to demonstrate ownership of the dam or evidence of authorization from the existing dam owner to evaluate the dam for potential generation. If the permit applicant could not satisfy this requirement, the Commission would issue an order to show cause why the permit application should not be dismissed. If good cause to issue the permit was not shown, the permit application would be declared patently deficient and dismissed. This, states NHA, would prevent the issuance of permits to entities that do not own the site or who lack real intent to construct a project.

348. Under NHA's proposal, six months before expiration of a first permit, the permit holder would have to file its NOI,[330] but would not have to file a PAD. A public notice of the NOI would be issued inviting potential competitors to also file an NOI. Thereafter, the permittee and any potential competitors would have to file a skeletal PAD, with both documents due on the same day in order to prevent either party from copying the other's PAD. The Commission would also bar the competitor from using the permittee's materials in any subsequent filings.[331] A PAD that did not meet minimum content standards would be declared patently deficient and rejected, with no opportunity to remedy the deficiency. The new permittee would have a specified period of time to file a new NOI and the same PAD required of all other potential license applicants. Thereafter the same integrated process applicable to relicenses would apply.

349. NHA's proposal would impede development applications at existing dams by entities other than the dam owner. That would be fundamentally inconsistent with Congress' intent to promote competition in hydropower development.[332]

350. California and NOAA Fisheries make much simpler proposals. California would have us require each new permittee to begin prefiling consultation within 30 days from issuance of the preliminary permit and to file an NOI and PAD within 60 days. NOAA Fisheries would require permit applicants to simultaneously file the NOI and PAD.

351. The California and NOAA Fisheries recommendations do not account for the many uncertainties associated with developing an unconstructed project, a lack of existing project-specific information and studies, or the need to obtain other permits, such as a dredge and fill permit under Section 404 of the Clean Water Act. These factors can add significant time to the period needed to prepare a new development application, or even an original license application for a project at an existing dam. For this reason, successive permits are typical in such circumstances. Other commenters recognize this,[333] and some suggest that the labor-intensive and time-sensitive integrated process may be incompatible with original licenses.

352. We affirm our proposal to apply the integrated process to original license applications. We conclude that the existing preliminary permit program and the integrated process can exist side-by-side and do not need any special provisions for coordination. There is no need for the permit term and pre-filing consultation to begin contemporaneously because a permit holder can file a license application any time during the term of the permit, and pre-filing consultation can and does go forward regardless of whether the potential applicant has a preliminary permit.

S. Competition for New Licenses

353. The FPA requires an existing licensee that is a potential applicant for a new license to file an NOI.[334] Neither the FPA nor our regulations require a non-licensee that is a potential competitor for a new license to file an NOI. In the NOPR we rejected requests from some licensees to require a potential non-licensee competitor to file an NOI.[335]

354. PG&E and NHA state that they are not concerned about this, as long as we require a potential non-licensee competitor to file its PAD no later than five years prior to license expiration. In effect, this would ensure that the potential non-licensee competitor must show its hand no later than the existing licensee. Likewise, an existing licensee concerned about potential competitors could ensure that any potential competitor may not copy its PAD by also issuing its NOI and PAD at the statutory deadline.[336]

355. Upon further reflection, we have decided that it is appropriate for a potential non-licensee competitor to file both the NOI and the PAD. We previously rejected the NOI requirement for non-licensee potential competitors in order to encourage competition on relicensing.[337] Over two hundred new license applications have been filed since the current rules were promulgated in 1989, but just a few applications have been filed by a non-licensee in competition with a timely-filed application by an existing licensee. It is clear that relieving non-licensee potential applicants of the NOI requirement has not had any effect or competition.

356. More important, the existing policy was developed when only the traditional licensing process existed. The adoption of the integrated process and the requirement for Commission approval to use the traditional process change the landscape considerably. The integrated process is based on clearly delineated steps designed to be completed before the license application is filed. The traditional process is much less prescriptive. If there were competing applications, it is mostly likely that we would require them to be developed using the same process in the same time frame. In any event, we would want to ensure that stakeholders have the same opportunity to comment on both potential applicants' process proposals, and the process proposal is required to be included with the PAD.[338]

357. The remaining question is whether a non-licensee potential competitor should be required to file its NOI and PAD within the same six month window applicable to existing licensees. The importance of process selection to efficient processing, discussed above, persuades us that a potential non-licensee competitor should also be required to file its NOI

[330] NHA states that the permit regulations would have to be modified to permit this.

[331] We have previously held that an application will not be rejected because it contains materials duplicated from another application, even if the material is copyrighted. WV Hydro, Inc. and City of St. Mary's, WV, 45 FERC ¶ 61,220 (1988).

[332] Order No. 496, Information to be Made Available by Hydroelectric Licenses under Section 4(c) of the Electric Consumers Protection Act of 1986, 53 FR 15804 (May 4, 1989), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,812 at p. 31,105 (Apr. 28, 1988).

[333] Long View, Troutman, ADK, Wisconsin DNR.

[334] 16 U.S.C. 15(b)(1).

[335] 68 FR at p. 14009; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,729. PG&E notes that the text of proposed 18 CFR 5.3(a) is consistent with the body of the NOPR in this regard, but that proposed 18 CFR 5.3(c) appears to require any potential applicant, whether or not an existing licensee, to file an NOI. We are modifying the language concerning this requirement in accordance with our decision here to require any potential applicant for a new license to file an NOI.

[336] This would if adopted, take care of Long View's concern that a competing non-licensee applicant could photocopy an existing licensee's PAD.

[337] Order No. 513, IV FERC Stats. & Regs. ¶ 30,854 at p. 31,415.

[338] 18 CFR 5.6(d)(1).

and PAD no later than five years before expiration of the existing license.[339]

T. Summary of Changes to Integrated Process—Regulation Text

358. In this section, we summarize the changes we are making to the integrated process. The changes are discussed in the order in which they occur in the part 5 regulations. A flowchart of the integrated process with significant modifications in boldface print is posted on the Commission's Web site.

359. The content and distribution requirements for the PAD have been substantially modified.[340]

360. At the time of the notice of commencement of proceeding, the Commission will request commencement of informal ESA consultation if the potential applicant is not designated as the Commission's non-federal representative for this purpose.[341]

361. We are accepting the Tribal Group's request that early tribal consultation be specifically acknowledged in the regulations. To that end, we have added a new section providing for a meeting no later than 30 days following the filing of the NOI between each willing Indian tribe likely to be affected by the potential license application and the Commission staff and other relevant Federal agencies.[342]

362. The NOPR proposed to have the Commission's NEPA Scoping Document 1 issued following the potential applicant's issuance of a revised PAD with a draft study plan. The Process Group concluded that because the study plan should be issue-driven, and because the PAD and other factors should enable participants to begin issue identification from the beginning of the process, the integrated process would work better if NEPA scoping begins earlier. Accordingly, we have modified the rule to provide for the issuance of Scoping Document 1 at the same time the Commission issues the notice that the proceeding has commenced.[343]

363. The proposed rule provided that comments on the PAD ''may'' include initial information and study requests. In light of the fact that the beginning of NEPA scoping has been advanced to the same date as notification that the proceeding has commenced, the regulations have been modified to state that comments on the PAD ''shall'' include the commenters' information and study requests, and should include information and studies needed for consultation under ESA Section 7 or water quality certification.[344] Agencies or Indian tribes with authority to issue water quality certification are strongly urged to participate in this and all other aspects of the development of a Commission-approved study plan and schedule.

364. The proposed rule would have required the potential applicant to file a revised PAD and a proposed study plan. The Process Group concluded that there is no need for a revised PAD if the process is modified to provide additional time for the participants to address the potential applicant's draft study plan. As we are modifying the rule for that purpose, as discussed below, the revised PAD has been eliminated. We stress once again, however, the importance of potential applicant's exercising due diligence in obtaining information and preparing all components of the PAD. It is central to the success of the enterprise.

365. At the same time the potential applicant files its draft study plan, the Commission staff will issue, if necessary, Scoping Document 2.[345] This previously occurred when the study plan determination is issued.

366. Comments on the draft study plan were proposed to be due 60 days after the draft study plan was filed, during which period the Commission staff would have issued Scoping Document 1, with the draft study plan appended.[346] As recommended by the Process Group, Scoping Document 1 has been advanced, and the draft study plan will be served directly on the participants. The comment period on the draft study plan has also been extended to 90 days, and provisions made for the applicants and participants to hold meetings on the study plan during the 90-day period, in order to encourage as much discussion and negotiation as possible among the participants.[347]

367. As proposed, the potential applicant would file a revised study plan for Commission approval, followed by the Commission's study plan order.[348] The Process Group recommended that we add an opportunity for participants to file comments on the revised study plan prior to the study plan order. We have added a 15-day period for this purpose.[349]

368. The formal dispute resolution rules have been modified to include a technical conference open to all parties, before the Advisory Panel begins deliberations.[350]

369. We have clarified the standards for requesting changes to ongoing studies, and for requesting new information gathering or studies following the initial and updated study reports.[351] In brief, requests made following the initial study report are subject to a good cause standard, and requests made following the updated study report are subject to an extraordinary circumstances standard.

370. The requirement to file for comment a draft license application has been replaced by a requirement to file a ''Preliminary Licensing Proposal,'' although a potential applicant may elect to file a draft application.''[352]

371. The proposed rule provided for comments, interventions, and the filing of preliminary recommendations and terms and conditions 60 days following issuance of the REA notice,[353] to be followed by the issuance of a draft EA or EIS, or an environmental assessment. We have, consistent with our current rules, added a 45-day period for reply comments, which would not affect the proposed time periods for issuance of NEPA documents.[354]

U. Changes to Traditional Process and ALP

372. The NOPR proposed four significant changes to the traditional process: (1) Full public participation; (2) mandatory, binding pre-filing dispute resolution; (3) the requirement to file an NOI and PAD; and (4) extending the deadline for filing the water quality certification application until 60 days after the REA notice. The NOI and PAD and related discussion of process selection and transition provisions were discussed above.[355] The water quality certification deadline was also discussed previously.[356]

373. As discussed in this section, we are adopting the changes to ensure full public participation, but have decided to maintain the existing pre-filing dispute resolution process.

[339] 18 CFR 5.5(d).
[340] 18 CFR 5.6 and Section III.E.
[341] 18 CFR 5.8(b)(2) and Section III.O.3.
[342] 18 CFR 5.7 and Section III.N.
[343] *See* 18 CFR 5.8(c).
[344] *See* 18 CFR 5.9(a).
[345] *See* 18 CFR 5.10 (Scoping Document 2).
[346] Proposed 18 CFR 5.9 and 5.10.
[347] 18 CFR 5.11(c).
[348] Proposed 18 CFR 5.12.
[349] 18 CFR 5.13(b).
[350] 18 CFR 5.14(j) and Section III.G.3.d.
[351] 18 CFR 5.15.
[352] 18 CFR 5.16 and Section III.K.
[353] Proposed 18 CFR 5.22.
[354] 18 CFR 5.23(a).
[355] *See* Sections III.D. and III.F.
[356] *See* Section III.M.2.

1. Traditional Process—Public Participation

374. In the NOPR we proposed to modify the traditional process pre-filing consultation regulations to require potential applicants to make reasonable efforts to bring into pre-filing consultation as early as possible NGOs and other members of the public, and for these entities to be involved in the development of the potential applicant's study plans.[357]

375. Non-industry commenters favor this proposal. NHA and SCE oppose it. NHA states that it could significantly increase the cost and time of the process. It recommends that we maintain the existing provisions for public participation, except that the public would be encouraged to provide the potential applicant with comments on its proposal following the public meeting required during stage one consultation,[358] and the potential applicant and agencies would be required to respond contemporaneously to those comments. NHA indicates that the availability of the PAD on the Commission's Web site should enable the public to effectively participate in the public meeting, and the potential applicant could decide what level of pre-filing public participation was appropriate for the project. SCE also cites increased costs and burdens and states that the public is already adequately represented by the Commission and resource agencies.[359]

376. We are strongly inclined to adopt the rule as proposed. Under NHA's proposal, the potential applicant would not be required to distribute the PAD to members of the public likely to be interested in any license application proceeding or include the public in the joint meeting with agencies and Indian tribes. There would also be no requirement for the public to provide comments and study requests following the joint meeting, and they would not be eligible to participate in the joint meeting following comments on the draft license application.[360] This would exacerbate the contribution that lack of public input during pre-filing consultation now makes to licensing delays. The proposal in the NOPR to include the public in all aspects of pre-filing consultation substantially resolves this problem for the traditional process.

2. Traditional Process—Mandatory, Binding Dispute Resolution

377. The principal reasons the existing study dispute resolution process is not used are that it is not required to be used and the result is advisory only.[361] We proposed to require consulted entities in the traditional process who oppose a potential applicant's information-gathering and study proposals to file a request for dispute resolution during pre-filing consultation. Consulted entities that do not request dispute resolution would thereafter be precluded from contesting the potential applicant's study plan or results with respect to the issue in question.

378. We also proposed to make the outcome of dispute resolution binding on all participants; that is, the Director's order resolving the dispute would, if information or a study is determined to be necessary, direct the potential applicant to gather the information or conduct the study. Consulted entities would not be permitted to revisit the dispute after the application is filed. We further proposed to eliminate from the traditional process the opportunity to request additional scientific studies after the license application is filed.[362]

379. NHA and EEI support the proposed change.[363] NHA would also modify the proposed rule by requiring study requesters to address the study criteria applicable to the integrated process, and by requiring the Director to address those criteria in his decision.

380. Agency and NGO commenters were less enthusiastic. HRC and Interior contend the proposed change could make the problem of post-application study disputes worse and, along with TU urge that if pre-filing binding dispute resolution is adopted, it be the same as formal dispute resolution in the integrated process. Interior argues that study disputes cannot be resolved without the aid of a panel of technical experts and the views of Commission staff, so the goal of developing a record during pre-filing consultation that will support the actions of all agencies with decisional authority would be thwarted. NYSDEC appears to support mandatory, binding dispute resolution, but opposes elimination of post-application study requests. HRC, echoing the concerns of commenters on binding dispute resolution in the integrated process, adds that if the traditional process dispute resolution is to be mandatory and binding, then the Commission must permit rehearing of the Director's decisions. Finally, Interior and NOAA Fisheries state that the Commission does not have authority to issue a binding pre-filing dispute resolution in the traditional process because in that process no formal proceeding commences until the application is filed. We think Interior and NOAA Fisheries are correct and will therefore not adopt this proposal.

381. Finally, NOAA Fisheries recommends that we modify the traditional process by requiring applicants to submit for Commission approval a study plan under conditions similar to development of the study plan in the integrated process. Since we are not adopting mandatory, binding dispute resolution in the traditional process, a Commission-approved study plan would serve no purpose, and would blur the distinction between the integrated and traditional process.

3. Traditional Process—Other Recommendations

382. Interior recommends that we make no changes in the traditional process until the integrated process has become established and shown to be effective because it opposes mandatory, binding dispute resolution in the traditional process. As just discussed, we are not adopting that proposal. Because Interior does not specifically oppose increased public participation, we presume it has no objection to that aspect of the proposed rule.

383. SCE states that the best way to streamline the process would be to eliminate pre-filing consultation altogether for any project that has previously been issued a license in which a NEPA document was prepared, or for small projects where no operational or ground-disturbing changes are contemplated. Under SCE's scenario, the pre-NOI notice to the applicant would be published in a local newspaper. The potential applicant would file the NOI and an abbreviated version of the PAD, then file an application based on whatever pre-filing consultation it decides is needed. In support, SCE states that it already has relationships with the resource agencies and that anyone is welcome to make

[357] 68 FR at p. 14011; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,734.

[358] *See* 18 CFR 4.38(b)(3) and 16.8(b)(3).

[359] Acres does not oppose the proposal, but states that the Commission should help individual members of the public organize themselves so that public participation is efficient and structured. Participation by individuals may be inconvenient for applicants in certain respects, but individuals are capable of determining for themselves whether joint action is consistent with their individual interests.

[360] *See* proposed 18 CFR 4.38(b) (1)(3)(4) and (5); 4.38(c)(2) and (6); 4.38(d)(2); analagous sections of proposed 18 CFR part 16, and proposed 18 CFR 5.4.

[361] 68 FR at p. 13996; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,707.

[362] *See* proposed changes to 18 CFR 4.38(b)(5), (c)(1), and (c)(2); and 16.38(b)(5), (c)(1), and (c)(2) and related NOPR discussion, 68 FR at p. 13996; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,734–735.

[363] SCE supports mandatory pre-filing dispute resolution, but states that it should be the same for all processes and should be available only to agencies with mandatory conditioning authority.

comments before an application is filed. It adds that Interior's Bureau of Land Management and the U.S. Forest Service do not require pre-filing consultation.

384. We think leaving pre-filing consultation to the discretion of potential applicants is unlikely to result in any gains in the timeliness or efficiency of the licensing process, and reject the qualifying criteria proposed by SCE. A NEPA document issued many years before a new license application is filed is likely to be of very little value. Nor is a proposal to maintain the *status quo* as an operating regime necessarily a guarantee that a new license application will not raise substantial issues. Changes are likely to have occurred over the term of the license with respect to recreational use of the reservoir and shoreline, threatened and endangered species listings, water quality standards, resource agency management goals, standards for protection of cultural and historical resources, and others. That SCE has established relations with certain agencies has no bearing on this issue of general applicability.

385. SCE adds that if the PAD is required it should be scaled back for applications using the traditional process because it is too burdensome for small projects and the required amount of information is not needed at the beginning because NEPA scoping will follow filing of the application. SCE overlooks two important facts. First, the PAD is one of the tools used to inform the opinions of the participants and the Commission concerning whether to approve use of the traditional process. Second, the PAD is only required to include existing relevant information that can be obtained with the exercise of due diligence. An existing licensee already has a substantially similar obligation to produce information under the traditional process regulations.[364]

4. Streamlined Process for Small Projects

386. The NOPR declined to adopt a proposal by NHA under which applicants could file a request for waiver of all or part of the pre-filing consultation requirements. We did so largely because the existing regulations already provide for consensual waiver by agencies and Indian tribes and owing to concerns about NHA's proposed criteria.[365] Nonetheless, in recognition of the important place of small hydropower in the nation's energy infrastructure and in the hope of eliminating potentially unnecessary costs of relicensing, we requested comments on other approaches to streamlining the licensing process for small projects that would not compromise the interests of other stakeholders.[366]

387. NHA responds that we should not have rejected its proposal because no other agency requires pre-filing consultation, it is not required by NEPA, and it is less important for licenses issued after enactment of the Electric Consumers Protection Act[367] because such licenses were the subject of a recent NEPA document and are likely to include many environmental protection measures. NHA adds that it does not seek an exemption from NEPA, or to preclude analysis based on new issues such as threatened or endangered species listings, but only wants recognition that some impacts will already have been adequately addressed. NHA also stresses that the existence of the PAD would enable interested entities to comment prior to the license application even if there is no formal opportunity to comment.

388. We remain unpersuaded. That other agencies may not require pre-filing consultation, or that it is not required by NEPA, has no bearing on whether it makes sense for license applications. The FPA licensing scheme is unique, and commenters were nearly unanimous that the key to timely and efficient processing of applications is combining pre-filing consultation with NEPA scoping. NHA may be correct that post-ECPA licenses are likely to contain a greater level of resource protection than pre-ECPA licenses. However, as noted in our response to SCE's proposal in the preceding section, many factors are likely to change over the term of any license, regardless of when it was issued.[368]

389. NEU recommends that projects under 5 MW with minor licenses should have the right to elect the traditional process without Commission approval, and to file the initial consultation document currently required by the regulations instead of the PAD. We think the approval requirement has been framed so that licensees of small projects will have a reasonable opportunity to make their case for using the traditional process and, as noted, we have made the PAD less burdensome for all potential applicants.

390. Agencies and NGOs continue to recommend that no special allowances be made for projects of any size unless there has been consultation with agencies, Indian tribes, and the public. They reiterate that size is no indicator of environmental impacts, case-by-case consideration of the issues is not unduly burdensome, and that if there really are few issues or little controversy, then the study design can reflect that.[369]

391. Notwithstanding our rejection of NHA's and NEU's recommendations, we think there are likely to be instances where relicensing of a small project will be uncontroversial, and for which study requirements should be modest. For such cases, waiver of part or all of pre-filing consultation may not prejudice the timely and thorough consideration of a relicense application. We are therefore modifying Section 16.8(e) of the regulations that requires the consent of a resource agency or Indian tribe in order to waive pre-filing consultation with respect to that entity. We will now permit non-consensual requests for waivers, but will require any such request to be preceded by discussions with these other entities and for the request to include documentation of the discussions and a response to any objections to the waiver request. We will also provide an opportunity for responses to the waiver request.[370]

5. Draft Applicant-Prepared Environmental Analyses

392. Under the current rules, a license applicant may include a draft EA with its application if it uses the ALP (applicant-prepared EA, or APEA). The NOPR declined to adopt recommendations that we permit license applicants to include a draft EA or draft EIS with their application even if they use the existing traditional process. We stated that the limits on pre-filing public participation and the history of post-application continuation of pre-filing study disputes would likely make such documents no more useful, or even less useful, than the existing Exhibit E. We did however note that by proposing full public participation in pre-filing consultation and adding mandatory, binding study dispute resolution, the problem of an incomplete record when the application is filed should be alleviated. We requested comments on whether, in light of these proposed changes, we

[364] *See* 18 CFR 16.7(d) and 16.8(b).

[365] 68 FR at p. 14012; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,735–736.

[366] 68 FR at p. 14012; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,736.

[367] Public Law 99–495, 100 Stat. 1243 (Oct. 16, 1986) (codified at 16 U.S.C. 791a *et seq.*).

[368] We note in this regard that the minimum term for a new license is 30 years, and the first relicenses of projects with post-ECPA licenses are still approximately 15 years away.

[369] S–P, MPRB, NCWRC, Interior, Georgia DNR, Wisconsin DNR, Oregon, California, HRC, NYSDEC.

[370] 18 CFR 16.8(e).

should change our rules in this regard.[371]

393. Agencies and NGO commenters opposed this idea.[372] HRC and Interior state that this would not achieve the goals of the rulemaking because there would still be no requirement comparable to the ALP or even the integrated process to consult on a study plan or the APEA. Thus, the APEA would reflect only the positions and interests of the applicant, making it highly unlikely that the Commission could adopt it without major revisions. California adds that even if the factual record was satisfactory, the objectivity of the applicant's analysis would be suspect.

394. EEI and NEU favor this idea. EEI states that APEAs work well in the gas pipeline certificates program.

395. We have decided to permit a license applicant to include a draft EA with its application. The agency and NGO commenters may be correct that an APEA prepared under the traditional process is less likely to account for the views of all participants and may require significant revisions pursuant to the Commission's independent review. That however is not the central issue. The adequacy of an APEA for purposes of filing a license application is determined by whether it contains the information required in Exhibit E, the environmental exhibit. If it contains that information, we are not concerned that it appears in a nontraditional format. The parties will retain the same rights they now enjoy to comment on the full application and make any additional information requests. Regardless of whether an applicant includes an APEA or a traditional Exhibit E in its application, the Commission will issue its own independently prepared draft NEPA document or single environmental assessment.

6. ALP—Applicability of Dispute Resolution

396. We proposed to leave the existing, non-mandatory and non-binding dispute resolution procedures applicable to the ALP in place because mandatory, binding dispute resolution appears to be incompatible with the collaborative nature of the ALP. We did however request comments on whether there may be circumstances in which binding dispute resolution could be conducted in a manner that safeguards the collaborative process.[373]

397. SCE recommends that the ALP include binding dispute resolution. Most commenters however state that a binding process would be inconsistent with the concept of a collaborative process and would therefore have a chilling effect on participation.[374] California and PFMC state that there should be a negotiated dispute resolution mechanism in the communications protocol for each ALP. PFBC recommends that if the existing ALP dispute resolution process[375] fails, the proposed formal dispute resolution process for the integrated licensing process should be used, modified to make it available to all parties.[376]

398. After considering the comments, we have decided not to change the existing ALP dispute resolution provision. Mandatory, binding dispute resolution still seems to us inconsistent with the collaborative process. For the same reason we decline to import into the ALP the formal dispute resolution procedures of the integrated process. The negotiated dispute resolution procedure contemplated by California and PFMC could however be encompassed within a communications protocol, if the participants agreed to request waiver of the process provided for in the regulations.

V. Ancillary Matters

1. Intervention by Federal and State Agencies

399. We proposed to permit Federal agencies that commonly intervene in Commission proceedings, and state fish and wildlife and water quality certification agencies, to intervene by filing a notice instead of the current requirement to file a motion to intervene.[377]

400. No commenter objected to this proposal. Various commenters request that we clarify that the intervention by notice policy extends to, or will be expanded to include, state water rights agencies[378] and Indian tribes with authority to issue water quality certification.[379] These requests are reasonable and will be granted.[380]

401. NYSDEC requests that late interventions also be allowed by notice unless there is prejudice to others. We deny this request. The best means of determining whether other parties would be prejudiced is for the entity seeking untimely intervention to address that issue and for potentially prejudiced parties to respond. Our regulations on this matter make clear that this is one of the matters the Commission may consider in acting on a late motion to intervene.[381]

402. NOAA Fisheries and Interior renew their request for automatic intervenor status, or for the ability to file one notice of intervention good for all proceedings throughout the term of a license. They advance no arguments that were not considered and rejected in the NOPR.

2. Information Technology

403. In the NOPR we denied requests by a few commenters to require that documents filed in a proceeding or required to be available to the public be served or otherwise made available on the internet. We acknowledged that there are many instances where this is very efficient and more useful for participants than distribution of paper. We also noted that many license applicants and others are taking advantage of these benefits. We concluded however that such a requirement might be an undue cost burden on licensees that are small enterprises, and noted that we have granted waiver of the ''licensing library'' requirement where the applicant agreed to make all of the information available on the Internet and to provide hard copies by mail on request.[382]

404. SCE requests that we reconsider and allow applicants to use Web sites and e-mail to disseminate information and effect service in the ordinary course.[383] The applicant would determine whether and to what extent to employ this means of service and information dissemination. SCE states that entities without access to the internet would be accommodated by service of physical documents. HRC notes in a similar vein that electronic service is critical to the tight deadlines

[371] 68 FR at p. 14012; IV FERC Stats. & Regs. § 32,568 at p. 34,736.

[372] HRC, Interior, PFMC, MPRB, NCWRC, California.

[373] 68 FR at p. 14012; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,735.

[374] Interior, HRC, NYSDEC, NEU.

[375] Under 18 CFR 4.34(i)(6)(vii), participants in an ALP may file a request with the Commission to resolve any disagreement concerning the ALP (*i.e.*, not limited to studies) after reasonable efforts have been made by the participants to resolve the dispute.

[376] CSWC recommends that numerous elements of the integrated process be incorporated into ongoing ALP processes. Imposing such requirements would be inconsistent with the collaborative nature of these processes and would upset the settled expectations of the potential applicants and stakeholders who have already established the means by which they will work together.

[377] 68 FR at p. 14013; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,737, and proposed 18 CFR 385.214.

[378] Alaska DNR, EPA.

[379] Interior, EPA.

[380] *See* 18 CFR 385.214.

[381] 18 CFR 385.214(d)(1)(iv).

[382] 68 FR at pp. 14013–014; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,737–738.

[383] SCE states that oversized documents that are not compatible with e-mail would be served by mail, and that critical energy infrastructure information could be excluded.

in the integrated process. It requests that we make electronic service the presumptive form of service, as long as the potential applicant agrees to paper service for anyone who requests it.

405. We continue to be concerned with the situation of small enterprises that operate jurisdictional projects, as well as small NGOs or individuals that may lack the sophistication to fully participate without physical service. We do however *see* the potential for great savings in electronic service and the Commission is continuously reviewing its filing and distribution requirements with a view toward maximizing the use of electronic filing and distribution of information. Thus, as noted above, the final rule encourages potential applicants to distribute on-line information and analyses referenced in the PAD, while preserving the right of a participant to receive these materials in hard copy form. One recent innovation in this connection is the advent of our e-subscription service, in which an entity may sign up to receive e-mail notification of, and a link to our Commission-wide information database (FERRIS [384]) for, every filing made in a specified proceeding.[385] Finally, we will also continue to consider waiver requests in individual cases, and participants in collaborative processes are free to negotiate agreements which take advantage of e-mail and other Internet capabilities.

406. ADK states that the Commission should permit meeting notices and other short documents to be served by facsimile machine instead of by e-mail on the ground that facsimile service is more reliable. This would be an extremely inefficient, if not impossible, means for the Commission to issue public notices. ADK is however free to request that license applicants or other participants in individual proceedings serve documents on it in this manner.

407. GLIFWC states that all documents filed in the licensing process should be made available on the Commission's Web site and an applicant's Web site in both portable document format (pdf) and a word processing format. All documents filed with the Commission are already available to the public on the Commission's Web site via FERRIS in various formats, including pdf. For this reason, there is no need to impose this burden on a potential applicant.

3. Project Boundaries and Maps

408. The NOPR stated that for historical reasons the current regulations do not require minor projects occupying non-federal lands to have an established project boundary, although the boundary for such projects has been considered to be the reservoir shoreline. We further observed that this situation is inconsistent with our ongoing effort to modernize project boundary mapping by conversion of such maps into highly accurate, georeferenced electronic maps, and therefore proposed to require all future license and exemption applicants, regardless of license or exemption type, to provide a project boundary with each application. We requested comments on this proposal.[386]

409. Agencies and NGOs support the proposal. They state that it is important for compliance purposes because the Commission has said the geographical limit of its compliance authority is the project boundary.[387] They state that the project boundary should include generating facilities, bypass reaches, the reservoir to the high water mark, all shoreline lands needed to meet project purposes other than the generation of power, and all lands needed to implement mitigation measures.[388] All of these are required to be included in the project boundary with the exception of bypassed reaches, which we have explained may or may not be jurisdictional depending on case-specific facts.[389]

410. NHA is not opposed to consistent standards for project boundary maps, but objects to imposing the new standards on existing minor licenses for which project boundary maps are already on file, or on exemptions. NHA states that it would cost thousands of dollars for field survey and drafting and that the Commission can obtain all the information it needs under the current rules. NHA, SCE, and NEU also state that licensees should only be required to revise their project boundaries when a new license application is filed or the licensee otherwise seeks approval to revise a particular Exhibit G drawing, because requiring georeferenced, electronically-formatted maps for all projects would be costly and extremely burdensome.

411. These commenters may misapprehend the proposed rule in this regard. It is not our intention to require all existing licensees or exemptees to file a georeferenced map of the project boundary. The project boundary data would only be required when an application is filed for a license or an exemption, or when an application to amend either authorization already requires a revised Exhibit G.

412. SCE adds that standards similar to the electronic standards required for project maps should also be established for design drawings required in a license application. Duke requests clarification of which electronic format is required for Exhibit G maps. It recommends widely used formats such as JPG, TIFF, or PDF, which do not require specialized software.

413. The revised regulations do not require Exhibit G maps to be in a GIS format. The project boundary is only one feature of Exhibit G maps, which also include the location of project features such as the reservoir, powerhouse, and other facilities. An applicant can file the Exhibit G map in a JPG, TIFF, or PDF file, or any other graphic format, the project boundary data however, must be filed in a GIS format.

4. Miscellaneous Filing Requirements

414. The NOPR proposed minor additions to the application filing requirements of §§ 4.41, 4.51, and 4.61. These are: monthly flow duration curves;[390] minimum and maximum hydraulic capacities for the powerplant;[391] estimated capital and operating and maintenance (O&M) expenses for each proposed PM&E measures;[392] estimates of the costs to develop the license application;[393] on-peak and off-peak values of project power, and the basis for the value determinations;[394] estimated annual increase or decrease in generation at existing projects;[395] remaining undepreciated net investment or book value of project;[396] a single-line electrical diagram;[397] and a statement of

[384] FERRIS stands for Federal Energy Regulatory Records and Information System.

[385] Entities wishing to establish e-subscriptions can find instructions on the Commission's Web site at http://www.ferconline@ferc.gov.

[386] 68 FR at p. 14014; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,738.

[387] *See* PacifiCorp, 80 FERC ¶ 61,334 (1997).

[388] HRC, IDFG, NCWRC, PFBC, NYSDEC, PFMC, Menominee, Interior, MPRB.

[389] *See* Duke Power, a Division of Duke Energy Corporation, 100 FERC ¶ 61,294 (2002), in which we stated that where a license requires ongoing programs in a bypassed reach (*e.g.*, a habitat restoration program) such that continued Commission oversight is necessary to meet the program requirements, the reach is considered to be part of the project.

[390] *See* proposed modifications to 18 CFR 4.41(c)(2)(i), 4.51(c)(2)(i), and 4.61(c)(1)(vii).

[391] Proposed modifications to 18 CFR 4.41(c)(4)(iii); 4.51(c)(2)(iii), and 4.61(c)(1)(vii).

[392] Proposed 18 CFR 4.41(e)(4)(v); 4.51(e)(4), and 4.61(c)(1)(x).

[393] Proposed 18 CFR 4.41(e)(9); 4.51(e)(7); and 4.61(c)(3).

[394] Proposed 18 CFR 4.41(e)(10); 4.51(e)(8); and 4.61(c)(4).

[395] Proposed 18 CFR 4.51(e)(9) and 4.61(c)(5).

[396] Proposed 18 CFR 4.61(c)(6).

[397] Proposed 18 CFR 4.61(c)(8).

measures taken or planned to ensure safe management, operation, and maintenance of the project.[398]

415. These are items of information not specifically required to be included by the current regulations, but which the Commission staff requests as additional information in nearly every license proceeding in order to complete its NEPA and comprehensive development analyses. The NOPR found that obtaining this information with the application instead of via an additional information request will enable the staff to move forward more expeditiously to process license applications. No opposing comments were received on these proposed changes, and we are adopting them. A few commenters raised other miscellaneous filing requirement issues.

416. NOAA Fisheries requests a reduction in the number of paper copies that are required to be filed, and that we consider allowing filings to be made on compact disks (CDs) and by other electronic means. The Commission allows, indeed strongly encourages, electronic filing. Parties may also request waiver of the filing requirements in order to substitute a compact disk or CD-ROM for a hard copy filing.[399] We are also reviewing our filing and distribution requirements Commission-wide with a view toward maximizing the use of e-filing and distribution of information, but that review is not complete at this time.

417. Interior requests that we require applicants to provide aerial photographs and/or satellite images to provide an overview of the project area. We think this is excessive in light of the requirements we are already imposing for electronically formatted maps, and the ready availability of United States Geological Survey and other maps.

5. Technical Changes

418. We are also taking this opportunity to correct various sections of the regulations to update them, or to cure incorrect cross-references, misspellings, or misstatements.[400]

W. Delegations of Authority

419. The proposed rule contemplated certain new delegations of authority to the Director, Office of Energy Projects, in the context of the proposed integrated process. Specifically, these are authority to issue: (1) Act on requests to use the traditional licensing process; (2) issue a study plan determination; (3) resolve formal study disputes; and (4) resolve disagreements brought during the conduct of studies. Consistent with our decision to adopt the integrated process as described herein, we are adopting conforming modifications to our delegations to the Director.[401]

X. Critical Energy Infrastructure Information

1. Order No. 630

420. In Order No. 630,[402] the Commission established standards and procedures for the handling of Critical Energy Infrastructure Information (CEII) submitted to or created by the Commission. CEII is information about existing or proposed critical infrastructure that relates to the production, generation, transportation, transmission, or distribution of energy; that could be useful to a person planning an attack on critical infrastructure; is exempt from mandatory disclosure under the Freedom of Information Act;[403] and that does not simply give the location of the critical infrastructure.[404] Critical infrastructure refers to existing or proposed systems and assets, the damage or destruction of which would harm the national security of the public health and safety.[405] The purpose of the rule is to protect information on critical energy infrastructure that could be used by terrorists, while continuing to make public the information necessary for participation in the Commission's processes.

421. CEII is required to be redacted from filings made with the Commission. A hydroelectric license application could contain various kinds of information that are CEII. The preamble to the rule gives examples of such information, including: (1) General design drawings of the principal project works, such as those found in Exhibit F; (2) Maps, such as those found in Exhibit G; (3) Drawings showing technical details of a project, such as plans and specifications, supporting design reports, part 12 independent consultant reports,[406] facility details, electrical transmission systems, communication and control center information; and (4) GPS coordinates of any project features.

422. Of particular concern to the Commission in defining CEII was location information. Such information is particularly relevant, for example, to participants in the NEPA process. Consequently, the following types of location information were not considered to be CEII: (1) USGS 7.5-minutes topographic maps showing the location of pipelines, dams, or other aboveground facilities; (2) alignment sheets showing the location of pipeline and aboveground facilities, right of way dimensions, and extra work areas; (3) drawings showing site or project boundaries, footprints, building locations and reservoir extent; and (4) general location maps. Such information is classified as ''non-Internet public access,'' that is, information to be included in paper filings with the Commission and made be available in hard copy and through the Commission's public reference room, but which will not be available for viewing or downloading from Commission databases[407]

423. Order No. 630 establishes procedures for persons to request CEII that has been filed with the Commission or to challenge CEII status.[408]

2. Conforming Rulemaking

424. Several commenters in the CEII rulemaking and on the NOPR in this proceeding[409] noted that the Commission also requires regulated entities to provide directly to agencies, Indian tribes, and the public certain information that is CEII. The Commission agreed and stated that it would issue conforming rules to ensure consistent treatment of CEII by the Commission and regulated entities. A proposed conforming rule was issued on April 9, 2003.[410] Comments were due on May 16, 2003, and a final rule is being issued concurrent with this rule.[411]

425. The final conforming rule identifies various sections of 18 CFR Parts 4 and 16 that require direct disclosure of information that could include CEII. Public disclosure requirements in part 4 include: (1) Notification of applications to affected

[398] Proposed 18 CFR 4.61(c)(9).

[399] Such waivers are granted under the Commission Secretary's delegated authority in 18 CFR 375.302(i).

[400] Corrections have been made to 18 CFR 2.1(a)(1); 2.7(b); 4.30(b)(9)(ii); 4.30(b)(23); 4.32(a)(5)(vi); 4.32(e)(2); 4.32(h); 4.33(a); 4.33(b); 4.37 introductory text; 4.37(b)(1); 4.39(a); 4.39(b); 4.40(b); 4.41(f)(6)(v); 4.41(f)(9)(i); 4.60(b); 4.61(f)(2); 4.70; 4.90; 4.91; 4.92; 4.93; 4.101; 4.200(c); 9.1; 9.10; 375.308(d)(11), (k)(1), (k)(2)(ii), and (k)(3).

[401] 18 CFR 375.308(aa).

[402] 68 FR 9857 (Mar. 3, 2003); IV FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003).

[403] 5 U.S.C. 552.

[404] 18 CFR 388.113(c)(1).

[405] 18 CFR 388.113(c)(2).

[406] *See* 18 CFR part 12, Subpart D.

[407] 68 FR at p. 9862.

[408] 18 CFR 388.113.

[409] Consumers, PSE, WPSR, NHA, WPPD, Oroville, EEI.

[410] Critical Energy Infrastructure Information (RM02–4–001, PL02–1–001), 68 FR 18538–18544 (Apr. 16, 2003); III FERC Stats. & Regs. ¶ 32,569 (Apr. 9, 2003).

[411] Order No. 643, III FERC Stats. & Regs. Regulations Preambles 104 FERC ¶ 61,107 (July 23, 2003).

property owners, which must include Exhibit G to the application;[412] (2) a copy of the application and all exhibits, available to the public for inspection and reproduction at specified locations;[413] (3) an applicant using alternative procedures must distribute an information package and maintain a public file of all relevant documents, including scientific studies;[414] and (4) in pre-filing consultation for an original license application, the requirement to make available for public inspection various items,[415] including detailed maps[416] and a general engineering design.[417]

426. Public disclosure requirements in part 16 include: (1) When the NOI is issued, a number of items, including the original application, as-built drawings, diagrams, emergency action plans, and operation and maintenance reports;[418] and (2) during pre-filing consultation, detailed maps and a general engineering design must be made available for public inspection.[419] Parts 4 and 16 also in several instances require applicants to serve CEII on Indian tribes, resource agencies, and other government offices.[420]

427. The NOPR proposed to provide that regulated entities subject to the disclosure requirements of Parts 4 and 16 omit CEII from the information made available to agencies, Indian tribes, and the public. Instead, they would include with their filing a statement briefly describing the omitted information, without revealing CEII, and referring the reader to the procedures for challenging CEII claims and for requesting CEII under the procedures adopted in Order No. 630.[421] Therefore, a member of the public could still obtain the information, but would have to follow procedures different from those applicable now. That proposal is adopted in the final rule.

428. Neither the regulations promulgated in Order No. 630 nor the proposals contained in the proposed conforming rule are intended to require companies to withhold CEII. Instead, they are intended to ensure that the Commission's regulations do not require companies to reveal CEII. Consequently, the Commission anticipates that, in most instances, companies will share CEII with participants in the licensing process without requiring those entities to request access to CEII through the Commission.

429. The rules also do not alter the ability of state agencies to obtain data directly from regulated companies pursuant to whatever authorities those agencies have. State agencies are also presumed to have a need to know information involving issues that are within there are of responsibility. They may submit requests for information regarding entities outside their jurisdictions with an explanation of the need.

3. CEII in the Integrated Process

430. Several commenters stated that the final rule needs to clarify how the information filing and distribution aspects of the license application process would work in concert with the CEII regulations.[422] They observe that some of the information in the PAD required to be filed and distributed appears to be non-Internet public information and CEII.[423]

431. The information filing and disclosure requirements of part 5 are not covered by Order No. 630, or the proposed conforming rule. We are therefore including in the new part 5 regulations a provision consistent with the revisions to Parts 4 and 16 promulgated in Order Nos. 630 and 630–A.[424]

432. Long View recommends that the requirements of Exhibit F to the license application be made consistent with the CEII rules. This is not a matter of conforming Exhibit F to the CEII rules, but rather making Exhibit F subject to the rules, which it is.

433. One commenter stated that the form which entities requesting CEII are to use is not available on the Commission's Web site and that the form does not provide a name or office number for the person to whom the submission is to be made. These omissions will shortly be remedied.[425]

Y. Transition Provisions

434. Nearly all the comments on the proposed transition provisions were made by industry representatives. Only Idaho Power found the three-month transition period to be reasonable, as long as flexibility is provided for the few existing licensees who would be immediately affected. HRC and NYSDEC agree.

435. Requests for extension of the transition period range from six months to six years, during which time applicants would have complete choice of process.[426] The commenters assert that more time is needed to fully consider the rule after it is finalized and to switch from the initial consultation document and public information requirements of the current rules to the PAD, and that a three-month period reduces the six-month window provided by the rules for submittal of the NOI to three months for some licensees.[427] The Process Group recommended a one to two year transition period.

436. In light of these comments, we have concluded that the integrated process should become the default process on July 23, 2005. Until that time, potential license applicants will be able to select the integrated process or the traditional process as it currently exists (except for increased public participation, changes in miscellaneous filing requirements, and a later deadline date for filing of the water quality certification application). At the end of the two-year period, the integrated process will become the default process. All potential applicants will have to file the NOI and PAD, and obtain Commission authorization to use the traditional process.[428]

437. All other proposed changes to the regulations will, as proposed, take effect on October 23, 2003.

438. EEI requests that changes to the *ex parte* rule in connection with reversal of the policy on intervention by cooperating agencies should not apply to any projects for which an NOI has

[412] 18 CFR 4.32(a)(3)(ii).

[413] 18 CFR 4.32(b)(3)(i), (b)(4)(ii)–(iv).

[414] 18 CFR 4.34(i)(4)(i) and (i)(6)(iii).

[415] 18 CFR 4.38(g).

[416] 18 CFR 4.38(b)(1)(i).

[417] 18 CFR 4.38(b)(1)(ii).

[418] 18 CFR 16.7(d)(1)–(2).

[419] 18 CFR 16.8(b)(2)(i)–(ii).

[420] 18 CFR 4.32(b)(1)–(2); 4.38(b)(1), (c)(4), (d); 16.8(b)(1), (c)(4), (d).

[421] *See* proposed 18 CFR 4.32(k), 4.34(i)(10), 4.38(i), 16.7(d)(7), and 16.8(k).

[422] Consumers, PSE, WPSR, NHA, WPPD, Oroville, EEI.

[423] They cite proposed 18 CFR 5.4(c)(2)(H), (I), (K) and (L).

[424] 18 CFR 5.30 (Critical Energy Infrastructure Information).

[425] The CEII request form is being developed and will soon be posted on the Commission's Web site at *http://www.ferc.gov*.

[426] Six months to one year (NHA); one year (Troutman, EEI, PG&E, SCE, Georgia Power); one to two years (Process Group); and five-six years (Long View).

[427] This would be the case when the effective date of the rule falls within the six-month window. In this regard, Georgia Power and Troutman recommend against making the NOI deadline date the trigger date for applicability of the rule. They recommend instead the six-month period of five to five and one-half years before license expiration. A licensee for whom the six-month period includes the effective date of the rule could choose the traditional process by filing its NOI prior to the effective date of the rule, or choose the integrated process by filing its NOI after the effective date (and not making a request to use the traditional process). Alternatively, Georgia Power, Duke, and NEU request that guidance and special consideration be given to requests for waiver of the rule for the few projects for which the NOI is due very close to the effective date of the rule.

[428] The two-year period is irrelevant for purposes of the ALP because the requirements for approval do not change.

already been filed, because those potential applicants relied on the existing rules. As we have decided to retain the existing cooperating agencies policy, EEI's request is moot.

439. California asserts that any change in the deadline for applying for water quality certification from the date of the application to a later time should apply immediately. California states that this would give all licensees that have filed an NOI, but not yet filed the license application, the benefit of additional time to resolve data requirements before filing their certification request.[429] We agree in general that licensee applicants should have the benefit of our decision to move back the deadline date to 60 days following issuance of the REA notice. To minimize confusion, however, we will make that change effective October 23, 2003. Thus, a license application filed after that date under any process will benefit from the changed deadline date for filing the water quality certification application.

440. SCE and the Process Group request that we ''grandfather'' any potential applicant that has already been authorized to use the ALP, even if the NOI date has not arrived. This request is reasonable and we will grant it.

441. Duke requests that we grandfather ''existing licensing proceedings,'' by which it apparently means that the potential applicant has commenced pre-filing consultation. This request is moot with respect to the process selection rules because a potential new license applicant by definition begins pre-filing consultation when the NOI and PAD are filed, and only those for whom the deadline date is two years away will be affected. With respect to the miscellaneous filing requirements, we think the three month transition period is sufficient.

442. Duke also states that potential applicants already engaged in the traditional pre-filing process should be permitted to employ features of the integrated process in the traditional process. We proposed changes to the regulatory text which enable a potential applicant to file a request to do so during first stage consultation after consulting with potentially affected entities.[430] No commenter opposed the proposed provisions, which we are including in the final rule.

[429] California cites changes to 18 CFR 4.34(j) and 4.38(h).

[430] Proposed 18 CFR 4.38(e)(4).

IV. Environmental Analysis

443. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have significant adverse effect on the human environment.[431] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusions are rules that are clarifying, corrective, or procedural or that do not substantively change the effect of the regulations being amended.[432] This proposed rule is procedural in nature and therefore falls under this exception. Consequently, no environmental consideration is necessary.

V. Regulatory Flexibility Act

444. The Regulatory Flexibility Act of 1980 (RFA)[433] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities, or a certification that the rule will not have a significant economic impact on a substantial number of small entities.[434] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the proposed licensing regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. We justify our certification on the fact that the efficiency and timeliness of the proposed integrated licensing process (early Commission assistance, early issue identification, integrated NEPA scoping with application development, and better coordination among federal and state agencies) will benefit small entities by minimizing redundancy and waste in the processes of the Commission and the various federal and state agencies associated with the hydroelectric licensing process.

VI. Information Collection Statement

445. The Office of Management and Budget's (''OMB's'') regulations require that OMB approve certain information collection requirements imposed by agency rule.[435] This Final Rule does not make any substantive or material changes to the information collection requirements specified in the NOPR, which was previously submitted to OMB for approval. OMB has elected to take no action on the NOPR. Thus, the information collection requirements in this rule are pending OMB approval.

446. The following collections of information contained in this proposed rule will be submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission identifies the information provided for under parts 4, 5, and 16 and FERC–500 ''Application for License/Relicense for Water Projects greater than 5 MW Capacity,'' and FERC–505, ''Application for License for Water Projects less than 5 MW Capacity.''

447. This Final Rule responds to comments concerning the information collections requirements specified in the NOPR, and has changed the PAD that was previously submitted to OMB. The changes make the document less burdensome on potential applicants and easier for all recipients to use. OMB did not make substantive comments on the NOPR, but directed the Commission to calculate the burden for each of the three available licensing processes and to estimate the proportion of licensees that would select each process. The burden calculation is based on the collection, dissemination of, and recordkeeping for information in the licensing process, and does not include any costs of license terms and conditions.

448. *Public Reporting Burden:* The Commission provided burden estimates for the proposed requirements. Several commenters stated that the PAD as proposed was unduly burdensome. These comments are addressed elsewhere in the Final Rule. In summary, we have clarified that the PAD requirements are limited to existing information and do not include any requirement to conduct studies, are substantially similar to existing requirements, and that the format and content requirements have been modified to reduce the burden on potential applicants.[436]

449. *Estimated Annual Burden*

[431] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶30,783 (Dec. 10, 1987).

[432] 18 CFR 380.4(a)(2)(ii).

[433] 5 U.S.C. 601–612 (2000).

[434] Section 601(c) of the RFA defines a ''small entity'' as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A ''small business'' is defined by reference to Section 3 of the Small Business Act as an enterprise which is ''independently owned and operated and which is not dominant in its field of operation'' 15 U.S.C. 632(a).

[435] 5 CFR part 1320.

[436] *See* Section III.E.

TABLE 1. TRADITIONAL LICENSING PROCESS

Data collection	No. of respondents *	No. of responses	Hours per response	Percent use **	Total annual hours
FERC–500	26	1	46,000	10	119,600
FERC–505	15	1	10,000	10	15,000

* Estimated number of licenses subject to renewal through 2009.
** Estimate of the percentage of applications that may use the Traditional Licensing Process.

Total Annual Hours for Collection: (Reporting + Recordkeeping, (if appropriate)) = 1,356,000 hours

TABLE 2. ALTERNATIVE LICENSING PROCESS

Data collection	No. of respondents*	No. of responses	Hours per response	Percent use**	Total annual hours
FERC–500	26	1	39,000	30	304,000
FERC–505	15	1	8,600	30	38,700

* Estimated number of licenses subject to renewal through 2009.
** Estimate of the percentage of applications that may use the Alternative Licensing Process.

Total Annual Hours for Collection: (Reporting + Recordkeeping, (if appropriate)) = 1,152,000 hours

TABLE 3. INTEGRATED LICENSING PROCESS

Data collection	No. of respondents *	No. of responses	Hours per response***	Percent use **	Total annual hours
FERC–500	26	1	32,200	60	502,320
FERC–505	15	1	7,000	60	63,000

* Estimated no. of licenses subject to renewal through FY 2009.
** Estimate of the percentage of applicants that may use the Integrated Licensing Process.
***Based on a 30% reduction through concomitant processes.

Total Annual Hours for Collection:

(Reporting + Recordkeeping, (if appropriate)) = 942,200 hours

Information Collection Costs: The Commission requested comments on the cost to comply with these requirements. None were received. The Commission has projected the average annualized cost per respondent to be the following:

Annualized Costs:

(1) Using Traditional Licensing Process

(a) Projects less than 5 MW (average)— $500,000.00

(b) Projects greater than 5 MW (average)—$2,300,000.00.

(2) Using Proposed Integrated Licensing Process

(a) Projects less than 5MW average— $350,000.00.

(b) Projects greater than 5 MW— $1,610,000.00.

Total Annualized Costs:

(1) Traditional Licensing Process— $67,300,000 ($59.8 mil. + $7.5 mil.).

(2) Proposed Integrated Licensing Process— $47,110,000 ($41.8 mil. + ($5.25 mil.)

The Office of Management and Budget's (OMB) regulations [437] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–500 ''Application for License/Relicense for Water Projects greater than 5 MW Capacity,'' and FERC–505, ''Application for License for Water Projects less than 5 MW Capacity.''

Action: Proposed Collections.

OMB Control No: 1902–0058 (FERC 500) and 1902–0115 (FERC 505).

Respondents: Business or other for profit, or non-profit.

Frequency of Responses: On occasion.

Necessity of the Information: The final rule revises the Commission's regulations regarding applications for licenses to construct, operate, and maintain hydroelectric projects. Specifically, the revisions establish a new process for the development and processing of license applications that combines during the pre-filing consultation phase activities that are currently conducted during pre-filing consultation and after the license application is filed. The information to be collected is needed to evaluate the license application pursuant to the comprehensive development standard of FPA Sections 4(e) and 10(a)(1), to consider in the comprehensive development analysis certain factors with respect to new licenses set forth in FPA Section 15, and to comply with NEPA, ESA, and NHPA. Most of the information is already being collected under the existing regulations, and the new regulations would for the most part affect only the timing of the collection and the form in which it is presented.

Internal Review: The Commission has reviewed the requirements pertaining to evaluation of hydroelectric license applications and has determined that the revisions are necessary because the hydroelectric licensing process is unnecessarily long and costly.

450. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the hydroelectric power industry. The Commission has assured itself, by means of internal review, that there is

[437] 5 CFR 1320.11.

specific, objective support for the burden estimates associated with the information requirements.

451. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415 or *michael.miller@ferc.gov*) or from the Office of Management and Budget (OMB), Room 10202 NEOB, 725 17th Street, NW., Washington, DC 20503. (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285.)

452. Comments on the collection of information and the associated burden estimates should be submitted to the contact listed above and to OMB. (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285 or by e-mail to *pamelabeverly.oirasubmissions @omb.eop.gov*.)

VII. Effective Date and Congressional Notification

453. This final rule will take effect on October 23, 2003. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a ''major rule'' within the meaning of Section 251 of Small Business Regulatory Enforcement Fairness Act of 1996.[438] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.

VIII. Document Availability

454. In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during regular business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

455. From the Commission's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number of this docket, excluding the last three digits, in the docket number field. User assistance is available for FERRIS and the Commission's Web site during regular business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

[438] 5 U.S.C. 804(2).

List of Subjects

18 CFR Part 2

Administrative practice and procedures, Electric power, Natural Gas, Pipelines, Reporting, and recordkeeping requirements.

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 5

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 9

Electric power, Reporting, and recordkeeping requirements.

18 CFR Part 16

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies).

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends parts 2, 4, 9, 16, 375, and 385, and adds a new part 5 to, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

Regulatory Text

PART 2—GENERAL POLICY AND INTERPRETATIONS

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

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

■ 2. Amend § 2.1 as follows:

■ a. Redesignate existing paragraph (a)(1)(xi)(K) as paragraph (a)(1)(xi)(L).

■ b. Add a new paragraph (a)(1)(xi)(K).

The added text reads as follows:

§ 2.1 Initial notice; service; and information copies of formal documents.

(a) * * *

(1) * * *

(xi) * * *

(K) Proposed penalties under section 31 of the Federal Power Act.

§ 2.7 [Amended]

■ 3. Amend § 2.7 by removing ''physically handicapped individuals'' in paragraph (b) and adding ''persons with disabilities'' in its place.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

■ 4. The authority citation for part 4 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 5. Amend § 4.30 as follows:

■ a. Paragraph (a) is revised.

■ b. In paragraph (b)(9)(ii), remove ''§§ 4.34(e)(2)'' and add ''§ 4.34(e)(1)'' in its place.

■ c. In paragraph (b)(23), remove ''§ 4.31(c)(2)'' and add ''§ 4.31(b)(2)'' in its place.

The revised text of paragraph (a) reads as follows:

§ 4.30 Applicability and definitions.

(a) (1) This subpart applies to applications for preliminary permit, license, or exemption from licensing.

(2) Any potential applicant for an original license for which prefiling consultation begins on or after July 23, 2005 and which wishes to develop and file its application pursuant to this part, must seek Commission authorization to do so pursuant to the provisions of part 5 of this chapter.

* * * * *

■ 6. Amend § 4.32 as follows:

■ a. In § 4.32, remove ''Office of Hydropower Licensing'' each place it appears and add ''Office of Energy Projects'' in its place.

■ b. The second sentence of paragraph (b)(1) is revised.

■ c. Paragraph (b)(2) is revised.

■ d. In paragraph (h), remove ''Division of Engineering and Environmental Review'' and add ''Division of Hydropower—Environment and Engineering'' in its place.

The revised text reads as follows:

§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.

* * * * *

(b) * * *

(1) * * * The applicant or petitioner must serve one copy of the application or petition on the Director of the

Commission's Regional Office for the appropriate region and on each resource agency, Indian tribe, and member of the public consulted pursuant to § 4.38 or § 16.8 of this chapter or part 5 of this chapter. * * *

(2) Each applicant for exemption must submit to the Commission's Secretary for filing an original and eight copies of the application. An applicant must serve one copy of the application on each resource agency consulted pursuant to § 4.38. For each application filed following October 23, 2003, maps and drawings must conform to the requirements of § 4.39. The originals (microfilm) of maps and drawing are not to be filed initially, but will be requested pursuant to paragraph (d) of this section.

* * * * *

■ 7. Amend § 4.33 as follows:

■ a. In paragraph (a), redesignate paragraph (a)(2) as (a)(3), and add a new paragraph (a)(2).

■ b. Paragraph (b) is revised.

The added and revised text reads as follows:

§ 4.33 Limitations on submitting applications.

(a) * * *

(2) Would interfere with a licensed project in a manner that, absent the licensee's consent, would be precluded by Section 6 of the Federal Power Act.

* * * * *

(b) *Limitations on submissions and acceptance of a license application.* The Commission will not accept an application for a license or project works that would develop, conserve, or utilize, in whole or part, the same water resources that would be developed, conserved, and utilized by a project for which there is:

* * * * *

(1) An unexpired preliminary permit, unless the permittee has submitted an application for license; or

(2) An unexpired license, as provided for in Section 15 of the Federal Power Act.

* * * * *

■ 8. Amend § 4.34 as follows:

■ a. In paragraph (b)(1), revise the third sentence to read as follows: ''In the case of an application prepared other than pursuant to part 5 of this chapter, if ongoing agency proceedings to determine the terms and conditions or prescriptions are not completed by the date specified, the agency must submit to the Commission by the due date:''

■ b. In paragraph (b)(4)(i): In the first sentence remove ''impact statement'' and add ''document'' in its place. In the second sentence remove ''statement'' and add ''document'' in its place.

■ c. Paragraph (b)(5) is added.

■ d. Paragraph (e) is revised.

■ e. In paragraph (h), remove ''consist of an original and eight copies'' and add ''conform to the requirements of subpart T of part 385 of this chapter'' in its place.

■ f. Paragraph (i)(5) is revised.

■ g. Paragraph (i)(9) is removed.

The revised and added text reads as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene; alternative procedures.

* * * * *

(b) * * *

(5)(i) With regard to certification requirements for a license applicant under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), an applicant shall file within 60 days from the date of issuance of the notice of ready for environmental analysis:

(A) A copy of the water quality certification;

(B) A copy of the request for certification, including proof of the date on which the certifying agency received the request; or

(C) Evidence of waiver of water quality certification as described in paragraph (b)(5)(ii) of this section.

(ii) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification. If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

(iii) Notwithstanding any other provision in title 18, chapter I, subchapter B, part 4, any application to amend an existing license, and any application to amend a pending application for a license, requires a new request for water quality certification pursuant to paragraph (b)(5)(i) of this section if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project.

* * * * *

(e) *Consultation on recommended fish and wildlife conditions; Section 10(j) process.* (1) In connection with its environmental review of an application for license, the Commission will analyze all terms and conditions timely recommended by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act for the protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the proposed project. Submission of such recommendations marks the beginning of the process under section 10(j) of the Federal Power Act.

(2) The agency must specifically identify and explain the recommendations and the relevant resource goals and objectives and their evidentiary or legal basis. The Commission may seek clarification of any recommendation from the appropriate fish and wildlife agency. If the Commission's request for clarification is communicated in writing, copies of the request will be sent by the Commission to all parties, affected resource agencies, and Indian tribes, which may file a response to the request for clarification within the time period specified by the Commission. If the Commission believes any fish and wildlife recommendation may be inconsistent with the Federal Power Act or other applicable law, the Commission will make a preliminary determination of inconsistency in the draft environmental document or, if none, the environmental assessment. The preliminary determination, for any recommendations believed to be inconsistent, shall include an explanation why the Commission believes the recommendation is inconsistent with the Federal Power Act or other applicable law, including any supporting analysis and conclusions, and an explanation of how the measures recommended in the environmental document would adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project.

(3) Any party, affected resource agency, or Indian tribe may file comments in response to the preliminary determination of inconsistency, including any modified recommendations, within the time frame allotted for comments on the draft environmental document or, if none, the time frame for comments on the environmental analysis. In this filing, the fish and wildlife agency concerned may also request a meeting, telephone or video conference, or other additional procedure to attempt to resolve any preliminary determination of inconsistency.

(4) The Commission shall attempt, with the agencies, to reach a mutually

acceptable resolution of any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of the fish and wildlife agency. If the Commission decides, or an affected resource agency requests, the Commission will conduct a meeting, telephone, or video conference, or other procedures to address issues raised by its preliminary determination of inconsistency and comments thereon. The Commission will give at least 15 days' advance notice to each party, affected resource agency, or Indian tribe, which may participate in the meeting or conference. Any meeting, conference, or additional procedure to address these issues will be scheduled to take place within 90 days of the date the Commission issues a preliminary determination of inconsistency. The Commission will prepare a written summary of any meeting held under this subsection to discuss section 10(j) issues, including any proposed resolutions and supporting analysis, and a copy of the summary will be sent to all parties, affected resource agencies, and Indian tribes.

(5) The section 10(j) process ends when the Commission issues an order granting or denying the license application in question. If, after attempting to resolve inconsistencies between the fish and wildlife recommendations of a fish and wildlife agency and the purposes and requirements of the Federal Power Act or other applicable law, the Commission does not adopt in whole or in part a fish and wildlife recommendation of a fish and wildlife agency, the Commission will publish the findings and statements required by section 10(j)(2) of the Federal Power Act.

* * * * *

(i) * * *

(5)(i) If the potential applicant's request to use the alternative procedures is filed prior to July 23, 2005, the Commission will give public notice in the **Federal Register** inviting comment on the applicant's request to use alternative procedures. The Commission will consider any such comments in determining whether to grant or deny the applicant's request to use alternative procedures. Such a decision will not be subject to interlocutory rehearing or appeal.

(ii) If the potential applicant's request to use the alternative procedures is filed on or after July 23, 2005 and prior to the deadline date for filing a notification of intent to seek a new or subsequent license required by § 5.5 of this chapter, the Commission will give public notice and invite comments as provided for in paragraph (i)(5)(i) of this section. Commission approval of the potential applicant's request to use the alternative procedures prior to the deadline date for filing of the notification of intent does not waive the potential applicant's obligation to file the notification of intent required by § 5.5 of this chapter and Pre-Application Document required by § 5.6 of this chapter.

(iii) If the potential applicant's request to use the alternative procedures is filed on or after July 23, 2005 and is at the same time as the notification of intent to seek a new or subsequent license required by § 5.5, the public notice and comment procedures of part 5 of this chapter shall apply.

* * * * *

§ 4.35 [Amended]

■ 9. Amend § 4.35 as follows:

■ In paragraph (f)(1)(iii) remove the word ''or'' and add the word ''of'' in its place.

§ 4.37 [Amended]

■ 10. Amend § 4.37 as follows:

■ a. In the introductory sentence, remove ''§ 4.33(f)'' and add ''§ 4.33(e)'' in its place.

■ b. In paragraph (b)(1), remove ''If both of two'' and add ''If both or neither of two'' in its place.

■ 11. Amend § 4.38 as follows:

■ a. In § 4.38, remove ''Office of Hydropower Licensing'' each place it appears and add ''Office of Energy Projects'' in its place.

■ b. In paragraph (a), redesignate existing paragraphs (a)(2) through (a)(7) as paragraphs (a)(4) through (a)(9), add new paragraphs (a)(2) and (a)(3), and revise newly redesignated paragraph (a)(4).

■ c. Paragraph (b) is revised.

■ d. In paragraph (c)(1), remove ''(b)(5)'' and add ''(b)(6)'' in its place.

■ e. In paragraph (c)(1)(ii), remove ''(b)(1)'' and add ''(b)(2)'' in its place.

■ f. In paragraph (c)(2): remove ''(b)(6)'' and add ''(b)(7)'' in its place; remove ''(b)(4)(i)–(vi)'' and add ''(b)(5)(i)–(vi)'' in its place; and remove ''(b)(5)'' and add ''(b)(6)'' in its place.

■ g. In paragraph (c)(4)(ii), remove ''(b)(1)(vii)'' and add ''(b)(2)(vii)'' in its place.

■ h. In paragraph (d)(1), remove ''Indian tribes, and other government offices'' and add ''Indian tribes, other government offices, and consulted members of the public'' in its place.

■ i. In paragraph (d)(2), remove ''resource agency and Indian tribe consulted and on other government offices'' and add ''resource agency, Indian tribes, and member of the public consulted, and on other government offices'' in its place.

■ j. In paragraph (e), a new paragraph (e)(4) is added.

■ k. In paragraph (f), paragraph (7) is removed, and paragraphs (8) and (9) are redesignated (7) and (8), respectively, and in newly redesignated paragraph (7), remove ''(b)(2)'' and add ''(b)(3)'' in its place.

■ l. In paragraph (g)(1), remove the phrase ''(b)(2)'' and add the phrase ''(b)(3)'' in its place.

■ m. In paragraph (g)(1), ''(b)(2)'' is removed and ''(b)(3)'' is added in its place.

■ n. Paragraph (g)(2) is revised.

■ o. Paragraph (h) is removed.

The revised and added text reads as follows:

§ 4.38 Consultation requirements.

(a) * * *

(2) Each requirement in this section to contact or consult with resource agencies or Indian tribes shall be construed to require as well that the potential applicant contact or consult with members of the public.

(3) If a potential applicant for an original license commences first stage pre-filing consultation on or after July 23, 2005 it shall file a notification of intent to file a license application pursuant to § 5.5 and a pre-application document pursuant to the provisions of § 5.6.

(4) The Director of the Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

* * * * *

(b) *First stage of consultation.* (1) A potential applicant for an original license that commences pre-filing consultation on or after July 23, 2005 must, at the time it files its notification of intent to seek a license pursuant to § 5.6 of this chapter and a pre-application document pursuant to § 5.6 of this chapter and, at the same time, provide a copy of the pre-application document to the entities specified in § 5.6(a) of this chapter.

(2) A potential applicant for an original license that commences pre-filing consultation under this part prior to July 23, 2005 or for an exemption must promptly contact each of the appropriate resource agencies, affected Indian tribes, and members of the public likely to be interested in the proceeding; provide them with a description of the proposed project and supporting information; and confer with them on project design, the impact of the proposed project (including a

description of any existing facilities, their operation, and any proposed changes), reasonable hydropower alternatives, and what studies the applicant should conduct. The potential applicant must provide to the resource agencies, Indian tribes and the Commission the following information:

(i) Detailed maps showing project boundaries, if any, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the proposed project, with a description of any proposed diversion of a stream through a canal or penstock;

(iii) A summary of the proposed operational mode of the project;

(iv) Identification of the environment to be affected, the significant resources present, and the applicant's proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations;

(vi) (A) A statement (with a copy to the Commission) of whether or not the applicant will seek benefits under section 210 of PURPA by satisfying the requirements for qualifying hydroelectric small power production facilities in § 292.203 of this chapter;

(B) If benefits under section 210 of PURPA are sought, a statement on whether or not the applicant believes diversion (as that term is defined in § 292.202(p) of this chapter) and a request for the agencies' view on that belief, if any;

(vii) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(viii) Any statement required by § 4.301(a) of this part.

(3) (i) A potential exemption applicant and a potential applicant for an original license that commences pre-filing consultation;

(A) On or after July 23, 2005 pursuant to part 5 of this chapter and receives approval from the Commission to use the license application procedures of part 4 of this chapter; or

(B) Elects to commence pre-filing consultation under part 4 of this chapter prior to July 23, 2005; must:

(*1*) Hold a joint meeting at a convenient place and time, including an opportunity for a site visit, with all pertinent agencies, Indian tribes, and members of the public to explain the applicant's proposal and its potential environmental impact, to review the information provided, and to discuss the data to be obtained and studies to be conducted by the potential applicant as part of the consultation process;

(*2*) Consult with the resource agencies, Indian tribes and members of the public on the scheduling and agenda of the joint meeting; and

(*3*) No later than 15 days in advance of the joint meeting, provide the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(ii) The joint meeting must be held no earlier than 30 days, but no later than 60 days, from, as applicable;

(A) The date of the Commission's approval of the potential applicant's request to use the license application procedures of this part pursuant to the provisions of part 5 of this chapter; or

(B) The date of the potential applicant's letter transmitting the information required by paragraph (b)(2) of this section, in the case of a potential exemption applicant or a potential license applicant that commences pre-filing consultation under this part prior to July 23, 2005.

(4) Members of the public must be informed of and invited to attend the joint meeting held pursuant to paragraph (b)(3) of this section by means of the public notice provision published in accordance with paragraph (g) of this section. Members of the public attending the meeting are entitled to participate in the meeting and to express their views regarding resource issues that should be addressed in any application for license or exemption that may be filed by the potential applicant. Attendance of the public at any site visit held pursuant to paragraph (b)(3) of this section will be at the discretion of the potential applicant. The potential applicant must make either audio recordings or written transcripts of the joint meeting, and must promptly provide copies of these recordings or transcripts to the Commission and, upon request, to any resource agency, Indian tribe, or member of the public.

(5) Not later than 60 days after the joint meeting held under paragraph (b)(3) of this Section (unless extended within this time period by a resource agency, Indian tribe, or members of the public for an additional 60 days by sending written notice to the applicant and the Director of the Office of Energy Projects within the first 60 day period, with an explanation of the basis for the extension), each interested resource agency and Indian tribe must provide a potential applicant with written comments:

(i) Identifying its determination of necessary studies to be performed or the information to be provided by the potential applicant;

(ii) Identifying the basis for its determination;

(iii) Discussing its understanding of the resource issues and its goals and objectives for these resources;

(iv) Explaining why each study methodology recommended by it is more appropriate than any other available methodology alternatives, including those identified by the potential applicant pursuant to paragraph (b)(2)(vii) of this section;

(v) Documenting that the use of each study methodology recommended by it is a generally accepted practice; and

(vi) Explaining how the studies and information requested will be useful to the agency, Indian tribe, or member of the public in furthering its resource goals and objectives that are affected by the proposed project.

(6)(i) If a potential applicant and a resource agency or Indian tribe disagree as to any matter arising during the first stage of consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency or Indian tribe may refer the dispute in writing to the Director of the Office of Energy Projects (Director) for resolution.

(ii) At the same time as the request for dispute resolution is submitted to the Director, the entity referring the dispute must serve a copy of its written request for resolution on the disagreeing party and any affected resource agency or Indian tribe, which may submit to the Director a written response to the referral within 15 days of the referral's submittal to the Director.

(iii) Written referrals to the Director and written responses thereto pursuant to paragraphs (b)(6)(i) or (b)(6)(ii) of this section must be filed with the Commission in accordance with the Commission's Rules of Practice and Procedure, and must indicate that they are for the attention of the Director pursuant to § 4.38(b)(6).

(iv) The Director will resolve the disputes by letter provided to the

potential applicant and all affected resource agencies and Indian tribes.

(v) If a potential applicant does not refer a dispute regarding a request for a potential applicant to obtain information or conduct studies (other than a dispute regarding the information specified in paragraph (b)(2) of this section), or a study to the Director under paragraph (b)(6) of this section, or if a potential applicant disagrees with the Director's resolution of a dispute regarding a request for information (other than a dispute regarding the information specified in paragraph (b)(2) of this section) or a study, and if the potential applicant does not provide the requested information or conduct the requested study, the potential applicant must fully explain the basis for its disagreement in its application.

(vi) Filing and acceptance of an application will not be delayed, and an application will not be considered deficient or patently deficient pursuant to § 4.32(e)(1) or (e)(2) of this part, merely because the application does not include a particular study or particular information if the Director had previously found, under paragraph (b)(6)(iv) of this section, that each study or information is unreasonable or unnecessary for an informed decision by the Commission on the merits of the application or use of the study methodology requested is not a generally accepted practice.

(7) The first stage of consultation ends when all participating agencies and Indian tribes provide the written comments required under paragraph (b)(5) of this section or 60 days after the joint meeting held under paragraph (b)(3) of this section, whichever occurs first, unless a resource agency or Indian tribe timely notifies the applicant and the Director of Energy Projects of its need for more time to provide written comments under paragraph (b)(5) of this section, in which case the first stage of consultation ends when all participating agencies and Indian tribes provide the written comments required under paragraph (b)(5) of this section or 120 days after the joint meeting held under paragraph (b)(5) of this section, whichever occurs first.

* * * * *

(e) * * *

(4) Following October 23, 2003, a potential license applicant engaged in pre-filing consultation under part 4 may during first stage consultation request to incorporate into pre-filing consultation any element of the integrated license application process provided for in part 5 of this chapter. Any such request must be accompanied by a:

(i) Specific description of how the element of the part 5 license application would fit into the pre-filing consultation process under this part; and

(ii) Demonstration that the potential license applicant has made every reasonable effort to contact all resource agencies, Indian tribes, non-governmental organizations, and others affected by the applicant's proposal, and that a consensus exists in favor of incorporating the specific element of the part 5 process into the pre-filing consultation under this part.

* * * * *

(g) * * *

(2)(i) A potential applicant must make available to the public for inspection and reproduction the information specified in paragraph (b)(2) of this section from the date on which the notice required by paragraph (g)(1) of this section is first published until a final order is issued on any license application.

(ii) The provisions of § 4.32(b) will govern the form and manner in which the information is to be made available for public inspection and reproduction.

(iii) A potential applicant must make available to the public for inspection at the joint meeting required by paragraph (b)(3) of this section at least two copies of the information specified in paragraph (b)(2) of this section.

■ 12. Amend § 4.39 as follows:

■ a. Paragraph (a) is revised.

■ b. Paragraph (b), introductory text, is revised.

■ c. Paragraph (e) is added.

The revised and added text reads as follows:

§ 4.39 Specifications for maps and drawings.

* * * * *

(a) Each original map or drawing must consist of a print on silver or gelatin 35mm microfilm mounted on Type D (3¼″ by 7⅜″) aperture cards. Two duplicates must be made on sheets of each original. Full-sized prints of maps and drawings must be on sheets no smaller than 24 by 36 inches and no larger than 28 by 40 inches. A space five inches high by seven inches wide must be provided in the lower right hand corner of each sheet. The upper half of this space must bear the title, numerical and graphical scale, and other pertinent information concerning the map or drawing. The lower half of the space must be left clear. Exhibit G drawings must be stamped by a registered land surveyor. If the drawing size specified in this paragraph limits the scale of structural drawings (exhibit F drawings) described in paragraph (c) of this section, a smaller scale may be used for those drawings.

(b) Each map must have a scale in full-sized prints no smaller than one inch equals 0.5 miles for transmission lines, roads, and similar linear features and no smaller than one inch equals 1,000 feet for other project features, including the project boundary. Where maps at this scale do not show sufficient detail, large scale maps may be required.

* * * * *

(e) The maps and drawings showing project location information and details of project structures must be filed in accordance with the Commission's instructions on submission of Critical Energy Infrastructure Information in §§ 388.112 and 388.113 of subchapter X of this chapter.

§ 4.40 [Amended]

■ 13. Amend § 4.40 as follows:

In paragraph (b), remove ''Division of Hydropower Licensing'' and add ''Office of Energy Projects'' in its place.

■ 14. Amend § 4.41 as follows:

■ a. In paragraph (c)(4)(i), remove ''a flow duration curve'' and add ''monthly flow duration curves'' in its place. After the phrase ''deriving the'', remove ''curve'' and add ''curves'' in its place.

■ b. In paragraph (c)(4)(iii), add ''minimum and maximum'' between ''estimated'' and ''hydraulic''.

■ c. In paragraph (e)(4)(iii), remove ''and'' the first place it appears.

■ d. In paragraph (e)(4)(iv), add ''and'' after the word ''contingencies;''.

■ e. Paragraph (e)(4)(v) is added.

■ f. In paragraph (e)(7), remove ''and'' after ''constructed;''.

■ g. In paragraph (e)(8), remove the period after ''section'' and add a semi-colon in its place.

■ h. Paragraphs (e)(9) and (e)(10) are added.

■ i. In paragraph (f)(9)(i), remove ''Soil Conservation Service'' and add ''Natural Resources Conservation Service'' in its place.

■ j. Paragraph (h), introductory text, is revised.

■ k. In paragraph (h)(2), second sentence, remove ''license'' from ''the license application''.

■ l. Paragraph (h)(3)(iv) is added.

■ m. Paragraph (h)(4)(ii) is revised.

The revised and added text reads as follows.

§ 4.41 Contents of application.

* * * * *

(e) * * *

(4) * * *

(v) The estimated capital cost and estimated annual operation and maintenance expense of each proposed environmental measure;

* * * * *

(9) An estimate of the cost to develop the license application; and

(10) The on-peak and off-peak values of project power, and the basis for estimating the values, for projects which are proposed to operate in a mode other than run-of-river.

* * * * *

(h) *Exhibit G* is a map of the project that must conform to the specifications of § 4.39. In addition, each exhibit G boundary map must be submitted in a geo-referenced electronic format—such as ArcView shape files, GeoMedia files, MapInfo files, or any similar format. The electronic boundary map must be positionally accurate to + 40 feet, in order to comply with the National Map Accuracy Standards for maps at a 1:24,000 scale (the scale of USGS quadrangle maps). The electronic exhibit G data must include a text file describing the map projection used (*i.e.*, UTM, State Plane, Decimal Degrees, etc.), the map datum (*i.e.*, feet, meters, miles, etc.). Three copies of the electronic maps must be submitted on compact disk or DVD. If more than one sheet is used for the paper maps, the sheets must be numbered consecutively, and each sheet must bear a small insert sketch showing the entire project and indicate that portion of the project depicted on that sheet. Each sheet must contain a minimum of three known reference points. The latitude and longitude coordinates, or state plane coordinates, or each reference point must be shown. If at any time after the application is filed there is any change in the project boundary, the applicant must submit, within 90 days following the completion of project construction, a final exhibit G showing the extent of such changes. The map must show:

* * * * *

(3) * * *

(iv) The project location must include the most current information pertaining to affected Federal lands as described under § 4.81(b)(5).

(4) * * *

(ii) Lands over which the applicant has acquired or plans to acquire rights to occupancy and use other than fee title, including rights acquired or to be acquired by easement or lease.

■ 15. Amend § 4.51 as follows:

■ a. In paragraph (c)(2)(i), remove ''a flow duration curve'' and add ''monthly flow duration curves'' in its place and remove ''curve'' the second place it appears and add ''curves'' in its place.

■ b. In paragraph (c)(2)(iii), before the word ''maximum'', add ''minimum and''.

■ c. Paragraph (e)(4) is revised.

■ d. Paragraphs (e)(7)–(9) are added.

■ e. Paragraph (g) is revised.

■ f. Paragraph (h) is revised.

The revised and added text reads as follows:

§ 4.51 Contents of application.

* * * * *

(e) * * *

(4) A statement of the estimated average annual cost of the total project as proposed specifying any projected changes in the costs (life-cycle costs) over the estimated financing or licensing period if the applicant takes such changes into account, including:

(i) Cost of capital (equity and debt);

(ii) Local, state, and Federal taxes;

(iii) Depreciation and amortization;

(iv) Operation and maintenance expenses, including interim replacements, insurance, administrative and general expenses, and contingencies; and

(v) The estimated capital cost and estimated annual operation and maintenance expense of each proposed environmental measure.

* * * * *

(7) An estimate to develop the cost of the license application;

(8) The on-peak and off-peak values of project power, and the basis for estimating the values, for projects which are proposed to operate in a mode other than run-of-river; and

(9) The estimated average annual increase or decrease in project generation, and the estimated average annual increase or decrease of the value of project power, due to a change in project operations (*i.e.*, minimum bypass flows; limits on reservoir fluctuations).

* * * * *

(g) Exhibit F. *See* § 4.41(g) of this chapter.

(h) Exhibit G. *See* § 4.41(h) of this chapter.

* * * * *

§ 4.60 [Amended]

■ 16. Amend § 4.60 as follows:

■ In paragraph (b), remove ''Division of Public Information'' and add ''Public Reference Room'' in its place.

■ 17. Amend § 4.61 as follows:

■ a. In paragraph (c)(1)(vii), after the first appearance of ''estimated'' add ''minimum and maximum''. After ''1.5 megawatts,'' remove ''a'' and add ''monthly'' in its place. Remove ''curve'' and add in its place ''curves''.

■ b. Paragraph (c)(1)(x) is added.

■ c. Paragraphs (c) (3) through (9) are added.

■ d. Paragraph (e) is revised.

■ e. Paragraph (f) is revised.

The revised and added text reads as follows:

§ 4.61 Contents of application.

* * * * *

(c) * * *

(1) * * *

(x) The estimated capital costs and estimated annual operation and maintenance expense of each proposed environmental measure.

* * * * *

(3) An estimate of the cost to develop the license application; and

(4) The on-peak and off-peak values of project power, and the basis for estimating the values, for project which are proposed to operate in a mode other than run-of-river.

(5) The estimated average annual increase or decrease in project generation, and the estimated average annual increase or decrease of the value of project power due to a change in project operations (*i.e.*, minimum bypass flows, limiting reservoir fluctuations) for an application for a new license;

(6) The remaining undepreciated net investment, or book value of the project;

(7) The annual operation and maintenance expenses, including insurance, and administrative and general costs;

(8) A detailed single-line electrical diagram;

(9) A statement of measures taken or planned to ensure safe management, operation, and maintenance of the project.

* * * * *

(e) *Exhibit F.* See § 4.41(g) of this chapter.

(f) *Exhibit G.* See § 4.41(h) of this chapter.

§ 4.70 [Amended]

■ 18. In § 4.70, remove ''or other hydroelectric power project authorized by Congress''.

§ 4.81 [Amended]

■ 19. In § 4.81, paragraph (b)(5) is revised to read as follows:

The revised text reads as follows:

§ 4.81 Contents of application.

* * * * *

(b) * * *

(5) All lands of the United States that are enclosed within the proposed project boundary described under paragraph (e)(3) of this section, identified and tabulated on a separate sheet by legal subdivisions of a public land survey of the affected area, if available. If the project boundary includes lands of the United States, such lands must be identified on a completed land description form, provided by the Commission. The

project location must identify any Federal reservation, Federal tracts, and townships of the public land surveys (or official protractions thereof if unsurveyed). A copy of the form must also be sent to the Bureau of Land Management state office where the project is located;

* * * * *

§ 4.90 [Amended]

■ 20. In § 4.90, remove ''§ 4.30(b)(26)'' and add ''§ 4.30(b)(28)'' in its place.

■ 21. Amend § 4.92 as follows:

■ a. In § 4.92 remove ''§ 4.30(b)(26)'' wherever it appears and add ''§ 4.30(b)(28)'' in its place.

■ b. Paragraph (a)(2) is revised.

■ c. In paragraph (c), introductory text, remove ''Exhibit B'' and add ''Exhibit F'' in its place.

■ d. Paragraph (d) is revised.

■ e. Paragraph (f) is revised.

The revised text reads as follows:

§ 4.92 Contents of exemption application.

(a) * * *

(2) Exhibits A, E, F, and G.

* * * * *

(d) *Exhibit G.* Exhibit G is a map of the project and boundary and must conform to the specifications of § 4.41(h) of this chapter.

* * * * *

(f) *Exhibit F.* Exhibit F is a set of drawings showing the structures and equipment of the small conduit hydroelectric facility and must conform to the specifications of § 4.41(g) of this chapter.

§ 4.93 [Amended]

■ 22. In § 4.93, remove from paragraph (a) ''§ 4.30(b)(26)(v)'' and add ''§ 4.30(b)(28)(v)'' in its place.

§ 4.101 [Amended]

■ 23. In § 4.101, remove ''4.30(b)(27)'' and add ''4.30(b)(29)'' in its place.

■ 24. Amend § 4.107 as follows:

■ a. Paragraph (d) is revised.

■ b. Paragraph (f) is revised.

The revised text reads as follows:

§ 4.107 Contents of application for exemption from licensing.

* * * * *

(d) *Exhibit G.* Exhibit G is a map of the project and boundary and must conform to the specifications of § 4.41(h) of this chapter.

* * * * *

(f) *Exhibit F.* Exhibit F is a set of drawings showing the structures and equipment of the small hydroelectric facility and must conform to the specifications of § 4.41(g) of this chapter.

§ 4.200 [Amended]

■ 25. In § 4.200, remove from paragraph (c) ''on'' and add ''in'' in its place.

■ 26. Add part 5 to read as follows:

PART 5—INTEGRATED LICENSE APPLICATION PROCESS

Sec.

5.1 Applicability, definitions, and requirement to consult.
5.2 Document availability
5.3 Process selection.
5.4 Acceleration of a license expiration date.
5.5 Notification of intent.
5.6 Pre-application document.
5.7 Tribal consultation.
5.8 Notice of commencement of proceeding and scoping document, or of approval to use traditional licensing process or alternative procedures.
5.9 Comments and information or study requests.
5.10 Scoping document 2.
5.11 Potential Applicant's proposed study plan and study plan meetings.
5.12 Comments on proposed study plan.
5.13 Revised study plan and study plan determination.
5.14 Formal study dispute resolution process.
5.15 Conduct of studies.
5.16 Preliminary licensing proposal.
5.17 Filing of application.
5.18 Application content.
5.19 Tendering notice and schedule.
5.20 Deficient applications.
5.21 Additional information.
5.22 Notice of acceptance and ready for environmental analysis.
5.23 Response to notice.
5.24 Applications not requiring a draft NEPA document.
5.25 Applications requiring a draft NEPA document.
5.26 Section 10(j) process.
5.27 Amendment of application.
5.28 Competing applications.
5.29 Other provisions.
5.30 Critical Energy Infrastructure Information.
5.31 Transition provision.

Authority: 16 U.S.C. 791a-825r, 2601–2645; 42 U.S.C. 7101–7352.

§ 5.1 Applicability, definitions, and requirement to consult.

(a) This part applies to the filing and processing of an application for an:

(1) Original license;

(2) New license for an existing project subject to Sections 14 and 15 of the Federal Power Act; or

(3) Subsequent license.

(b) *Definitions.* The definitions in § 4.30(b) of this parte and § 16.2 of this part apply to this part.

(c) *Who may file.* Any citizen, association of citizens, domestic corporation, municipality, or state may develop and file a license application under this part.

(d) *Requirement to consult.* (1) Before it files any application for an original, new, or subsequent license under this part, a potential applicant must consult with the relevant Federal, state, and interstate resource agencies, including as appropriate the National Marine Fisheries Service, the United States Fish and Wildlife Service, Bureau of Indian Affairs, the National Park Service, the United States Environmental Protection Agency, the Federal agency administering any United States lands utilized or occupied by the project, the appropriate state fish and wildlife agencies, the appropriate state water resource management agencies, the certifying agency or Indian tribe under Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341(c)(1)), the agency that administers the Coastal Zone Management Act, 16 U.S.C. § 1451–1465, any Indian tribe that may be affected by the project, and members of the public. A potential license applicant must file a notification of intent to file a license application pursuant to § 5.2 and a pre-application document pursuant to the provisions of § 5.3.

(2) The Director of the Office of Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

(e) *Purpose.* The purpose of the integrated licensing process provided for in this part is to provide an efficient and timely licensing process that continues to ensure appropriate resource protections through better coordination of the Commission's processes with those of Federal and state agencies and Indian tribes that have authority to condition Commission licenses.

(f) *Default process.* Each potential original, new, or subsequent license applicant must use the license application process provided for in this part unless the potential applicant applies for and receives authorization from the Commission under this part to use the licensing process provided for in:

(1) 18 CFR part 4, Subparts D–H and, as applicable, part 16 (*i.e.*, traditional process), pursuant to paragraph (c) of this section; or

(2) Section 4.34(i) of this chapter, *Alternative procedures.*

§ 5.2 Document availability.

(a) *Pre-application document.* (1) From the date a potential license applicant files a notification of intent to

seek a license pursuant to § 5.5 until any related license application proceeding is terminated by the Commission, the potential license applicant must make reasonably available to the public for inspection at its principal place of business or another location that is more accessible to the public, the pre-application document and any materials referenced therein. These materials must be available for inspection during regular business hours in a form that is readily accessible, reviewable, and reproducible.

(2) The materials specified in paragraph (a)(1) of this section must be made available to the requester at the location specified in paragraph (a)(1) of this section or through the mail, or otherwise. Except as provided in paragraph (a)(3) of this section, copies of the pre-application document and any materials referenced therein must be made available at their reasonable cost of reproduction plus, if applicable, postage.

(3) A potential licensee must make requested copies of the materials specified in paragraph (a)(1) of this section available to the United States Fish and Wildlife Service, the National Marine Fisheries Service, the state agency responsible for fish and wildlife resources, any affected Federal land managing agencies, and Indian tribes without charge for the costs of reproduction or postage.

(b) *License application.* (1) From the date on which a license application is filed under this part until the licensing proceeding for the project is terminated by the Commission, the license applicant must make reasonably available to the public for inspection at its principal place of business or another location that is more accessible to the public, a copy of the complete application for license, together with all exhibits, appendices, and any amendments, pleadings, supplementary or additional information, or correspondence filed by the applicant with the Commission in connection with the application. These materials must be available for inspection during regular business hours in a form that is readily accessible, reviewable, and reproducible at the same time as the information is filed with the Commission or required by regulation to be made available.

(2) The applicant must provide a copy of the complete application (as amended) to a public library or other convenient public office located in each county in which the proposed project is located.

(3) The materials specified in paragraph (b)(1) of this section must be made available to the requester at the location specified in paragraph (b)(1) of this section or through the mail. Except as provided in paragraph (b)(4) of this section, copies of the license application and any materials referenced therein must be made available at their reasonable cost of reproduction plus, if applicable, postage.

(4) A licensee applicant must make requested copies of the materials specified in paragraph (b)(1) of this section available to the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency responsible for fish and wildlife resources, any affected Federal land managing agencies, and Indian tribes without charge for the costs of reproduction or postage.

(c) *Confidentiality of cultural information.* A potential applicant must delete from any information made available to the public under paragraphs (a) and (b) of this section, specific site or property locations the disclosure of which would create a risk of harm, theft, or destruction of archeological or native American cultural resources or of the site at which the sources are located, or would violate any Federal law, include the Archeological Resources Protection Act of 1979, 16 U.S.C. 470w–3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(d) *Access.* Anyone may file a petition with the Commission requesting access to the information specified in paragraphs (a) or (b) of this section if it believes that the potential applicant or applicant is not making the information reasonably available for public inspection or reproduction. The petition must describe in detail the basis for the petitioner's belief.

§ 5.3 Process selection

(a)(1) Notwithstanding any other provision of this part or of parts 4 and 16 of this chapter, a potential applicant for a new, subsequent, or original license may until July 23, 2005 elect to use the licensing procedures of this part or the licensing procedures of parts 4 and 16.

(2) Any potential license applicant that files its notification of intent pursuant to § 5.5 and pre-application document pursuant to § 5.6 after July 23, 2005 must request authorization to use the licensing procedures of parts 4 and 16, as provided for in paragraphs (b)–(f) of this section.

(b) A potential license applicant may file with the Commission a request to use the traditional licensing process or alternative procedures pursuant to this Section with its notification of intent pursuant to § 5.5.

(c)(1)(i) An application for authorization to use the traditional process must include justification for the request and any existing written comments on the potential applicant's proposal and a response thereto.

(ii) A potential applicant requesting authorization to use the traditional process should address the following considerations:

(A) Likelihood of timely license issuance;

(B) Complexity of the resource issues;

(C) Level of anticipated controversy;

(D) Relative cost of the traditional process compared to the integrated process;

(E) The amount of available information and potential for significant disputes over studies; and

(F) Other factors believed by the commenter to be pertinent

(2) A potential applicant requesting the use of § 4.34(i) *alternative procedures* of this chapter must:

(i) Demonstrate that a reasonable effort has been made to contact all agencies, Indian tribes, and others affected by the applicant's request, and that a consensus exists that the use of alternative procedures is appropriate under the circumstances;

(ii) Submit a communications protocol, supported by interested entities, governing how the applicant and other participants in the pre-filing consultation process, including the Commission staff, may communicate with each other regarding the merits of the potential applicant's proposal and proposals and recommendations of interested entities; and

(iii) Provide a copy of the request to all affected resource agencies and Indian tribes and to all entities contacted by the applicant that have expressed an interest in the alternative pre-filing consultation process.

(d)(1) The potential applicant must provide a copy of the request to use the traditional process or alternative procedures to all affected resource agencies, Indian tribes, and members of the public likely to be interested in the proceeding. The request must state that comments on the request to use the traditional process or alternative procedures, as applicable, must be filed with the Commission within 30 days of the filing date of the request and, if there is no project number, that responses must reference the potential applicant's name and address.

(2) The potential applicant must also publish notice of the filing of its notification of intent, of the pre-application document, and of any request to use the traditional process or alternative procedures no later than the

filing date of the notification of intent in a daily or weekly newspaper of general circulation in each county in which the project is located. The notice must:

(i) Disclose the filing date of the request to use the traditional process or alternative procedures, and the notification of intent and pre-application document;

(ii) Briefly summarize these documents and the basis for the request to use the traditional process or alternative procedures;

(iii) Include the potential applicant's name and address, and telephone number, the type of facility proposed to be applied for, its proposed location, the places where the pre-application document is available for inspection and reproduction;

(iv) Include a statement that comments on the request to use the traditional process or alternative procedures are due to the Commission and the potential applicant no later than 30 days following the filing date of that document and, if there is no project number, that responses must reference the potential applicant's name and address;

(v) State that comments on any request to use the traditional process should address, as appropriate to the circumstances of the request, the:

(A) Likelihood of timely license issuance;

(B) Complexity of the resource issues;

(C) Level of anticipated controversy;

(D) Relative cost of the traditional process compared to the integrated process; and

(E) The amount of available information and potential for significant disputes over studies; and

(F) Other factors believed by the commenter to be pertinent; and

(vi) State that respondents must submit an electronic filing pursuant to § 385.2003(c) or an original and eight copies of their comments to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

(e) Requests to use the traditional process or alternative procedures shall be granted for good cause shown.

§ 5.4 Acceleration of a license expiration date.

(a) *Request for acceleration.* (1) No later than five and one-half years prior to expiration of an existing license, a licensee may file with the Commission, in accordance with the formal filing requirements in subpart T of part 385 of this chapter, a written request for acceleration of the expiration date of its existing license, containing the statements and information specified in § 16.6(b) of this chapter and a detailed explanation of the basis for the acceleration request.

(2) If the Commission grants the request for acceleration pursuant to paragraph (c) of this section, the Commission will deem the request for acceleration to be a notice of intent under § 16.6 of this chapter and, unless the Commission directs otherwise, the licensee must make available the Pre-Application Document provided for in § 5.6 no later than 90 days from the date that the Commission grants the request for acceleration.

(b) *Notice of request for acceleration.* (1) Upon receipt of a request for acceleration, the Commission will give notice of the licensee's request and provide a 45-day period for comments by interested persons by:

(i) Publishing notice in the **Federal Register**;

(ii) Publishing notice once in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(iii) Notifying appropriate Federal, state, and interstate resource agencies and Indian tribes, and non-governmental organizations likely to be interested.

(2) The notice issued pursuant to paragraphs (b)(1)(A) and (B) and the written notice given pursuant to paragraph (b)(1)(C) will be considered as fulfilling the notice provisions of § 16.6(d) of this chapter should the Commission grant the acceleration request and will include an explanation of the basis for the licensee's acceleration request.

(c) *Commission order.* If the Commission determines it is in the public interest, the Commission will issue an order accelerating the expiration date of the license to not less than five years and 90 days from the date of the Commission order.

§ 5.5 Notification of intent.

(a) *Notification of intent.* A potential applicant for an original, new, or subsequent license, must file a notification of its intent to do so in the manner provided for in paragraphs (b) and (c) of this section.

(b) *Requirement to notify.* In order for a non-licensee to notify the Commission that it intends to file an application for an original, new, or subsequent license, or for an existing licensee to notify the Commission whether or not it intends to file an application for a new or subsequent license, a potential license applicant must file with the Commission pursuant to the requirements of subpart T of part 385 of this chapter a letter that contains the following information:

(1) The potential applicant or existing licensee's name and address.

(2) The project number, if any.

(3) The license expiration date, if any.

(4) An unequivocal statement of the potential applicant's intention to file an application for an original license, or, in the case of an existing licensee, to file or not to file an application for a new or subsequent license.

(5) The type of principal project works licensed, if any, such as dam and reservoir, powerhouse, or transmission lines.

(6) The location of the project by state, county, and stream, and, when appropriate, by city or nearby city.

(7) The installed plant capacity, if any.

(8) The names and mailing addresses of:

(i) Every county in which any part of the project is located, and in which any Federal facility that is used or to be used by the project is located;

(ii) Every city, town, or similar political subdivision;

(A) In which any part of the project is or is to be located and any Federal facility that is or is to be used by the project is located, or

(B) That has a population of 5,000 or more people and is located within 15 miles of the existing or proposed project dam;

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision:

(A) In which any part of the project is or is proposed to be located and any Federal facility that is or is proposed to be used by the project is located; or

(B) That owns, operates, maintains, or uses any project facility or any Federal facility that is or is proposed to be used by the project;

(iv) Every other political subdivision in the general area of the project or proposed project that there is reason to believe would be likely to be interested in, or affected by, the notification; and

(v) Affected Indian tribes.

(c) *Requirement to distribute.* Before it files any application for an original, new, or subsequent license, a potential license applicant proposing to file a license application pursuant to this part or to request to file a license application pursuant to part 4 of this chapter and, as appropriate, part 16 of this chapter (*i.e.*, the ''traditional process''), including an application pursuant to § 4.34(i) *alternative procedures* of this chapter must distribute to appropriate Federal, state, and interstate resource agencies, Indian tribes, and members of the public likely to be interested in the

proceeding the notification of intent provided for in paragraph (a) of this section.

(d) *When to notify.* An existing licensee or non-licensee potential applicant must notify the Commission as required in paragraph (b) of this section at least five years, but not more than five and one-half years, before the existing license expires.

(e) *Non-Federal representatives.* A potential license applicant may at the same time it files its notification of intent and distributes its pre-application document, request to be designated as the Commission's non-Federal representative for purposes of consultation under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402, Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and the implementing regulations at 50 CFR 600.920. A potential license applicant may at the same time request authorization to initiate consultation under section 106 of the National Historic Preservation Act and the implementing regulations at 36 CFR 800.2(c)(4).

(f) *Procedural matters.* The provisions of subpart F of part 16 of this chapter apply to projects to which this part applies.

(g) *Construction of regulations.* The provisions of this part and parts 4 and 16 shall be construed in a manner that best implements the purposes of each part and gives full effect to applicable provisions of the Federal Power Act.

§ 5.6 Pre-application document.

(a) *Pre-application document.* (1) Simultaneously with the filing of its notification of intent to seek a license as provided for in § 5.5, and before it files any application for an original, new, or subsequent license, a potential applicant for a license to be filed pursuant to this part or part 4 of this chapter and, as appropriate, part 16 of this chapter, must file with the Commission and distribute to the appropriate Federal, state, and interstate resource agencies, Indian tribes, local governments, and members of the public likely to be interested in the proceeding, the pre-application document provided for in this section.

(2) The agencies referred to in paragraph (a)(1) of this section include: Any state agency with responsibility for fish, wildlife, and botanical resources, water quality, coastal zone management plan consistency certification, shoreline management, and water resources; the U.S. Fish and Wildlife Service; the National Marine Fisheries Service; Environmental Protection Agency; State Historic Preservation Officer; Tribal Historic Preservation Officer; National Park Service; local, state, and regional recreation agencies and planning commissions; local and state zoning agencies; and any other state or Federal agency or Indian tribe with managerial authority over any part of project lands and waters.

(b) *Purpose of pre-application document.* (1) The pre-application document provides the Commission and the entities identified in paragraph (a) of this section with existing information relevant to the project proposal that is in the potential applicant's possession or that the potential applicant can obtain with the exercise of due diligence. This existing, relevant, and reasonably available information is distributed to these entities to enable them to identify issues and related information needs, develop study requests and study plans, and prepare documents analyzing any license application that may be filed. It is also a precursor to the environmental analysis section of the Preliminary Licensing Proposal or draft license application provided for in § 5.16, Exhibit E of the final license application, and the Commission's scoping document(s) and environmental impact statement or environmental assessment under the National Environmental Policy Act (NEPA).

(2) A potential applicant is not required to conduct studies in order to generate information for inclusion in the pre-application document. Rather, a potential applicant must exercise due diligence in determining what information exists that is relevant to describing the existing environment and potential impacts of the project proposal (including cumulative impacts), obtaining that information if the potential applicant does not already possess it, and describing or summarizing it as provided for in paragraph (d) of this section. Due diligence includes, but is not limited to, contacting appropriate agencies and Indian tribes that may have relevant information and review of Federal and state comprehensive plans filed with the Commission and listed on the Commission's Web site at *http://www.ferc.gov*.

(c) *Form and distribution protocol.*—(1) *General requirements.* As specifically provided for in the content requirements of paragraph (d) of this section, the pre-application document must describe the existing and proposed (if any) project facilities and operations, provide information on the existing environment, and existing data or studies relevant to the existing environment, and any known and potential impacts of the proposed project on the specified resources.

(2) *Availability of source information and studies.* The sources of information on the existing environment and known or potential resource impacts included in the descriptions and summaries must be referenced in the relevant section of the document, and in an appendix to the document. The information must be provided upon request to recipients of the pre-application document. A potential applicant must provide the requested information within 20 days from receipt of the request. Potential applicants and requesters are strongly encouraged to use electronic means or compacts disks to distribute studies and other forms of information, but a potential applicant must, upon request, provide the information in hard copy form. The potential applicant is also strongly encouraged to include with the pre-application document any written protocol for distribution consistent with this paragraph to which it has agreed with agencies, Indian tribes, or other entities.

(d) *Content requirements.*—(1) *Process plan and schedule.* The pre-application document must include a plan and schedule for all pre-application activity that incorporates the time frames for pre-filing consultation, information gathering, and studies set forth in this part. The plan and schedule must include a proposed location and date for the scoping meeting and site visit required by § 5.8(b)(3)(viii).

(2) *Project location, facilities, and operations.* The potential applicant must include in the pre-application document:

(i) The exact name and business address, and telephone number of each person authorized to act as agent for the applicant;

(ii) Detailed maps showing lands and waters within the project boundary by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of any Federal and tribal lands, and the location of proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(iii) A detailed description of all existing and proposed project facilities and components, including:

(A) The physical composition, dimensions, and general configuration of any dams, spillways, penstocks, canals, powerhouses, tailraces, and other structures proposed to be included

as part of the project or connected directly to it;

(B) The normal maximum water surface area and normal maximum water surface elevation (mean sea level), gross storage capacity of any impoundments;

(C) The number, type, and minimum and maximum hydraulic capacity and installed (rated) capacity of any proposed turbines or generators to be included as part of the project;

(D) The number, length, voltage, and interconnections of any primary transmission lines proposed to be included as part of the project, including a single-line diagram showing the transfer of electricity from the project to the transmission grid or point of use; and

(E) An estimate of the dependable capacity, average annual, and average monthly energy production in kilowatt hours (or mechanical equivalent);

(iv) A description of the current (if applicable) and proposed operation of the project, including any daily or seasonal ramping rates, flushing flows, reservoir operations, and flood control operations.

(v) In the case of an existing licensed project;

(A) A complete description of the current license requirements; *i.e.*, the requirements of the original license as amended during the license term;

(B) A summary of project generation and outflow records for the five years preceding filing of the pre-application document;

(C) Current net investment; and

(D) A summary of the compliance history of the project, if applicable, including a description of any recurring situations of non-compliance.

(vi) A description of any new facilities or components to be constructed, plans for future development or rehabilitation of the project, and changes in project operation.

(3) *Description of existing environment and resource impacts.*—(i) *General requirements.* A potential applicant must, based on the existing, relevant, and reasonably available information, include a discussion with respect to each resource that includes:

(A) A description of the existing environment as required by paragraphs (d)(3)(ii)–(xiii) of this section;

(B) Summaries (with references to sources of information or studies) of existing data or studies regarding the resource;

(C) A description of any known or potential adverse impacts and issues associated with the construction, operation or maintenance of the proposed project, including continuing and cumulative impacts; and

(D) A description of any existing or proposed project facilities or operations, and management activities undertaken for the purpose of protecting, mitigating impacts to, or enhancing resources affected by the project, including a statement of whether such measures are required by the project license, or were undertaken for other reasons. The type and amount of the information included in the discussion must be commensurate with the scope and level of resource impacts caused or potentially caused by the proposed project. Potential license applicants are encouraged to provide photographs or other visual aids, as appropriate, to supplement text, charts, and graphs included in the discussion.

(ii) *Geology and soils.* Descriptions and maps showing the existing geology, topography, and soils of the proposed project and surrounding area. Components of the description must include:

(A) A description of geological features, including bedrock lithology, stratigraphy, structural features, glacial features, unconsolidated deposits, and mineral resources at the project site;

(B) A description of the soils, including the types, occurrence, physical and chemical characteristics, erodability and potential for mass soil movement;

(C) A description of reservoir shorelines and streambanks, including:

(*1*) Steepness, composition (bedrock and unconsolidated deposits), and vegetative cover; and

(*2*) Existing erosion, mass soil movement, slumping, or other forms of instability, including identification of project facilities or operations that are known to or may cause these conditions.

(iii) *Water resources.* A description of the water resources of the proposed project and surrounding area. This must address the quantity and quality (chemical/physical parameters) of all waters affected by the project, including but not limited to the project reservoir(s) and tributaries thereto, bypassed reach, and tailrace. Components of the description must include:

(A) Drainage area;

(B) The monthly minimum, mean, and maximum recorded flows in cubic feet per second of the stream or other body of water at the powerplant intake or point of diversion, specifying any adjustments made for evaporation, leakage, minimum flow releases, or other reductions in available flow;

(C) A monthly flow duration curve indicating the period of record and the location of gauging station(s), including identification number(s), used in deriving the curve; and a specification of the critical streamflow used to determine the project's dependable capacity;

(D) Existing and proposed uses of project waters for irrigation, domestic water supply, industrial and other purposes, including any upstream or downstream requirements or constraints to accommodate those purposes;

(E) Existing instream flow uses of streams in the project area that would be affected by project construction and operation; information on existing water rights and water rights applications potentially affecting or affected by the project;

(F) Any federally-approved water quality standards applicable to project waters;

(G) Seasonal variation of existing water quality data for any stream, lake, or reservoir that would be affected by the proposed project, including information on:

(*1*) Water temperature and dissolved oxygen, including seasonal vertical profiles in the reservoir;

(*2*) Other physical and chemical parameters to include, as appropriate for the project; total dissolved gas, pH, total hardness, specific conductance, cholorphyll a, suspended sediment concentrations, total nitrogen (mg/L as N), total phosphorus (mg/L as P), and fecal coliform (E. Coli) concentrations;

(H) The following data with respect to any existing or proposed lake or reservoir associated with the proposed project; surface area, volume, maximum depth, mean depth, flushing rate, shoreline length, substrate composition; and

(I) Gradient for downstream reaches directly affected by the proposed project.

(iv) *Fish and aquatic resources.* A description of the fish and other aquatic resources, including invasive species, in the project vicinity. This section must discuss the existing fish and macroinvertebrate communities, including the presence or absence of anadromous, catadromous, or migratory fish, and any known or potential upstream or downstream impacts of the project on the aquatic community. Components of the description must include:

(A) Identification of existing fish and aquatic communities;

(B) Identification of any essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act and established by the National Marine Fisheries Service; and

(C) Temporal and spacial distribution of fish and aquatic communities and any associated trends with respect to:

(*1*) Species and life stage composition;

(*2*) Standing crop;

(*3*) Age and growth data;

(*4*) Spawning run timing; and

(*5*) The extent and location of spawning, rearing, feeding, and wintering habitat.

(v) *Wildlife and botanical resources.* A description of the wildlife and botanical resources, including invasive species, in the project vicinity. Components of this description must include:

(A) Upland habitat(s) in the project vicinity, including the project's transmission line corridor or right-of-way and a listing of plant and animal species that use the habitat(s); and

(B) Temporal or spacial distribution of species considered important because of their commercial, recreational, or cultural value.

(vi) *Wetlands, riparian, and littoral habitat.* A description of the floodplain, wetlands, riparian habitats, and littoral in the project vicinity. Components of this description must include:

(A) A list of plant and animal species, including invasive species, that use the wetland, littoral, and riparian habitat;

(B) A map delineating the wetlands, riparian, and littoral habitat; and

(C) Estimates of acreage for each type of wetland, riparian, or littoral habitat, including variability in such availability as a function of storage at a project that is not operated in run-of-river mode.

(vii) *Rare, threatened and endangered species.* A description of any listed rare, threatened and endangered, candidate, or special status species that may be present in the project vicinity. Components of this description must include:

(A) A list of Federal- and state-listed, or proposed to be listed, threatened and endangered species known to be present in the project vicinity;

(B) Identification of habitat requirements;

(C) References to any known biological opinion, status reports, or recovery plan pertaining to a listed species;

(D) Extent and location of any federally-designated critical habitat, or other habitat for listed species in the project area; and

(E) Temporal and spatial distribution of the listed species within the project vicinity.

(viii) *Recreation and land use.* A description of the existing recreational and land uses and opportunities within the project boundary. The components of this description include:

(A) Text description illustrated by maps of existing recreational facilities, type of activity supported, location, capacity, ownership and management;

(B) Current recreational use of project lands and waters compared to facility or resource capacity;

(C) Existing shoreline buffer zones within the project boundary;

(D) Current and future recreation needs identified in current State Comprehensive Outdoor Recreation Plans, other applicable plans on file with the Commission, or other relevant local, state, or regional conservation and recreation plans;

(E) If the potential applicant is an existing licensee, its current shoreline management plan or policy, if any, with regard to permitting development of piers, boat docks and landings, bulkheads, and other shoreline facilities on project lands and waters;

(F) A discussion of whether the project is located within or adjacent to a:

(*1*) River segment that is designated as part of, or under study for inclusion in, the National Wild and Scenic River System; or

(*2*) State-protected river segment;

(G) Whether any project lands are under study for inclusion in the National Trails System or designated as, or under study for inclusion as, a Wilderness Area.

(H) Any regionally or nationally important recreation areas in the project vicinity;

(I) Non-recreational land use and management within the project boundary; and

(J) Recreational and non-recreational land use and management adjacent to the project boundary.

(ix) *Aesthetic resources.* A description of the visual characteristics of the lands and waters affected by the project. Components of this description include a description of the dam, natural water features, and other scenic attractions of the project and surrounding vicinity. Potential applicants are encouraged to supplement the text description with visual aids.

(x) *Cultural resources.* A description of the known cultural or historical resources of the proposed project and surrounding area. Components of this description include:

(A) Identification of any historic or archaeological site in the proposed project vicinity, with particular emphasis on sites or properties either listed in, or recommended by the State Historic Preservation Officer or Tribal Historic Preservation Officer for inclusion in, the National Register of Historic Places;

(B) Existing discovery measures, such as surveys, inventories, and limited subsurface testing work, for the purpose of locating, identifying, and assessing the significance of historic and archaeological resources that have been undertaken within or adjacent to the project boundary; and

(C) Identification of Indian tribes that may attach religious and cultural significance to historic properties within the project boundary or in the project vicinity; as well as available information on Indian traditional cultural and religious properties, whether on or off of any federally-recognized Indian reservation (A potential applicant must delete from any information made available under this section specific site or property locations, the disclosure of which would create a risk of harm, theft, or destruction of archaeological or Native American cultural resources or to the site at which the resources are located, or would violate any Federal law, including the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470w-3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh).

(xi) *Socio-economic resources.* A general description of socio-economic conditions in the vicinity of the project. Components of this description include general land use patterns (*e.g.*, urban, agricultural, forested), population patterns, and sources of employment in the project vicinity.

(xii) *Tribal resources.* A description of Indian tribes, tribal lands, and interests that may be affected by the project Components of this description include:

(A) Identification of information on resources specified in paragraphs (d)(2)(ii)–(xi) of this section to the extent that existing project construction and operation affecting those resources may impact tribal cultural or economic interests, *e.g.*, impacts of project-induced soil erosion on tribal cultural sites; and

(B) Identification of impacts on Indian tribes of existing project construction and operation that may affect tribal interests not necessarily associated with resources specified in paragraphs (d)(3)(ii)–(xi) of this Section, *e.g.*, tribal fishing practices or agreements between the Indian tribe and other entities other than the potential applicant that have a connection to project construction and operation.

(xiii) *River basin description.* A general description of the river basin or sub-basin, as appropriate, in which the proposed project is located, including information on:

(A) The area of the river basin or sub-basin and length of stream reaches therein;

(B) Major land and water uses in the project area;

(C) All dams and diversion structures in the basin or sub-basin, regardless of function; and

(D) Tributary rivers and streams, the resources of which are or may be affected by project operations;

(4) *Preliminary issues and studies list.* Based on the resource description and impacts discussion required by paragraphs (d)(1) and (d)(2) of this section; the pre-application document must include with respect to each resource area identified above, a list of:

(i) Issues pertaining to the identified resources;

(ii) Potential studies or information gathering requirements associated with the identified issues;

(iii) Relevant qualifying Federal and state or tribal comprehensive waterway plans; and

(iv) Relevant resource management plans.

(5) *Summary of contacts.* An appendix summarizing contacts with Federal, state, and interstate resource agencies, Indian tribes, non-governmental organizations, or other members of the public made in connection with preparing the pre-application document sufficient to enable the Commission to determine if due diligence has been exercised in obtaining relevant information.

(e) If applicable, the applicant must also provide a statement of whether or not it will seek benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) by satisfying the requirements for qualifying hydroelectric small power production facilities in § 292.203 of this chapter. If benefits under section 210 of PURPA are sought, a statement of whether or not the applicant believes the project is located at a new dam or diversion (as that term is defined in § 292.202(p) of this chapter), and a request for the agencies' view on that belief, if any.

§ 5.7 Tribal consultation.

A meeting shall be held no later than 30 days following issuance of the notification of intent required by § 5.5 between each Indian tribe likely to be affected by the potential license application and the Commission staff if the affected Indian tribe agrees to such meeting.

§ 5.8 Notice of commencement of proceeding and scoping document, or of approval to use traditional licensing process or alternative procedures.

(a) *Notice.* Within 60 days of the notification of intent required under § 5.5, filing of the pre-application document pursuant to § 5.6, and filing of any request to use the traditional licensing process or alternative procedures, the Commission will issue a notice of commencement of proceeding and scoping document or of approval of a request to use the traditional licensing process or alternative procedures.

(b) *Notice contents.* The notice shall include:

(1) The decision of the Director of the Office of Energy Projects on any request to use the traditional licensing process or alternative procedures.

(2) If appropriate, a request by the Commission to initiate informal consultation under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402, section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920, or section 106 of the National Historic Preservation Act and implementing regulations at 36 CFR 800.2, and, if applicable, designation of the potential applicant as the Commission's non-federal representative.

(3) If the potential license application is to be developed and filed pursuant to this part, notice of:

(i) The applicant's intent to file a license application;

(ii) The filing of the pre-application document;

(iii) Commencement of the proceeding;

(iv) A request for comments on the pre-application document (including the proposed process plan and schedule);

(v) A statement that all communications to or from the Commission staff related to the merits of the potential application must be filed with the Commission;

(vi) The request for other Federal or state agencies or Indian tribes to be cooperating agencies for purposes of developing an environmental document;

(vii) The Commission's intent with respect to preparation of an environmental impact statement; and

(viii) A public scoping meeting and site visit to be held within 30 days of the notice.

(c) *Scoping Document 1.* At the same time the Commission issues the notice provided for in paragraph (a) of this Section, the Commission staff will issue Scoping Document 1. Scoping Document 1 will include:

(1) An introductory section describing the purpose of the scoping document, the date and time of the scoping meeting, procedures for submitting written comments, and a request for information or study requests from state and Federal resource agencies, Indian tribes, non-governmental organizations, and individuals;

(2) Identification of the proposed action, including a description of the project's location, facilities, and operation, and any proposed protection and enhancement measures, and other alternatives to the proposed action, including alternatives considered but eliminated from further study, and the no action alternative;

(3) Identification of resource issues to be analyzed in the environmental document, including those that would be cumulatively affected along with a description of the geographic and temporal scope of the cumulatively affected resources;

(4) A list of qualifying Federal and state comprehensive waterway plans;

(5) A list of qualifying tribal comprehensive waterway plans;

(6) A process plan and schedule and a draft outline of the environmental document; and

(7) A list of recipients.

(d) *Scoping meeting and site visit.* The purpose of the public meeting and site visit is to:

(1) Initiate issues scoping pursuant to the National Environmental Policy Act;

(2) Review and discuss existing conditions and resource management objectives;

(3) Review and discuss existing information and make preliminary identification of information and study needs;

(4) Review, discuss, and finalize the process plan and schedule for pre-filing activity that incorporates the time periods provided for in this part and, to the extent reasonably possible, maximizes coordination of Federal, state, and tribal permitting and certification processes, including consultation under section 7 of the Endangered Species Act and water quality certification or waiver thereof under section 401 of the Clean Water Act; and

(5) Discuss the appropriateness of any Federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document pursuant to the National Environmental Policy Act.

(e) *Method of notice.* The public notice provided for in this section will be given by:

(1) Publishing notice in the **Federal Register**;

(2) Publishing notice in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated, and, as appropriate, tribal newspapers;

(3) Notifying appropriate Federal, state, and interstate resource agencies, state water quality and coastal zone management plan consistency certification agencies, Indian tribes, and non-governmental organizations by mail.

§ 5.9 Comments and information or study requests.

(a) *Comments and study requests.* Comments on the pre-application document and the Commission staff's Scoping Document 1 must be filed with the Commission within 60 days following the Commission's notice of consultation procedures issued pursuant to § 5.8. Comments, including those by Commission staff, must be accompanied by any information gathering and study requests, and should include information and studies needed for consultation under section 7 of the Endangered Species Act and water quality certification under Section 401 of the Clean Water Act.

(b) *Content of study request.* Any information or study request must:

(1) Describe the goals and objectives of each study proposal and the information to be obtained;

(2) If applicable, explain the relevant resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied;

(3) If the requester is a not resource agency, explain any relevant public interest considerations in regard to the proposed study;

(4) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied, and how the study results would inform the development of license requirements;

(6) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate filed season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge; and

(7) Describe considerations of level of effort and cost, as applicable, and why any proposed alternative studies would not be sufficient to meet the stated information needs.

(c) *Applicant seeking PURPA benefits; estimate of fees.* If a potential applicant has stated that it intends to seek PURPA benefits, comments on the pre-application document by a fish and wildlife agency must provide the potential applicant with a reasonable estimate of the total costs the agency anticipates it will incur and set mandatory terms and conditions for the proposed project. An agency may provide a potential applicant with an updated estimate as it deems necessary. If any agency believes that its most recent estimate will be exceeded by more than 25 percent, it must supply the potential applicant with a new estimate and submit a copy to the Commission.

§ 5.10 Scoping Document 2.

Within 45 days following the deadline for filing of comments on Scoping Document 1, the Commission staff shall, if necessary, issue Scoping Document 2.

§ 5.11 Potential Applicant's proposed study plan and study plan meetings.

(a) Within 45 days following the deadline for filing of comments on the pre-application document, including information and study requests, the potential applicant must file with the Commission a proposed study plan.

(b) The potential applicant's proposed study plan must include with respect to each proposed study:

(1) A detailed description of the study and the methodology to be used;

(2) A schedule for conducting the study;

(3) Provisions for periodic progress reports, including the manner and extent to which information will be shared; and sufficient time for technical review of the analysis and results; and

(4) If the potential applicant does not adopt a requested study, an explanation of why the request was not adopted, with reference to the criteria set forth in § 5.9(b).

(c) The potential applicant's proposed study plan must also include provisions for the initial and updated study reports and meetings provided for in § 5.15.

(d) The applicant's proposed study plan must:

(1) Describe the goals and objectives of each study proposal and the information to be obtained;

(2) Address any known resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied;

(3) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(4) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied;

(5) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate field season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers any known tribal interests;

(6) Describe considerations of level of effort and cost, as applicable.

(e) The potential applicant's proposed study plan must be accompanied by a proposal for conducting a study plan meeting or meetings during the 90-day period provided for in § 5.12 for the purpose of clarifying the potential applicant's proposed study plan and any initial information gathering or study requests, and to resolve any outstanding issues with respect to the proposed study plan. The initial study plan meeting must be held no later than 30 days after the deadline date for filing of the potential applicant's proposed study plan.

§ 5.12 Comments on proposed study plan.

Comments on the potential applicant's proposed study plan, including any revised information or study requests, must be filed within 90 days after the proposed study plan is filed. This filing must also include an explanation of any study plan concerns and any accommodations reached with the potential applicant regarding those concerns. Any proposed modifications to the potential applicant's proposed study plan must address the criteria in § 5.9(b).

§ 5.13 Revised study plan and study plan determination.

(a) Within 30 days following the deadline for filing comments on the potential applicant's proposed study plan, as provided for in § 5.12, the potential applicant must file a revised study plan for Commission approval. The revised study plan shall include the comments on the proposed study plan and a description of the efforts made to resolve differences over study requests. If the potential applicant does not adopt a requested study, it must explain why the request was not adopted, with

reference to the criteria set forth in § 5.9(b).

(b) Within 15 days following filing of the potential applicant's revised study plan, participants may file comments thereon.

(c) Within 30 days following the date the potential applicant files its revised study plan, the Director of Energy Projects will issue a Study Plan Determination with regard to the potential applicant's study plan, including any modifications determined to be necessary in light of the record.

(d) If no notice of study dispute is filed pursuant to § 5.14 within 20 days of the Study Plan Determination, the study plan as approved in the Study Plan Determination shall be deemed to be approved and the potential applicant shall proceed with the approved studies. If a potential applicant fails to obtain or conduct a study as required by Study Plan Determination, its license application may be considered deficient.

§ 5.14 Formal study dispute resolution process.

(a) Within 20 days of the Study Plan Determination, any Federal agency with authority to provide mandatory conditions on a license pursuant to FPA Section 4(e), 16 U.S.C. 797(e), or to prescribe fishways pursuant to FPA Section 18, 16 U.S.C. 811, or any agency or Indian tribe with authority to issue a water quality certification for the project license under section 401 of the Clean Water Act, 42 U.S.C. 1341, may file a notice of study dispute with respect to studies pertaining directly to the exercise of their authorities under sections 4(e) and 18 of the Federal Power Act or section 401 of the Clean Water Act.

(b) The notice of study dispute must explain how the disputing agency's or Indian tribe's study request satisfies the criteria set forth in § 5.9(b), and shall identify and provide contact information for the panel member designated by the disputing agency or Indian tribe, as discussed in paragraph (d) of this section.

(c) Studies and portions of study plans approved in the Study Plan Determination that are not the subject of a notice of dispute shall be deemed to be approved, and the potential applicant shall proceed with those studies or portions thereof.

(d) Within 20 days of a notice of study dispute, the Commission will convene one or more three-person Dispute Resolution Panels, as appropriate to the circumstances of each proceeding. Each such panel will consist of:

(1) A person from the Commission staff who is not otherwise involved in the proceeding, and who shall serve as the panel chair;

(2) One person designated by the Federal or state agency or Indian tribe that filed the notice of dispute who is not otherwise involved in the proceeding; and

(3) A third person selected by the other two panelists from a pre-established list of persons with expertise in the resource area. The two panelists shall make every reasonable effort to select the third panel member. If however no third panel member has been selected by the other two panelists within 15 days, an appropriate third panel member will be selected at random from the list of technical experts maintained by the Commission.

(e) If more than one agency or Indian tribe files a notice of dispute with respect to the decision in the preliminary determination on any information-gathering or study request, the disputing agencies or Indian tribes must select one person to represent their interests on the panel.

(f) The list of persons available to serve as a third panel member will be posted, as revised from time-to-time, on the hydroelectric page of the Commission's Web site. A person on the list who is requested and willing to serve with respect to a specific dispute will be required to file with the Commission at that time a current statement of their qualifications, a statement that they have had no prior involvement with the proceeding in which the dispute has arisen, or other financial or other conflict of interest.

(g) All costs of the panel members representing the Commission staff and the agency or Indian tribe which filed the notice of dispute will be borne by the Commission or the agency or Indian tribe, as applicable. The third panel member will serve without compensation, except for certain allowable travel expenses as defined in 31 CFR part 301.

(h) To facilitate the delivery of information to the dispute resolution panel, the identity of the panel members and their addresses for personal service with respect to a specific dispute resolution will be posted on the hydroelectric page of the Commission's Web site.

(i) No later than 25 days following the notice of study dispute, the potential applicant may file with the Commission and serve upon the panel members comments and information regarding the dispute.

(j) Prior to engaging in deliberative meetings, the panel shall hold a technical conference for the purpose of clarifying the matters in dispute with reference to the study criteria. The technical conference shall be chaired by the Commission staff member of the panel. It shall be open to all participants, and the panel shall receive information from the participants as it deems appropriate.

(k) No later than 50 days following the notice of study dispute, the panel shall make and deliver to the Director of the Office of Energy Projects a finding, with respect to each information or study request in dispute, concerning the extent to which each criteria set forth in § 5.9(b) is met or not met, and why, and make recommendations regarding the disputed study request based on its findings. The panel's findings and recommendations must be based on the record in the proceeding. The panel shall file with its findings and recommendations all of the materials received by the panel. Any recommendation for the potential applicant to provide information or a study must include the technical specifications, including data acquisition techniques and methodologies.

(l) No later than 70 days from the date of filing of the notice of study dispute, the Director of the Office of Energy Projects will review and consider the recommendations of the panel, and will issue a written determination. The Director's determination will be made with reference to the study criteria set forth in § 5.9(b) and any applicable law or Commission policies and practices, will take into account the technical expertise of the panel, and will explain why any panel recommendation was rejected, if applicable. The Director's determination shall constitute an amendment to the approved study plan.

§ 5.15 Conduct of studies.

(a) *Implementation.* The potential applicant must gather information and conduct studies as provided for in the approved study plan and schedule.

(b) *Progress reports.* The potential applicant must prepare and provide to the participants the progress reports provided for in § 5.11(b)(3). Upon request of any participant, the potential applicant will provide documentation of study results.

(c) *Initial study report.* (1) Pursuant to the Commission-approved study plan and schedule provided for in § 5.13 or no later than one year after Commission approval of the study plan, whichever comes first, the potential applicant must prepare and file with the Commission an initial study report describing its overall progress in implementing the

study plan and schedule and the data collected, including an explanation of any variance from the study plan and schedule. The report must also include any modifications to ongoing studies or new studies proposed by the potential applicant.

(2) Within 15 days following the filing of the initial study report, the potential applicant shall hold a meeting with the participants and Commission staff to discuss the study results and the potential applicant's and or other participant's proposals, if any, to modify the study plan in light of the progress of the study plan and data collected.

(3) Within 15 days following the meeting provided for in paragraph (c)(2) of this section, the potential applicant shall file a meeting summary, including any modifications to ongoing studies or new studies proposed by the potential applicant.

(4) Any participant or the Commission staff may file a disagreement concerning the applicant's meeting summary within 30 days, setting forth the basis for the disagreement. This filing must also include any modifications to ongoing studies or new studies proposed by the Commission staff or other participant.

(5) Responses to any filings made pursuant to paragraph (c)(4) of this section must be filed within 30 days.

(6) No later than 30 days following the due date for responses provided for in paragraph (c)(5) of this section, the Director will resolve the disagreement and amend the approved study plan as appropriate.

(7) If no participant or the Commission staff files a disagreement concerning the potential applicant's meeting summary and request to amend the approved study plan within 15 days, any proposed amendment shall be deemed to be approved.

(d) *Criteria for modification of approved study.* Any proposal to modify an ongoing study pursuant to paragraphs (c)(1)–(4) of this section must be accompanied by a showing of good cause why the proposal should be approved, and must include, as appropriate to the facts of the case, a demonstration that:

(1) Approved studies were not conducted as provided for in the approved study plan; or

(2) The study was conducted under anomalous environmental conditions or that environmental conditions have changed in a material way.

(e) *Criteria for new study.* Any proposal for new information gathering or studies pursuant to paragraphs (c)(1)–(4) of this section must be accompanied by a showing of good cause why the proposal should be approved, and must include, as appropriate to the facts of the case, a statement explaining:

(1) Any material changes in the law or regulations applicable to the information request;

(2) Why the goals and objectives of any approved study could not be met with the approved study methodology;

(3) Why the request was not made earlier;

(4) Significant changes in the project proposal or that significant new information material to the study objectives has become available; and

(5) Why the new study request satisfies the study criteria in § 5.9(b).

(f) *Updated study report.* Pursuant to the Commission-approved study plan and schedule provided for in § 5.13, or no later than two years after Commission approval of the study plan and schedule, whichever comes first, the potential applicant shall prepare and file with the Commission an updated study report describing its overall progress in implementing the study plan and schedule and the data collected, including an explanation of any variance from the study plan and schedule. The report must also include any modifications to ongoing studies or new studies proposed by the potential applicant. The review, comment, and disagreement resolution provisions of paragraphs (c)(4)–(7) of this section shall apply to the updated study report. Any proposal to modify an ongoing study must be accompanied by a showing of good cause why the proposal should be approved as set forth in paragraph (d) of this section. Any proposal for new information gathering or studies is subject to paragraph (e) of this section except that the proponent must demonstrate extraordinary circumstances warranting approval. The applicant must promptly proceed to complete any remaining undisputed information-gathering or studies under its proposed amendments to the study plan, if any, and must proceed to complete any information-gathering or studies that are the subject of a disagreement upon the Director's resolution of the disagreement.

§ 5.16 Preliminary licensing proposal.

(a) No later than 150 days prior to the deadline for filing a new or subsequent license application, if applicable, the potential applicant must file for comment a preliminary licensing proposal.

(b) The preliminary licensing proposal must:

(1) Clearly describe, as applicable, the existing and proposed project facilities, including project lands and waters;

(2) Clearly describe, as applicable, the existing and proposed project operation and maintenance plan, to include measures for protection, mitigation, and enhancement measures with respect to each resource affected by the project proposal; and

(3) Include the potential applicant's draft environmental analysis by resource area of the continuing and incremental impacts, if any, of its preliminary licensing proposal, including the results of its studies conducted under the approved study plan.

(c) A potential applicant may elect to file a draft license application which includes the contents of a license application required by § 5.18 instead of the Preliminary Licensing Proposal. A potential applicant that elects to file a draft license application must include notice of its intent to do so in the updated study report required by § 5.15(f).

(d) A potential applicant that has been designated as the Commission's non-Federal representative may include a draft Biological Assessment, draft Essential Fish Habitat Assessment, and draft Historic Properties Management Plan with its Preliminary Licensing Proposal or draft license application.

(e) Within 90 days of the date the potential applicant files the Preliminary Licensing Proposal or draft license application, participants and the Commission staff may file comments on the Preliminary Licensing Proposal or draft application, which may include recommendations on whether the Commission should prepare an Environmental Assessment (with or without a draft Environmental Assessment) or an Environmental Impact Statement. Any participant whose comments request new information, studies, or other amendments to the approved study plan must include a demonstration of extraordinary circumstances, pursuant to the requirements of § 5.15(f).

(f) A waiver of the requirement to file the Preliminary Licensing Proposal or draft license application may be requested, based on a consensus of the participants in favor of such waiver.

§ 5.17 Filing of application.

(a) *Deadline—new or subsequent license application.* An application for a new or subsequent license must be filed no later than 24 months before the existing license expires.

(b) *Subsequent licenses.* An applicant for a subsequent license must file its application under part I of the Federal Power Act. The provisions of section 7(a) of the Federal Power Act do not

apply to licensing proceedings involving a subsequent license.

(c) *Rejection or dismissal of application.* If the Commission rejects or dismisses an application for a new or subsequent license filed under this part pursuant to the provisions of § 5.20, the application may not be refiled after the new or subsequent license application filing deadline specified in paragraph (a) of this section.

(d)(1) *Filing and service.* Each applicant for a license under this part must submit the application to the Commission's Secretary for filing pursuant to the requirements of subpart T of part 385 of this chapter. The applicant must serve one copy of the application on the Director of the Commission's Regional Office for the appropriate region and on each resource agency, Indian tribe, or member of the public consulted pursuant to this part.

(2) An applicant must publish notice twice of the filing of its application, no later than 14 days after the filing date in a daily or weekly newspaper of general circulation in each county in which the project is located. The notice must disclose the filing date of the application and briefly summarize it, including the applicant's name and address, the type of facility applied for, its proposed location, and the places where the information specified in § 5.2(b) is available for inspection and reproduction. The applicant must promptly provide the Commission with proof of the publication of this notice.

(e) *PURPA benefits.* (1) Every application for a license for a project with a capacity of 80 megawatts or less must include in its application copies of the statements made under § 4.38(b)(1)(vi).

(2) If an applicant reverses a statement of intent not to seek PURPA benefits:

(i) Prior to the Commission issuing a license, the reversal of intent will be treated as an amendment of the application under § 4.35 of this chapter and the applicant must:

(A) Repeat the pre-filing consultation process under this part; and

(B) Satisfy all the requirements in § 292.208 of this chapter; or

(ii) After the Commission issues a license for the project, the applicant is prohibited from obtaining PURPA benefits.

(f) *Limitations on submitting applications.* The provisions of §§ 4.33(b), (c), and (e) of this chapter apply to license applications filed under this Section.

(g) *Applicant notice.* An applicant for a subsequent license that proposes to expand an existing project to encompass additional lands must include in its application a statement that the applicant has notified, by certified mail, property owners on the additional lands to be encompassed by the project and governmental agencies and subdivisions likely to be interested in or affected by the proposed expansion.

§ 5.18 Application content.

(a) *General content requirements.* Each license application filed pursuant to this part must:

(1) Identify every person, citizen, association of citizens, domestic corporation, municipality, or state that has or intends to obtain and will maintain any proprietary right necessary to construct, operate, or maintain the project;

(2) Identify (providing names and mailing addresses):

(i) Every county in which any part of the project, and any Federal facilities that would be used by the project, would be located;

(ii) Every city, town, or similar local political subdivision:

(A) In which any part of the project, and any Federal facilities that would be used by the project, would be located; or

(B) That has a population of 5,000 or more people and is located within 15 miles of the project dam;

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision:

(A) In which any part of the project, and any Federal facilities that would be used by the project, would be located; or

(B) That owns, operates, maintains, or uses any project facilities that would be used by the project;

(iv) Every other political subdivision in the general area of the project that there is reason to believe would likely be interested in, or affected by, the application; and

(v) All Indian tribes that may be affected by the project.

(3)(i) For a license (other than a license under section 15 of the Federal Power Act) state that the applicant has made, either at the time of or before filing the application, a good faith effort to give notification by certified mail of the filing of the application to:

(A) Every property owner or record of any interest in the property within the bounds of the project, or in the case of the project without a specific project boundary, each such owner of property which would underlie or be adjacent to any project works including any impoundments; and

(B) The entities identified in paragraph (a)(2) of this section, as well as any other Federal, state, municipal or other local government agencies that there is reason to believe would likely be interested in or affected by such application.

(ii) Such notification must contain the name, business address, and telephone number of the applicant and a copy of the Exhibit G contained in the application, and must state that a license application is being filed with the Commission.

(4)(i) As to any facts alleged in the application or other materials filed, be subscribed and verified under oath in the form set forth in paragraph (a)(3)(B) of this Section by the person filing, an officer thereof, or other person having knowledge of the matters set forth. If the subscription and verification is by anyone other than the person filing or an officer thereof, it must include a statement of the reasons therefor.

(ii) This application is executed in the:

State of _____
County of _____
By: _____
(Name) _____
(Address) _____
being duly sworn, depose(s) and say(s) that the contents of this application are true to the best of (his or her) knowledge or belief. The undersigned Applicant(s) has (have) signed the application this___ day of____, 2__.

_____
(Applicant(s))
By: _____

Subscribed and sworn to before me, a [Notary Public, or title of other official authorized by the state to notarize documents, as appropriate] this___ day of ____, 2__.
/SEAL [if any]
(Notary Public, or other authorized official)

(5) Contain the information and documents prescribed in the following Sections of this chapter, except as provided in paragraph (b) of this Section, according to the type of application:

(i) License for a minor water power project and a major water power project 5 MW or less: § 4.61 (General instructions, initial statement, and Exhibits A, B, C, D, F, and G);

(ii) License for a major unconstructed project and a major modified project: § 4.41 of this chapter (General instructions, initial statement, Exhibits A, B, C, D, F, and G);

(iii) License for a major project—existing dam: § 4.51 of this chapter (General instructions, initial statement, Exhibits A, F, and G); or

(iv) License for a project located at a new dam or diversion where the applicant seeks PURPA benefits: § 292.208 of this chapter.

(b) *Exhibit E—Environmental Exhibit.* The specifications for Exhibit E in

§§ 4.41, 4.51, or 4.61 of this chapter shall not apply to applications filed under this part. The Exhibit E included in any license application filed under this part must address the resources listed in the Pre-Application Document provided for in § 5.6; follow the Commission's ''Preparing Environmental Assessments: Guidelines for Applicants, Contractors, and Staff,'' as they may be updated from time-to-time; and meet the following format and content requirements:

(1) *General description of the river basin.* Describe the river system, including relevant tributaries; give measurements of the area of the basin and length of stream; identify the project's river mile designation or other reference point; describe the topography and climate; and discuss major land uses and economic activities.

(2) *Cumulative effects.* List cumulatively affected resources based on the Commission's Scoping Document, consultation, and study results. Discuss the geographic and temporal scope of analysis for those resources. Describe how resources are cumulatively affected and explain the choice of the geographic scope of analysis. Include a brief discussion of past, present, and future actions, and their effects on resources based on the new license term (30–50 years). Highlight the effect on the cumulatively affected resources from reasonably foreseeable future actions. Discuss past actions' effects on the resource in the Affected Environment Section.

(3) *Applicable laws.* Include a discussion of the status of compliance with or consultation under the following laws, if applicable:

(i) *Section 401 of the Clean Water Act.* The applicant must file a request for a water quality certification (WQC), as required by Section 401 of the Clean Water Act no later than the deadline specified in § 5.23(b). Potential applicants are encouraged to consult with the certifying agency or tribe concerning information requirements as early as possible.

(ii) *Endangered Species Act (ESA).* Briefly describe the process used to address project effects on Federally listed or proposed species in the project vicinity. Summarize any anticipated environmental effects on these species and provide the status of the consultation process. If the applicant is the Commission's non-Federal designee for informal consultation under the ESA, the applicant's draft biological assessment must be included.

(iii) *Magnuson-Stevens Fishery Conservation and Management Act.* Document from the National Marine Fisheries Service (NMFS) and/or the appropriate Regional Fishery Management Council any essential fish habitat (EFH) that may be affected by the project. Briefly discuss each managed species and life stage for which EFH was designated. Include, as appropriate, the abundance, distribution, available habitat, and habitat use by the managed species. If the project may affect EFH, prepare a draft ''EFH Assessment'' of the impacts of the project. The draft EFH Assessment should contain the information outlined in 50 CFR 600.920(e).

(iv) *Coastal Zone Management Act (CZMA).* Section 307(c)(3) of the CZMA requires that all Federally licensed and permitted activities be consistent with approved state Coastal Zone Management Programs. If the project is located within a coastal zone boundary or if a project affects a resource located in the boundaries of the designated coastal zone, the applicant must certify that the project is consistent with the state Coastal Zone Management Program. If the project is within or affects a resource within the coastal zone, provide the date the applicant sent the consistency certification information to the state agency, the date the state agency received the certification, and the date and action taken by the state agency (for example, the agency will either agree or disagree with the consistency statement, waive it, or ask for additional information). Describe any conditions placed on the state agency's concurrence and assess the conditions in the appropriate section of the license application. If the project is not in or would not affect the coastal zone, state so and cite the coastal zone program office's concurrence.

(v) *National Historic Preservation Act (NHPA).* Section 106 of NHPA requires the Commission to take into account the effect of licensing a hydropower project on any historic properties, and allow the Advisory Council on Historic Preservation (Advisory Council) a reasonable opportunity to comment on the proposed action. ''Historic Properties'' are defined as any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places (NRHP). If there would be an adverse effect on historic properties, the applicant may include a Historic Properties Management Plan (HPMP) to avoid or mitigate the effects. The applicant must include documentation of consultation with the Advisory Council, the State Historic Preservation Officer, Tribal Historic Preservation Officer, National Park Service, members of the public, and affected Indian tribes, where applicable.

(vi) *Pacific Northwest Power Planning and Conservation Act (Act).* If the project is not within the Columbia River Basin, this section shall not be included. The Columbia River Basin Fish and Wildlife Program (Program) developed under the Act directs agencies to consult with Federal and state fish and wildlife agencies, appropriate Indian tribes, and the Northwest Power Planning Council (Council) during the study, design, construction, and operation of any hydroelectric development in the basin. Section 12.1A of the Program outlines conditions that should be provided for in any original or new license. The program also designates certain river reaches as protected from development. The applicant must document consultation with the Council, describe how the act applies to the project, and how the proposal would or would not be consistent with the program.

(vii) *Wild and Scenic Rivers and Wilderness Acts.* Include a description of any areas within or in the vicinity of the proposed project boundary that are included in, or have been designated for study for inclusion in, the National Wild and Scenic Rivers System, or that have been designated as wilderness area, recommended for such designation, or designated as a wilderness study area under the Wilderness Act.

(4) *Project facilities and operation.* Provide a description of the project to include:

(i) Maps showing existing and proposed project facilities, lands, and waters within the project boundary;

(ii) The configuration of any dams, spillways, penstocks, canals, powerhouses, tailraces, and other structures;

(iii) The normal maximum water surface area and normal maximum water surface elevation (mean sea level), gross storage capacity of any impoundments;

(iv) The number, type, and minimum and maximum hydraulic capacity and installed (rated) capacity of existing and proposed turbines or generators to be included as part of the project;

(v) An estimate of the dependable capacity, and average annual energy production in kilowatt hours (or mechanical equivalent);

(vi) A description of the current (if applicable) and proposed operation of the project, including any daily or seasonal ramping rates, flushing flows, reservoir operations, and flood control operations.

(5) *Proposed action and action alternatives.* (i) The environmental document must explain the effects of the applicant's proposal on resources. For each resource area addressed include:

(A) A discussion of the affected environment;

(B) A detailed analysis of the effects of the applicant's licensing proposal and, if reasonably possible, any preliminary terms and conditions filed with the Commission; and

(C) Any unavoidable adverse impacts.

(ii) The environmental document must contain, with respect to the resources listed in the Pre-Application Document provided for in § 5.6, and any other resources identified in the Commission's scoping document prepared pursuant to the National Environmental Policy Act and § 5.8, the following information, commensurate with the scope of the project:

(A) *Affected environment.* The applicant must provide a detailed description of the affected environment or area(s) to be affected by the proposed project by each resource area. This description must include the information on the affected environment filed in the Pre-Application Document provided for in § 5.6, developed under the applicant's approved study plan, and otherwise developed or obtained by the applicant. This section must include a general description of socio-economic conditions in the vicinity of the project including general land use patterns (*e.g.*, urban, agricultural, forested), population patterns, and sources of employment in the project vicinity.

(B) *Environmental analysis.* The applicant must present the results of its studies conducted under the approved study plan by resource area and use the data generated by the studies to evaluate the beneficial and adverse environmental effects of its proposed project. This section must also include, if applicable, a description of any anticipated continuing environmental impacts of continued operation of the project, and the incremental impact of proposed new development of project works or changes in project operation. This analysis must be based on the information filed in the Pre-Application Document provided for in § 5.6, developed under the applicant's approved study plan, and other appropriate information, and otherwise developed or obtained by the Applicant.

(C) *Proposed environmental measures.* The applicant must provide, by resource area, any proposed new environmental measures, including, but not limited to, changes in the project design or operations, to address the environmental effects identified above and its basis for proposing the measures. The applicant must describe how each proposed measure would protect or enhance the existing environment, including, where possible, a non-monetary quantification of the anticipated environmental benefits of the measure. This section must also include a statement of existing measures to be continued for the purpose of protecting and improving the environment and any proposed preliminary environmental measures received from the consulted resource agencies, Indian tribes, or the public. If an applicant does not adopt a preliminary environmental measure proposed by a resource agency, Indian tribe, or member of the public, it must include its reasons, based on project-specific information.

(D) *Unavoidable adverse impacts.* Based on the environmental analysis, discuss any adverse impacts that would occur despite the recommended environmental measures. Discuss whether any such impacts are short- or long-term, minor or major, cumulative or site-specific.

(E) *Economic analysis.* The economic analysis must include annualized, current cost-based information. For a new or subsequent license, the applicant must include the cost of operating and maintaining the project under the existing license. For an original license, the applicant must estimate the cost of constructing, operating, and maintaining the proposed project. For either type of license, the applicant should estimate the cost of each proposed resource protection, mitigation, or enhancement measure and any specific measure filed with the Commission by agencies, Indian tribes, or members of the public when the application is filed. For an existing license, the applicant's economic analysis must estimate the value of developmental resources associated with the project under the current license and the applicant's proposal. For an original license, the applicant must estimate the value of the developmental resources for the proposed project. As applicable, these developmental resources may include power generation, water supply, irrigation, navigation, and flood control. Where possible, the value of developmental resources must be based on market prices. If a protection, mitigation, or enhancement measure reduces the amount or value of the project's developmental resources, the applicant must estimate the reduction.

(F) *Consistency with comprehensive plans.* Identify relevant comprehensive plans and explain how and why the proposed project would, would not, or should not comply with such plans and a description of any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan.

(G) *Consultation Documentation.* Include a list containing the name, and address of every Federal, state, and interstate resource agency, Indian tribe, or member of the public with which the applicant consulted in preparation of the Environmental Document.

(H) *Literature cited.* Cite all materials referenced including final study reports, journal articles, other books, agency plans, and local government plans.

(2) The applicant must also provide in the Environmental Document:

(A) Functional design drawings of any fish passage and collection facilities or any other facilities necessary for implementation of environmental measures, indicating whether the facilities depicted are existing or proposed (these drawings must conform to the specifications of § 4.39 of this chapter regarding dimensions of full-sized prints, scale, and legibility);

(B) A description of operation and maintenance procedures for any existing or proposed measures or facilities;

(C) An implementation or construction schedule for any proposed measures or facilities, showing the intervals following issuance of a license when implementation of the measures or construction of the facilities would be commenced and completed;

(D) An estimate of the costs of construction, operation, and maintenance, of any proposed facilities, and of implementation of any proposed environmental measures.

(E) A map or drawing that conforms to the size, scale, and legibility requirements of § 4.39 of this chapter showing by the use of shading, cross-hatching, or other symbols the identity and location of any measures or facilities, and indicating whether each measure or facility is existing or proposed (the map or drawings in this exhibit may be consolidated).

(c) *Exhibit H.* The information required to be provided by this paragraph (c) must be included in the application as a separate exhibit labeled ''Exhibit H.''

(1) *Information to be provided by an applicant for new license: Filing requirements.*—(i) *Information to be supplied by all applicants.* All Applicants for a new license under this part must file the following information with the Commission:

(A) A discussion of the plans and ability of the applicant to operate and

maintain the project in a manner most likely to provide efficient and reliable electric service, including efforts and plans to:

(*1*) Increase capacity or generation at the project;

(*2*) Coordinate the operation of the project with any upstream or downstream water resource projects; and

(*3*) Coordinate the operation of the project with the applicant's or other electrical systems to minimize the cost of production.

(B) A discussion of the need of the applicant over the short and long term for the electricity generated by the project, including:

(*1*) The reasonable costs and reasonable availability of alternative sources of power that would be needed by the applicant or its customers, including wholesale customers, if the applicant is not granted a license for the project;

(*2*) A discussion of the increase in fuel, capital, and any other costs that would be incurred by the applicant or its customers to purchase or generate power necessary to replace the output of the licensed project, if the applicant is not granted a license for the project;

(*3*) The effect of each alternative source of power on:

(*i*) The applicant's customers, including wholesale customers;

(*ii*) The applicant's operating and load characteristics; and

(*iii*) The communities served or to be served, including any reallocation of costs associated with the transfer of a license from the existing licensee.

(C) The following data showing need and the reasonable cost and availability of alternative sources of power:

(*1*) The average annual cost of the power produced by the project, including the basis for that calculation;

(*2*) The projected resources required by the applicant to meet the applicant's capacity and energy requirements over the short and long term including:

(*i*) Energy and capacity resources, including the contributions from the applicant's generation, purchases, and load modification measures (such as conservation, if considered as a resource), as separate components of the total resources required;

(*ii*) A resource analysis, including a statement of system reserve margins to be maintained for energy and capacity; and

(*iii*) If load management measures are not viewed as resources, the effects of such measures on the projected capacity and energy requirements indicated separately;

(*iv*) For alternative sources of power, including generation of additional power at existing facilities, restarting deactivated units, the purchase of power off-system, the construction or purchase and operation of a new power plant, and load management measures such as conservation: The total annual cost of each alternative source of power to replace project power; the basis for the determination of projected annual cost; and a discussion of the relative merits of each alternative, including the issues of the period of availability and dependability of purchased power, average life of alternatives, relative equivalent availability of generating alternatives, and relative impacts on the applicant's power system reliability and other system operating characteristics; and the effect on the direct providers (and their immediate customers) of alternate sources of power.

(D) If an applicant uses power for its own industrial facility and related operations, the effect of obtaining or losing electricity from the project on the operation and efficiency of such facility or related operations, its workers, and the related community.

(E) If an applicant is an Indian tribe applying for a license for a project located on the tribal reservation, a statement of the need of such Indian tribe for electricity generated by the project to foster the purposes of the reservation.

(F) A comparison of the impact on the operations and planning of the applicant's transmission system of receiving or not receiving the project license, including:

(*1*) An analysis of the effects of any resulting redistribution of power flows on line loading (with respect to applicable thermal, voltage, or stability limits), line losses, and necessary new construction of transmission facilities or upgrading of existing facilities, together with the cost impact of these effects;

(*2*) An analysis of the advantages that the applicant's transmission system would provide in the distribution of the project's power; and

(*3*) Detailed single-line diagrams, including existing system facilities identified by name and circuit number, that show system transmission elements in relation to the project and other principal interconnected system elements. Power flow and loss data that represent system operating conditions may be appended if applicants believe such data would be useful to show that the operating impacts described would be beneficial.

(G) If the applicant has plans to modify existing project facilities or operations, a statement of the need for, or usefulness of, the modifications, including at least a reconnaissance-level study of the effect and projected costs of the proposed plans and any alternate plans, which in conjunction with other developments in the area would conform with a comprehensive plan for improving or developing the waterway and for other beneficial public uses as defined in Section 10(a)(1) of the Federal Power Act.

(H) If the applicant has no plans to modify existing project facilities or operations, at least a reconnaissance-level study to show that the project facilities or operations in conjunction with other developments in the area would conform with a comprehensive plan for improving or developing the waterway and for other beneficial public uses as defined in Section 10(a)(1) of the Federal Power Act.

(I) A statement describing the applicant's financial and personnel resources to meet its obligations under a new license, including specific information to demonstrate that the applicant's personnel are adequate in number and training to operate and maintain the project in accordance with the provisions of the license.

(J) If an applicant proposes to expand the project to encompass additional lands, a statement that the applicant has notified, by certified mail, property owners on the additional lands to be encompassed by the project and governmental agencies and subdivisions likely to be interested in or affected by the proposed expansion.

(K) The applicant's electricity consumption efficiency improvement program, as defined under Section 10(a)(2)(C) of the Federal Power Act, including:

(*1*) A statement of the applicant's record of encouraging or assisting its customers to conserve electricity and a description of its plans and capabilities for promoting electricity conservation by its customers; and

(*2*) A statement describing the compliance of the applicant's energy conservation programs with any applicable regulatory requirements.

(L) The names and mailing addresses of every Indian tribe with land on which any part of the proposed project would be located or which the applicant reasonably believes would otherwise be affected by the proposed project.

(ii) *Information to be provided by an applicant licensee.* An existing licensee that applies for a new license must provide:

(A) The information specified in paragraph (c)(1) of this section.

(B) A statement of measures taken or planned by the licensee to ensure safe management, operation, and maintenance of the project, including:

(*1*) A description of existing and planned operation of the project during flood conditions;

(*2*) A discussion of any warning devices used to ensure downstream public safety;

(*3*) A discussion of any proposed changes to the operation of the project or downstream development that might affect the existing Emergency Action Plan, as described in subpart C of part 12 of this chapter, on file with the Commission;

(*4*) A description of existing and planned monitoring devices to detect structural movement or stress, seepage, uplift, equipment failure, or water conduit failure, including a description of the maintenance and monitoring programs used or planned in conjunction with the devices; and

(*5*) A discussion of the project's employee safety and public safety record, including the number of lost-time accidents involving employees and the record of injury or death to the public within the project boundary.

(C) A description of the current operation of the project, including any constraints that might affect the manner in which the project is operated.

(D) A discussion of the history of the project and record of programs to upgrade the operation and maintenance of the project.

(E) A summary of any generation lost at the project over the last five years because of unscheduled outages, including the cause, duration, and corrective action taken.

(F) A discussion of the licensee's record of compliance with the terms and conditions of the existing license, including a list of all incidents of noncompliance, their disposition, and any documentation relating to each incident.

(G) A discussion of any actions taken by the existing licensee related to the project which affect the public.

(H) A summary of the ownership and operating expenses that would be reduced if the project license were transferred from the existing licensee.

(I) A statement of annual fees paid under part I of the Federal Power Act for the use of any Federal or Indian lands included within the project boundary.

(iii) *Information to be provided by an applicant who is not an existing licensee.* An applicant that is not an existing licensee must provide:

(A) The information specified in paragraph (c)(1) of this section.

(B) A statement of the applicant's plans to manage, operate, and maintain the project safely, including:

(*1*) A description of the differences between the operation and maintenance procedures planned by the applicant and the operation and maintenance procedures of the existing licensee;

(*2*) A discussion of any measures proposed by the applicant to implement the existing licensee's Emergency Action Plan, as described in subpart C of part 12 of this chapter, and any proposed changes;

(*3*) A description of the applicant's plans to continue safety monitoring of existing project instrumentation and any proposed changes; and

(*4*) A statement indicating whether or not the applicant is requesting the licensee to provide transmission services under section 15(d) of the Federal Power Act.

(d) *Consistency with comprehensive plans.* An application for license under this part must include an explanation of why the project would, would not, or should not, comply with any relevant comprehensive plan as defined in § 2.19 of this chapter and a description of any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan.

(e) *Response to information requests.* An application for license under this Section must respond to any requests for additional information-gathering or studies filed with comments on its preliminary licensing proposal or draft license application. If the license applicant agrees to do the information-gathering or study, it must provide the information or include a plan and schedule for doing so, along with a schedule for completing any remaining work under the previously approved study plan, as it may have been amended. If the applicant does not agree to any additional information-gathering or study requests made in comments on the draft license application, it must explain the basis for declining to do so.

(f) *Maps and drawings.* All required maps and drawings must conform to the specifications of § 4.39 of this chapter.

§ 5.19 Tendering notice and schedule.

(a) *Notice.* Within 14 days of the filing date of any application for a license developed pursuant to this part, the Commission will issue public notice of the tendering for filing of the application. The tendering notice will include a preliminary schedule for expeditious processing of the application, including dates for:

(1) Issuance of the acceptance for filing and ready for environmental analysis notice provided for in § 5.22.

(2) Filing of recommendations, preliminary terms and conditions, and fishway prescriptions;

(3) Issuance of a draft environmental assessment or environmental impact statement, or an environmental assessment not preceded by a draft.

(4) Filing of comments on the draft environmental assessment or environmental impact statement, as applicable;

(5) Filing of modified recommendations, mandatory terms and conditions, and fishway prescriptions in response to a draft NEPA document or Environmental Analysis, if no draft NEPA document is issued;

(6) Issuance of a final NEPA document, if any;

(7) In the case of a new or subsequent license application, a deadline for submission of final amendments, if any, to the application; and

(8) Readiness of the application for Commission decision.

(b) *Modifications to process plan and schedule.* The tendering notice shall also include any known modifications to the schedules developed pursuant to § 5.8 for completion of consultation under section 7 of the Endangered Species Act and water quality certification under section 401 of the Clean Water Act.

(c) *Method of notice.* The public notice provided for in paragraphs (a) and (b) of this Section will be given by:

(1) Publishing notice in the **Federal Register**; and

(2) Notifying appropriate Federal, state, and interstate resource agencies, state water quality and coastal zone management plan consistency certification agencies, Indian tribes, and non-governmental organizations by mail.

(d) *Applicant notice.* The applicant must publishing notice once every week for two weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated, and, as appropriate, tribal newspapers.

(e) *Resolution of pending information requests.* Within 30 days of the filing date of any application for a license developed pursuant to this part, the Director of the Office of Energy Projects will issue an order resolving any requests for additional information-gathering or studies made in comments on the preliminary licensing proposal or draft license application.

§ 5.20 Deficient applications.

(a) *Deficient applications.* (1) If an applicant believes that its application conforms adequately to the pre-filing consultation and filing requirements of this part without containing certain required materials or information, it

must explain in detail why the material or information is not being submitted and what steps were taken by the applicant to provide the material or information.

(2) Within 30 days of the filing date of any application for a license under this part, the Director of the Office of Energy Projects will notify the applicant if, in the Director's judgment, the application does not conform to the prefiling consultation and filing requirements of this part, and is therefore considered deficient. An applicant having a deficient application will be afforded additional time to correct the deficiencies, not to exceed 90 days from the date of notification. Notification will be by letter or, in the case of minor deficiencies, by telephone. Any notification will specify the deficiencies to be corrected. Deficiencies must be corrected by submitting an a filing pursuant to the requirements of subpart T of part 385 of this chapter within the time specified in the notification of deficiency.

(3) If the revised application is found not to conform to the prefiling consultation and filing requirements of this part, or if the revisions are not timely submitted, the revised application will be rejected. Procedures for rejected applications are specified in paragraph (b)(3) of this section.

(b) *Patently deficient applications.* (1) If, within 30 days of its filing date, the Director of the Office of Energy Projects determines that an application patently fails to substantially comply with the prefiling consultation and filing requirements of this part, or is for a project that is precluded by law, the application will be rejected as patently deficient with the specification of the deficiencies that render the application patently deficient.

(2) If, after 30 days following its filing date, the Director of the Office of Energy Projects determines that an application patently fails to comply with the prefiling consultation and filing requirements of this part, or is for a project that is precluded by law:

(i) The application will be rejected by order of the Commission, if the Commission determines that it is patently deficient; or

(ii) The application will be considered deficient under paragraph (a)(2) of this Section, if the Commission determines that it is not patently deficient.

(iii) Any application for an original license that is rejected may be submitted if the deficiencies are corrected and if, in the case of a competing application, the resubmittal is timely. The date the rejected application is resubmitted will be considered the new filing date for purposes of determining its timeliness under § 4.36 of this chapter and the disposition of competing applications under § 4.37 of this chapter.

§ 5.21 Additional information.

An applicant may be required to submit any additional information or documents that the Commission considers relevant for an informed decision on the application. The information or documents must take the form, and must be submitted within the time, that the Commission prescribes. An applicant may also be required to provide within a specified time additional copies of the complete application, or any of the additional information or documents that are filed, to the Commission or to any person, agency, Indian tribe or other entity that the Commission specifies. If an applicant fails to provide timely additional information, documents, or copies of submitted materials as required, the Commission may dismiss the application, hold it in abeyance, or take other appropriate action under this chapter or the Federal Power Act.

§ 5.22 Notice of acceptance and ready for environmental analysis.

(a) When the Commission has determined that the application meets the Commission's filing requirements as specified in §§ 5.18 and 5.19, the approved studies have been completed, any deficiencies in the application have been cured, and no other additional information is needed, it will issue public notice as required in the Federal Power Act:

(1) Accepting the application for filing and specifying the date upon which the application was accepted for filing (which will be the application filing date if the Secretary receives all of the information and documents necessary to conform to the requirements of §§ 5.1 through 5.21, as applicable, within the time frame prescribed in § 5.20 or § 5.21;

(2) Finding that the application is ready for environmental analysis;

(3) Requesting comments, protests, and interventions;

(4) Requesting recommendations, preliminary terms and conditions, and preliminary fishway prescriptions, including all supporting documentation; and

(5) Establishing the date for final amendments to applications for new or subsequent licenses; and

(6) Updating the schedule issued with the tendering notice for processing the application.

(b) If the project affects lands of the United States, the Commission will notify the appropriate Federal office of the application and the specific lands affected, pursuant to Section 24 of the Federal Power Act.

(c) For an application for a license seeking benefits under Section 210 of the Public Utility Regulatory Polices Act of 1978, as amended, for a project that would be located at a new dam or diversion, the Applicant must serve the public notice issued under paragraph (a)(1) of this Section to interested agencies at the time the applicant is notified that the application is accepted for filing.

§ 5.23 Response to notice.

(a) *Comments and reply comments.* Comments, protests, interventions, recommendations, and preliminary terms and conditions or preliminary fishway prescriptions must be filed no later than 60 days after the notice of acceptance and ready for environmental analysis. All reply comments must be filed within 105 days of that notice.

(b) *Water quality certification.* (1) With regard to certification requirements for a license applicant under Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), the license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provide for in § 5.22:

(i) A copy of the water quality certification;

(ii) A copy of the request for certification, including proof of the date on which the certifying agency received the request; or

(iii) Evidence of waiver of water quality certification as described in paragraph (b)(5)(2) of this Section.

(2) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification. If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

(3) Notwithstanding any other provision in 18 CFR part 4, subpart B, any application to amend an existing license, and any application to amend a pending application for a license, requires a new request for water quality certification pursuant to § 4.34(b)(5) of this chapter if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project.

§ 5. 24 Applications not requiring a draft NEPA document.

(a) If the Commission determines that a license application will be processed with an environmental assessment rather than an environmental impact statement and that a draft environmental assessment will not be required, the Commission will issue the environmental assessment for comment no later than 120 days from the date responses are due to the notice of acceptance and ready for environmental analysis.

(b) Each environmental assessment issued pursuant to this paragraph must include draft license articles, a preliminary determination of consistency of each fish and wildlife agency recommendation made pursuant to Federal Power Act section 10(j) with the purposes and requirements of the Federal Power Act and other applicable law, as provided for in § 5.26, and any preliminary mandatory terms and conditions and fishway prescriptions.

(c) Comments on an environmental assessment issued pursuant to paragraph (a) of this section, including comments in response to the Commission's preliminary determination with respect to fish and wildlife agency recommendations and on preliminary mandatory terms and conditions or fishway prescriptions, must be filed no later than 30 or 45 days after issuance of the environmental assessment, as specified in the notice accompanying issuance of the environmental assessment, and should any revisions to supporting documentation.

(d) Modified mandatory prescriptions or terms and conditions must be filed no later than 60 days following the date for filing of comments provided for in paragraph (c) of this section, as specified in the notice accompanying issuance of the environmental analysis.

§ 5.25 Applications requiring a draft NEPA document.

(a) If the Commission determines that a license application will be processed with an environmental impact statement, or a draft and final environmental assessment, the Commission will issue the draft environmental impact statement or environmental assessment for comment no later than 180 days from the date responses are due to the notice of acceptance and ready for environmental analysis provided for in § 5.22.

(b) Each draft environmental document will include for comment draft license articles, a preliminary determination of the consistency of each fish and wildlife agency recommendation made pursuant to section 10(j) of the Federal Power Act with the purposes and requirements of the Federal Power Act and other applicable law, as provided for in § 5.26, and any preliminary mandatory terms and conditions and fishways prescriptions.

(c) Comments on a draft environmental document issued pursuant to paragraph (b) of this section, including comments in response to the Commission's preliminary determination with respect to fish and wildlife agency recommendations and on preliminary mandatory terms and conditions or prescriptions must be filed no later than 30 or 60 days after issuance of the draft environmental document, as specified in the notice accompanying issuance of the draft environmental document.

(d) Modified mandatory prescriptions or terms and conditions must be filed no later than 60 days following the date for filing of comments provided for in paragraph (c) of this section.

(e) The Commission will issue a final environmental document within 90 days following the date for filing of modified mandatory prescriptions or terms and conditions.

§ 5.26 Section 10(j) process.

(a) In connection with its environmental review of an application for license, the Commission will analyze all terms and conditions timely recommended by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act for the protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the proposed project. Submission of such recommendations marks the beginning of the process under section 10(j) of the Federal Power Act.

(b) The agency must specifically identify and explain the recommendations and the relevant resource goals and objectives and their evidentiary or legal basis. The Commission may seek clarification of any recommendation from the appropriate fish and wildlife agency. If the Commission's request for clarification is communicated in writing, copies of the request will be sent by the Commission to all parties, affected resource agencies, and Indian tribes, which may file a response to the request for clarification within the time period specified by the Commission. If the Commission believes any fish and wildlife recommendation may be inconsistent with the Federal Power Act or other applicable law, the Commission will make a preliminary determination of inconsistency in the draft environmental document or, if none, the environmental assessment. The preliminary determination, for any recommendations believed to be inconsistent, shall include an explanation why the Commission believes the recommendation is inconsistent with the Federal Power Act or other applicable law, including any supporting analysis and conclusions and an explanation of how the measures recommended in the environmental document would adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project.

(c) Any party, affected resource agency, or Indian tribe may file comments in response to the preliminary determination of inconsistency, including any modified recommendations, within the time frame allotted for comments on the draft environmental document or, if none, the time frame for comments on the environmental assessment. In this filing, the fish and wildlife agency concerned may also request a meeting, telephone or video conference, or other additional procedure to attempt to resolve any preliminary determination of inconsistency.

(d) The Commission shall attempt, with the agencies, to reach a mutually acceptable resolution of any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of the fish and wildlife agency. If the Commission decides, or an affected resource agency requests, the Commission will conduct a meeting, telephone or video conference, or other procedures to address issues raised by its preliminary determination of inconsistency and comments thereon. The Commission will give at least 15 days' advance notice to each party, affected resource agency, or Indian tribe, which may participate in the meeting or conference. Any meeting, conference, or additional procedure to address these issues will be scheduled to take place within 90 days of the date the Commission issues a preliminary determination of inconsistency. The Commission will prepare a written summary of any meeting held under this paragraph to discuss section 10(j) issues, including any proposed resolutions and supporting analysis, and a copy of the summary will be sent to all parties,

affected resource agencies, and Indian tribes.

(e) The section 10(j) process ends when the Commission issues an order granting or denying the license application in question. If, after attempting to resolve inconsistencies between the fish and wildlife recommendations of a fish and wildlife agency and the purposes and requirements of the Federal Power Act or other applicable law, the Commission does not adopt in whole or in part a fish and wildlife recommendation of a fish and wildlife agency, the Commission will publish the findings and statements required by section 10(j)(2) of the Federal Power Act.

§ 5.27 Amendment of application.

(a) *Procedures.* If an Applicant files an amendment to its application that would materially change the project's proposed plans of development, as provided in § 4.35 of this chapter, an agency, Indian tribe, or member of the public may modify the recommendations or terms and conditions or prescriptions it previously submitted to the Commission pursuant to §§ 5.20–5.26. Such modified recommendations, terms and conditions, or prescriptions must be filed no later than the due date specified by the Commission for comments on the amendment.

(b) *Date of acceptance.* The date of acceptance of an amendment of application for an original license filed under this part is governed by the provisions of § 4.35 of this chapter.

(c) *New and subsequent licenses.* The requirements of § 4.35 of this chapter do not apply to an application for a new or subsequent license, except that the Commission will reissue a public notice of the application in accordance with the provisions of § 4.32(d)(2) of this chapter if a material amendment, as that term is used in § 4.35(f) of this chapter, is filed.

(d) *Deadline.* All amendments to an application for a new or subsequent license, including the final amendment, must be filed with the Commission and served on all competing applicants no later than the date specified in the notice issued under § 5.23.

§ 5.28 Competing applications.

(a) *Site access for a competing applicant.* The provisions of § 16.5 of this chapter shall govern site access for a potential license application to be filed in competition with an application for a new or subsequent license by an existing licensee pursuant to this part, except that references in § 16.5 to the pre-filing consultation provisions in parts 4 and 16 of this chapter shall be construed in a manner compatible with the effective administration of this part.

(b) *Competing applications.* The provisions of § 4.36 of this chapter shall apply to competing applications for original, new, or subsequent licenses filed under this part.

(c) *New or subsequent license applications—final amendments; better adapted statement.* Where two or more mutually exclusive competing applications for new or subsequent license have been filed for the same project, the final amendment date and deadlines for complying with provisions of § 4.36(d)(2) (ii) and (iii) of this chapter established pursuant to the notice issued under § 5.23 will be the same for all such applications.

(d) *Rules of preference among competing applicants.* The Commission will select among competing applications according to the provisions of § 4.37 of this chapter.

§ 5.29 Other provisions.

(a) *Filing requirement.* Unless otherwise provided by statute, regulation or order, all filings in hydropower hearings, except those conducted by trial-type procedures, must conform to the requirements of 18 CFR part 385, subpart T of this chapter.

(b) *Waiver of compliance with consultation requirements.* (1) If an agency, Indian tribe, or member of the public waives in writing compliance with any consultation requirement of this part, an applicant does not have to comply with the requirement as to that agency, Indian tribe, or member of the public.

(2) If an agency, Indian tribe, member of the public fails to timely comply with a provision regarding a requirement of this section, an applicant may proceed to the next sequential requirement of this section without waiting for the agency, Indian tribe, or member of the public.

(c) *Requests for privileged treatment of pre-filing submission.* If a potential Applicant requests privileged treatment of any information submitted to the Commission during pre-filing consultation (except for the information specified in § 5.4), the Commission will treat the request in accordance with the provisions in § 388.112 of this chapter until the date the application is filed with the Commission.

(d) *Conditional applications.* Any application, the effectiveness of which is conditioned upon the future occurrence of any event or circumstance, will be rejected.

(e) *Trial-type hearing.* The Commission may order a trial-type hearing on an application for a license under this part either upon its own motion or the motion of any interested party of record. Any trial-type hearing will be limited to the issues prescribed by order of the Commission. In all other cases, the hearings will be conducted by notice and comment procedures.

(f) *Notice and comment hearings.* (1) All comments and reply comments and all other filings described in this part must be served on all persons on the service list prepared by the Commission, in accordance with the requirements of § 385.2010 of this chapter. If a party submits any written material to the Commission relating to the merits of an issue that may affect the responsibility of particular resource agency, the party must also serve a copy of the submission on that resource agency.

(2) The Director of Energy Projects may waive or modify any of the provisions of this part for good cause. A commenter or reply commenter may obtain an extension of time from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with § 385.2008 of this chapter.

(3) Late-filed recommendations by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act and section 10(j) of the Federal Power Act for the protection, mitigation of damages to, and enhancement of fish and wildlife affected by the development, operation, and management of the proposed project and late-filed terms and conditions or prescriptions filed pursuant to sections 4(e) and 18 of the Federal Power Act, respectively, will be considered by Commission under section 10(a) of the Federal Power Act if such consideration would not delay or disrupt the proceeding.

(g) *Settlement negotiations.* (1) The Commission will consider, on a case-by-case basis, requests for a short suspension of the procedural schedule for the purpose of participants conducting settlement negotiations, where it determines that the suspension will not adversely affect timely action on a license application. In acting on such requests, the Commission will consider, among other things:

(i) Whether requests for suspension of the procedural schedule have previously been made or granted;

(ii) Whether the request is supported by a consensus of participants in the proceeding and an explanation of objections to the request expressed by any participant;

(iii) The likelihood that a settlement agreement will be filed within the requested suspension period; and

(iv) Whether the requested suspension is likely to cause any new or subsequent license to be issued after the expiration of the existing license.

(2) The Commission reserves the right to terminate any suspension of the procedural schedule if it concludes that insufficient progress is being made toward the filing of a settlement agreement.

(h) *License conditions and required findings.* (1) All licenses shall be issued on the conditions specified in Section 10 of the Federal Power Act and such other conditions as the Commission determines are lawful and in the public interest.

(2) Subject to paragraph (f)(3) of this section, fish and wildlife conditions shall be based on recommendations timely received from the fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act.

(3) The Commission will consider the timely recommendations of resource agencies, other governmental units, and members of the public, and the timely recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project.

(4) Licenses for a project located within any Federal reservation shall be issued only after the findings required by, and subject to any conditions that may be timely filed pursuant to section 4(e) of the Federal Power Act.

(5) The Commission will require the construction, maintenance, and operation of such fishways as may be timely prescribed by the Secretary of Commerce or the Secretary of the Interior, as appropriate, pursuant to section 18 of the Federal Power Act.

(i) *Standards and factors for issuing a new license.* (1) In determining whether a final proposal for a new license under section 15 of the Federal Power Act is best adapted to serve the public interest, the Commission will consider the factors enumerated in sections 15(a)(2) and (a)(3) of the Federal Power Act.

(2) If there are only insignificant differences between the final applications of an existing licensee and a competing Applicant after consideration of the factors enumerated in section 15(a)(2) of the Federal Power Act, the Commission will determine which Applicant will receive the license after considering:

(i) The existing licensee's record of compliance with the terms and conditions of the existing license; and

(ii) The actions taken by the existing licensee related to the project which affect the public.

(iii) An existing licensee that files an application for a new license in conjunction with an entity or entities that are not currently licensees of all or part of the project will not be considered an existing licensee for the purpose of the insignificant differences provision of section 15(a)(2) of the Federal Power Act.

(j) *Fees under section 30(e) of the Federal Power Act.* The requirements of 18 CFR part 4, subpart M, of this chapter, fees under section 30(e) of the Federal Power Act, apply to license applications developed under this part.

§ 5.30 Critical energy infrastructure information.

If any action required by this part requires a potential Applicant or Applicant to reveal Critical Energy Infrastructure Information, as defined by § 388.113(c) of this chapter, to the public, the Applicant must follow the procedures set out in § 4.32(k) of this chapter.

§ 5.31 Transition provision.

This part shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license, or for filing a notification of intent to file an original license application, as required by § 5.5 of this part, is July 23, 2005 or later.

PART 9—TRANSFER OF LICENSE OR LEASE OF PROJECT PROPERTY

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

Authority: Sec. 8, 41 Stat. 1068, sec. 309, 49 Stat. 858; 16 U.S.C. 801, 825h; Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*)

§ 9.1 [Amended]

■ 28. In § 9.1, remove ''4.31'' and add ''4.32'' in its place.

§ 9.2 [Amended]

■ 29. In § 9.10, remove ''4.31'' and add ''4.32(b)(1)'' in its place.

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OR LICENSED PROJECTS

■ 30. The authority citation for part 16 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 31. Remove the phrase ''Office of Hydropower Licensing'' throughout the part and add in its place ''Office of Energy Projects''.

■ 32. Amend § 16.1 by adding paragraph (c) to read as follows:

§ 16.1 Applicability.

* * * * *

(c) Any potential applicant for a new or subsequent license for which the deadline for the notice of intent required by § 16.6 falls on or after July 23, 2005 and which wishes to develop and file its application pursuant to this part, must seek Commission authorization to do so pursuant to the provisions of part 5 of this chapter.

■ 33. Amend § 16.6 as follows:

■ a. In paragraph (b)(9), remove ''16.16'' and add ''16.7'' in its place.

■ b. In paragraph (b)(10)(ii), remove ''Indian tribe''.

■ c. In paragraph (b)(10)(iii)(B), remove ''and''.

■ d. In paragraph (b)(10)(iv), remove the period after ''notification'' and add a semi-colon in its place.

■ e. In paragraph (b)(10), add a new paragraph (b)(10)(v).

■ f. Paragraph (d) is revised.

■ The revised text reads as follows:

§ 16.6 Notification procedures under Section 15 of the Federal Power Act.

* * * * *

(b) * * *

(10) * * *

(v) Affected Indian tribes.

* * * * *

(d) *Commission notice.* Upon receipt of the notification required under paragraph (c) of this Section, the Commission will provide notice of the licensee's intent to file or not to file an application for a new license by:

(1) If the notification is filed prior to July 23, 2005;

(i) Publishing notice in the **Federal Register**;

(ii) Publishing notice once in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(iii) Notifying the appropriate Federal and state resource agencies, state water quality and coastal zone management consistency certifying agencies, and Indian tribes by mail.

(2) If the notification is filed on or after July 23, 2005, pursuant to the provisions of § 5.8 of this chapter.

■ 34. Amend § 16.7 as follows:

■ a. Paragraph (d) is revised.

■ b. In paragraph (e)(1), following ''section'' add '', or the pre-application document, as applicable,''.

■ c. In paragraph (e)(3), after ''National Marine Fisheries Service,'' add ''Indian tribes,''.

■ d. In paragraph (g), remove ''16.16(d)(1)(iv)'' and add ''16.7(d)(1)(iv)'' in its place.

■ The revised text reads as follows:

§ 16.7 Information to be made available to the public at the time of notification of intent under Section 15(b) of the Federal Power Act.

* * * * *

(d) *Information to be made available.* (1) A licensee for which the deadline for filing a notification of intent to seek a new or subsequent license is on or after July 23, 2005 must, at the time it files a notification of intent to seek a license pursuant to § 5.5 of this chapter, provide a copy of the pre-application document required by § 5.6 of this chapter to the entities specified in that paragraph.

(2) A licensee for which the deadline for filing a notification of intent to seek a new or subsequent license is prior to July 23, 2005, and which elects to seek a license pursuant to this part must make the following information regarding its existing project reasonably available to the public as provided in paragraph (b) of this section:

(i) The following construction and operation information:

(A) The original license application and the order issuing the license and any subsequent license application and subsequent order issuing a license for the existing project, including

(*1*) Approved Exhibit drawings, including as-built exhibits,

(*2*) Any order issuing amendments or approving exhibits,

(*3*) Any order issuing annual licenses for the existing project;

(B) All data relevant to whether the project is and has been operated in accordance with the requirements of each license article, including minimum flow requirements, ramping rates, reservoir elevation limitations, and environmental monitoring data;

(C) A compilation of project generation and respective outflow with time increments not to exceed one hour, unless use of another time increment can be justified, for the period beginning five years before the filing of a notice of intent;

(D) Any public correspondence related to the existing project;

(E) Any report on the total actual annual generation and annnual operation and maintenance costs for the period beginning five years before the filing of a notice of intent;

(F) Any reports on original project costs, current net investment, and available funds in the amortization reserve account;

(G) A current and complete electrical single-line diagram of the project showing the transfer of electricity from the project to the area utility system or point of use; and

(H) Any bill issued to the existing licensee for annual charges under Section 10(e) of the Federal Power Act.

(ii) The following safety and structural adequacy information:

(A) The most recent emergency action plan for the project or a letter exempting the project from the emergency action plan requirement;

(B) Any independent consultant's reports required by part 12 of this chapter and filed on or after January 1, 1981;

(C) Any report on operation or maintenance problems, other than routine maintenance, occurring within the five years preceding the filing of a notice of intent or within the most recent five-year period for which data exists, and associated costs of such problems under the Commission's Uniform System of Accounts;

(D) Any construction report for the existing project; and

(E) Any public correspondence relating to the safety and structural adequacy of the existing project.

(iii) The following fish and wildlife resources information:

(A) Any report on the impact of the project's construction and operation on fish and wildlife resources;

(B) Any existing report on any threatened or endangered species or critical habitat located in the project area, or affected by the existing project outside the project area;

(C) Any fish and wildlife management plan related to the project area prepared by the existing licensee or any resource agency; and

(D) Any public correspondence relating to the fish and wildlife resources within the project area.

(iv) The following recreation and land use resources information:

(A) Any report on past and current recreational uses of the project area;

(B) Any map showing recreational facilities and areas reserved for future development in the project area, designated or proposed wilderness areas in the project area; Land and Water Conservation Fund lands in the project area, and designated or proposed Federal or state wild and scenic river corridors in the project area.

(C) Any documentation listing the entity responsible for operating and maintaining any existing recreational facilities in the project area; and

(D) Any public correspondence relating to recreation and land use resources within the project area.

(v) The following cultural resources information:

(A) Except as provided in paragraph (d)(2)(v)(B) of this section, a licensee must make available:

(*1*) Any report concerning documented archeological resources identified in the project area;

(*2*) Any report on past or present use of the project area and surrounding areas by Native Americans; and

(*3*) Any public correspondence relating to cultural resources within the project area.

(B) A licensee must delete from any information made available under paragraph (d)(2)(v)(A) of this section, specific site or property locations the disclosure of which would create a risk of harm, theft, or destruction of archeological or Native American cultural resources or to the site at which the resources are located, or would violate any Federal law, including the Archeological Resources Protection Act of 1979, 16 U.S.C. 470w–3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(vi) The following energy conservation information under section 10(a)(2)(C) of the Federal Power Act related to the licensee's efforts to conserve electricity or to encourage conservation by its customers including:

(A) Any plan of the licensee;

(B) Any public correspondence; and

(C) Any other pertinent information relating to a conservation plan.

* * * * *

■ 35. Amend § 16.8 as follows:

■ a. Redesignate existing paragraphs (a)(2) and (a)(3) as paragraphs (a)(4) and (a)(5) and revise newly redesignated paragraph (a)(4).

■ b. Add new paragraphs (a)(2) and (a)(3).

■ c. Paragraph (b) is revised.

■ d. In paragraph (c)(1), remove ''(b)(5)'' and add ''(b)(6)'' in its place.

■ e. In paragraph (c)(1)(ii), following ''(b)(1)'' remove ''of this section'' and add ''or (b)(2) of this section, as applicable,'' in its place.

■ f. In paragraph (c)(2), remove ''(b)(6)'' and add ''(b)(7)'' in its place.

■ g. In paragraph (c)(2), remove ''resource agency or Indian tribe'' and add ''resource agency, Indian tribe, or member of the public'' in its place.

■ h. In paragraph (c)(4)(ii), remove ''(b)(1)((vi)'' and add ''(b)(2)(vi)'' in its place.

■ i. In paragraph (d)(1), remove ''mailed'' and add ''distributed'' in its place.

■ j. In paragraph (e), add a new paragraph (e)(4).

■ k. Remove paragraph (f)(7) and redesignate existing paragraph (f)(8) as (f)(7).

■ l. In paragraph (h), remove ''(b)(2)(i)'' and add ''(b)(3)(i)'' in its place.

■ m. In paragraph (i)(1), remove ''(b)(2)'' wherever it appears and add ''(b)(3)'' in its place.

■ n. In paragraph (i)(2)(i), remove ''the date of the joint meeting required by

paragraph (b)(2) of this section.'' and add ''a final order is issued on the license application.'' in its place.

■ o. In paragraph (i)(2)(iii), remove ''(b)(2)'' and add ''(b)(3)'' in its place and remove ''(b)(1)'' and add ''(b)(2)'' in its place.

■ p. Paragraph (j) is removed.

■ The revised and added text reads as follows:

§ 16.8 Consultation requirements.

(a) * * *

(2) Each requirement in this section to contact or consult with resource agencies or Indian tribes shall require as well that the potential Applicant contact or consult with members of the public.

(3) If the potential applicant for a new or subsequent license commences first stages pre-filing consultation under this part on or after July 23, 2005, it must file a notification of intent to file a license application pursuant to § 5.5 of this chapter and a pre-application document pursuant to the provisions of § 5.6 of this chapter.

(4) The Director of the Office of Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, and Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

* * * * *

(b) *First stage of consultation.* (1) A potential Applicant for a new or subsequent license must, at the time it files its notification of intent to seek a license pursuant to § 5.5 of this chapter, provide a copy of the pre-application document required by § 5.6 of this chapter to the entities specified in § 5.6(a) of this chapter.

(2) A potential applicant for a nonpower license or exemption must promptly contact each of the appropriate resource agencies, Indian tribes, and members of the public listed in paragraph (a)(1) of this section, and the Commission with the following information:

(i) Detailed maps showing existing project boundaries, if any, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all existing and proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the existing project and any proposed changes, with a description of any existing or proposed diversion of a stream through a canal or penstock;

(iii) A summary of the existing operational mode of the project and any proposed changes;

(iv) Identification of the environment affected or to be affected, the significant resources present and the applicant's existing and proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations;

(vi) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(vii) Any statement required by § 4.301(a) of this chapter.

(3)(i) A potential applicant for an exemption, a new or subsequent license for which the deadline for filing a notification of intent to seek a license is prior to July 23, 2005 and which elects to commence pre-filing consultation under this part, or a new or subsequent license for which the deadline for filing a notification of intent to seek a license is on or after July 23, 2005 and which receives Commission approval to use the license application procedures of this part must:

(A) Hold a joint meeting, including an opportunity for a site visit, with all pertinent agencies, Indian tribes and members of the public to review the information and to discuss the data and studies to be provided by the potential applicant as part of the consultation process; and

(B) Consult with the resource agencies, Indian tribes and members of the public on the scheduling of the joint meeting; and provide each resource agency, Indian tribe, member of the public, and the Commission with written notice of the time and place of the joint meeting and a written agenda of the issues to be discussed at the meeting at least 15 days in advance.

(ii) The joint meeting must be held no earlier than 30 days, and no later than 60 days from, as applicable:

(A) The date of the potential applicant's letter transmitting the information required by paragraph (b)(2) of this section, in the case of a potential exemption applicant or a potential license applicant that commences pre-filing consultation under this part prior to July 23, 2005; or

(B) The date of the Commission's approval of the potential license applicant's request to use the license application procedures of this part pursuant to the provisions of part 5, in the case of a potential license applicant for which the deadline for filing a notification of intent to seek a license is on or after July 23, 2005.

(4) Members of the public are invited to attend the joint meeting held pursuant to paragraph (b)(3) of this section. Members of the public attending the meeting are entitled to participate fully in the meeting and to express their views regarding resource issues that should be addressed in any application for a new license that may be filed by the potential applicant. Attendance of the public at any site visit held pursuant to paragraph (b)(3) of this section shall be at the discretion of the potential applicant. The potential applicant must make either audio recordings or written transcripts of the joint meeting, and must upon request promptly provide copies of these recordings or transcripts to the Commission and any resource agency and Indian tribe.

(5) Unless otherwise extended by the Director of Office of Energy Projects pursuant to paragraph (b)(6) of this section, not later than 60 days after the joint meeting held under paragraph (b)(3) of this section each interested resource agency, and Indian tribe, and member of the public must provide a potential applicant with written comments: (i) Identifying its determination of necessary studies to be performed or information to be provided by the potential applicant;

(ii) Identifying the basis for its determination;

(iii) Discussing its understanding of the resource issues and its goals objectives for these resources;

(iv) Explaining why each study methodology recommended by it is more appropriate than any other available methodology alternatives, including those identified by the potential applicant pursuant to paragraph (b)(2)(vi) of this section;

(v) Documenting that the use of each study methodology recommended by it is a generally accepted practice; and

(vi) Explaining how the studies and information requested will be useful to the agency, Indian tribe, or member of the public in furthering its resource goals and objectives.

(6)(i) If a potential applicant and a resource agency, Indian tribe, or member of the public disagree as to any matter arising during the first stage of

consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency, or Indian tribe, or member of the public may refer the dispute in writing to the Director of the Office of Energy Projects (Director) for resolution.

(ii) The entity referring the dispute must serve a copy of its written request for resolution on the disagreeing party at the time the request is submitted to the Director. The disagreeing party may submit to the Director a written response to the referral within 15 days of the referral's submittal to the Director.

(iii) Written referrals to the Director and written responses thereto pursuant to paragraphs (b)(6)(i) or (b)(6)(ii) of this section must be filed with the Secretary of the Commission in accordance with the Commission's Rules of Practice and Procedure, and must indicate that they are for the attention of the Director of the Office of Energy Projects pursuant to § 16.8(b)(6).

(iv) The Director will resolve disputes by an order directing the potential applicant to gather such information or conduct such study or studies as, in the Director's view, is reasonable and necessary.

(v) If a resource agency, Indian tribe, or member of the public fails to refer a dispute regarding a request for a potential applicant to obtain information or conduct studies (other than a dispute regarding the information specified in paragraph (b)(1) or (b)(2) of this section, as applicable), the Commission will not entertain the dispute following the filing of the license application.

(vi) If a potential applicant fails to obtain information or conduct a study as required by the Director pursuant to paragraph (b)(6)(iv) of this section, its application will be considered deficient.

(7) Unless otherwise extended by the Director pursuant to paragraph (b)(6) of this section, the first stage of consultation ends when all participating agencies, Indian tribes, and members of the public provide the written comments required under paragraph (b)(5) of this section or 60 days after the joint meeting held under paragraph (b)(3) of this section, whichever occurs first.

* * * * *

(e) * * *

(4) Following July 23, 2003 a potential license applicant engaged in pre-filing consultation under this part may during first stage consultation request to incorporate into pre-filing consultation any element of the integrated license application process provided for in part 5 of this chapter. Any such request must be accompanied by a:

(i) Specific description of how the element of the part 5 license application would fit into the pre-filing consultation process under this part; and

(ii) Demonstration that the potential license applicant has made every reasonable effort to contact all resource agencies, Indian tribes, non-governmental organizations, and others affected by the potential applicant's proposal, and that a consensus exists in favor of incorporating the specific element of the part 5 process into the pre-filing consultation under this part.

* * * * *

§ 16.9 [Amended]

■ 36. Amend § 16.9 by removing ''agencies and Indian tribes by mail'' from paragraph (d)(1)(iii) and adding ''agencies, Indian tribes, and non-governmental organizations'' in its place.

§ 16.10 [Amended]

■ 37. Amend § 16.10 as follows:
■ a. Paragraph (d) is removed.
■ b. Paragraph (e) is redesignated as paragraph (d) and newly redesignated paragraph (d) is revised.
■ c. Paragraph (f) is removed.
■ The revised text reads as follows:

§ 16.10 Information to be provided by an Applicant for new license: Filing requirements.

* * * * *

(d) *Inclusion in application.* The information required to be provided by this section must be included in the application as a separate exhibit labeled ''Exhibit H.''

§ 16.11 [Amended]

■ 38. Amend § 16.11 by removing paragraph (a)(2).

§ 16.19 [Amended]

■ 39. Amend § 16.19 by removing paragraphs (b)(3) and (b)(4) and by redesignating paragraph (b)(5) as paragraph (b)(3).

§ 16.20 [Amended]

■ 40. In § 16.20, paragraph (c) is revised.
The revised text reads as follows:

§ 16.20 Applications for subsequent license for a project with an expiring license subject to Section 14 and 15 of the Federal Power Act.

* * * * *

(c) *Requirement to file.* An applicant must file an application for subsequent license at least 24 months before the expiration of the existing license.

* * * * *

PART 375—THE COMMISSION

■ 41. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 42. Amend § 375.308 as follows:
■ a. In paragraph (c)(11), remove ''4.303(d)'' and add ''4.303(e)'' in its place.
■ b. In paragraph (k)(1), remove ''4.32(d)(2)(i)'' and add ''4.32(e)(2)(i)'' in its place.
■ c. In paragraph (k)(2)(ii), remove ''4.32(d)(1)'' and add ''4.32(e)(1)(iii)'' in its place.
■ d. In paragraph (k)(3), remove ''4.32(f)'' and add ''4.32(g)'' in its place.
■ e. Add a new section (aa):
■ The added text reads as follows.

§ 375.308 Delegations to the Director of the Office of Energy Projects.

* * * * *

(aa) Take the following actions to implement part 5 of this chapter on or after October 23, 2003:

(1) Act on requests for approval to use the application procedures of parts 4 or 16, pursuant to § 5.3 of this chapter;

(2) Approve a potential license applicant's proposed study plan with appropriate modifications pursuant to § 5.13 of this chapter;

(3) Resolve formal study disputes pursuant to § 5.14 of this chapter; and

(4) Resolve disagreements brought pursuant to § 5.15 of this chapter.

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 43. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a-825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 44. In § 385.214, revise paragraphs (a)(2) and (a)(3).
■ The revised text reads as follows.

§ 385.214 Intervention (Rule 214).

(a) * * *

(2) Any State Commission, the Advisory Council on Historic Preservation, the U.S. Departments of Agriculture, Commerce, and the Interior, any state fish and wildlife, water quality certification, or water rights agency; or Indian tribe with authority to issue a water quality certification is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the period established under

Rule 210(b). If the period for filing notice has expired, each entity identified in this paragraph must comply with the rules for motions to intervene applicable to any person under paragraph (a)(3) of this section including the content requirements of paragraph (b) of this section.

(3) Any person seeking to intervene to become a party, other than the entities specified in paragraphs (a)(1) and (a)(2) of this section, must file a motion to intervene.

* * * * *

§ 385.2001 [Amended]

■ 45. In § 385.2001, remove ''*http://www.ferc.fed.us*'' from paragraph (a)(iii) and add ''*http://www.ferc.gov*'' in its place.

§ 385.2003 [Amended]

■ 46. In § 385.2003, remove ''*http://www.ferc.fed.us*'' from paragraph (c)(ii) and add ''*http://www.ferc.gov*'' in its place.

Note: The following Appendix will appear in the Code of Federal Regulations:

Appendix A

List of Commenters

Licensees

Alabama Power Co. (Alabama Power)
American Electric Power Company (AEP)
CHI Energy (CHI)
Consumers Energy Company (Consumers)
Duke Power Company (Duke)
Edison Electric Institute and Alliance of Energy Suppliers (EEI)
Georgia Power Company (Georgia Power)
Idaho Power Company (Idaho Power)
National Hydropower Association (NHA)
Northeast Utilities Systems (NEU)
Oroville-Wyandotte Irrigation District (Oroville)
PG&E Corporation (PG&E)
Progress Energy (Progress)
Puget Sound Energy (PSE)
Reliant Energy (Reliant)
Southern California Edison Company (SCE)
Tri-Dam Project (Tri-Dam)
WPS Resources (WPSR)
Wisconsin Public Service Corporation (WPSC)
Xcel Energy (Xcel)

Non-Governmental Organizations

Adirondack Mountain Club (ADK)
American Rivers (AmRivers)
American Whitewater Affiliation (AW)
Appalachian Mountain Club (AMC)
California Hydropower Reform Coalition (CHRC)
Catawba-Wateree Relicensing Coalition (C-WRC)
Hydropower Reform Coalition (HRC)
Idaho Rivers United (IRU)
Maine Rivers
New England FLOW (NE FLOW)
Pacific Fishery Management Council (PFMC)
River Alliance of Wisconsin (RAW)
South Carolina Coastal Conservation League (SC League)
Trout Unlimited (TU)

Federal Agencies

Advisory Council on Historic Preservation (Advisory Council)
Environmental Protection Agency (EPA)
National Marine Fisheries Service (NOAA)
Dept. of the Interior (Interior)
Dept. of the Interior, Bureau of Indian Affairs (BIA)
Dept. of the Interior, Bureau of Land Management (BLM)
Dept. of the Interior, Fish and Wildlife Service (FWS)
Dept. of the Interior, National Park Service (NPS)

States/State Agencies

Alaska Department of Natural Resources (Alaska DNR)
California Department of Fish and Game (CDFG)
California Attorney-General (Cal A-G)
California Department of Water Resources (CDWR)
California Resources Agency, California EPA, State Water Resources Control Board,
Department of Fish and Game, State of California Office of the Attorney General (California)
California Regional Council of Rural Counties (CA RCRC)
Commonwealth of Virginia (Virginia DEQ)
Georgia Department of Natural Resources (Georgia DNR)
Idaho Department of Fish and Game (IDFG)
Idaho Department of Environmental Quality (IDEQ)
Idaho Department of Parks and Recreation (IDPR)
Indiana Department of Natural Resources
Maine Department of Environmental Protection (MDEP)
Maryland Department of Natural Resources (Maryland DNR)
Massachusetts Division of Energy Resources (Massachusetts DER)
Minnesota Department of Natural Resources (Minnesota DNR)
Minneapolis Parks and Recreation Board (MPRB)
New Jersey Department of Environmental Protection (NJDEP)
New York State Department of Environmental Conservation (NYSDEC)
North Carolina Wildlife Resources Commission (NCWRC)
Pennsylvania Fish and Boat Commission (PFBC)
Placer County Water Agency (PCWA)
State of Oregon (Oregon)
Oregon Water Resources Commission (OWRC)
Oregon Department of Fish and Wildlife (ODFW)
Oregon Dept. of Enviromental Quality (ODEQ)
Snohomish County PUD and City of Everett (Snohomish)
State of Washington
State of Vermont, Agency of Natural Resources (VANR)
Washington Department of Ecology (WDOE)
Washington Department of Natural Resources (Washington DNR)
Western Governors' Association (WGA)
Wisconsin Department of Natural Resources (Wisconsin DNR)
Wyoming Game and Fish Department

Indian Tribes

Affiliated Tribes of Northwest Indians—Economic Development Corporation (NW Indians)
Catawba Indian Nation (Catawba)
Confederated Tribes of the Umatilla Indian Reservation (Umatilla)
Columbia River Inter-Tribal Fish Commission (CRITFC)
Fort Peck Assiniboine Sioux Tribes, Northeast Montana (Fort Peck)
Shoshone-Paiute Tribes of Nevada and Idaho, Duck Valley Reservation (S–P)
Shoshone-Bannock (S–B)
Great Lakes Indian Fish and Wildlife Commission (GLIFWC)
Maidu-Enterprise Tribe (Maidu)
Menominee Tribe of Wisconsin (Menominee)
Mississippi Band of Choctaw Indians (Choctaw)
Nez Perce
North Fork Rancheria of Mono Indians of California (NF Rancheria)
Skagit System Cooperative
Skokomish Indian Tribe (Skokomish)

Individuals

Frank Groznik
Acres International
Cyrus Noe
Thomas Sullivan, Sullivan & Gomez Engineers (Sullivan)
Grammer, Kissel, Robbins, Skancke, & Edwards (GKRSE)
Fred Springer
John Suloway

Other

Association of California Water Agencies (ACWA)
Balch & Bingham (B&B)
California State Water Contractors (CSWC)
Commonwealth of Puerto Rico (PR)
Geosyntec
Long View Associates (Long View)
Mead & Hunt (M&H)
MWH
Normandeau Associates (Normandeau)
Pacific Legacy
Spiegel and McDiarmid (Spiegel)
Troutman Sanders (Troutman)
Western Urban Water Coalition (WUWC)

[FR Doc. 03–20999 Filed 8–22–03; 8:45 am]

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Federal Register

Monday,
August 25, 2003

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries off the Exclusive Economic Zone Off Alaska; Provisions of the American Fisheries Act (AFA); Final and Proposed Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030808196–3197–02; I. D. 081103B]

RIN 0648–AR42

Fisheries of the Exclusive Economic Zone Off Alaska; Provisions of the American Fisheries Act (AFA)

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

ACTION: Final rule: effectiveness of collection-of-information requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in the following American Fisheries Act (AFA)-related amendments: Amendment 61 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) Area, Amendment 61 to the FMP for Groundfish of the Gulf of Alaska, Amendment 13 to the FMP for BSAI King and Tanner Crab, and Amendment 8 to the FMP for the Scallop Fishery off Alaska (collectively referred to as Amendment 61/61/13/8), and in Amendment 69 to the FMP for the Groundfish Fishery of the BSAI Area, and issues a final rule to make effective the collections of information contained in those amendments. The collections provide that if an AFA cooperative contract was previously filed with NMFS and the North Pacific Fishery Management Council (Council), a renewal letter may be submitted to NMFS and the Council in lieu of the cooperative contract and business review letter. Each AFA cooperative contract must include a clause that the parties agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery that are not landed in the State of Alaska; and an AFA cooperative may contract with a non-member vessel to harvest a portion of the cooperative's annual pollock allocation. The intent of this final rule is to inform the public of the effective date of the requirements.

DATES: Sections 679.61(d)(1) and (d)(2), and § 679.61(e)(1)(v), published at 67 FR 79692 (December 30, 2002), and § 679.62(c), published at 68 FR 6833 (February 11, 2003), are effective on September 24, 2003.

ADDRESSES: Any comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, phone: 907–586–7247, email: lori.durall@noaa.gov and to OMB, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, NMFS, 907–586–7228 or e-mail at *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION: A final rule that implemented the measures contained in Amendment 61/61/13/8 was published in the **Federal Register** on December 30, 2002 (67 FR 79692), and most of the measures were effective January 29, 2003. A final rule that implemented the measures contained in Amendment 69 was published in the **Federal Register** on February 11, 2003 (68 FR 6833), and most of the measures were effective March 13, 2003. However, because OMB approval of the reporting requirements contained in these amendments had not yet been received as of the effective date of each rule, effectiveness of the requirements contained in the amendments was delayed.

OMB approval for those measures was received on July 14, 2003. No comments were received in response to this review. Consequently, this rule makes the following requirements effective:

OMB 0648–0393, AFA Vessel and Processor Permit Applications. Approval of this collection included: § 679.61(d)(1) and (d)(2), cooperative contract renewal letter, and § 679.61(e)(1)(v), contract clause regarding payments to the State of Alaska, codified in the final rule published on December 30, 2002 (67 FR 79692).

OMB 0648–0401, American Fisheries Act: Recordkeeping and Reporting. Approval of this collection included § 679.62(c), contract fishing by non-member vessels, codified in the final rule published on February 11, 2003 (68 FR 6833).

Classification

This rule has been determined to be not significant for the purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA that have been approved by OMB under control numbers 0648–0393 (AFA Vessel and Processor Permit Applications) and 0648–0401 (American Fisheries Act: Recordkeeping and Reporting). The estimated time per response to submit a cooperative contract renewal letter and a contract clause regarding payments to the State of Alaska is estimated as part of the permit process (0648–0393), which is 2.5 hours. The estimated time per response to contract fishing by non-member vessels (0648–0401) is 30 minutes.

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collection-of-information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

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

Dated: August 15, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21451 Filed 8–22–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030808196–3196–01; I. D. 062403C]

RIN 0648–AR13

Fisheries of the Exclusive Economic Zone Off Alaska; Provisions of the American Fisheries Act (AFA)

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to remove the expiration date of regulations published as a final rule in the **Federal Register** on December 30, 2002, implementing the AFA. The AFA final rule specified a period of effectiveness that will expire December 31, 2007, and this rule proposes to make the amendments to the AFA rule permanent. This action is necessary to implement properly the AFA, and is intended to do so in a manner consistent with the objectives of the AFA, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

DATES: Comments must be received by September 24, 2003.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (FAX) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet. The Final Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis (FEIS/RIR/FRFA) prepared for Amendments 61/61/13/8 is available in the NEPA section of the NMFS Alaska Region home page at *http://www.fakr.noaa.gov*. Paper copies of the FEIS/RIR/FRFA prepared for Amendments 61/61/13/8 may be requested from Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, phone: 907 586 7247, email: *lori.durall@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, NMFS, 907–586–7228 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION: The final rule implementing the AFA was published on December 30, 2002 (67 FR 79692), and became effective January 29, 2003. Excepted from this period of effectiveness were several paragraphs under review by the Office of Management and Budget (OMB) under the requirements of the Paperwork Reduction Act (PRA). The **DATES** section of the preamble text described the period of effectiveness for the final rule as January 29, 2003, through December 31, 2007. The December 31, 2007, date was meant to apply only to 50 CFR 679.50, which describes the Groundfish Observer Program, applicable through that date. Therefore, except for those paragraphs in 50 CFR 679.50, and the paragraphs subject to review under PRA, this proposed rule would state the date of effectiveness for the AFA rule and would clarify that the affected paragraphs are permanent revisions without expiration. The paragraphs subject to review under PRA were subsequently approved by OMB on July 14, 2003. A document announcing their effective requirements is published elsewhere in this issue of the **Federal Register**.

Classification

This action is necessary to make the regulations governing the pollock fishery in the BSAI consistent with statute. In October 1998, the AFA mandated sweeping changes to the conservation and management program for the pollock fishery of the Bering Sea and Aleutian Islands (BSAI) and to a lesser extent, affected the management programs for other groundfish fisheries of the BSAI, the groundfish fisheries of the Gulf of Alaska (GOA), the king and Tanner crab fisheries of the BSAI, and the scallop fishery off Alaska. With respect to the fisheries off Alaska, the AFA requires a suite of new management measures that fall into four general categories:

(1) regulations that limit access into the fishing and processing sectors of the BSAI pollock fishery and that allocate pollock to such sectors,

(2) regulations governing the formation and operation of fishery cooperatives in the BSAI pollock fishery,

(3) regulations to protect other fisheries from spillover effects from the AFA, and

(4) regulations governing catch measurement and monitoring in the BSAI pollock fishery.

Section 213 of the AFA as originally passed by Congress contained a December 31, 2004, sunset date and authorized the Council to review and extend the AFA management program in 2004. As submitted by the Council, Amendments 61/61/13/8 contained this December 31, 2004, sunset date. However, after the amendments were submitted for Secretarial review, the ''Department of Commerce and Related Agencies Act, 2002,'' was enacted which contained a provision that removed the December 31, 2004, sunset date from the AFA. As a result, NMFS found it necessary to reconcile the sunset dates contained in the FMP amendments and proposed rule with the newly-amended AFA which contained no such sunset date. On February 27, 2002, NMFS partially approved Amendments 61/61/13/8, implementing the AFA. NMFS disapproved the December 31, 2004, sunset dates contained in the amendments because the sunset dates were inconsistent with new legislation making the AFA permanent. The remaining text in Amendments 61/61/13/8 was approved.

The final rule implementing these amendments was published on December 30, 2002 (67 FR 79692) and became effective January 29, 2003. The pollock fisheries in the BSAI are subject to observer requirements under regulations at § 679.50. These observer requirements have an independent sunset date of December 31, 2007. The final rule made changes to these observer regulations. The DATE section of the preamble to the final rule contained a reference to the sunset date for these observer requirements, but as the preamble was written, this observer sunset date applied to the entire final rule. Thus, the DATES section of the preamble text described the period of effectiveness for the final rule as January 29, 2003 through December 31, 2007. This proposed rule would state that the phrase ''effective through December 31, 2007'' applies only to those paragraphs dealing with the observer program, and that the other provisions would be effective indefinitely.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The impacts of this action have already been analyzed pursuant to the Regulatory Flexibility Act by way of the FRFA completed for Amendments 61/61/13/8, and may be found in Section 4.6 of the Final Environmental Impact Statement for American Fisheries Act Amendments 61/61/13/8 (NMFS, 2002). The FRFA is further summarized in the final rule (December 30, 2002, 67 FR 79692). The FRFA identified a total of 41 small pollock fishing industry entities to which the rule applied (Table 4.6.2). A description of the fleet, fishery

and industry directly and reasonably indirectly impacted by Amendments 61/61/13/8 was provided in Section 4.6.7 of the FRFA (pages 4–176 to 4–182). Since this action corrects the dates for which this rule is effective, and does not modify eligibility criteria or any other facet of Amendments 61/61/13/8, there would be no change in the numbers of impacted entities as a result of this proposed action.

Similarly, the FRFA in Section 4.6.8 described the negative impacts of Amendments 61/61/13/8 on small entities, summarized in the final rule (December 30, 2002, 67 FR 79692). This proposed rule corrects the described period of effectiveness in the DATES section of the preamble to a final rule. The proposed rule results in no impacts on small entities.

Two criteria were considered in determining the significance of regulatory impacts, namely, disproportionality and profitability. These criteria consider the effect of regulations on small businesses and other small entities. The correction of the effective dates section in this proposed rule will not place a substantial number of small entities at a significant competitive disadvantage to large entities. Similarly, this proposed rule will not significantly reduce profit for a substantial number of small entities. This proposed rule will not impact industry.

The final rule for Amendments 61/61/13/8 (December 30, 2002, 67 FR 79692), addressed whether the rule would impose impacts on a substantial number of small entities. As discussed above, this proposed action will not impact the numbers of affected entities.

The findings of fact underlying a certification should ''describe the data sources and analytical methods used in the analyses, variability, and uncertainty in the cost and revenue estimates, explain the assumptions used, and indicate the extent to which the results were affected by those assumptions.'' The findings of fact underlying this certification are based on a review of the FRFA for the original action, and did not utilize new data sets, analytical methods, or cost and revenue estimates beyond those incorporated in the earlier analysis.

On this basis, the Chief Counsel for Regulation has certified that this action will not have ''a significant impact on a substantial number of small entities.'' As a result, a regulatory flexibility analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Dated: August 14, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–21452 Filed 8–22–03; 8:45 am]

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Hazardous materials training requirements; air carriers and commercial operators; comments due by 9-5-03; published 7-7-03 [FR 03-17107]

Airworthiness directives:

Boeing; comments due by 9-2-03; published 7-17-03 [FR 03-18082]

Hartzell Propeller, Inc., et al.; comments due by 9-2-03; published 7-3-03 [FR 03-16689]

MD Helicopters, Inc.; comments due by 9-2-03; published 7-2-03 [FR 03-16687]

Class E airspace; comments due by 9-2-03; published 7-29-03 [FR 03-19165]

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Low-income housing tax credit; section 42 carryover and stacking rule amendments; comments due by 9-5-03; published 7-7-03 [FR 03-16941]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcoholic beverages:

Dried fruit and honey wines production; comments due by 9-2-03; published 7-2-03 [FR 03-16564]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2195/P.L. 108–72
Smithsonian Facilities Authorization Act (Aug. 15, 2003; 117 Stat. 888)

H.R. 2465/P.L. 108–73
Family Farmer Bankruptcy Relief Act of 2003 (Aug. 15, 2003; 117 Stat. 891)

H.R. 2854/P.L. 108–74
To amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program, and for other purposes. (Aug. 15, 2003; 117 Stat. 892)

S. 1015/P.L. 108–75

Mosquito Abatement for Safety and Health Act (Aug. 15, 2003; 117 Stat. 898)

H.R. 1412/P.L. 108–76

Higher Education Relief Opportunities for Students Act of 2003 (Aug. 18, 2003; 117 Stat. 904)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4] Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869–050–00002–4)	32.00	[1] Jan. 1, 2003
4	(869–050–00003–2)	9.50	Jan. 1, 2003
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700–1199	(869–050–00005–9)	46.00	Jan. 1, 2003
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7 Parts:			
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27–52	(869–050–00008–3)	47.00	Jan. 1, 2003
53–209	(869–050–00009–1)	36.00	Jan. 1, 2003
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300–399	(869–050–00011–3)	43.00	Jan. 1, 2003
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900–999	(869–050–00014–8)	57.00	Jan. 1, 2003
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51–199	(869–050–00026–1)	56.00	Jan. 1, 2003
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CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
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Subscription (mailed as issued)		298.00	2003
Individual copies		2.00	2003
Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

[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, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 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.

[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.