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Federal Register

1–14–04 Wednesday
Vol. 69 No. 9 Jan. 14, 2004

Pages 2053–2288

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Presidential Documents

Title 3—

The President

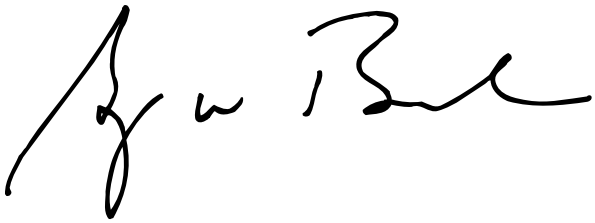
Presidential Determination No. 2004–16 of December 30, 2003

Designation of the Kingdom of Thailand as a Major Non-NATO Ally

Memorandum for the Secretary of State

Consistent with the authority vested in me, by section 517 of the Foreign Assistance Act of 1961, as amended (the ''Act''), I hereby designate the Kingdom of Thailand as a Major Non-NATO Ally of the United States for the purposes of the Act and the Arms Export Control Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 30, 2003.

[FR Doc. 04–897
Filed 1–13–04; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2004–17 of December 30, 2003

Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court

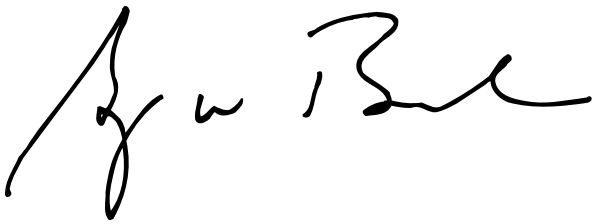
Memorandum for the Secretary of State

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002 (the ''Act''), title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby:

• Determine that Belize, Former Yugoslav Republic of Macedonia, Panama, and Fiji have each entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such countries; and

• Waive the prohibition of section 2007(a) of the Act with respect to these countries for as long as such agreement remains in force.

You are authorized and directed to report this determination to the Congress, and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 30, 2003.

[FR Doc. 04–898
Filed 1–13–04; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2004–18 of December 30, 2003

Extension of Waiver of Section 907 of the FREEDOM Support Act with respect to Assistance to the Government of Azerbaijan

Memorandum for the Secretary of State

Consistent with the authority contained in title II of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115), I hereby determine and certify that extending the waiver of section 907 of the FREEDOM Support Act of 1992 (Public Law 102–511):

• is necessary to support United States efforts to counter international terrorism;

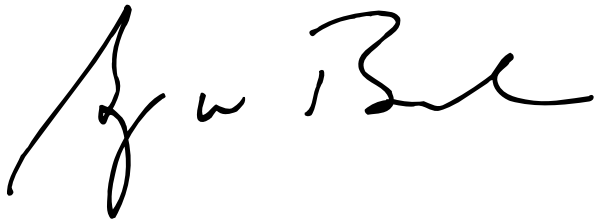
• is necessary to support the operational readiness of United States Armed Forces or coalition partners to counter international terrorism;

• is important to Azerbaijan's border security; and

• will not undermine or hamper ongoing efforts to negotiate a peaceful settlement between Armenia and Azerbaijan or be used for offensive purposes against Armenia.

Accordingly, I hereby extend the waiver of section 907 of the FREEDOM Support Act.

You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 30, 2003.

[FR Doc. 04–899
Filed 1–13–04; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–16–AD; Amendment 39–13427; AD 2004–01–13]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA supersedes Airworthiness Directive (AD) 97–22–16, which applies to certain Raytheon Model 1900, 1900C, and 1900D airplanes. AD 97–22–16 currently requires you to replace the bearings on the vent blower assemblies with improved design bearings and install a thermal protection device for the vent blowers. That AD resulted from reports of vent blower assembly bearings seizing and locking the blower motor on several of the affected airplanes. This AD retains the actions required in AD 97–22–16 for certain vent blower assemblies and requires you to incorporate further product improvement modifications on all affected vent blower assemblies. This AD is the result of reports that vent blower assemblies modified in accordance with AD 97–22–16 are still malfunctioning. We are issuing this AD to prevent smoke from entering the cockpit and cabin due to the current configuration of vent blower assemblies, which could result in the pilot becoming incapacitated or impairing her/his judgment. Such a condition could lead to the pilot not being able to make critical flight safety decisions and result in loss of control of the airplane.

DATES: This AD becomes effective on February 19, 2004.

As of February 19, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–16–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Reports of the vent blower assembly bearings seizing and locking the blower motor on several Raytheon Model 1900, 1900C, and 1900D airplanes caused us to issue AD 97–22–16, Amendment 39–10187 (62 FR 58894, October 31, 1997. AD 97–22–16 currently requires the following on certain Raytheon Model 1900, 1900C, and 1900D airplanes:

—Incorporating a modification to replace the bearings in the vent blower assemblies with improved design bearings (Electromech Technologies Kit No. EM630–201–1 or EM630–201–2 (as appropriate for the blower serial number)); and

—Installing a thermal protection for the vent blowers (Electromech Technologies Kit No. EM630–201–1 or EM630–201–2 or Advanced Industries Kit No. BC80A905 (as appropriate for the blower serial number)).

What has happened since AD 97–22–16 to initiate this action? The FAA has received reports that vent blower assemblies modified in accordance with AD 97–22–16 are still malfunctioning.

What is the potential impact if FAA took no action? If not corrected, smoke could enter the cockpit and cabin, which could result in the pilot becoming incapacitated or impairing her/his judgment. This condition could lead to the pilot not being able to make critical flight safety decisions and result in loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Model 1900, 1900C, and 1900D airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 4, 2003 (68 FR 33420). The NPRM proposed to supersede AD 97–22–16 with a new AD that would retain the actions required in AD 97–22–16 for certain vent blower assemblies and require you to incorporate further product improvement modifications for all affected vent blower assemblies.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in the development of this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue: The Proposed AD Does Not Solve the Problem of Smoke in the Cockpit/Cabin

What is the commenter's concern? The commenter states that the proposed AD focuses on the vent blower low speed resistors and does not consider the motor as a source of smoke. Since the cooling air for the motor is drawn through the motor by the blower intake and then is exhausted into the cabin, any motor failure that generates smoke and fumes is blown directly into the cabin.

The following summarizes the commenter's concerns:

—The insulation on the lead-wire can hang up on the brush holder if the brush lead-wire is pushed down to clear the metal brush inspection cover. The installation instructions provided with Modification Kit BC80A–901–3, which incorporates the replacement brushes with the lead-wire insulation, do not clarify where the lead-wires should be formed;

—When a brush lead-wire gets hung up on the brush holder (caused by improper lead-wire forming), there is little to no force from the spring to hold the brush against the

commutator. Lack of force to hold the brush against the commutator can cause arcing between the brush and commutator surface, which produces tremendous heat and accelerated brush wear. This will ultimately lead to excess heat that will cause the grease to boil out of the bearings and result in bearing failure;

—The hard anodized coating on the metal brush inspection cover provided with Modification Kit No. 630–203–1 is a poor insulator and is easily scratched during assembly and disassembly. Once scratched, the coating offers no insulation, which creates the possibility for a short circuit to the brush shunt; and

—The low speed power resistors are considered undersized for the application.

The commenter recommends the following:

—Installing thermal fuse(s) on the motor to interrupt the current in the event of the motor overheating;

—Controlling how the brush lead-wires are formed to prevent shorting to metal inspection screen or any other adjacent conductor; and

—Increasing the power rating of the low speed resistors to improve the safety margin.

The commenter requests these changes based on personal repair history as well as analysis of the design.

What is FAA's response to the concern? We do not agree. Although the commenter raises many pertinent concerns, we consider the requested changes a product improvement or a way to increase the reliability of the motor.

The proposed AD is intended to address smoke in the cabin/cockpit that is specifically caused by the vent blower assembly. Investigation by Raytheon engineering concluded that all incidents involving smoke in the cockpit/cabin were caused by overheating of the vent blower low speed resistors while operating the blower on low speed.

AD 97–22–16 required incorporating the applicable modification kit as specified in Raytheon Service Bulletin No. 2721, Issued: January, 1997. Raytheon Service Bulletin No. 2721 added a 216°C thermal cutout to the resistor assembly to interrupt power to the resistors and prevent overheating.

Further field experience revealed that the 216°C cutout may not open soon enough to prevent overheating in all instances. As a result, Raytheon issued Mandatory Service Bulletin SB 21–3448, Issued: October, 2002, to decrease the thermal cutout set point to 152°C. New tests verified that this value cutout to the resistor assembly provides adequate protection against resistor overheating while avoiding nuisance trips during normal operation.

The addition of an insulating sleeve over the brush lead-wires and hard anodizing of the brush inspection cover required by Raytheon Mandatory Service Bulletin SB 21–3448, Issued: October, 2002, was done to offer an additional measure of protection. The additions are not meant to substitute proper brush lead-wire routing.

The thermal cutout on the resistors and the aircraft's blower circuit current limiter are the primary methods of protection. If a brush lead-wire was shorted to the housing and the vent blower was operated in the low speed mode, the increased current flow would cause the resistor temperature to increase until the thermal cutout opens and interrupts power to the resistors. If a brush lead-wire was shorted to the housing and the vent blower was operated in the high speed mode, the increased current flow would cause the aircraft's current limiter to open and interrupt power.

A brush lead-wire could possibly get hung up with or without the sleeving. If the brush lead-wire gets hung up, this would result in arcing between the brush and commutator resulting in increased heat and accelerated brush wear until the blower no longer continues to operate. At this time, the manufacturer has not received any field reports of smoke related to ''hung brushes.''

The power dissipation in the low speed circuit does appear to be above the rated value for the resistors. However, this does not account for the large amount of cooling airflow that passes over the area to which the resistors are mounted. Service history shows that the resistor rating is adequate under normal operations. If the resistors start to overheat because of vent blower failure, then the thermal cutout will open and interrupt power to the resistor assembly.

Since none of the recommendations specifically address an unsafe condition, we have determined that we are not changing the final rule AD based on these comments.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 300 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 per hour = $180	$415 (for both the forward and aft ventilation blower assemblies).	$595	$595 × 300 = $178,500.

Regulatory Findings

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

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–16–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 97–22–16, Amendment 39–10187 (62 FR 58894, October 31, 1997), and by adding a new AD to read as follows:

2004–01–13 Raytheon Aircraft Company: Amendment 39–13427; Docket No. 2003–CE–16–AD; Supersedes AD 97–22–16, Amendment 39–10187.

When Does This AD Become Effective?

(a) This AD becomes effective on February 19, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 97–22–16, Amendment 39–10187 (62 FR 58894, October 31, 1997).

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are:

(1) certificated in any category; and

(2) equipped with vent blower assembly, part number 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7.

Model	Serial numbers
1900	UA–3.
1900C	UB–1 through UB–74 and UC–1 through UC–174.
1900 (C–12J)	UD–1 through UD–6.
1900D	UE–1 through UE–427.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports that vent blower assemblies modified in accordance with AD 97–22–16 are still malfunctioning. The actions specified in this AD are intended to prevent smoke from entering the cockpit and cabin due to the current configuration of vent blower assemblies, which could result in the pilot becoming incapacitated or impairing his/her judgment. This condition could lead to the pilot not being able to make critical flight safety decisions and result in loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Check the maintenance records to determine if a part number (P/N) 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly is installed.	Within the next 800 hours time-in-service (TIS) after February 19, 2004 (the effective date of this AD), unless already done.	Follow Raytheon Aircraft Mandatory Service Bulletin SB 21–3448, Issued: October, 2002. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.
(2) If, by checking the maintenance records, the owner/operator can definitely show that a P/N 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly is not installed, no further action is required by this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Prior to further flight after the maintenance records check required in paragraph (e)(1) of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may make this entry.
(3) If, by checking the maintenance records, the owner/operator can definitely show that a P/N 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly is installed, do the following for each P/N:. (i) *P/N 114–380028–1:* modify following Raytheon Service Bulletin No. 2721, Issued: January, 1997, prior to incorporating Electromechanic Technologies Modification Kit No. P/N 630–203–01 and changing the P/N to 114–380028–11. (ii) *P/N 114–380028–3:* incorporate Advanced Industries Modification Kit No. P/N BC80A–901–3 and change the P/N to 114–380028–9. (iii) *P/N 114–380028–5 with a serial number (S/N) of 2162 or above or with a S/N of 2162 with an ''A'' suffix:* no modification is required. Change the P/N to 114–380028–11 and make an entry into the aircraft records that shows compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Do all modifications prior to further flight after the maintenance records check required in paragraph (e)(1) unless already done.	Following Raytheon Aircraft Mandatory Service Bulletin SB 21–3448, Issued: October, 2002, and Raytheon Service Bulletin No. 2721, Issued: January, 1997.

Actions	Compliance	Procedures
(iv) *P/N 114–380028–5 with a S/N prior to 2162 without an ''A'' suffix:* incorporate Electromechanic Technologies Modification Kit No. P/N 630–203–01 and change the P/N to 114–380028–11.		
(v) *P/N 114–380028–7:* incorporate Advanced Industries Modification Kit No. P/N BC80A–901–3 and change the P/N to 114–380028–9.		
(4) If the owner/operator cannot definitely show that a P/N 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly is installed through the maintenance records check, an appropriately-rated mechanic must do an inspection to determine the P/N of the installed ventilation blower assembly and do the applicable modification required in paragraphs (e)(3)(i), (e)(3)(ii), (e)(3)(iii), (e)(3)(iv), and (e)(3)(v) of this AD.	Inspect within the next 800 hours TIS after February 19, 2004 (the effective date of this AD). Do all modifications prior to further flight.	Follow Raytheon Aircraft Mandatory Service Bulletin SB 21–3448, Issued: October, 2002, and Raytheon Service Bulletin No. 2721, Issued: January, 1997.
(5) Do not install any P/N 114–380028–1, 114–380028–3, 114–380028–5, or 114–380028–7 ventilation blower assembly, unless it has been modified as specified in paragraphs (e)(3)(i), (e)(3)(ii), (e)(3)(iii), (e)(3)(iv), and (e)(3)(v) of this AD.	As of February 19, 2004 (the effective date of this AD).	Follow Raytheon Aircraft Mandatory Service Bulletin SB 21–3448, Issued: October, 2002, and Raytheon Service Bulletin No. 2721, Issued: January, 1997.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13.

(1) Send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4107.

(2) Alternative methods of compliance approved in accordance with AD 97–22–16, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Raytheon Aircraft Mandatory Service Bulletin SB 21–3448, Issued: October, 2002, and Raytheon Aircraft Mandatory Service Bulletin No. 2721, Issued: January, 1997. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Kansas City, Missouri, on January 2, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–474 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–26–AD; Amendment 39–13409; AD 2003–26–11]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–80E1A2 and –80E1A4 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–26–11 applicable to GE CF6–80E1A2 and –80E1A4 turbofan engines with left vertical link bolts part number (P/N) 1304M26P02 installed, and pylon attachment bolts originally torqued to 450–500 lb ft. That AD was published in the **Federal Register** on January 6, 2004 (69 FR 494). The **SUPPLEMENTARY INFORMATION** paragraph title, first sentence, and first three words of the second sentence of that paragraph were inadvertently omitted. This document corrects that omission. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective January 14, 2004.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule; request for comments AD, FR Doc. 04–144 applicable to GE CF6–80E1A2 and –80E1A4 turbofan engines with left vertical link bolts part number (P/N) 1304M26P02 installed, and pylon attachment bolts originally torqued to 450–500 lb ft, was published in the **Federal Register** on January 6, 2004 (69 FR 494). The following correction is needed:

§ 39.13 [Corrected]

■ On page 494, in the second column, under **FOR FURTHER INFORMATION CONTACT:** after the seventh line, add ''**SUPPLEMENTARY INFORMATION:** GE has notified the FAA that an unsafe condition may exist on GE CF6–80E1A2 and –80E1A4 turbofan engines. GE advises that''.

Issued in Burlington, MA on January 8, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–760 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1309, 1310

[Docket No. DEA–239T]

Clarification of the Exemption of Sales by Retail Distributors of Pseudoephedrine and Phenylpropanolamine Products

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interpretive rule.

SUMMARY: By this interpretive rule, DEA is providing guidance to retail distributors for compliance with the law and DEA regulations regarding the exemption of sales of pseudoephedrine or phenylpropanolamine regulated products. Pseudoephedrine and phenylpropanolamine, which are regulated as List I chemicals, are components of many over-the-counter cold and allergy products. This rule does not change DEA's regulations and will have no impact on individual retail customers of such products who have been purchasing them from retailers which have been properly following DEA's regulations.

DEA regulations already provide—and this rule clarifies—that an exemption from being a regulated transaction exists for sales of ordinary over-the-counter pseudoephedrine and phenylpropanolamine products (''safe harbor'' products) by retail distributors. However, some sellers have failed to adequately understand that this exemption must be considered in the context of the definition of a ''retail distributor.'' A retail distributor is one whose sales of regulated pseudoephedrine and phenylpropanolamine products are limited almost exclusively to quantities below the 9 gram threshold—whether these products are defined as ''safe harbor'' products or not—to individuals for legitimate medical use. Therefore, a person who sells more than an occasional amount of pseudoephedrine or phenylpropanolamine product at or above the 9 gram threshold for these products does not fit the definition of a retail distributor on which the exemption is based.

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

SUPPLEMENTARY INFORMATION:

Special Notice

Due to concerns regarding possible harmful side effects from the use of phenylpropanolamine, the Food and Drug Administration (FDA) initiated action in November, 2000, to remove products containing it from the market. As a result, many firms voluntarily discontinued marketing products containing phenylpropanolamine and removed them from the shelves for disposal. However, since some products containing phenylpropanolamine are still available, and since the regulations specifically address products containing phenylpropanolamine, DEA has written this interpretive rule to include drug products containing phenylpropanolamine as well as drug products containing pseudoephedrine.

Introduction

DEA is publishing this Interpretive Rule to clarify its policies and procedures regarding the exemption of sales of *ordinary over-the-counter pseudoephedrine and phenylpropanolamine products* (''safe harbor'' products) by retail distributors from being regulated transactions and to provide guidance for compliance with the law and DEA regulations. The Controlled Substances Act (CSA), which is found in Title 21 of the United States Code (21 U.S.C.), sections 801 *et seq.*, sets forth the law for controlled substances and listed chemicals. Implementing regulations are found in Title 21 of the Code of Federal Regulations (21 CFR). Pertinent implementing regulations pertaining to the distribution of List I chemicals are found in 21 CFR 1300.02—definitions relating to listed chemicals; part 1309—information on the requirements for registration and security; and part 1310—requirements for recordkeeping and reports for listed chemicals. This interpretive rule does not change the regulations. Also, this rule does not have an impact on individual retail customers of regulated pseudoephedrine and phenylpropanolamine products who have been purchasing them from retailers that have been following DEA's regulations.

Some retail distributors have failed to adequately understand this exemption. They believe that this exemption is absolute—that a retailer may, without regulation, sell as much ''safe harbor'' pseudoephedrine and phenylpropanolamine product to any person for any purpose as often as that person wishes to make a purchase. This is not the case. The exemption of sales of ''safe harbor'' products by retail distributors from being regulated transactions must be considered in the context of the definition of a retail distributor of pseudoephedrine and phenylpropanolamine products on which it is based. In the definition of a retail distributor (21 U.S.C. 802(46)(A)), all sales of these regulated products—whether the products are defined as ''safe harbor'' products or not—are limited almost exclusively to below-threshold amounts to individuals for legitimate personal medical use. The transaction threshold for sales of regulated pseudoephedrine or phenylpropanolamine products by retail distributors is 9 grams (in packages of not more than 3 grams) in a single transaction (21 U.S.C. 802(39)(A)(iv)(II)). Therefore, a person who sells more than an occasional amount of these products at or above the 9 gram threshold does not meet the definition of a retail distributor on which the exemption is based. The seller would need to register with DEA as a distributor of List I chemicals and comply with the recordkeeping and other regulatory requirements that are set forth for all regulated transactions.

Background

The Comprehensive Methamphetamine Control Act of 1996 (MCA) created the exemption that sales of ordinary over-the-counter pseudoephedrine and phenylpropanolamine products by retail distributors are not regulated transactions (21 U.S.C. 802(39)(A)(iv)(I)(aa), 802(45) and 802(46)). To understand the intent of Congress in creating this exemption, it is necessary to review the legislative history of the MCA. Congress proposed the MCA to curb the fast spreading abuse of methamphetamine and amphetamine across the United States. In the Findings to the MCA, Congress stated that ''methamphetamine is a very dangerous and harmful drug'' and that ''Illegal methamphetamine manufacture and abuse presents an imminent public health threat * * *'' (Pub. L. 104–237, section 2).

To combat the illegal manufacture and the abuse of methamphetamine and amphetamine, Congress chose to restrict access to the chemical precursors of these drugs—ephedrine, pseudoephedrine and phenylpropanolamine. However, many legal over-the-counter allergy and cold products contain these precursor chemicals. Therefore, Congress balanced the need to restrict access to legal over-the-counter drug products containing precursor chemicals with the need of the public to have access to them. Senator Biden clearly stated this in the *Congressional Record:*

> The legislation [MCA] goes after the source of the methamphetamine problem—the precursor chemicals, often found in legal, over-the-counter drug products, which are used to manufacture methamphetamine and its ugly cousin, amphetamine. While still allowing consumer access to many helpful and commonly used products containing the precursor chemicals, the bill will place significant restrictions on the bulk sale of the chemicals, both through the mail and over the counter. (142 Cong. Rec. S 10717 (September 17, 1996))

In addition to allowing consumers access to over-the-counter products

containing the precursor chemicals, Congress also tried not to overburden retailers with recordkeeping. As Representative Riggs stated:

Thus, while imposing measures to decrease the availability of precursor chemicals, the legislation does not restrict the ability of law-abiding citizens to use common remedies for colds and allergies. Nor does the legislation subject sales of such legal products to onerous recordkeeping requirements at the retail level. (142 Cong. Rec. H 11111 (September 25, 1996))

Clarification

The MCA created an exemption or ''safe harbor'' for the sale by retail distributors of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products. (Ephedrine and combination ephedrine products were not included in this ''safe harbor.'') These pseudoephedrine and phenylpropanolamine products are packaged according to specific criteria, which includes blister packs or unit dose pouches or packets for products in solid form (21 U.S.C. 802(45)). Many retail distributors have the misconception that the exemption is unqualified—that they may, without regulation, sell as many ''safe harbor'' pseudoephedrine or phenylpropanolamine products as they want to anyone for any purpose so long as these products meet the ''safe harbor'' definition. A review of the law shows this is not the case, nor was it the intent of Congress. The intent of Congress has been established by the previous statements cited from the legislative history of the MCA. It is further demonstrated by the following statement of Senator Grassley, which clearly indicates that sales of large quantities of these products at retail stores were not to be allowed.

Some of the chemical companies also tried to create so-called safe harbors so large that enormous bulk purchases of meth ingredients would never have to be reported to the DEA. That means criminals could go to the corner drugstore, purchase legal products like pseudoephedrine in large quantities and make poison with no one the wiser. And then that poison is sold to our kids. (142 Cong. Rec. S 10717 (September 17, 1996))

When reference is made to the ''safe harbor'' exemption, it is actually referring to ordinary over-the-counter pseudoephedrine and phenylpropanolamine products, which are defined as follows [emphasis added]:

The term *ordinary over-the-counter pseudoephedrine or phenylpropanolamine product* means any product containing pseudoephedrine or phenylpropanolamine that is *regulated* * * * and * * * sold in package sizes of *not more than 3.0 grams* of pseudoephedrine base or 3.0 grams of phenylpropanolamine base, and that is packaged *in blister packs*, each blister containing *not more than two dosage units*, or where the use of blister packs is technically infeasible, that is packaged in unit dose packets or pouches; and * * * for liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base. (21 U.S.C. 802(45))

To fully understand the exemption of sales of ordinary over-the-counter pseudoephedrine and phenylpropanolamine products by retail distributors from a regulated transaction, it is necessary to clearly understand the definition of a regulated transaction [emphasis added]:

The term *regulated transaction* means—a distribution, receipt, *sale*, importation, or exportation of * * * a listed chemical, or if the Attorney General establishes a threshold amount *for a specific listed chemical, a threshold amount*, including a cumulative threshold amount for multiple transactions * * * of a listed chemical, except that such term does not include—* * *

- [*not a regulated transaction*] any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act * * * unless—
- [*regulated transaction*] the drug contains *ephedrine* or its salts, optical isomers, or salts of optical isomers, *pseudoephedrine* or its salts, optical isomers, or salts of optical isomers, or *phenylpropanolamine* or its salts, optical isomers, or salts of optical isomers * * * except
- [*not a regulated transaction*] that any *sale* of *ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by retail distributors* shall not be a regulated transaction * * * (21 U.S.C. 802(39)(A))

It is also necessary to understand the definition of a retail distributor as it relates to pseudoephedrine or phenylpropanolamine products. A retail distributor of pseudoephedrine and phenylpropanolamine products is defined as follows [emphasis added]:

The term *retail distributor means*—a[n] * * * entity or person whose activities as a distributor relating to *pseudoephedrine or phenylpropanolamine products* are limited *almost exclusively* to *sales for personal use,* both in *number of sales and volume of sales,* either directly to walk-in customers or in face-to-face transactions by direct sales * * * *Sale for personal use* means the sale of *below-threshold* quantities *in a single transaction* to an *individual* for *legitimate medical use.* (21 U.S.C. 802(46))

This definition of the activities of a retail distributor makes no distinction between ''safe harbor'' and other regulated pseudoephedrine or phenylpropanolamine products. All retail sales of these products—both safe harbor products and other regulated pseudoephedrine or phenylpropanolamine products—are limited almost exclusively to amounts below the retail threshold to an individual for legitimate medical use.

When all of the above definitions and conditions are taken as a whole, the exemption of sales of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products (''safe harbor'' products) by a retail distributor from being a regulated transaction must be read as follows:

Any *sale* of *ordinary over-the-counter pseudoephedrine or phenylpropanolamine products* by [a] person whose activities as a distributor relating to *pseudoephedrine or phenylpropanolamine products* are limited *almost exclusively* to *sales for personal use, both in number of sales* and *volume of sales,* either directly to walk-in customers or in face-to-face transactions by direct sales shall not be a regulated transaction. *Sale for personal use* means the sale of *below-threshold* quantities in a *single transaction* to an *individual* for *legitimate medical use.*

Since sales of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by retail distributors are limited almost exclusively to below-threshold amounts to an individual for personal medical use, it is necessary to set forth the general threshold for pseudoephedrine and phenylpropanolamine products for retail distributors:

The threshold for any sale of products containing pseudoephedrine or phenylpropanolamine products by retail distributors * * * shall be 9 grams of pseudoephedrine or 9 grams of phenylpropanolamine in a single transaction and sold in packages of not more than 3 grams of pseudoephedrine base or 3 grams of phenylpropanolamine base; * * * (21 U.S.C. 802(39)(A)(iv)(II)).

Thus, sales by retail distributors of all regulated pseudoephedrine and phenylpropanolamine products—both ''safe harbor'' products as well as other regulated products—are almost exclusively to be below the 9 gram threshold (in packages of not more than 3 grams) in a single transaction. An occasional sale at or above the 9 gram threshold is permitted for ''safe harbor'' products. Such an occasional sale is not a regulated transaction and does not subject the retail distributor to recordkeeping or registration as a distributor. Examples of occasional sales at or above threshold for ''safe harbor'' products would include a sale to a family where everyone is sick or suffering from allergies or a sale to a person who comes from a long distance away, such as in a rural area. For other

regulated pseudoephedrine and phenylpropanolamine products, a sale at or above threshold, while permitted, is a regulated transaction necessitating recordkeeping and other regulatory requirements (21 U.S.C. 802(39)(A)(iv)(I)(aa)).

If sales of either ''safe harbor'' or other regulated pseudoephedrine or phenylpropanolamine products exceed ''almost exclusively below-threshold'' amounts either in number of sales or volume of sales (*i.e.*, such sales are not just rare events or sales are not in relatively small quantities), the seller does not meet the definition of a retail distributor and must register with DEA as a distributor of List I chemicals and meet all the applicable regulatory requirements (21 CFR 1309). This includes the requirements for customer identification (21 CFR 1310.07), recordkeeping and reporting (21 CFR 1310), and the security of List I chemicals (21 CFR 1309.71).

Following is a table showing the qualifications and requirements for the exemption of sales of ''ordinary over-the-counter pseudoephedrine or phenylpropanolamine'' regulated products by retail distributors.

Qualifications and Requirements for the Exemption of Sales of ''Ordinary Over-the-Counter Pseudoephedrine or Phenylpropanolamine Regulated Products'' (''Safe Harbor Products'') by Retail Distributors

Seller must first meet the definition of retail distributor relating to regulated pseudoephedrine, phenylpropanolamine, or ephedrine products listed below:

1. Means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to drug products containing pseudoephedrine or phenylpropanolamine are''
2. Limited to sales almost exclusively for personal use, both in the number of sales and volume of sales [regardless of the packaging of the products].

Sale for personal use means the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use.

AND

3. Sales are made either directly to walk-in customers or face-to-face by direct sales. (21 U.S.C. 802(46) & 21 CFR 1300.02(b)(29))

Requirements and conditions if retail distributor qualifies for the exemption	Requirements and conditions if retail distributor does not qualify for the exemption
DEA registration as a distributor of List I chemicals is waived. (21 CFR 1309.23(e)).	Seller must register with DEA as a distributor of List I chemicals. (21 CFR 1309)
As a regulated person whose registration has been waived, a retail distributor must meet security requirements for List I chemicals 1309.71–1309.73. (21 CFR 1309.24(k)).	Distributor must meet security requirements for List I chemicals found in 21 CFR in 21 CFR 1309.71–1309.73.
As a regulated person whose registration has been waived, a retail distributor is subject to the to the reporting regulated transactions requirements for of listed chemicals in 21 CFR 1310.05. (21 CFR 1309.24(k)).	Distributor is subject reporting requirements for listed chemicals in 21 CFR 1310.
No records are required for sales of regulated pseudoephedrine or phenylpropanolamine products below threshold quantities in a single transaction regardless of packaging (not a regulated transaction).	No records are required for sales of regulated pseudoephedrine or phenylpropanolamine products below threshold quantities in a single transaction regardless of packaging (not a regulated transaction).
Records must be retained for all sales of threshold and above quantities of pseudoephedrine and phenylpropanolamine regulated products not in blister packs (such as bottles), which are regulated transactions, as set forth in 21 1310.	Records must be retained for all transactions of threshold or above CFR quantities regardless of type of packaging (regulated transactions). (21 CFR 1310)
If sales of pseudoephedrine or phenylpropanolamine regulated products exceed ''almost exclusively below-threshold'' either in number of sales or volume of sales—regardless of the kind of packaging, then seller must register with DEA as a distributor of List I chemicals. (See the other side of this table—Requirements and Conditions If for Retail Distributor Does Not Qualify for the Exemption.).	For all transactions amountsat or above threshold amounts (regulated transactions), distributor must meet proof of identity requirements for customers. (21 CFR 1310.07)

Conclusion

For sales of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products (''safe harbor'' products) by a retail distributor to qualify for exemption from a regulated transaction, they must fall within the definition of the activities of a retail distributor (21 U.S.C. 802(46)(A)). The activities of a retail distributor relating to regulated drug products containing pseudoephedrine and phenylpropanolamine makes no distinction between ''safe harbor'' and other regulated pseudoephedrine and phenylpropanolamine products. All sales by a retail distributor of these products are limited almost exclusively to amounts below the retail threshold for a single transaction to an individual for legitimate personal medical use. Products must be sold to walk-in customers or must be sold in face-to-face transactions. More than occasional sales of these products by a seller at or above-threshold quantities to an individual in a single transaction or a large number of sales of these products to an individual are inconsistent with the activities defined for a retail distributor. An occasional sale of ''safe harbor'' pseudoephedrine or phenylpropanolamine products at or above the retail threshold is not a regulated transaction and does not require the retail distributor to keep records. More than an occasional sale that does not fit within these parameters requires the seller to obtain a DEA registration as a distributor and to meet all the requirements for a distributor, including, but not limited to, security requirements for storing List I chemicals and all the requirements for any sales that are regulated transactions.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The rule provides DEA's interpretation of its law

and regulations regarding the sale by retail distributors of ordinary over-the-counter pseudoephedrine and phenylpropanolamine products (''safe harbor'' products). Compliance with the current law and regulations, as interpreted by this rulemaking, will not result in any change in economic activity for retail distributors of pseudoephedrine and phenylpropanolamine regulated products.

Executive Order 12866

The Deputy Assistant Administrator certifies that this rulemaking has been drafted in accordance with the principles of Executive Order 12866, section 1(b). The rule provides DEA's interpretation of its law and regulations regarding the sale by retail distributors of ordinary over-the-counter pseudoephedrine and phenylpropanolamine products (''safe harbor'' products). DEA has determined that this is not a significant regulatory action. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; not does it impose enforcement responsibilities on any state; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rule does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Act

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: January 5, 2004.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 04–722 Filed 1–13–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF DEFENSE

National Geospatial-Intelligence Agency

32 CFR Part 320

[NIMA Instruction 5500.7R1]

Privacy Act; Implementation

AGENCY: National Geospatial-Intelligence Agency, DoD.

ACTION: Final rule.

SUMMARY: The document is published to make administrative changes to the National Geospatial-Intelligence Agency (NGA), formerly know as the National Imagery and Mapping Agency, Privacy Program rule.

EFFECTIVE DATE: This rule is effective January 14, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. M. Flattery, (301) 227–2268.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 320

Privacy program.

■ Accordingly, 32 CFR part 320 is amended as follows:

PART 320—NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY (NGA) PRIVACY

Program

■ 1. The authority citation for part 320 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 552a).

■ 2. The part heading is revised as set forth above.

§ 320.1 [Amended]

■ 3. Section 320.1, paragraph (a)(1)(i) is amended by revising ''National Imagery and Mapping Agency (NIMA)'' to read ''National Geospatial-Intelligence Agency (NGA)''

■ 4. The following paragraphs are amended by revising ''NIMA'' to read ''NGA'': § 320.1 paragraph (a)(2); § 320.2 paragraphs (a), (c), (f), (h), and (i); § 320.3 paragraphs (a), (a)(1), (a)(2), (a)(4), (b)(6), and (c)(4); § 320.4 paragraphs (a), (b), (c), (c)(2), (d), and (e); § 320.5 paragraphs (a), (b), (b)(1), (b)(2), (b)(3), (c), (c)(1), (c)(2), and (d)(1); § 320.6 (b); § 320.7 paragraphs (a) and (b); § 320.8, paragraphs (b), (c), and (c)(1); § 320.9 paragraphs (a), (c)(5), and (c)(7); §§ 320.10 and 320.11; and § 320.12 paragraphs (a), (b)(3)(i), (b)(3)(v) and (b)(3)(vi).

Dated: January 7, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–758 Filed 1–13–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–018]

RIN 1625–AA00

Security and Safety Zone; Protection of Large Passenger Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing regulations for the security and safety of large passenger vessels in the navigable waters of Puget Sound and adjacent waters, Washington. This security and safety zone, when enforced by the Captain of the Port Puget Sound, provides for the regulation of vessel traffic in the vicinity of large passenger vessels in the navigable waters of the United States, Puget Sound and adjacent waters, WA.

DATES: This rule is effective February 8, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13–03–018 and are available for inspection or copying at Commanding Officer, Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTjg T. Thayer, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 15, 2003, we published a notice of proposed rulemaking (NPRM)

entitled Security and Safety Zone; Protection of Large Passenger Vessels, Puget Sound, WA in the **Federal Register** (68 FR 41764). We received no comments on the proposed rule. A public hearing was not requested and none was held.

The Coast Guard finds that good cause exists to make this rule effective less than 30 days after publication. This final rule continues regulations that were established in a temporary final rule (68 FR 49359), which ends on February 7, 2004. The requirements are necessary to ensure the safety and security of large passenger vessels in Puget Sound, and need to be continuous to be effective.

Background and Purpose

On March 31, 2003, the Captain of the Port Puget Sound published a Temporary Final Rule (TFR) (68 FR 15375, CGD 13–03–003, 33 CFR § 165.T13–002) establishing security and safety zones for the protection of large passenger vessels, which expired on August 8, 2003. The TFR also requested public comment. On June 20, 2003, the Captain of the Port Puget Sound issued a Notice of Proposed Rule Making (NPRM) entitled Security and Safety Zone; Protection of Large Passenger Vessels, Puget Sound, WA. This NPRM was published in the **Federal Register** on July 15, 2003 (68 FR 41764). In drafting the proposed rule, the Coast Guard considered comments it received in response to the TFR. In general, the comments concerned the scope and impact of the TFR. *See,* Discussion of Proposed Rule, 68 FR at 41765. In response to these comments, the Coast Guard modified the definition of large passenger vessel by excluding small passenger vessels (vessels inspected and certificated under 46 CFR Chapter I, Subchapter T) thereby decreasing the number of vessels with security and safety zones around them. In addition, the Coast Guard reduced the size of the exclusionary zone from 100 yards to 25 yards for a large passenger vessel that is moored.

The original TFR, expired before the notice and comment period in the NPRM closed. Rather than extend the original TFR, the Captain of the Port Puget Sound published a second TFR on August 18, 2003, which was substantially the same as the proposed rule (68 FR 49359, CGD 13–03–026, 33 CFR 165.T13–017). There were no comments received regarding the second TFR.

This final rule will assist large passenger vessels by establishing a permanent security and safety zone that when enforced by the Captain of the Port would exclude persons and vessels from the immediate vicinity of certain large passenger vessels. Hostile entities continue to operate with the intent to harm U.S. National Security by attacking or sabotaging national security assets. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. 67 FR 58317 ((Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks)); 67 FR 59447 ((Sept. 20, 2002) continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)); 68 FR 55189 ((Sept. 22, 2003 (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)).

The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations). Moreover, the ongoing hostilities in Afghanistan and Iraq make it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Discussion of Comments and Changes

No comments were received by the Coast Guard as a result of the request for comments in our NPRM. However, as discussed above, the Coast Guard considered comments received regarding the scope and impact of the original TFR in drafting the proposed rule. *See,* Discussion of Proposed Rule, 68 FR at 41765.

Regulatory Evaluation

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

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

Although this rule restricts access to the regulated area, the effect of this rule will not be significant because: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the official on-scene patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the large passenger vessel security and safety zone for any given transiting large passenger vessel will effect a given geographical location for a limited time; (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly; (v) the reduction in the number and types of vessels covered by this rule as a result of comments received in response to the original Large Passenger Vessel Security Zone TFR; and (vi) the size of the exclusionary zone was reduced from 100 yards to 25 yards for large passenger vessels that are moored.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate near or anchor in the vicinity of large passenger vessels in the navigable waters of the United States.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the official on-scene patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the large passenger vessel security and safety zone for any given transiting large passenger vessel will effect a given geographical location for a limited time; (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly; (v) the reduction in the number and types of vessels covered by this rule as a result of comments

received in response to the original Large Passenger Vessel Security Zone TFR; and (vi) the size of the exclusionary zone was reduced from 100 yards to 25 yards for large passenger vessels that are moored.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of this rule to accommodate the special needs of mariners in the vicinity of large passenger vessels and the Coast Guard's commitment to working with the Tribes, we have determined that passenger vessel security and fishing rights protection need not be incompatible and therefore have determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34) of Commandant Instruction M16475.lD, that this rule is categorically excluded from further environmental documentation. This rule fits this categorical exclusion because it is a security and safety zone. A Categorical Exclusion Determination is available in the docket for inspection and copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.1317 to read as follows:

§ 165.1317 Security and Safety Zone; Large Passenger Vessel Protection, Puget Sound and adjacent waters, Washington.

(a) *Notice of enforcement or suspension of enforcement.* The large passenger vessel security and safety zone established by this section will be enforced only upon notice by the Captain of the Port Puget Sound. Captain of the Port Puget Sound will cause notice of the enforcement of the large passenger vessel security and safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Puget Sound will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of the large passenger vessel security and safety zone is suspended.

(b) *Definitions.* The following definitions apply to this section:

Federal Law Enforcement Officer means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

Large Passenger Vessel means any cruise ship over 100 feet in length carrying passengers for hire, and any auto ferries and passenger ferries over 100 feet in length carrying passengers for hire such as the Washington State Ferries, M/V COHO and Alaskan Marine Highway Ferries. Large Passenger Vessel does not include vessels inspected and certificated under 46 CFR, Chapter I, Subchapter T such as excursion vessels, sight seeing vessels, dinner cruise vessels, and whale watching vessels.

Large Passenger Vessel Security and Safety Zone is a regulated area of water established by this section, surrounding large passenger vessels for a 500-yard radius to provide for the security and safety of these vessels.

Navigable waters of the United States means those waters defined as such in 33 CFR part 2.

Navigation Rules means the Navigation Rules, International—Inland.

Official Patrol means those persons designated by the Captain of the Port to monitor a large passenger vessel security and safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Persons authorized in paragraph (l) to enforce this section are designated as the Official Patrol.

Public vessel means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Washington Law Enforcement Officer means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(c) *Security and safety zone.* There is established a large passenger vessel security and safety zone extending for a 500-yard radius around all large passenger vessels located in the navigable waters of the United States in Puget Sound, WA, east of 123°30′ West Longitude. [Datum: NAD 1983].

(d) *Compliance.* The large passenger vessel security and safety zone established by this section remains in effect around large passenger vessels at all times, whether the large passenger vessel is underway, anchored, or moored. Upon notice of enforcement by the Captain of the Port Puget Sound, the Coast Guard will enforce the large passenger vessel security and safety zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Puget Sound, all persons and vessels are authorized to enter, transit, and exit the large passenger vessel security and safety zone, consistent with the Navigation Rules.

(e) The Navigation Rules shall apply at all times within a large passenger vessel security and safety zone.

(f) When within a large passenger vessel security and safety zone all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the on-scene official patrol or large passenger vessel master. No vessel or person is allowed within 100 yards of a large passenger vessel that is underway or at anchor, unless authorized by the on-scene official patrol or large passenger vessel master. No vessel or person is allowed within 25 yards of a large passenger vessel that is moored.

(g) To request authorization to operate within 100 yards of a large passenger vessel that is underway or at anchor, contact the on-scene official patrol or large passenger vessel master on VHF–FM channel 16 or 13.

(h) When conditions permit, the on-scene official patrol or large passenger vessel master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a large passenger vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of an anchored large passenger vessel or within 25 yards of a moored large passenger vessel with minimal delay consistent with security.

(i) When a large passenger vessel approaches within 100 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the large passenger vessel's security and safety zone unless it is either ordered by, or given permission by the Captain of the Port Puget Sound, his designated representative or the on-scene official patrol to do otherwise.

(j) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from complying with paragraphs (c), (d), (f), (g), (h), and (i), of this section.

(k) *Exception.* 33 CFR part 161 contains Vessel Traffic Service regulations. When measures or directions issued by Vessel Traffic Service Puget Sound pursuant to 33 CFR part 161 also apply, the regulations govern rather than the regulations in this section.

(l) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section in the vicinity of a large passenger vessel, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section.

(m) *Waiver.* The Captain of the Port Puget Sound may waive any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: December 10, 2003.

Danny Ellis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 04–747 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0402; FRL–7339–8]

Extension of Tolerances for Emergency Exemptions Multiple Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that

will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective January 14, 2004. Objections and requests for hearings, identified by docket ID number OPP–2003–0402, must be received by EPA on or before February 13, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: See the following table for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Pesticide/CFR cite	Contact person
Bifenthrin;§ 180.442	Andrea Conrath conrath.andrea@epa.gov (703) 308–9356
Avermectin; § 180.449 Azoxystrobin; § 180.507	Libby Pemberton pemberton.libby@epa.gov (703) 308–9364
Fluroxypyr 1-methylheptyl ester; § 180.535 Imidacloprid; § 180.472 Propyzamide; § 180.317	Andrew Ertman ertman.andrew@epa.gov (703) 308–9367
Tebufenozide; § 180.482	Stacey Milan Groce milan.stacey@epa.gov (703) 305–2505

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0402. 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/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development.

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

II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each chemical/commodity listed. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) of 1996 (Public Law 104–170) was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6) of the FFDCA. Therefore, the time-limited tolerances are extended until the date listed. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended

1. *Avermectin.* EPA has authorized under FIFRA section 18 the use of avermectin on avocado for control of avocado thrip in California. This regulation extends a time-limited tolerance for combined residues of the insecticide avermectin B1 (a mixture of avermectins containing greater than or equal to 80% avermectin B1a (5-O-demethyl avermectin A1) and less than or equal to 20% avermectin B1b (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A1)) and its delta-8,9-isomer in or on avocado at 0.02 parts per million (ppm) for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2006. A time-limited tolerance was originally published in the **Federal Register** of April 7, 1999 (64 FR 16843) (FRL–6070–6).

EPA has also authorized under FIFRA section 18 the use of avermectin on spinach for control of leafminers in California. This regulation extends a time-limited tolerance for combined residues of the insecticide avermectin B1 in or on spinach at 0.05 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2006. A time-limited tolerance was originally published in the **Federal Register** of August 19, 1997 (62 FR 44089) (FRL–5737–1). Additionally, this regulation also extends a time-limited tolerance for combined residues of the insecticide avermectin B1 in or on basil at 0.05 ppm for an additional 3–year period in connection with use under section 18 on basil in California to control leafminer. This tolerance will expire and is revoked on December 31, 2006. A time-limited tolerance was originally published in the **Federal Register** of October 29, 1997 (62 FR 56082) (FRL–5750–8).

2. *Azoxystrobin.* EPA has authorized under FIFRA section 18 the use of azoxystrobin on cabbage for control of alternaria leafspot and cercospora leafspot in Texas. This regulation extends a time-limited tolerance for combined residues of the fungicide azoxystrobin (methyl(E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate, and the Z-isomer of azoxystrobin methyl(Z)-2-(2-(6-(2-cyanophenoxy) pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) in or on head and stem (Brassica) subgroup at 30 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2006. A time-limited tolerance was originally published in the **Federal Register** of November 21, 2001 (66 FR 58400) (FRL–6809–3)

3. *Bifenthrin.* EPA has authorized under FIFRA section 18 the use of bifenthrin on sweet potatoes for control of soil beetles and weevils in Louisiana and Mississippi. This regulation extends a time-limited tolerance for residues of the insecticide bifenthrin ((2-methyl[1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylate) in or on sweet potato, roots at 0.05 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2005. A time-limited tolerance was originally published in the **Federal Register** of September 27, 2001 (66 FR 49308) (FRL–6801–5), subsequently corrected by a technical amendment published in the **Federal Register** of September 3, 2003 (68 FR 52353) (FRL–7323–9).

4. *Fluroxypyr 1-methylheptyl ester.* EPA has authorized under FIFRA section 18 the use of fluroxypyr 1-methylheptyl ester on field corn and sweet corn for control of volunteer potatoes in Washington, Oregon, Idaho, and Wisconsin. This regulation extends time-limited tolerances for residues of the herbicide fluroxypyr 1-methylheptyl ester ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid, 1-methylheptyl ester and its metabolite fluroxypyr in or on corn, sweet, K + CWHR at 0.05 ppm; corn, sweet, forage at 2.0 ppm; corn, sweet, stover at 2.5 ppm; corn, field, grain at 0.05 ppm; corn, field, forage at 2.0 ppm; corn, field, stover at 2.5 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2006. Time-limited tolerances were originally published in the **Federal Register** of August 5, 1998 (63 FR 41727) (FRL–6018–4).

5. *Tebufenozide.* EPA has authorized under FIFRA section 18 the use of tebufenozide on grapes for control of omnivorous leafroller and grape leaffolder in California. This regulation extends a time-limited tolerance for combined residues of the insecticide tebufenozide (benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide) in or on grapes at 3.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2005. A time-limited tolerance was originally published in the **Federal Register** of July 6, 2000 (FR 67 41594) (FRL–6590–1).

EPA has authorized under FIFRA section 18 the use of imidacloprid on almonds for control of the glassy-winged sharpshooter in California. This regulation extends time-limited tolerances for combined residues of the insecticide imidacloprid; (1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on almond hulls at 4.0 ppm and almond at 0.05 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2005. Time-limited tolerances were originally published in the **Federal Register** of November 7, 2001 (FR 66 56225) (FRL–6806–9).

EPA has received objections to a tolerance it established for imidacloprid on a specific food commodity. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. EPA has considered whether it is appropriate to extend this emergency exemption tolerance for imidacloprid while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support

establishing this tolerance at this time. First, the objections proceeding is unlikely to conclude prior to when action is necessary on this petition. NRDC's objections raise complex legal, scientific, policy, and factual matters. EPA has published a notice describing the nature of the NRDC's objections in more detail. This notice offered an opportunity for the public to comment on this matter and published in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7). EPA is now examining the extensive comments received. Second, the nature of the current action is extremely time-sensitive and addresses an emergency situation. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders.

EPA has also received objections to the tolerance it established for propiconazole on a specific food commodity. The objections were filed by the NRDC and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. EPA has considered whether it is appropriate to extend this emergency exemption tolerance for propiconazole while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support establishing this tolerance at this time. First, the objections proceeding is unlikely to conclude prior to when action is necessary on this petition. NRDC's objections raise complex legal, scientific, policy, and factual matters. EPA has published a notice describing the nature of the NRDC's objections in more detail. This notice offered an opportunity for the public to comment on this matter and published in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7). EPA is now examining the extensive comments received. Second, the nature of the current action is extremely time-sensitive and addresses an emergency situation. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders.

6. *Propyzamide.* EPA has authorized under FIFRA section 18 the use of propyzamide on cranberries for control of dodder in Delaware, Massachusetts, New Jersey, and Rhode Island. This regulation extends a time-limited tolerance for the combined residues of the herbicide propyzamide and its metabolites containing the 3,5-dichlorobenzoyl moiety (calculated as 3,5-dichloro-*N*-1,1-dimethyl-2-propenyl benzamide) in or on cranberries at 0.05 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2006. A time-limited tolerance was originally published in the **Federal Register** of September 16, 1998 (63 FR 49479) (FRL–6022–5).

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0402 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 13, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0402, to: Public Information

and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov.* Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established under section 408(l)(6) of the FFDCA in response to an exemption under FIFRA section 18, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 31, 2003.

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.317 [Amended]

■ 2. In § 180.317, in the table to paragraph (b), amend the entry for cranberries by revising the expiration date ''12/31/03'' to read ''12/31/06''.

§ 180.442 [Amended]

■ 4. In § 180.442, in the table to paragraph (b), amend the entry for sweet

potato, roots by revising the expiration date ''12/31/03'' to read ''12/31/05''.

§ 180.449 [Amended]

■ 5. In § 180.449, in the table to paragraph (b), amend the entries for avocado, basil, and spinach by revising the expiration dates ''12/31/03'' to read ''12/31/06''.

§ 180.472 [Amended]

■ 6. In § 180.472, in the table to paragraph (b), amend the entries for almond and almond hulls by revising the expiration dates ''12/31/03'' to read ''12/31/05''.

§ 180.482 [Amended]

■ 7. In § 180.482, in the table to paragraph (b), amend the entry for grape by revising the expiration date ''12/31/03'' to read ''12/31/05''.

§ 180.507 [Amended]

■ 8. In § 180.507, in the table to paragraph (b), amend the entry for head and stem (Brassica) subgroup by revising the expiration date ''12/31/03'' to read ''12/31/06''.

§ 180.535 [Amended]

■ 9. In § 180.535, in the table to paragraph (b), amend the entry for corn, field, forage; corn, field, grain; corn, field, stover, corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; and corn, sweet, stover; by revising the expiration date ''12/31/03'' to read ''12/31/06''.

[FR Doc. 04–554 Filed 1–13–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No 031119283–4001–02; I.D. 110703A]

RIN 0648–AQ80

50 CFR Part 648

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2004 Specifications

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

ACTION: Final rule; final 2004 specifications, and preliminary quota adjustment; notification of 2004 commercial summer flounder quota harvest for Delaware.

SUMMARY: NMFS issues final specifications for the 2004 summer flounder, scup, and black sea bass fisheries and makes preliminary adjustments to the 2004 commercial quotas for these fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, including scup possession limits. This action also prohibits federally permitted commercial vessels from landing summer flounder in Delaware in 2004. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Delaware, Federal vessel permit holders, and Federal dealer permit holders that no commercial quota is available for landing summer flounder in Delaware in 2004. The intent of this action is to establish allowed 2004 harvest levels and other measures to attain the target fishing mortality (F) or exploitation rates, as specified for these species in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

DATES: This rule is effective from January 14, 2004, through December 31, 2004.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment, Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents for the specification are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The specifications document is also accessible via the Internet at *http://www.mafmc.org*. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

The regulations outline the process for specifying annually the catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as an F rate or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2004 specifications for these species was provided in the proposed specifications (68 FR 66784, November 28, 2003). That information is not repeated here. NMFS makes one correction to the text published in the proposed 2004 specifications in this final rule. The amount of the summer flounder Total Allowable Landings (TAL) set aside for research activities to be conducted by the National Fisheries Institute and Rutgers University is 174,750 lb (79.3 mt), rather than 74,750 lb (40 mt), which was a typographical error.

NMFS will establish the 2004 recreational management measures for summer flounder, scup, and black sea bass by publishing a proposed and final rule in the **Federal Register** at a later date, following receipt of the Council's recommendations as specified in the FMP.

Summer Flounder

The FMP specifies an F of F_{max} that is the level of fishing that produces maximum yield per recruit. The best available scientific information

indicates that, for 2004, F_{max} for summer flounder is 0.26 (equal to an exploitation rate of about 22 percent from fishing). The TAL associated with the target F rate is allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is allocated to the coastal states based upon percentage shares specified in the FMP. The recreational harvest limit is specified on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2004.

This final rule implements the specifications contained in the proposed rule, i.e., a 28.2–million lb (12,791–mt) summer flounder TAL, which is allocated 16.92 million lb (7,675 mt) to the commercial sector and 11.28 million lb (5,117 mt) to the recreational sector. This TAL was determined by the Council's Summer Flounder Monitoring Committee to have at least a 50–percent probability of achieving the Fmax (0.26) that is specified in the FMP, if the 2003 TAL and assumed discard levels are not exceeded. One research project that would utilize the full summer flounder research set-aside (RSA), 174,750 lb (79.3 mt), has been recommended for approval. After deducting this RSA, the TAL is divided into a commercial quota of 16.82 million lb (7,630 mt) and a recreational harvest limit of 11.21 million lb (5,085 mt). If this project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the summer flounder TAL through publication of a notice in the **Federal Register** by NMFS.

Table 1 presents the final 2003 commercial summer flounder quota for each state, the reported 2003 landings for each state through October 31, 2003, and the resultant 2003 quota overages.

TABLE 1. SUMMER FLOUNDER PRELIMINARY COMMERCIAL 2003 LANDINGS BY STATE

State	2003 Quota[1]		Reported 2003 Landings through 10/31/03		Preliminary 2003 Overage	
	lb[2]	kg[2]	lb	kg[3]	lb	kg[3]
ME	(6,980)	(3,125)	0	0	6,890	3,125
NH	64	29	0	0	0	0
MA	907,274	411,537	926,149	420,098	18,875	8,562
RI	2,183,907	990,614	1,993,084	904,057	0	0
CT	314,306	142,568	355,413	161,214	41,107	18,646
NY	1,064,869	483,021	988,645	448,446	0	0
NJ	2,329,010	1,056,432	2,280,738	1,034,536	0	0
DE	(45,609)	(20,688)	4,479	2,032	50,088	22,720
MD	283,951	128,799	357,248	162,047	73,297	33,247
VA	2,968,429	1,346,471	2,931,066	1,329,523	0	0
NC	3,821,924	1,733,613	4,273,519	1,938,456	451,595	204,842
Total[3]	13,873,734	6,293,084	14,110,341	6,400,409	641,852	291,142

[1] Reflects quotas as published on March 3, 2003 (68 FR9905)
[2] Parentheses indicate a negative number.
[3] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal the overage because they reflect positive quota balances in several states.

Based upon 2003 landings through October 31, 2003, NMFS adjusts the 2004 commercial quotas for 2003 quota overages. The commercial summer flounder percent share, 2004 initial quota (with and without the research set-aside deduction), 2003 quota overages, and the adjusted quotas (with and without the research set-aside deduction) for 2004, by state, are presented in Table 2.

The FMP does not allocate Pennsylvania a share of the annual summer flounder quota. However, in June 2003, 6,880 lb (3,125 kg) of summer flounder were landed in Pennsylvania; these landings are under investigation by the NMFS Office of Law Enforcement. The Federal regulations regarding summer flounder quotas do not address the incidence of summer landings in a state that does not have a quota allocation, or the accounting of such landings against the commercial quota. NMFS does not anticipate that the amount of summer flounder landings in Pennsylvania, which is negligible relative to the overall 2003 commercial quota, will affect the upcoming annual stock assessment for the purpose of recommending a TAL for the 2005 fishing year. NMFS and the Commission are concerned that the landing of summer flounder in states without an allocation undermines the Interstate and Federal FMPs for summer flounder, scup, and black sea bass. NMFS intends to work with the Commission to further address this issue.

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TABLE 2. FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2004

State	Percent Share	2004 Initial Quota		2004 Initial Quota, less Research Set-Aside		2003 Quota Overages (through 10/31/03)[1]		Adjusted 2004 Quota[2]		Adjusted 2004 Quota, less Research Set-Aside	
		lb	kg	lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	8,047	3,650	7,997	3,628	6,890	3,125	1,157	525	1,107	502
NH	0.00046	78	35	77	35	0	0	78	35	77	35
MA	6.82046	1,154,022	523,461	1,146,871	520,217	18,875	8,562	1,135,147	514,899	1,127,996	511,655
RI	15.68298	2,653,560	1,203,647	2,637,117	1,196,188	0	0	2,653,560	1,203,647	2,637,117	1,196,188
CT	2.25708	381,898	173,228	379,531	172,154	41,107	18,646	340,791	154,582	338,424	153,508
NY	7.64699	1,293,871	586,896	1,285,853	583,259	0	0	1,293,871	586,896	1,285,853	583,259
NJ	16.72499	2,829,868	1,283,620	2,812,332	1,275,655	0	0	2,829,868	1,283,620	2,812,332	1,275,655
DE	0.01779	3,010	1,365	2,991	1,357	50,088	22,720	(47,078)	(21,354)	(47,097)	(21,363)
MD	2.03910	345,016	156,498	342,878	155,528	73,297	33,247	271,719	123,251	269,581	122,281
VA	21.31676	3,606,796	1,636,032	3,584,445	1,625,894	0	0	3,606,796	1,636,032	3,584,445	1,625,894
NC	27.44584	4,643,836	2,106,430	4,615,059	2,093,377	451,595	204,842	4,192,241	1,901,588	4,163,464	1,888,535
Total[3]	100.00	16,920,000	7,674,862	16,815,150	7,627,302	641,852	291,142	16,325,228	7,405,075	16,220,396	7,357,523

[1] For Delaware, includes continued repayment of overharvest from 2002

[2] Parentheses indicate a negative number.

[3] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding

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The Commission has established a system whereby 15 percent of each state's quota may be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery in a state has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in these 2004 final specifications because NMFS does not have authority to establish such subcategories.

Delaware Summer Flounder Closure

Table 2 above indicates that, for Delaware, the amount of the 2003 summer flounder quota overage (inclusive of overharvest from 2002) is greater than the amount of commercial quota allocated to Delaware for 2004. As a result, there is no quota available for 2004 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2004, landings of summer flounder in Delaware by vessels holding commercial Federal fisheries permits are prohibited for the 2004 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2004 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

Scup

The target exploitation rate for scup for 2004 is 21 percent. The FMP specifies that the Total Allowable Catch (TAC) associated with a given exploitation rate be allocated 78 percent to the commercial sector and 22 percent to the recreational sector. Scup discard estimates are deducted from both sectors' TACs to establish TALs for each sector (TAC less discards = TAL). The commercial TAL is then allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January-April)--45.11 percent; Summer (May-October)--38.95 percent; and Winter II (November-December)--15.94 percent. The recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2004.

This final rule implements the specifications contained in the proposed rule, i.e., an 18.65–million lb (8,460–mt) scup TAC and a 16.5–million lb (7,484–mt) scup TAL. Two research projects that would utilize the full scup RSA, 160,000 lb (73 mt), have been recommended for approval. After deducting this RSA, the TAL is divided into a commercial quota of 12.35 million lb (5,600 mt) and a recreational harvest limit of 3.99 million lb (1,812 mt). If either of these projects is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the scup TAL through publication of a notice in the **Federal Register** by NMFS.

Table 3 presents the final 2003 commercial scup quota for each period and the reported 2003 landings for the 2003 Winter I and Summer periods; there was no overage of the Winter I or Summer quota. On November 3, 2003 (68 FR 62250), NMFS published the final rule to implement Framework 3 to the FMP, and announced a transfer of quota from Winter I to Winter II 2003. Per the quota counting procedures, after June 30, 2004, NMFS will compile all available landings data for Winter II 2003 and compare the landings to the Winter II 2003 allocation, as adjusted. Any overages will be determined and required deductions will be made to the Winter II 2004 allocation.

TABLE 3.–SCUP PRELIMINARY 2003 COMMERCIAL LANDINGS BY QUOTA PERIOD

Quota Period	2003 Quota[1]		Reported 2003 Landings through 10/31/03		Preliminary Overages as of 10/31/03	
	lb	kg	lb	kg	lb	kg
Winter I	5,602,495	2,541,275	3,730,118	1,691,970	0	0
Summer	4,521,879	2,051,111	4,467,940	2,026,644	0	0
Winter II	1,979,689	897,981	n/a[2]	n/a[2]	n/a[2]	n/a[2]
Total	12,104,063	5,490,367	8,198,058	3,718,614		

[1] Reflects quotas as published on March 3, 2003 (68 FR 9905).
[2] Not applicable.

Table 4 presents the commercial scup percent share, 2004 TAC, projected discards, 2004 initial quota (with and without the research set-aside deduction), and possession limits, by quota period. To achieve the commercial quotas, this final rule implements a Winter I period (January-April) per trip possession limit of 15,000 lb (6.8 mt), and a Winter II period (November-December) per trip possession limit of 1,500 lb (680 kg). The Winter I per trip possession limit will be reduced to 1,000 lb (454 kg) when 80 percent of the commercial quota allocated to that period is projected to be harvested.

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Table 4. INITIAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2004 BY QUOTA PERIOD

Period	Percent Share	Total Allowable Catch		Discards		Initial Quota w/o Research Set-Aside		Initial Quota, less Research Set-Aside		Possession Limits (Per Trip)[2]	
		lb	kg[1]	lb	kg	lb	kg	lb	kg	lb	kg
Winter I	45.11	6,563,505	2,977,186	938,288	425,605	5,625,217	2,551,582	5,568,920	2,526,045	15,000	6,804
Summer	38.95	5,667,225	2,570,636	810,160	367,486	4,857,065	2,203,150	4,808,455	2,181,101	n/a[3]	n/a[3]
Winter II	15.94	2,319,270	1,052,014	331,552	150,391	1,987,718	901,623	1,967,825	892,600	1,500	680
Total	100.00	14,550,000	6,599,837	2,080,000	943,482	12,470,000	5,656,355	12,345,200	5,599,746	.....	.....

[1] Kilograms are as converted from pounds and may not necessarily add due to rounding.

[2] The Winter I landing limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation.

[3] Not applicable.

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The final rule to implement Framework 3 to the FMP (68 FR 62250, November 3, 2003) implemented a process, for years in which the full Winter I commercial scup quota is not harvested, to allow unused quota from the Winter I period to be rolled over to the quota for the Winter II period. In any year that NMFS determines that the landings of scup during Winter I are less than the Winter I quota for that year, NMFS will, through a notification in the **Federal Register**, increase the Winter II quota for that year by the amount of the Winter I underharvest, and adjust the Winter II possession limits consistent with the amount of the quota increase, based on the possession limits presented in Table 5.

TABLE 5. POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

Initial Winter II Possession Limit		Rollover from Winter I to Winter II		Increase in Initial Winter II Possession Limit		Final Winter II Possession Limit after Rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
1500	680	0–499,999	0–227	0	0	1500	680
1500	680	500,000–999,999	227–454	500	227	2000	907
1500	680	1,000,000–1,499,999	454–680	1000	454	2500	1134
1500	680	1,500,000–1,999,999	680–907	1500	680	3000	1361
1500	680	2,000,000–2,500,000	907–1,134	2000	907	3500	1587

Black Sea Bass

For 2004, the target exploitation rate for black sea bass is 25 percent. The FMP specifies that the TAL associated with a given exploitation rate be allocated 49 percent to the commercial sector and 51 percent to the recreational sector. The recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2004.

This final rule implements the specifications contained in the proposed rule, i.e., an 8–million lb (3,629–mt) black sea bass TAL. Three research projects that would utilize the full black sea bass RSA, 134,792 lb (61 mt), have been recommended for approval by the Council. The black sea bass TAL, having been adjusted to reflect this RSA, is divided into a commercial quota of 3.86 million lb (1,751 mt) and a recreational harvest limit of 4.01 million lb (1,819 mt). If any of these projects is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the black sea bass TAL through publication of a notice in the **Federal Register** by NMFS.

The final rule to implement Amendment 13 to the FMP (68 FR 10181, March 4, 2003) established an annual (calendar year) coastwide quota for the commercial black sea bass fishery to replace the quarterly quota allocation system. The quota counting procedures were accordingly revised to specify that landings in excess of the annual coastwide quota are to be deducted from the quota allocation for the following year based on landings for the current year through September 30, and landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual coastwide quota for the current year. Table 6 presents the initial 2004 commercial quota, the 2004 commercial quota less the research set-aside, the 2003 quota overage calculated as described above, and the resulting final adjusted 2004 commercial quota.

TABLE 6. FINAL BLACK SEA BASS COMMERCIAL QUOTA ALLOCATIONS FOR 2004

2004 Initial Quota		2004 Quota Less Research Set-aside		Quota Overages (through 09/30/03)		Final (Adjusted) 2004 Quota	
(lb)	(kg)	(lb)	(kg)	(lb)	(kg)	(lb)	(kg)
3,920,000	1,778,100	3,853,951	1,748,141	85,376	38,726	3,768,575	1,709,414

Changes From Proposed Rule

In the proposed rule for the 2004 specifications (68 FR 66784), NMFS proposed to implement the Council's recommendations regarding access to the Gear Restricted Areas (GRAs), with some exceptions, i.e., most notably that the Scup GRA Exemption Program (as implemented in 2003 (68 FR 12814, March 18, 2003)) would not resume once a discard trigger is met, and that GRA monitors would be placed on 100 percent of participating vessels.

NMFS has consistently supported the concept of gear modifications to reduce scup discards, if such measures can be justified on the basis of sound scientific review. However, many concerns remain about the Scup GRA Access Program that was recommended by the Council in 2003 and described in the proposed rule. First, the recommended amounts of scup discards to trigger closure of the GRAs could easily be reached in just a few (i.e., less than 10) small-mesh fishing trips, given known co-occurrence levels of Loligo and scup. Even with the recommendation of the Northeast Fisheries Science Center (Center) for 100–percent coverage (whether by monitors or observers), effective closure of the Scup GRA Access Program without significant risk of exceeding the trigger amounts may not be possible. Second, in order to ensure consistency and reliability of data collected on participating vessels, the use of NMFS-certified observers is preferable to the use of non-NMFS-certified GRA monitors. Third, the current regulations are intended to provide sufficient data to evaluate the effectiveness of modified gear in the GRAs. Industry representatives have repeatedly commented that, if the effectiveness of modified gear in reducing scup discards can be demonstrated, the GRAs should be

eliminated or modified to be less restrictive. As proposed, the Scup GRA Access Program would not require the use of modified gear and would not provide the related collection of information regarding fishing practices and results. In January 2004, the Center will begin a quantitative assessment of the effectiveness of a 5 3/4–inch (14.6–cm) square mesh cylinder, installed as an extension of a *Loligo* squid net, in reducing scup bycatch and in retaining commercial quantities of *Loligo*. Until gear modifications, or other suitable measures, are demonstrated to reduce sufficiently the bycatch of scup in the fisheries for non-exempt species, NMFS considers the GRAs to be necessary. Lastly, there has not been sufficient technical analysis of the Scup GRA Access Program, as proposed. The Council's recommended trigger amounts, 50,000 lb (22.68 mt) and 70,000 lb (31.75 mt) in the Northern and Southern GRAs, respectively, were not based on science, and may not be appropriate trigger levels, either from a management/implementation perspective, or from a biological perspective.

Therefore, for the reasons stated above, NMFS has disapproved the Scup GRA Access Program. This final rule maintains the Scup GRA Exemption Program, as established in the 2003 final rule. The cost of each at-sea observer day to each participating vessel will be $1,150. The $1,150 per day cost accounts for the total program costs per at-sea observer day, including administrative and other costs associated with the observer program.

Comments and Responses

Seven comments were received from commercial Loligo industry participants and/or representatives, and one comment was received from the Council, regarding the proposed measures.

Comment 1: Two of the commenters support the proposed summer flounder TAL, but disagree with the stock level estimated by NMFS to produce the maximum sustainable yield (MSY) on a continuing basis (234.6 million lb), based on the argument that it is not an observed value and, therefore, may not be a valid target. The commenters add that industry representatives and scientists have raised concerns on several occasions regarding the stock's density-dependent responses, and request that the stock size assumptions to achieve MSY be re-evaluated as soon as possible. The commenters also urge NMFS and the Council to initiate changes to the regulations to allow for recreational overharvest from the current year to be deducted from the quota for the following year.

Response: The Overfishing Definition Review Panel recommended that the Council base MSY proxy reference points on yield-per-recruit analysis, and this recommendation was adopted in formulating the FMP Amendment 12 overfishing definition, based on the 1999 assessment. The median number of summer flounder recruits was estimated from the 1999 Virtual Population Analysis for the 1982–1998 period, and MSY was estimated based on this information. As a result of the Council's Science and Statistical Committee (SSC) peer review, the reference points were retained in the 2001 stock assessment. In the review of the 2002 stock assessment, the 35th Northeast Regional Stock Assessment Review Committee (SARC 35) concluded that revision of the reference points was not warranted at that time due to the continuing stability of the input data and resulting reference point estimates. These reference points were retained in the 2003 assessment, as well. The Stock Assessment Workshop Southern Demersal Working Group, the scientific body responsible for the summer flounder assessment, has continued to monitor the biological characteristics of the stock in accordance with SARC and SSC recommendations. The biological reference points will continue to be updated and potential revisions would be subject to peer review as part of the continuing assessment process. The next assessment update for summer flounder is scheduled for review by the Council's Monitoring Committee during the summer of 2004. The next review of the summer flounder assessment by the SARC is scheduled for the summer of 2005.

The Council has considered the issue regarding recreational overages on several occasions without identifying an alternative method of calculating recreational landings or an appropriate means of using the Marine Recreational Fisheries Statistical Survey (MRFSS) data to calculate overages. The fact that commercial and recreational fisheries are inherently different is the basis for their differing regulatory requirements. Overages in the commercial fishery, which are easily calculated, are deducted from the appropriate states' quotas the following year. Recreational catches, which are estimated based upon the MRFSS methodology, are used as a basis to formulate recreational management measures (minimum fish size, individual possession limits, and fishing seasons) to constrain the recreational catch to the harvest limit set for the following year. This is done in part because recreational data are substantially incomplete at the time the recreational harvest limit must be specified by the Council. The procedures used by the Council and NMFS since quota management was established in 1993 has never compensated in subsequent years for recreational landings in excess of the recreational harvest limit.

Comment 2: Three of the commenters support a shift of the inside and outside, i.e., shoreward and seaward, boundaries of the Southern GRA by 2 minutes (1.75 miles (3.2 km)) west to allow the *Loligo* fleet greater fishing opportunities and to demonstrate that the gear modifications and fishing practices of the *Loligo* fleet over the past 3–4 years (not including use of an escapement panel) can result in a directed *Loligo* fishery with little bycatch of scup. The commenters also requested that NMFS determine how many observer trips in the area that would be opened to the east of the adjusted Southern GRA would be needed to provide adequate scup discard estimates in order to support this modification.

Response: In response to a previous request by the commercial *Loligo* industry to move the boundaries of the Southern GRA, the Council evaluated distributional data from the Northeast Fisheries Science Center's Winter and Spring trawl surveys and did not support the change. In a July 2003 report, the Council stated that the Southern GRA encompasses the geographic range occupied by *Loligo* and scup during the effective period, and that the portion of the Southern GRA that would be open to small-mesh trawls if the boundaries were shifted coincides with both recent survey catches of scup and with scup-*Loligo* overlap. The suggestion to move the boundaries 2 minutes to the west was recently directed by the commenter to the Council and Center for their consideration, but was not supported. Because of the spatial resolution of catch data, it is difficult to justify the suggested shift of the boundaries. Further, in the case of a shoreward shift of the southern GRA, 100–percent observer coverage would be required to account for the discards of scup in the area that would be opened to the east, due to the inter-annual and spatial variability in the co-occurrence of the two species. Should changes to the Northern or Southern GRA be determined to be appropriate, i.e., supported by the available data, they should be initiated by the Council through the framework adjustment process.

Comment 3: Four of the commenters support the Scup GRA Access program as proposed, with the exception of the requirement for GRA monitors to be carried by 100 percent of participating vessels, as this level exceeds observer requirements used by NMFS to monitor fishing activities in other regions, exceeds the Atlantic Coastal Cooperative Statistics Program (ACCSP) standards, and may result in a significant economic burden on the industry. The comment from the Council contains a request for 20–percent coverage. Two of these four commenters also express concern that if there are not enough GRA monitors available to meet the potential demand, NMFS may deny access to qualified vessels to the GRAs. Another commenter supports the proposed rule but provided recommendations regarding the administration of the Scup GRA Access Program, including the process of placing monitors on vessels, Vessel Monitoring System (VMS) reporting requirements, and action to be taken by NMFS when the discard triggers are met.

Response: The Scup GRA Access Program, both as recommended by the Council, and as proposed, has been disapproved. Under the existing 100–percent observer coverage program, a maximum of 72 vessels are expected to apply for an authorization letter (based on the average number of vessels making directed *Loligo* trips from 1996 through 1999) and the maximum number of trips would be 209. The actual total number of trips required to carry an observer under the existing program would vary, depending upon the individual decisions of vessel owners regarding the potentially increased profitability of fishing in the GRAs versus additional observer costs. NMFS anticipates that the Scup GRA Exemption Program, in combination with the Center's upcoming study on 5 3/4–inch (14.6–cm) square mesh cylinders described above, will facilitate the collection of information necessary to evaluate the effectiveness of gear modifications in reducing scup bycatch in the fisheries for non-exempt species (Loligo, black sea bass, and silver hake (whiting)).

Comment 4: Four of the commenters express opposition to the requirement for each participating vessel to pay for the full cost of carrying a GRA monitor or observer. Two of the four commenters included the recommendation that if NMFS does not pay the costs of monitors, NMFS should devise a method to spread the cost of GRA monitor coverage equally among all vessels participating in the GRAs. The other two commenters state that they could support a nominal fee to cover the costs of Scup GRA monitors if the amount is reasonable for the services provided, and if the required number of observed trips is the number necessary to generate a statistically sound estimate of scup discards.

Response: The Scup GRA Exemption Program, which was requested by the industry to provide NMFS more complete data to evaluate the effectiveness of gear modifications in reducing discards, is dependent on observer coverage. The provision that vessels pay for observers was discussed at the August 2002 Council meeting.

As indicated above, the cost of one at-sea observer day would be $1,150. This cost would apply to all participating vessels, so a cost-sharing arrangement would not be appropriate. The $1,150 per day cost accounts for the total program costs per at-sea observer day, including administrative and other costs associated with the observer program. The Center has recommended 100–percent observer coverage due to the inter-annual and spatial variability in the co-occurrence of scup and *Loligo*.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This action establishes annual quotas for the summer flounder, scup, and black sea bass fisheries and possession limits for the commercial scup fishery. If implementation of the specifications is delayed, NMFS will be prevented from carrying out its function of preventing overfishing of these three species. The fisheries covered by this action will begin making landings on January 1, 2004. If a delay in effectiveness is required, and a quota were to be harvested during a delayed effectiveness period, the lack of effective quota specifications would prevent NMFS from closing the fishery. The scup and black sea bass fisheries are expected to be active at the start of the fishing season in 2004. In addition, the Delaware summer flounder fishery would be open for fishing but in a negative quota situation. This likely would result in large overages that would have distributional effects on other quota periods and might potentially disadvantage some gear sectors. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delayed effectiveness period for this rule.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Eight comments were received on the measures contained in the proposed rule. The commenters did not refer specifically to the IRFA, but five of the commenters discussed the economic impacts on small entities, especially as they relate to scup observer coverage. NMFS has disapproved the Scup GRA Access Program and instead maintains the Scup GRA Exemption Program as implemented in 2003. No changes to the proposed rule were required to be made as a result of public comments. For a summary of the comments received, refer to the section above titled ''Comments and Responses.''

Description and Estimate of Number of Small Entities to which Rule Will Apply

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in state waters. The Council estimates that the 2004 quotas could affect 2,122 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2002. However, the more immediate impact of this rule will likely be felt by the 1,041 vessels that actively participated (i.e., landed these species) in these fisheries in 2002.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Economic impacts are being minimized to the extent practicable with the quota specifications being implemented in this final rule, while being consistent with the target fishing mortality rates or target exploitation rates specified in the FMP. Specification of commercial quotas and possession limits is constrained by the conservation objectives of the FMP, and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The economic analysis assessed the impacts of the various management alternatives. In the Environmental Assessment (EA), the no action alternative is defined as follows: (1) No proposed specifications for the 2004 summer flounder, scup, and black sea bass fisheries would be published; (2) the indefinite management measures (minimum sizes, bag limits, possession limits, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2004; (4) the existing GRA regulations would remain in place for 2004; and (5) there would be no specific cap on the allowable annual landings in these fisheries (i.e., there would be no quota). Implementation of the no action alternative would be inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Act. In addition, the no action alternative would substantially complicate the approved management program for these fisheries, and would very likely result in overfishing of the resources. Therefore, the no action alternative is not considered to be a reasonable alternative to the preferred action and is not analyzed in the EA/RIR/IRFA/FRFA.

Alternative 1 (preferred) consists of the harvest limits proposed by the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) for summer flounder, scup, and black sea bass. Alternative 2 consists of the most restrictive quotas (i.e., lowest landings) considered by the Council and the Board for all of the species. Alternative 3 consists of the least restrictive quotas (i.e., highest landings) considered by the Council and Board for all three species. Although Alternative 3 would result in higher landings for 2004, it would also likely exceed the biological targets specified in the FMP.

Table 7 evaluates three alternative combinations of summer flounder, scup, and black sea bass landings (commercial and recreational).

TABLE 7. COMPARISON (IN MILLION LB) OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED

	2004 Initial TAL	2004 RSA	2003 Commercial Quota Overage	2004 Final Adjusted Commercial Quota	2004 Preliminary Recreational Harvest Limit
Quota Alternative 1 (Preferred)					
Summer Flounder Preferred Alternative	28.20	0.17	0.64	16.22	11.21
Scup Preferred Alternative (Status quo)	16.50	0.16	0.00	12.35	3.99
Black Sea Bass Preferred Alternative	8.00	0.13	0.09	3.77	4.01
Quota Alternative 2 (Most Restrictive Preferred)					
Summer Flounder Alternative 2 (Status Quo)	23.30	0.17	0.64	13.28	9.25
Scup Alternative 2	11.00	0.16	0.00	8.06	2.78
Black Sea Bass Alternative 2 (Status Quo)	6.80	0.13	0.09	3.18	3.40
Quota Alternative 3 (Least Restrictive)					
Summer Flounder Alternative 3	30.10	0.17	0.05	17.36	11.97
Scup Alternative 3	22.00	0.16	0.00	16.64	5.20
Black Sea Bass Alternative 3	8.90	0.13	0.09	4.21	4.47

In summary, the 2004 commercial quotas and recreational harvest limits contained in the Preferred Alternative would result in substantial increases in the summer flounder and black sea bass landings and a small increase in scup landings, relative to 2003; percentage changes associated with each alternative are discussed in the proposed rule. The measures contained in the Preferred Alternative were chosen because they provide for the maximum level of landings that still achieve the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP.

The possession limits for scup were chosen in part because they are intended to provide for economically viable fishing trips that will be equitably distributed over the entire quota period.

The economic effects of the existing GRAs will not change as a result of this final rule. As indicated in the 2003 final rule to implement the Scup GRA Exemption Program, it is expected that individual vessels will assess changes in costs and revenues to their operations before they participate in this program. The increase in the cost of an at-sea observer day, as noted above, will understandably be a factor in a vessel owner's decision to participate in the Scup GRA Exemption Program.

Finally, the revenue decreases associated with the RSA program are expected to be minimal, and are expected to yield important long-term benefits associated with improved fisheries data. It should also be noted that fish harvested under the RSAs would be sold, and the profits would be used to offset the costs of research. As such, total gross revenue to the industry would not decrease substantially if the RSAs are utilized.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 8, 2004.

Rebecca Lent,

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[FR Doc. 04–807 Filed 1–9–04; 4:16 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 9
Wednesday, January 14, 2004

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

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 1469

Conservation Security Program

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Proposed rule; notice of meetings.

SUMMARY: The Natural Resources Conservation Service (NRCS) hereby gives notice that it will conduct 10 public forums whereby interested individuals can provide comments and ideas regarding the proposed rule for the Conservation Security Program (CSP). NRCS published a proposed rule for the implementation of CSP on January 2, 2004.

The public is invited to attend. There will be a CSP introductory workshop proceeding each listening session. Those who wish to speak at a forum may make arrangements in advance by calling the State contact listed or may sign up at the forum. Speakers will be limited to five minutes.

NRCS will accept written comments at each of the fora. NRCS will also accept written comments by mail, facsimile, or e-mail. Written comments must be postmarked or faxed by March 1, 2004, and addressed to: Thomas Christensen, Acting Director, Conservation Operations Division, Natural Resources Conservation Service, USDA, P.O. Box 2890, Washington, DC; fax: (202) 720–4265; or e-mail to *david.mckay@usda.gov;* Attn: Conservation Security Program. You may access the proposed rule via the Internet through the NRCS home page at *http://www.nrcs.usda.gov.* Select ''Farm Bill.''

USDA Natural Resources and Environment and NRCS leadership will participate in each meeting.

Date (2004)	State	City	Venue	Contact	Time
Jan. 13	Arizona	Tempe	Sheraton Airport Hotel, 1600 South 52nd Street, (480) 967–6600.	Jon Hall, (602) 280–8781	1–5 p.m.
Feb. 11	Florida	Ft. Pierce	U.S. Horticultural Laboratory, 2001 South Rock Road.	Bob Stobaugh, (352) 338–9565.	10 a.m.–1 p.m.
Feb. 11	Iowa	Des Moines	Four Points Sheraton, 4800 Merle Hay Road, (515) 278–4755.	Dennis Pate, (515) 284–4769.	1–4 p.m.
Feb. 11	Maine	Augusta	Civic Center, 76 Community Center Dr	Colleen Churchill, (207) 990–9551.	10 a.m.–1 p.m.
Feb. 10	Michigan	Lansing	Clarion Hotel and Conference Center, 3600 Dunckel Rd., (517) 351–7600.	Alan G. Herceg, (517) 324–5282.	1–3 p.m.
Feb. 11	Mississippi	Greenwood	Greenwood Civic Center, Highway 7 North.	James Johnson, (662) 453–2762, ext. 29.	1:30–3:30 p.m.
Jan. 21	Texas	Kerrville	Inn of the Hills Conference Center, 1001 Junction Highway.	Marsha Redwine, (254) 742–9800.	10 a.m.–1 p.m.
Jan. 13	Virginia	Roanoke	The Hotel Roanoke & Conference Center, 110 Shenandoah Ave.	Carol Lipinski, (804) 287–1691.	1–4 p.m.
Jan. 27	Washington	Spokane	Spokane Convention Center, 334 Spokane Falls Boulevard.	Raymond ''Gus'' Hughbanks, (509) 323–2900.	Noon–4 p.m.
Feb. 26	Wisconsin	Madison	Sheraton Hotel, 706 John Nolen Dr	Renae Anderson, (608) 662–4422, ext. 227.	1–4 p.m.

Please call the contact person of the meeting that you wish to attend to obtain further meeting details.

FOR FURTHER INFORMATION CONTACT: Diane Heard, Office of the Deputy Chief for Programs, telephone: (202) 720–3587; fax: (202) 720–6559; email: *diane.heard@usda.gov.*

Signed in Washington, DC, on January 6, 2004.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 04–728 Filed 1–13–04; 8:45 am]

BILLING CODE 3410–16–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 4, 5 and 111

[NOTICE 2004—2]

Rulemaking Petition: Public Access to Materials Relating to Closed Enforcement Cases

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: notice of availability.

SUMMARY: On December 9, 2003, the Commission received a Petition for Rulemaking jointly submitted by the Campaign Legal Center, the National Voting Rights Institute, the Center for Responsive Politics, and Democracy 21. Petitioners urge the Commission to revise its regulations to provide for the disclosure of materials relating to closed enforcement cases without unnecessarily burdening First Amendment interests. The Petition is available for inspection in the Commission's Public Records Office, through its Faxline service, and on its Web site, *http://www.fec.gov.*

DATES: Statements in support of or in opposition to the Petition must be submitted on or before February 13, 2004.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting

Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *publicaccess@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to have public comments posted on its web site within ten business days of the close of the comment period.

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

SUPPLEMENTARY INFORMATION:

The Federal Election Commission (''Commission'') has received a Petition for Rulemaking jointly submitted by the Campaign Legal Center, the National Voting Rights Institute, the Center for Responsive Politics, and Democracy 21. Petitioners ask that the Commission revise 11 CFR 4.2, 4.4(a)(3), 5.4, 111.20 and 111.21, so as to provide for the disclosure of materials relating to closed enforcement cases without unnecessarily burdening First Amendment interests. The Commission seeks comments on this issue.

Copies of the Petition for Rulemaking are available for public inspection at the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday though Friday between the hours of 9 a.m. and 5 p.m., and on the Commission's Web site, *http://www.fec.gov*. Interested persons may also obtain a copy of the Petition by dialing the Commission's Faxline service at (202) 501–3413 and following its instructions, at any time of the day and week. Request document #256.

Consideration of the merits of the Petition will be deferred until the close of the comment period. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: January 8, 2004.

Bradley A. Smith,

Chairman, Federal Election Commission.

[FR Doc. 04–786 Filed 1–13–04; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16584; Airspace Docket No. 03–AAL–25]

Proposed Establishment of Class E Airspace; Kwigillingok, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Kwigillingok, AK. Two new Standard Instrument Approach Procedures (SIAP) are being published for the Kwigillingok Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approaches at Kwigillingok, AK. Adoption of this proposal would result in the establishment of 700 ft. Class E airspace at Kwigillingok, AK.

DATES: Comments must be received on or before March 1, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16584/Airspace Docket No. 03–AAL–25, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16584/Airspace Docket No. 03–AAL–25.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of Notices of Proposed Rulemaking (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this

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

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Kwigillingok, AK. The intended effect of this proposal is to establish Class E airspace, from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Kwigillingok, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Kwigillingok Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 33, original; and (2) RNAV (GPS) Runway 15, original. New Class E controlled airspace extending upward from 700 feet above the surface within a 6.2 mile radius of the Kwigillingok Airport would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Kwigillingok Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Kwigillingok, AK [New]

Kwigillingok Airport, AK
(Lat. 59°52′35″ N., long. 163§°10′07″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Kwigillingok Airport.

* * * * *

Issued in Anchorage, AK, on January 5, 2004.

Anthony M. Wylie,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–757 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16586; Airspace Docket No. 03–AAL–24]

Proposed Establishment of Class E Airspace; Ruby, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Ruby, AK. Two new Standard Instrument Approach Procedures (SIAP) and two new Departure Procedures are being published for the Ruby Airport. There is no existing Class E airspace at Ruby, AK. Adoption of this proposal would result in the establishment of 700 ft. Class E airspace at Ruby, AK.

DATES: Comments must be received on or before March 1, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16586/ Airspace Docket No. 03–AAL–24, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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

triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16586/Airspace Docket No. 03–AAL–24.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of Notices of Proposed Rulemaking (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Ruby, AK. The intended effect of this proposal is to establish Class E airspace, from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Ruby, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Ruby Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 21, original; and (2) RNAV (GPS) Runway 3, original. The YUKUN One RNAV Departure and FILIN ONE RNAV Departure will also be established. New Class E controlled airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Ruby Airport would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Ruby Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Ruby, AK [New]

Ruby Airport, AK

(Lat. 64°43′38″ N., long. 155°28′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Ruby Airport.

* * * * *

Issued in Anchorage, AK, on January 5, 2004.

Anthony M. Wylie,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–756 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16587; Airspace Docket No. 03–AAL–22]

Proposed Amendment of Class E Airspace; Juneau, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class E airspace at Juneau, AK. A new Standard instrument approach procedure is being published for Juneau, AK. Additional Class E surface area airspace is needed to protect instrument flight rules (IFR) operations at Juneau, AK. The additional Class E surface area airspace will ensure that aircraft executing the new standard instrument approach procedure to Runway 8 remain within controlled airspace. Adoption of this proposal would result in additional Class E surface area airspace at Juneau, AK.

DATES: Comments must be received on or before March 1, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of

Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16587/ Airspace Docket No. 03–AAL–22, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16587/Airspace Docket No. 03–AAL–22.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of Notices of Proposed Rulemaking (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by adding Class E surface area airspace at Juneau, AK. The intended effect of this proposal is to amend Class E surface area airspace necessary to contain Instrument Flight Rules (IFR) operations at Juneau, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed a new SIAP for the Juneau International Airport. The new approach is Area Navigation (Global Positioning System) (RNAV GPS) V Runway (RWY) 8, original. Amended Class E controlled airspace extending upward from the surface within 2.8 miles south and 2.2 miles north of the Juneau Localizer west course, extending from the 3-mile radius of the Juneau International Airport to 8.9 miles west of the Juneau International Airport would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedure for the Juneau International Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E4 airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004 in FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is to be amended as follows:

* * * * *

Paragraph 6004 Class E airspace designated as an extension to a Class D or Class E surface area.

* * * * *

AAL AK E4 Juneau, AK [Amended]

Juneau Airport, AK
(Lat. 58°21′18″ N., long. 134°34′35″ W.)
Juneau Localizer
(Lat. 58°21′32″ N, long. 134°38′10″ W)
That airspace extending upward from the surface within 2.8 miles south and 2.2 miles north of the Juneau Localizer west course, extending from the 3-mile radius of the Juneau International Airport to 8.9 miles west of the Juneau International Airport.

* * * * *

Issued in Anchorage, AK, on January 5, 2004.

Anthony M. Wylie,

Acting Manager, Air Traffic Division, Alaskan.

[FR Doc. 04–755 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16059; Airspace Docket No. 03–AGL–16]

Proposed Modification of Class E Airspace; Mount Comfort, IN; Proposed Revocation of Class E Airspace; Indianapolis, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Mount Comfort, IN, and revoke Class E airspace at Indianapolis, IN. The Indianapolis Brookside Airpark has been abandoned, and the Standard Instrument Approach Procedures (SIAPS) decommissioned. The Class E airspace area extending upward from 700 feet above the surface of the earth is no longer needed. This action would revoke the existing Class E airspace area for Indianapolis Brookside Airpark, IN, and modify the existing Class E airspace area for Mount Comfort Airport, IN.

DATES: Comments must be received on or before March 15, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2003–16059/ Airspace Docket No. 03–AGL–16, at the beginning of your comments. You may also submit comments on the internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Patricia A. Graham, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16059/Airspace Docket No. 03–AGL–16.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking wil be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Mount Comfort, IN, for Mount Comfort Airport, and revoke Class E airspace at Indianapolis, IN for Indianapolis Brookside Airpark. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

AGL IN E5 Indianapolis Brookside Airpark, IN [Revoked]

AGL IN E5 Mount Comfort, IN [Revised]

Mount Comfort Airport, IN
(Lat. 39°50′37″ N., long. 85°53′49″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mount Comfort Airport, and within a 6.3-mile radius of Indianapolis Metropolitan Airport, excluding that airspace within the Indianapolis Terry Airport, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois, on December 10, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 04–849 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16544; Airspace Docket No. 03–AGL–19]

Proposed Modification of Class E Airspace; Greencastle, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Greencastle, IN. Standard Instrument Approach Procedures (SIAPS) have been developed for Putnam County Airport, Greencastle, IN. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the area of the existing controlled airspace for Putnam County Airport.

DATES: Comments must be received on or before March 15, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16544/Airspace Docket No. 03–AGL–19, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may receive the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Patricia A. Graham, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16544/Airspace Docket No. 03–AGL–19.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Greencastle, IN, for Putnam County Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

AGL IN E5 Greencastle, IN [Revised]

Greencastle, Putnam County Airport, IN
(Lat. 39°37′53″ N., long. 86°48′50″ W.)

That airspace extending upward from 700 feet above the surface within an 8.9-mile radius of Putnam County Airport.

* * * * *

Issued in Des Plaines, Illinois on December 10, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 04–851 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16225; Airspace Docket No. 03–AGL–18]

Proposed Modification of Class E Airspace; Ashtabula, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Ashtabula, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 282° helicopter point in space approach, has been developed for Ashtabula County Medical Center, Ashtabula, OH. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the radius of the existing controlled airspace for Ashtabula County Airport.

DATES: Comments must be received on or before March 15, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2003–16225/ Airspace Docket No. 03–AGL–18, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building above the address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Del Plaines, Illinois 60018 telphone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as the may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16225/Airspace Docket No. 03–AGL–18.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be change din light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http//www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Ashtabula, OH, for Ashtabula County Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures. Class E airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be removed subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

AGL OH E Ashtabula, OH [Revised]

Ashtabula County Airport, OH
(Lat. 41°46′41″ N., long. 80°41′44″ W.)
Ashtabula, Ashtabula County Medical Center, OH
Point in Space Coordinates
(Lat. 41°52′47″ N., long. 80°46′42″ W.)

That airspace extending upward from 700 feet above the surface of the earth within a 6.5-mile radius of the Ashtabula County Airport, and within a 6-mile radius of the Point in Space serving Ashtabula County Medical Center.

Issued in Des Plaines, Illinois, on December 10, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 04–850 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16457; Airspace Docket No. 03–ASO–4]

RIN 2120–AA66

Proposed Revision of VOR Federal Airway V–521

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking, (NPRM).

SUMMARY: This action proposes to revise a segment of Very High Frequency Omnidirectional Range (VOR) Federal Airway (V–521), in the vicinity of Fort Myers, FL, between the Lee County Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC), and the RINSE intersection (a navigation fix on V–521 that is formed by an intersection of radials from the Lee County and Labelle VORTACs). Specifically, this action would change the alignment of that segment of the airway from the Lee County VORTAC 014° (T) radial to the 012° (T) radial. This action would support a new standard terminal arrival route (STAR) serving the Southwest Florida International Airport and the Page Field Airport at Fort Myers, FL.

DATES: Comments must be received on or before March 1, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2003–16457, and Airspace Docket No. 03–ASO–4, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2003–16457, and Airspace Docket No. 03–ASO–4) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2003–16457, and Airspace Docket No. 03–ASO–4.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Southern Region Headquarters, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is proposing an amendment to title 14 Code of Federal Regulations (14 CFR) part 71 to revise a segment of V–521 in the vicinity of Fort Myers, FL, between the Lee County VORTAC, and the RINSE intersection (a navigation fix on V–521). Specifically, this action would change the alignment of that segment of the airway from the Lee County VORTAC 014° (T) radial to the Lee County VORTAC 012° (T) radial. This change is needed to support a new arrival route called the ''RINSE ONE STAR'' that is being developed to serve aircraft arriving at the Southwest Florida International Airport, and Page Field Airport in Fort Myers, FL. In conjunction with the development of the new STAR, the RINSE intersection will be relocated to a point within one mile of its current position. The proposed modification of V–521 is needed to ensure that the airway remains aligned with the RINSE intersection. These changes are the result of a comprehensive airspace redesign plan to enhance the management of aircraft operations traffic into and out of southwest Florida.

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

Environmental Review

The FAA has determined that this proposed action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–521 (Revised)

From Dolphin, FL; INT Dolphin 318° and Lee County, FL, 099° radials; Lee County; INT Lee County 012° and Lakeland, FL, 154° radials; Lakeland; Cross City, FL; INT Cross City 287° and Marianna, FL, 141° radials; Marianna; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; INT Montgomery 357° and Vulcan, AL, 139° radials; Vulcan.

* * * * *

Issued in Washington, DC, on January 6, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 04–754 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 101

Extension of Port Limits of Memphis, TN

AGENCY: Customs and Border Protection, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to extend the port limits of the port of Memphis, Tennessee, to include all of the territory within the limits of DeSoto

County, northern Mississippi. The port extension is being proposed in order to facilitate economic development in northern Mississippi, and to provide convenience and improved service to carriers, importers, and the general public.

DATES: Comments must be received on or before March 15, 2004.

ADDRESSES: Comments must be submitted to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, (Attention: Regulations Branch), 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at the CBP, 799 9th Street, NW., Washington, DC during regular business hours.

Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202–572–8768.

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, 202–927–6871.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Customs and Border Protection (CBP) is proposing to extend the port limits of the port of Memphis, to include all of the territory within the limits of DeSoto County, northern Mississippi, as described below. Recently, northern Mississippi has experienced marked business expansion and population growth. Currently, businesses located in northern Mississippi utilize the nearest port of entry at Memphis, Tennessee, and the port limits of Memphis do not extend beyond the Tennessee border. The proposed extension of the port limits to include the specified territory will facilitate economic development in northern Mississippi, and provide convenience and improved service to carriers, importers, and the general public.

Current Port Limits of Memphis, Tennessee

The current port limits of Memphis, Tennessee are described as follows in Treasury Decision (T.D.) 84–126 of May 14, 1984:

[T]he corporate limits of the city of Memphis, Tennessee* * * [and] all of the territory within the limits of Shelby County, Tennessee.

Proposed Port Limits of Memphis, Tennessee

CBP proposes to extend the port limits of the port of Memphis, Tennessee, to include DeSoto County, Mississippi so that the description of the port limits would read as follows:

The city limits of Memphis, Tennessee and all of the territory within the limits of Shelby County, Tennessee and DeSoto County, Mississippi.

Proposed Amendment to Customs Regulations

If the proposed port limits are adopted, CBP will amend § 101.3(b)(1), Customs Regulations (19 CFR 101.3(b)(1)) to reflect the new boundaries of the Memphis port of entry.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Signing Authority

The document is being issued in accordance with section 0.2(a) of the Customs Regulations (19 CFR 0.2(a)).

Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to CBP. All such comments received from the public, pursuant to this notice of proposed rulemaking, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, Department of Homeland Security, 799 9th Street, NW., Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq). Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Isaac D. Levy, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

Dated: January 9, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 04–813 Filed 1–13–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 162

RIN 1651–AA48

Publication of Administrative Forfeiture Notices

AGENCY: Bureau of Customs and Border Protection, Homeland Security.

ACTION: Proposed rule.

SUMMARY: The Customs Regulations set forth the procedure that the Bureau of Customs and Border Protection (CBP) must follow in administrative forfeiture proceedings, as required by section 607 of the Tariff Act of 1930, as amended. The statutory language allows for administrative forfeiture when CBP seizes: A prohibited importation; a transporting conveyance if used to import, export, transport or store a controlled substance or listed chemical; any monetary instrument within the meaning of 31 U.S.C. 5312(a)(3); or any conveyance, merchandise or baggage for which its value does not exceed $500,000.

If the value of the seized property exceeds $2,500, the current regulations require CBP to publish notice of seizure and intent to forfeit in a newspaper circulated at the Customs port and in the judicial district where the seizure occurred. When the value of the seized property does not exceed $2,500, CBP may publish the notice by posting it in a conspicuous place accessible to the public at the customhouse nearest the place of seizure.

This document proposes to amend the Customs Regulations by raising the threshold value of seized property for which CBP must publish a notice in a newspaper from $2,500 to $5,000. By changing the requirements for publication of administrative forfeiture notices, the proposed amendment would significantly reduce the publication costs incurred by CBP, which have often exceeded the value of seized property.

DATES: Comments must be received by March 15, 2004.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Greg Olsavsky, Chief, Fines Penalties & Forfeitures Branch, (202) 927–3119.

SUPPLEMENTARY INFORMATION:

Background

Section 162.45 of the Customs Regulations (19 CFR 162.45) sets forth the procedure that the Bureau of Customs and Border Protection (CBP) must follow when it seizes and gives notice of intent to forfeit property under administrative forfeiture proceedings, as required by section 607 of the Tariff Act of 1930, as amended (19 U.S.C. 1607). The statutory language allows for administrative forfeiture when CBP seizes (1) a prohibited importation; (2) a transporting conveyance if used to import, export, transport or store a controlled substance or listed chemical; (3) any monetary instrument within the meaning of 31 U.S.C. 5312(a)(3); or (4) any conveyance, merchandise or baggage for which its value does not exceed $500,000.

Specifically, current § 162.45(b), Customs Regulations, addresses publication of notices under administrative forfeiture proceedings. If the value of the seized property exceeds $2,500, paragraph (b)(1) requires publication of administrative forfeiture notices in a newspaper circulated at the Customs port and in the judicial district where the seizure occurred. All known parties-in-interest are notified of the newspaper and expected dates of publication of the notice.

It is proposed to amend § 162.45(b)(1) to raise the value threshold of property for which CBP must publish an administrative forfeiture notice in a newspaper from $2,500 to $5,000.

When the value of the seized property does not exceed $2,500, current paragraph (b)(2) of § 162.45 allows CBP to publish a notice of seizure and intent to forfeit by posting it in a conspicuous place accessible to the public at the customhouse nearest the place of seizure. If the proposed amendment to paragraph (b)(1) is adopted, the applicability of paragraph (b)(2) would be automatically expanded to seizures of property valued under $5,000.

CBP last changed the regulation in 1985, when it increased the dollar threshold from $250 to $2,500. Since then, inflation has often caused the costs of publication in large metropolitan areas to exceed $2,500. Thus, in many cases the publication costs can be prohibitive when compared to the value of the property advertised.

If implemented, the proposed change to the regulations would result in estimated yearly savings of at least $147,000, based on FY 2002 expenditure levels.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to CBP, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Regulatory Flexibility Act and Executive Order 12866

CBP does not anticipate that the proposed amendment will have an impact on private parties, as it pertains to the agency's internal operating procedures. For that reason, it is certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

For the same reasons, this document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Drafting Information

The principal author of this document was Mr. Fernando Pena, Office of Regulations and Rulings, Customs and Border Protection. However, personnel from other Bureau offices participated in its development.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1 (b)(1).

List of Subjects in 19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Drug traffic control, Exports, Imports, Inspection, Law enforcement, Penalties, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Search warrants, Seizures and forfeitures.

Proposed Amendment to the Regulations

For the reasons stated above, it is proposed to amend part 162 of the Customs Regulations (19 CFR part 162) as set forth below.

PART 162—INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation for part 162 and the specific authority citation for § 162.45 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

Section § 162.45 also issued under 19 U.S.C. 1607, 1608.

* * * * *

§ 162.45 [Amended]

2. It is proposed to amend the first sentence of paragraph (b)(1) of § 162.45 by removing the monetary amount ''$2,500'' and adding in its place ''$5,000''.

Dated: January 8, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 04–724 Filed 1–13–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4676–N–12]

Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meeting

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

ACTION: Notice of Negotiated Rulemaking Committee meeting.

SUMMARY: This document announces the final meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The purpose of the Committee is to discuss and negotiate a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other regulatory issues that arise out of the allocation or reallocation of IHBG funds.

DATES: The committee meeting will be held on Tuesday, January 13, 2004, Wednesday, January 14, 2004, Thursday, January 15, 2004, and Friday, January 16, 2004. The committee meeting will begin at approximately 8:30 a.m. on Tuesday, January 13, 2004, and is scheduled to adjourn at approximately 6:30 p.m. on Friday, January 16, 2004.

ADDRESSES: The meeting will take place at the Crowne Plaza Hotel, 4255 S. Paradise Road, Las Vegas, NV 89109; telephone (702) 369–4400 (this is not a toll-free number).

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

SUPPLEMENTARY INFORMATION:

I. Background

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

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

This document announces the final meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document. The agenda planned for the meeting includes discussion and approval of draft regulatory language. The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document.

Dated: January 9, 2004.

Rodger J. Boyd,

Deputy Assistant Secretary for Native American Programs.

[FR Doc. 04–827 Filed 1–13–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD05–03–036]

RIN 1625–AA01

Baltimore Harbor Anchorage Project

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the geographic coordinates and modify the regulated use of the anchorages in Baltimore Harbor, MD. The Army Corps of Engineers and the Coast Guard discussed changes to the coordinates of Anchorage 2 after the comment period for the Baltimore Harbor Anchorage Project notice of proposed rulemaking (NPRM) had closed. The discussions resulted in two changes not yet commented on by the public. This supplemental notice of proposed rulemaking solicits comments for those two additional changes plus all original changes included in the NPRM. An explanation of the two additional proposed changes can be found in the ''Discussion of Rule'' section of this document.

DATES: Comments and related material must reach the Coast Guard on or before February 13, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–036 and are available for inspection or copying at Commander, Fifth Coast Guard District (oan), 431 Crawford Street, Portsmouth, VA 23704–5004 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Timothy Martin, Fifth Coast Guard District Aids to Navigation and Waterways Management Branch, (757) 398–6285, e-mail: *trmartin@lantd5.uscg.mil.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD 5–03–036), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Regulatory History

On July 2, 2003, the Coast Guard published an NPRM in the **Federal Register** titled ''Baltimore Harbor Anchorage Project'' (68 FR 39503)

explaining changes requested as a result of the U. S. Army Corps of Engineer's Baltimore Harbor Anchorage Dredging Project. This supplemental notice of proposed rulemaking (SNPRM) provides further opportunity for public comment on the NPRM and the two changes incorporated after the original publication of the NPRM and close of comment period.

Background and Purpose

Following the close of the NPRM comment period two minor changes were proposed to Anchorage 2 including a northeast extension to the anchorage that more closely aligns it with the limits of the Federal Navigation Project and the addition of a cutoff angle. The cutoff angle rounds off the northwest corner of the anchorage to remove the need for vessels to make a sharp turn when making their approach to Seagirt Marine Terminal from Fort McHenry Channel or vice versa. Also, removal of the anchorage's northwest corner will eliminate the possibility of transiting vessels entering the anchorage boundary when making the same turn.

Discussion of Rule

To simplify the charting and representation of the Baltimore Harbor anchorage areas, Anchorage No. 2 was further extended toward the Seagirt Marine Terminal to the Northeast to make Anchorage No. 2 congruent with the toe of the Federal Navigation Project. A cutoff angle was provided on the Northwest side of Anchorage No. 2 to provide more maneuvering room for vessels as they approach from the Fort McHenry Channel. This supplemental notice of proposed rulemaking solicits comments on the changes made to Anchorage 2. The U.S. Army Corps of Engineers, Maryland state officials and the Maryland Pilots had no adverse comments to these proposed changes to Anchorage 2.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. The Coast Guard does not expect that these proposed new regulations will adversely impact maritime commerce.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels used for chartering, taxi, ferry services, or any other marine traffic that transit this area of Fort McHenry Channel in Baltimore Harbor. Changes to Anchorage No. 3 and Anchorage No. 4 may change the vessel routing through this area of the harbor. Deepening the anchorages and changing the coordinates for the anchorages would not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic could pass safely around the new anchorage areas. The new coordinates for the anchorages would be a change in dimension, the size of which would remain proportional to its current size, and their location would not interfere with commercial traffic.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTjg Timothy Martin at the address listed (*see* **ADDRESSES**).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

power and responsibilities between the Federal government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2. of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. This proposed rule would change the size of Anchorage No. 2, Anchorage No. 3 and Anchorage No. 4 and modifies the regulated uses of these anchorages.

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

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. In § 110.158 revise paragraphs (a) and (b) and add paragraphs (c), (d), and (e) to read as follows:

§ 110.158 Baltimore Harbor, MD.

(a) *Anchorage grounds*—(1) *Anchorage No. 1, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°15′13.0″ N	76°34′08.5″ W
39°15′10.5″ N	76°34′12.5″ W
39°14′52.5″ N	76°33′54.0″ W
39°14′48.0″ N	76°33′42.0″ W

Datum: NAD 83.

(2) *Anchorage No. 2, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′46.2″ N	76°33′25.8″ W
39°14′56.1″ N	76°33′37.1″ W
39°15′08.5″ N	76°33′37.7″ W
39°15′19.2″ N	76°33′24.5″ W
39°15′19.3″ N	76°33′14.4″ W
39°15′14.8″ N	76°32′59.6″ W
39°15′06.8″ N	76°32′45.5″ W
39°14′41.1″ N	76°32′27.2″ W
39°14′30.9″ N	76°32′33.5″ W
39°14′46.3″ N	76°32′49.7″ W
39°14′43.7″ N	76°32′53.6″ W
39°14′57.5″ N	76°33′08.1″ W

Datum: NAD 83.

(3) *Anchorage No. 3, Upper, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′32.5″ N	76°33′11.3″ W
39°14′46.2″ N	76°33′25.8″ W
39°14′57.5″ N	76°33′08.1″ W
39°14′43.7″ N	76°32′53.6″ W

Datum: NAD 83.

(4) *Anchorage No. 3, Lower, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′32.5″ N	76°33′11.3″ W
39°14′46.3″ N	76°32′49.7″ W
39°14′30.9″ N	76°32′33.5″ W
39°14′24.4″ N	76°32′39.9″ W
39°14′15.6″ N	76°32′53.6″ W

Datum: NAD 83.

(5) *Anchorage No. 4, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′52.9″ N	76°32′29.6″ W
39°14′05.9″ N	76°32′43.3″ W
39°14′07.3″ N	76°32′43.1″ W
39°14′17.9″ N	76°32′26.4″ W
39°14′05.3″ N	76°32′13.1″ W
39°14′00.5″ N	76°32′17.8″ W

Datum: NAD 83.

(6) *Anchorage No. 5, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′07.0″ N	76°32′58.5″ W
39°13′34.0″ N	76°32′24.0″ W
39°13′22.0″ N	76°32′29.0″ W
39°13′21.0″ N	76°33′12.0″ W

Datum: NAD 83.

(7) *Anchorage No. 6, general anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′42.5″ N	76°32′20.2″ W
39°13′20.0″ N	76°31′56.0″ W
39°13′34.0″ N	76°31′33.5″ W
39°14′02.0″ N	76°32′02.9″ W
39°13′50.5″ N	76°32′20.0″ W

Datum: NAD 83.

(8) *Dead ship anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′00.4″ N	76°34′10.4″ W
39°13′13.4″ N	76°34′10.8″ W
39°13′13.9″ N	76°34′05.7″ W
39°13′14.8″ N	76°33′29.8″ W
39°13′00.4″ N	76°33′29.9″ W

Datum: NAD 83.

(b) *Definitions.* As used in this section:

Class 1 (explosive) materials means Division 1.1, 1.2, 1.3, and 1.4 explosives, as defined in 49 CFR 173.50.

Dangerous cargo means ''certain dangerous cargo'' as defined in § 160.203 of this title.

U.S. naval vessel means any vessel owned, operated, chartered, or leased by the U.S. Navy; any pre-commissioned vessel under construction for the U.S. Navy, once launched into the water; and any vessel under the operational control of the U.S. Navy or a Combatant Command.

(c) *General regulations.* (1) Except as otherwise provided, this section applies to vessels over 20 meters long and vessels carrying or handling dangerous cargo or Class 1 (explosive) materials while anchored in an anchorage ground described in this section.

(2) Except in cases where unforeseen circumstances create conditions of imminent peril, or with the permission of the Captain of the Port, no vessel shall be anchored in Baltimore Harbor and Patapsco River outside of the anchorage areas established in this section for more than 24 hours. No vessel shall anchor within a tunnel, cable or pipeline area shown on a government chart. No vessel shall be moored, anchored, or tied up to any pier, wharf, or other vessel in such manner as to extend into established channel limits. No vessel shall be positioned so as to obstruct or endanger the passage of any other vessel.

(3) Except in an emergency, a vessel that is likely to sink or otherwise become a menace or obstruction to navigation, or to the anchoring of other vessels, may not occupy an anchorage, unless the vessel obtains a permit from the Captain of the Port.

(4) The Captain of the Port may grant a revocable permit to a vessel for a habitual use of an anchorage. Only the vessel that holds the revocable permit may use the anchorage during the period that the permit is in effect.

(5) Upon notification by the Captain of the Port to shift its position, a vessel at anchor shall get underway and shall move to its new designated position within 2 hours after notification.

(6) The Captain of the Port may prescribe specific conditions for vessels anchoring within the anchorages described in this section, including, but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communication guards on selected radio frequencies.

(7) No vessel at anchor or at a mooring within an anchorage may transfer oil to or from another vessel unless the vessel has given the Captain of the Port the four hours advance notice required by § 156.118 of this title.

(8) No vessel may anchor in a ''dead ship'' status (propulsion or control unavailable for normal operations) without prior approval of the Captain of the Port.

(d) *Regulations for vessels handling or carrying dangerous cargoes or Class 1 (explosive) materials.* (1) This paragraph applies to every vessel, except a U.S. naval vessel, handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(2) The Captain of the Port may require every person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, to hold either a pass issued by the Captain of the Port or another form of identification prescribed by the Captain of the Port.

(3) Each person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, shall present the pass or other form of identification prescribed by paragraph (d)(2) of this section to any Coast Guard Boarding Officer who requests it.

(4) The Captain of the Port may revoke at any time a pass issued under the authority of paragraph (d)(2) of this section.

(5) Each non-self-propelled vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must have a tug in attendance at all times while at anchor.

(6) Each vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while at anchor must display by day a bravo flag in a prominent location and by night a fixed red light.

(e) *Regulations for Specific Anchorages*—(1) *Anchorage 1.* Except when given permission by the Captain of the Port, a vessel may not anchor in this anchorage for more than 12 hours.

(2) *Anchorage 3.* Except when given permission by the Captain of the Port, a vessel may not anchor in this anchorage for more than 24 hours.

(3) *Anchorage 7.* Dead Ship Anchorage. The primary use of this anchorage is to lay up dead ships. Such use has priority over other uses. A written permit from the Captain of the Port must be obtained prior to the use of this anchorage for more than 72 hours.

Dated: December 18, 2003.

Sally Brice-O'Hara,

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

[FR Doc. 04–749 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 174

[USCG–2003–15708]

RIN 1625–AA75

Terms Imposed by States on Numbering of Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to expand the number of conditions that a State may require in order for owners to obtain vessel numbering certificates in that State. Current Federal statutes and regulations limit these conditions to proof of ownership or payment of State or local taxes. The proposed rule would allow any State to impose proof of liability insurance as a condition for obtaining vessel numbering certificates in that State.

DATES: Comments and related material must reach the Docket Management Facility on or before April 13, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2003–15708 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

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

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) 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.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Audrey Pickup, Project Manager, Office of Boating Safety, Program Operations Division, Coast Guard, by e-mail at *apickup@comdt.uscg.mil* or by telephone at 202–267–1077. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, 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 Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2003–15708), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit 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. We may change this proposed rule in view of them.

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, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Meeting

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

Background and Purpose

Title 46 of the United States Code contains provisions, in chapter 123, for the numbering of undocumented vessels equipped with propulsion machinery of any kind. (Undocumented vessels primarily include recreational boats and some types of commercial vessel.) Vessels must carry an identification number issued in compliance with the Standard Numbering System (SNS) maintained by the Coast Guard. States can administer their own numbering programs if those programs comply with SNS requirements and receive Coast Guard approval. SNS requirements include a limitation on the conditions that States can impose on applicants for vessel numbering. A State cannot impose any condition unless it relates to proof of tax payment, or has been sanctioned by Coast Guard regulations. The relevant Coast Guard regulation is 33 CFR 174.31. It permits States to impose only two conditions: Proof of tax payment, and proof of title.

In recent years, States have expressed an interest in imposing an additional condition—proof of liability insurance—which many people think will promote public safety. Currently, however, a State cannot impose such a condition without going beyond what 33 CFR 174.31 authorizes. As a result, a State imposing a liability insurance condition would not be in compliance with the SNS requirements of Federal law. This could threaten continued Coast Guard approval of the State's numbering system. Loss of that approval could result in decreased funding for the State's recreational boating safety program. The Coast Guard views these as undesirable results in light of the possible public safety benefit that could result from a State's decision to add an insurance condition. To avoid those results, we wish to remove any Coast Guard regulatory barrier to State imposition of an insurance condition. To do that, we must amend 33 CFR 174.31.

Discussion of Proposed Rule

The proposed rule would amend 33 CFR 174.31 by expanding the number of conditions a State may require in order for owners to obtain vessel numbering certificates in that State. The proposed rule would allow any State to impose proof of liability insurance as a condition for obtaining vessel numbering certificates in that State.

Regulatory Evaluation

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

Costs of Rule

This proposed rule would allow States to require proof of liability insurance as a condition for vessel registration. Because this proposed rule would simply allow, not require, States to incorporate proof of liability as a condition of registration, this rulemaking would not impose any direct costs on vessel owners in any State.

Benefits of Rule

This proposed rule expands the number of conditions States can consider in administering vessel numbering programs.

Small Entities

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

The proposed rule imposes no costs on the public but simply expands the number of conditions States can consider. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with

Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD (the ''Instruction''), which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under Figure 2–1, paragraph (34)(d) of the Instruction, from further environmental documentation. This rule allows States to require proof of liability insurance as a precondition for vessel numbering and therefore concerns documentation of vessels. An ''Environmental Analysis Check List'' is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 174

Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 174 as follows:

PART 174—STATE NUMBERING AND CASUALTY REPORTING SYSTEMS

1. The authority citation for part 174 is revised to read as follows:

Authority: 46 U.S.C. 6101 and 12302; Department of Homeland Security Delegation No. 0170.1 (92).

2. Amend § 174.31 by revising the section heading, redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 174.31 Terms imposed by States for numbering of vessels.

* * * * *

(b) Proof of liability insurance for a vessel except a recreational-type public vessel of the United States; or

* * * * *

Dated: January 8, 2004.

David S. Belz,

Rear Admiral, U.S. Coast Guard, Director of Operations.

[FR Doc. 04–748 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reexamination of Regulatory Mechanisms in Relation to the 1998 Florida Black Bear Petition Finding

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a reexamination of regulatory mechanisms in relation to the 1998 finding for a petition to list the Florida black bear (*Ursus americanus floridanus*), under the Endangered Species Act (ESA) of 1973, as amended. Pursuant to a court order, we have reexamined only one factor, the inadequacy of existing regulatory mechanisms in effect at the time of our previous 1998 12-month finding.

DATES: The finding announced in this document was made on December 24, 2003.

ADDRESSES: The complete file for this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Field Office, 6620 Southpoint Drive South, Jacksonville, FL 32216–0958.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Kasbohm (*see* **ADDRESSES** section), telephone (904) 232–2580; facsimile (904) 232–2404.

SUPPLEMENTARY INFORMATION:

Background

The Florida black bear (*Ursus americanus floridanus*) is a subspecies of the black bear (*Ursus americanus*), which ranges from northern Alaska and Canada south to northern Mexico. According to Hall (1981), the Florida black bear was primarily restricted to Florida, but also occurred in coastal plain areas of Georgia, Alabama, and extreme southeastern Mississippi. Following extensive human development, the distribution of the Florida black bear has become fragmented and reduced. Population sizes and densities prior to the arrival of the first European colonists are not known; but, the Florida Game and Fresh Water Fish Commission (Commission 1993; now the Florida Fish and Wildlife Conservation Commission) estimated that possibly 11,500 bears once inhabited Florida.

Our involvement with the Florida black bear began with the species' inclusion as a category 2 species in notices of review published on December 30, 1982 (47 FR 58454), September 18, 1985 (50 FR 37958), January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 53804). At that time, category 2 species were defined as those for which information in our possession indicated that listing was possibly appropriate, but for which sufficient data on biological vulnerability and threat were not currently available to support proposed

rules. On May 20, 1990, we received a petition from Ms. Inge Hutchison of Lake Geneva, Florida, to list the Florida black bear as a threatened species. The petition cited the following threats: (1) Illegal hunting by beekeepers, gallbladder poachers, and others, (2) loss and fragmentation of critical habitat, (3) hunting pressure, and (4) road mortality. We made a 90-day petition finding on October 18, 1990 (55 FR 42223), that substantial information was presented. Based on the information received and information in our files, a 12-month finding was made on January 7, 1992 (57 FR 596), indicating that the Service believed that the petitioned action was warranted but precluded by higher priority listing actions.

At the time of the finding, we assigned the species a level 9 priority based on our listing priority system that had been published on September 21, 1983 (48 FR 43098). ''Level 9'' meant that the species was subject to imminent but moderate-to-low threats throughout its range. The species was included as a category 1 candidate in the November 15, 1994, animal review notice (59 FR 58982). At that time, a category 1 candidate (now referred to as a ''candidate'') was one for which we had on file sufficient information to support issuance of a proposed rule. Following the 1992 12-month finding, the Service's Southeast Region used its listing resources to process higher priority listing actions. Furthermore, designation of candidates by category was discontinued in the February 28, 1996, notice of review (61 FR 7956). In that notice, the Florida black bear was included as a candidate with a priority number of 12, indicating a species under non-imminent moderate-to-low threat.

On January 21, 1997, the Service entered into an agreement in the *Fund for Animals et al.* v. *Babbitt* case (Civil No. 92–0800 SS, U.S. District Court for the District of Columbia). Among other things, we agreed that we would resolve the conservation status of the Florida black bear by December 31, 1998. In 1998, we updated the status review for this species (Kasbohm and Bentzien 1998) to include significant additional information that had become available since the 1992 assessment. Based on this review, on December 8, 1998, we published a new 12-month finding (63 FR 67613) that listing was not warranted, and removed the species from candidate status.

In 1999, Defenders of Wildlife and others filed suit challenging the Service's finding (*Defenders of Wildlife et al.* v. *Norton,* Civil Action 99–02072 HHK, U.S. District Court for the District of Columbia) claiming our decision was arbitrary, capricious, and an abuse of discretion, violating the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and the ESA. First, plaintiffs alleged that our determination that listing was not warranted, based on the existence of four larger secure populations distributed throughout the bear's historic range, was inconsistent with the ESA because we erroneously interpreted the phrase ''all or a significant portion of its range.'' Plaintiffs argued that our projection of the likely loss of a large percentage (approximately 40%) of existing bear habitat over the foreseeable future obligated us to list the species because this amount constituted a significant portion of the species' range. Second, plaintiffs argued that our decision not to list was arbitrary and capricious based on our 1992 ''warranted but precluded'' finding, and on the combined effects of habitat destruction, habitat isolation, roadkill, and hunting. Third, plaintiffs asserted that our determination that existing regulatory mechanisms were adequate to protect the bear was incorrect because it relied on possible future regulations rather than those that were both authorized and implemented at the time of our finding.

On December 13, 2001, the District Court issued a decision in the case. On the first issue, the Court found that our interpretation of ''significant portion of the range'' was reasonable. On the second issue, the Court found that biological data presented in the administrative record, especially the 1998 status review, supported our determinations that positive changes in the bear's situation from 1992 to 1998 supported a ''not warranted'' finding, and that the overall effects of habitat loss and isolation, roadkill, and hunting would not likely result in the bear becoming endangered in the foreseeable future. However, on the third issue, the Court concluded that it was unclear from the record whether the regulations upon which we relied were currently being implemented, to what extent we relied on the possibility of future regulatory actions, and whether we would have found that the bear was threatened if we had not considered the possibility of future actions. As a result, the Court remanded the case to the Service, ordering us to examine only regulatory mechanisms that are currently being undertaken and enforced, clarify our finding regarding the regulations upon which we based our decision, and to determine whether the inadequacy of existing regulatory mechanisms warranted listing the black bear as a threatened species.

Pursuant to the Court's order, we are providing our reexamination of the regulatory mechanisms being undertaken and enforced at the time of our 1998 finding. Regulatory mechanisms that are mentioned in the ''Summary of Factors'' section below as part of our reexamination were in effect in 1998. However, we describe the regulatory mechanisms in the present tense because we have been asked by the court to make a current reexamination. We have also included as footnotes, separate from our court-ordered reexamination, updates on several regulatory mechanisms that have been revised since 1998 in an effort to provide the best available information regarding protections for the Florida black bear. Based upon this review, we have determined that the existing regulatory mechanisms are not inadequate so as to warrant listing the Florida black bear under the ESA.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and its implementing regulations (50 CFR Part 424) set forth the procedures for listing species as endangered or threatened. They provide that a species may be determined to be endangered or threatened if one or more of the following five factors is met:

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or predation.

D. The inadequacy of existing regulatory mechanisms.

E. Other natural or manmade factors affecting its continued existence.

As stated above, the Court upheld the analyses and conclusions from our 1998 12-month finding regarding factors A, B, C, and E. (*See* 63 FR 67613 for our discussion of factors A, B, C, and E and their application to the Florida black bear).

Factor D. The inadequacy of existing regulatory mechanisms. As directed by the Court, the sole purpose of this reexamination is to clarify our previous discussion of the applicability of factor D to the Florida black bear. Specifically, we were directed to explain the regulations upon which we based our decision and to reexamine whether the inadequacy of existing regulatory mechanisms—*i.e.*, those being implemented and enforced at the time of the 1998 finding—warrants listing the bear as a threatened species.

In order to conclude that the bear warrants listing under factor D, we have to find that existing regulatory mechanisms that relate to, or otherwise affect, the protection and management of bears and bear habitat are inadequate because they actively allow or encourage, or at minimum do not prevent, levels of direct take (*i.e.*, mortality rates), habitat loss, and/or habitat degradation from reaching a point that the bear would be in danger of extinction or likely would become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. In other words, we would need to document that existing core bear populations at Okefenokee National Wildlife Refuge (NWR)—Osceola National Forest (NF), Apalachicola NF, Ocala NF, and Big Cypress NF, in the States of Florida and Georgia, either are not viable or likely would become so over the foreseeable future because of the inadequacy of existing regulatory mechanisms. With this in mind, it also is important to recognize that it would not be appropriate for us to list the species merely because existing regulatory mechanisms either do not actively improve the bear's status (either by increasing the number of bears, the acreage of bear habitat or by improving habitat quality) or do not prevent all negative effects of human activities.

Existing regulatory mechanisms that relate to the direct take of the Florida black bear include those that prohibit the taking of wildlife, provide specific protection to the bear, and regulate legal hunting. The States of Georgia and Florida, the Service, U.S. Forest Service (USFS), and National Park Service (NPS) all prohibit the taking of wildlife, game species, and their dens on lands under their jurisdictions unless a specific permit is issued allowing such take, or an open season, bag limit and methods of take are designated by regulation (16 U.S.C. 668dd, 36 CFR 2.2, 36 CFR 261.8, 50 CFR 27.21, 50 CFR 27.51, Fla. Admin. Code [FAC] 62D–2.014(10), FAC 68A–4.001, Official Code of Georgia [OCG] 27–1–3, OCG 27–1–30). Law enforcement officers from each of these agencies are authorized to regulate take and regularly enforce all laws and regulations relating to wildlife (16 U.S.C. 668dd(g), 32 CFR 190, 36 CFR 241.1, Fla. Statutes [FS] 372.07, FS 372.9906, FAC 68A.3.002, OCG 27–1–18, OCG 27–1–20). In both Florida and Georgia, the sale, purchase, or transportation of bears or bear parts are prohibited (FAC 68A–4.004, FAC 68A–12.004(12), OCG 27–3–26). These State laws and regulations, along with all others regulating the taking of bears, complement the Lacey Act (16 U.S.C. 3372), which prohibits the import, export, transport, sale, or purchase in interstate commerce of any wildlife taken, possessed, transported, or sold in violation of any State law or regulation; thus, Federal law protects against the illegal trade of bears or bear parts (*e.g.*, gall bladders and claws) that cross State lines. Moreover, we again point out that illegal take is currently not believed to be a significant problem affecting any Florida black bear population (63 FR 67617, Kasbohm and Bentzien 1998).

Additional protection is provided to bears under specific State laws. In Georgia, OCG 27–3–26 prohibits the killing of a bear except during an open hunting season (maximum authorized open season is defined as September 15 to January 15, OCG 27–3–15) or by authorization of the Georgia Department of Natural Resources (Ga. DNR). The Florida Administrative Code lists the bear as threatened (FAC 68A–27.004) except in Baker and Columbia counties and in the Apalachicola NF; this designation prohibits the intentional killing, wounding, taking, possession, transportation, molestation, harassment, or sale of the species unless specifically authorized by a permit issued by the Commission (FS 372.0725, FAC 68A–27.004). By regulation (FAC 68A–27.004), Commission permits allowing the taking of a threatened species or their nests/dens are issued only for scientific or conservation purposes and only if the permitted activity will not have a negative impact on the survival potential of the species. Enforcement of these protections is aided in Florida by the establishment and implementation of the Commission's Endangered and Threatened Species Reward Program that continues to provide incentives for individuals to report the illegal killing, wounding, or possession of bears (FS 372.073, FAC 68A–27.006). Despite lack of threatened designation, bears in Baker and Columbia counties and in the Apalachicola NF remain protected by general State and Federal laws and regulations noted above that prohibit the taking of wildlife.

Florida and Georgia also regulate the ability of landowners to remove nuisance bears or bears damaging private property. In Florida, a landowner cannot remove a bear damaging personal property until a permit has been issued by the Commission (FAC 68A–12.009(2)). Landowners in Georgia must petition the Ga. DNR to remove bears threatening property (OCG 27–3–21). The DNR must investigate such claims and cannot remove the animal unless it finds the removal is justified. In both States, nuisance bear policies have been developed and implemented to deal with a wide variety of bear-human interactions including property damage complaints (Commission 1990 [1], Ga. DNR 1996). Both States mandate that wildlife personnel first provide technical assistance to allow effective preventative measures (such as electric fences around apiaries, *i.e.*, bee yards) to be put in place. Only if problems continue after preventative measures are employed will the State capture and relocate the offending bear. Only on rare occasions are these nuisance animals destroyed, and neither State allows the public to remove or kill these animals directly (Commission 1990; OCG 27–3–21; W. Abler, Ga. DNR, pers. comm.). It also should be noted that, on many public lands within the occupied habitat of the Florida black bear, policies have been adopted that minimize the likelihood of conflicts between bears and beekeepers; for example, the Florida Division of Forestry prohibits apiaries on Seminole State Forest because of its large bear population and requires the use of electric fences to bear proof apiaries on all State forests that have bears (State Forest Handbook [SFH] 6.6.1). These regulations and policies help prevent bear-human conflict and ultimately the indiscriminate killing of bears, either illegally or by the States.

To date, we consider the legal hunting of bears not to be a threat to the Florida black bear (57 FR 598, 63 FR 67616). Nevertheless, hunting can affect bear populations, and adequate regulation of the activity is essential to ensure that it does not lead to population declines that could threaten the species in the future. In Florida, the Commission regulates hunting under authority of Article IV, Section 9 of the Florida Constitution and FAC 68A–1.002. In 1993, the Commission removed the species from the list of game animals (FAC 68A–1.004), ending all legal bear hunting. Likewise, because the Federal agencies that manage Federal lands in Florida are required to allow hunting only in accordance with State laws and regulations (10 U.S.C. 2671, 16 U.S.C. 668dd, 16 U.S.C. 670h, 16 U.S.C. 698j, 32 CFR 190, 36 CFR 2.2, 36 CFR 7.86(e), 36 CFR 241.2, 50 CFR 32.2, 50 CFR

[1] The Commission's nuisance bear policy was revised April 30, 2001. The revised policy provides similar guidance as that given in 1990, but specifies in more detail the responses of the Commission to nuisance complaints including providing procedures for the euthanasia of bears that have been captured at least twice following serious conflicts with humans (*e.g.*, killing of livestock or a threat to human safety).

32.3), hunting is prohibited on these lands as well. Because four healthy and secure Florida bear populations (including a significant portion of the Okefenokee NWR—Osceola NF population that extends into south Georgia) occur under the jurisdiction of the Commission and these Federal lands, and because no biological evidence exists that demonstrates that hunting is either a threat to the bear or that it is being inappropriately managed by the State, no additional regulation is warranted regarding take associated with hunting in Florida.

In Georgia, as regulated by the DNR under OCG 27–1–3(a) and OCG 27–1–4, bears remain designated a game species (OCG 27–1–2(34)) and are hunted in a 3-day season in Dixon Memorial Wildlife Management Area (Ga. Comp. R. & reg. [GCRR] 391–4–2–.70) and a six-day season in a five-county area (GCRR 391–4–2–.64(2)) surrounding, but not in, Okefenokee NWR where bear hunting is prohibited (50 CFR 32.29). Georgia laws and regulations allow a bag limit of one bear per hunter per year (GCRR 391–4–2–.10(4)) and prohibit the killing of females with cubs or cubs weighing less than 75 pounds (OCG 27–3.1.1 and GCRR 391–4–2–.64(3)). Georgia DNR manages the hunt under a bear management plan (Ga. DNR 1984); goals in the plan include maintaining a harvest rate of less than 15% with a sex ratio being equal or primarily composed of males, holding ages of harvested females to 3.5 years or older, requiring the checking of killed bears at DNR check stations, and the collection of a variety of biological data from killed bears needed to make these determinations.[2] Pursuant to the management plan, Georgia DNR actively monitors the hunt; requires all killed bears to be reported to a check station where basic biological information including sex, age, and body condition are recorded (OCG 27–3.1.1, GCRR 391–4–2–.10(5), and GCRR 391–4–2–.64(2)); and has adjusted the season to meet harvest goals and ensure population viability. Bear hunting in Dixon Memorial Wildlife Management Area was closed in 1990 after monitoring indicated that females were being harvested above management plan goals (Ga. DNR 1990, Carlock 1992). Bear hunting in Dixon Memorial Wildlife Management Area was reopened in 1998. No detrimental effects to the bear population are evident. The Ga. DNR continues to monitor and regulate bear hunting in this area as per its bear management plan. These actions establish that Ga. DNR's approach to managing the bear hunt provides effective regulatory means to prevent hunting from becoming a threat to the Okefenokee population in the future.

Because of the significant protections provided by, and the level of enforcement of, the existing laws, regulations, and policies described above, and considering the current low levels of threat as demonstrated by a lack of significant take of bears from sources including hunting and illegal kill, we concluded in 1998, and conclude again now, that existing regulatory mechanisms are adequate to protect the bear from direct take.

In addition to having adequate protections from take, in order to conclude that the species is not and will not become threatened, sufficient quantity and quality of bear habitat also must remain available to the four core bear populations at Okefenokee NWR—Osceola NF, Big Cypress National Park, Ocala NF, and Apalachicola NF, and to a lesser extent, at Eglin Air Force Base. Existing regulatory mechanisms that are relevant to habitat include laws, regulations, and agency policies that lessen or prevent the development of bear habitat on private lands, and that ensure the management of public lands is at a minimum compatible with, although not necessarily actively directed at, maintaining viable bear populations. These must be considered in the context of the bear's current widespread distribution across its historic range, its large population size, and the large quantity of protected habitat available to the species in each of the four core populations, as well as current levels of habitat loss on private lands that we do not believe will cause the species to become endangered in the foreseeable future (63 FR 67614–16, Kasbohm and Bentzien 1998).

Provisions of section 404 of the Clean Water Act (33 U.S.C. 1344) and its implementing regulations (33 CFR 320.4, 40 CFR 230.10), which require the Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) to regulate activities affecting the ''waters of the United States,'' protect wetland habitats important to the bear throughout its range. Although the Corps is not specifically required to consult with the Service regarding the species as it would if the bear were federally listed, adverse effects of wetland dredge and fill proposals are evaluated through a public interest test that includes a determination of the impacts of permit issuance to wildlife and wildlife habitat generally. Such permits cannot be issued if the activities would cause a significant degradation to the waters of the United States, including significant adverse effects to wildlife, and may be vetoed by the EPA (40 CFR 230.10). Both the Service and State wildlife agencies must be consulted regarding the effects of projects and retain the opportunity to review and provide comments on the effects on wildlife, including the bear (16 U.S.C. 662, 33 CFR 320.4). These coordination requirements are especially relevant to private lands in Florida (except those in Baker and Columbia counties) because the species is listed as threatened by the Commission.

Permit reviews have resulted in modifications to projects, habitat protection, and compensatory mitigation to offset project impacts to wetlands. Fifteen wetland mitigation banks were active by 1998 in Florida that help compensate development impacts to wetlands.[3] Further, FS 373.4137 requires the Florida Department of Transportation (DOT) to mitigate for each acre of wetlands impacted by transportation projects and to provide $75,000 per acre (adjusted annually by the percentage change in the Consumer Price Index) to the Florida Department of Environmental Protection (DEP) to pay for these activities. The Florida legislature mandated the transfer of $12 million to initiate this program in 1996 (FS 373.4173(4)(d)).

In areas where federally listed species also depend on habitats used by bears and that may be affected by the issuance of section 404 permits, review and consultation requirements of the ESA provide additional scrutiny of 404 permit applications that can result in indirect habitat protection for the bear through development of habitat mitigation measures or project modifications. For example, permit reviews within the range of the endangered Florida panther in and around Big Cypress NP have resulted in benefits to bears. The installation of 24 wildlife crossings/underpasses during the construction of I–75 through the habitat of the Big Cypress bear population not only prevented vehicle-caused panther deaths, they also have

[2] The Georgia DNR approved a revised bear management plan on April 8, 1999. The plan specifies similar harvest goals including a maximum harvest rate of 20%, no more than 50% of the harvest composed of females, and an average age of harvested females held at or above 3.75 years. The plan continues to provide for close monitoring and accurate data collection to insure goals are met without detrimental impacts to the Okefenokee bear population.

[3] As of October, 2002, 27 mitigation banks had been permitted in the State of Florida; several of these including the Panther Island, Big Cypress and Treyburn/Collier banks provide habitat that benefits bears.

had the benefit of preventing road mortalities and maintaining population connectivity for this bear population as well (Foster and Humphrey 1995, Gilbert and Wooding 1996, Lotz *et al.* 1996).

Threatened status under Florida law provides additional protections; because the bear is State-listed, its needs must be considered in several types of State regulatory decisions regarding development. Two applicable regulatory programs provide direct habitat protections for bears. The most important of these are the Environmental Resource Permitting (ERP) program and, to a lesser extent, the required State review of Developments of Regional Impact (DRI) proposals. Through the ERP program, the Water Management Districts (Districts) and DEP regulate developments and projects that impact water resources of the State, including wetlands. Florida law requires all activities resulting in dredge and fill of wetlands (including isolated wetlands) to be reviewed and permitted by the Districts or DEP (FS 373.118, 373.413, 373.416, 373.426, 373.414). Permits cannot be issued if the activity is determined to adversely impact the value and functions of wetlands or to be contrary to the public interest; impacts to State-listed species, including impacts to their abundance, diversity, or habitat, are specifically evaluated in both standards (FAC 40B–400.103, 40B–400.104, 40C–4.301, 40C–4.302, 40D–4.301, 40D–4.302, 40E–4.301, 40E–4.302, 62–330.200). Furthermore, secondary impacts also must not affect the ecological value of uplands to wetland-dependent listed species (including the bear) for enabling existing denning of the species (FAC 40B–400.103, 40C–4.301, 40D–4.301, 40E–4.301, 62–330.200). To be permitted, impacts must either be avoided or offset through appropriate mitigation (FS 373.414). The Commission, through the Office of Environmental Services, is provided the opportunity to submit comments and recommendations to the District and DEP regarding the impacts of wetland permit proposals on wildlife and State-listed species. As noted above, at least 15 wetland mitigation banks, several located in bear habitat, were available in Florida by 1998 to help offset development impacts to wetlands. The legal requirement for the DOT to provide funding for wetland mitigation per acre of impact applies to the ERP permitting program as well (FS 373.4137).

Development proposals in Florida that will affect more than one county and that meet certain threshold standards are required to undergo a DRI review by the Department of Community Affairs (DCA) to determine their impacts (FS 380.06). DCA guidelines and criteria for DRI reviews specifically require a determination as to whether a significant impact to State-listed species will result from the project and the identification of appropriate mitigation for any unavoidable impacts (FAC 9J–2.041). A significant impact and appropriate mitigation to a listed species are specified in a written recommendation from the Commission's Office of Environmental Services (FS 380.06, FAC 9J–2.041). These recommendations regarding listed species must be included in a report to the local government responsible for deciding whether such projects will be approved (FS 380.06, FAC 9J–2.041). While the local government and DCA ultimately can decide to ignore in whole or in part the recommendations made by the Commission (FS 380.06), the recommendations ensure that the needs of the bear are considered in large-scale developments and therefore can result in preservation and mitigation of at least some bear habitat that otherwise might be lost. Furthermore, lack of implementation of Commission recommendations in the DRI review does not circumvent any other required State or Federal authorizations, including ERP or section 404 wetland permits, which still must be acquired before a development occurs.

In certain areas of Florida, special provisions have been enacted to provide additional habitat protection for State-listed species. Florida Statute sections 369.305 and 369.307 established the Wekiva River Protection Area south of the Ocala NF in an area of important bear habitat. This designation, coupled with a mandate to the St. John's River Water Management District to promulgate rules establishing a protection zone adjacent to the watercourses in the Wekiva River system (FS 373.415), have resulted in specific regulatory guidelines and restrictions that provide an additional level of protection for wetlands and wetland-dependent species, including the bear. Regulations provide for strategic local and regional planning, development restrictions intended to retain a rural setting, and land acquisition (FS 369.305, 369.307, FAC 40C–41.063). Specifically, the District has designated a Riparian Habitat Protection Zone consisting of wetlands and uplands that can benefit bears (up to 550 feet landward of forested wetlands) abutting the Wekiva River, Little Wekiva River, Rock Springs Run, Black Water Creek, Sulphur Run, and Seminole Creek (FAC 40C–41.063). Permit applicants must provide assurances that developments will not adversely affect the abundance, food sources, or habitat of wetland-dependent species provided by the zone. Within the zone, construction of buildings, golf courses, impoundments, roads, canals, ditches, swales and land clearing are presumed to have adverse effects (FAC 40C–41.063).

Since the 1970s, several Florida statutes have provided authorization and funding to various State agencies to acquire land for the protection of wildlife habitat and listed species. These programs, especially the Conservation and Recreation Lands Trust Fund enacted in 1979 (FS 259.032) and the Florida Preservation 2000 Trust Fund enacted in 1990 (FS 259.101, 375.045) have benefited bears and may have been the most valuable means of ensuring the protection and preservation of bear habitat on private lands in Florida. From 1992 to 1998, publicly protected bear habitat increased by an estimated 1,500 km^2 (374,000 ac) as a direct result of deliberate attempts within these Florida land acquisition programs to secure wildlife habitat across the State. Much of this area was adjacent to core bear populations at Apalachicola NF, Ocala NF, Big Cypress NP, and Okefenokee NWR—Osceola NF, and has been identified by the Commission (Cox *et al.* 1994) as black bear strategic habitat conservation areas. In fact, the identification of bear habitat by the Commission often has been used to elevate the priority of acquisition projects (FL DEP 1997). Florida continues to emphasize land acquisition to meet a variety of environmental and wildlife related objectives.[4] The currently available acreage of public lands, coupled with the private lands that will remain as bear habitat, are sufficient to provide for viable bear populations in the four core areas as noted in our 1998 finding (63 FR 67613–18).

Nevertheless, bear habitat protection cannot be assured if public lands under

[4] The Florida Forever Act (FS 259.105) and the Florida Forever Trust Fund (FS 259.1051) were enacted in 1999, continuing funding for land acquisition similar to Preservation 2000. Since 1998, at least 320,000 acres of additional bear habitat have been acquired in Florida. Considering the effective record of purchases over the last decade, and continued statutory appropriations for funding for these programs, it is reasonable to conclude that future acquisitions will continue to expand public lands and provide additional security to bear populations in Florida.

State and Federal ownership are not managed in a manner compatible with maintaining a viable bear population. In order to appropriately consider public land management and its impacts to bears, the habitat requirements of the bear must be considered. The Florida black bear is a habitat generalist; although it depends on forested habitats, it prospers in a variety of forest types including forested wetlands, bottomland hardwoods, pine flatwoods, and other habitats typically found on public lands throughout their occupied range. Key habitat features are tied more to maintaining large, relatively undeveloped forest communities with a juxtaposition of a variety of habitat types that provide a diverse seasonal food base and sufficient cover, rather than habitat management practices or strategies directed specifically at bears or one habitat component (Maehr and Wooding 1992). Hence, appropriate management of public lands relative to black bears includes land management practices that ensure long-term maintenance of a variety of forest cover types and successional stages and, most importantly, that prevent conversion of these habitat types to nonforest uses through development and urbanization.

Key regulatory mechanisms that provide for continued forested habitat types for bears are Federal and State laws, regulations, and policies that govern the management and management planning on public lands. The important public lands providing for viable populations include 4,668 km^2 (1,153,583 ac) in the National Forests in Florida (Apalachicola, Ocala, and Osceola NFs) administered by the USFS, 1,967 km^2 (486,079 ac) in National Wildlife Refuges (Okefenokee, Florida Panther, and St. Marks NWRs) administered by the Service, a 2,916 km^2 (720,440 ac) NPS unit (Big Cypress NP), a 1,878 km^2 (464,000 ac) Department of Defense installation (Eglin AFB), and about 3,850 km^2 (950,000 ac) distributed among numerous State lands owned and administered by the Florida Board of Trustees of the Internal Improvement Trust Fund, the Florida Division of Forestry, the Florida Division of Parks and Recreation, and Florida's Water Management Districts (primarily the St. Johns River WMD, South Florida WMD and the Suwannee River WMD). Each of these agencies is required by statute to conserve wildlife species and their habitats as important uses or components of resource management programs (16 U.S.C. 1, 528 *et seq.*, 668dd(a), 670 *et seq.*, 1601(d); FS 253.034, 253.036, 258.037).

Furthermore, to assure that these mandates are carried out, Congress and the Florida legislature have enacted specific natural resource planning requirements that direct the management and uses of these public lands. In many cases such requirements are not explicitly directed at protection of Florida black bear habitat; however, in order for the Service to conclude that such requirements are adequate regulatory mechanisms compatible with and beneficial to the species, agency plans and active land management programs do not need to specifically address the needs of or impacts to the bear as long as the resultant management does not threaten the species with extinction. Furthermore, as long as these agencies follow existing mandates required by law, appropriate forested habitats will be maintained for bears throughout the foreseeable future. Regulatory mechanisms, including laws, regulations and policies, in effect at the time of our 1998 finding pertaining to the agencies responsible for the management of public lands supporting the core Florida black bear populations are discussed below.

1. The Department of the Interior, through the NPS, must promote and regulate the use of national parks and preserves to conserve the scenery and the natural and historic objects and the wildlife therein in an unimpaired state (16 U.S.C. 1) and must administer Big Cypress NP to assure the natural and ecological integrity of the Big Cypress watershed (16 U.S.C. 698f, 698i). The General Management Plan (GMP) for Big Cypress NP was approved in 1991 (NPS 1991). Although the GMP does not specifically address black bears in terms of direct management, its goals included the preservation of the watershed and its natural flora and fauna through prescribed burning, the control of exotic plants, and the restoration of hydrology. These habitat goals and the results of the implementation of the GMP since 1991 have been consistent with the overall purposes of a unit of the National Park System and the legislative mandate behind the creation of Big Cypress NP and, thus, have maintained and will continue to maintain appropriate forested habitats for bears that will help ensure the species' perpetuation in south Florida.

2. The Department of the Interior, through the Service, administers the National Wildlife Refuge (NWR) system. The system is a national network of lands and waters for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States (16 U.S.C. 668dd(a)). Individual NWRs are established with a mandate to restore, preserve, develop, and manage wildlife and habitat (50 CFR 25.11) to perpetuate a diversity of viable wildlife populations including big game such as bears (Fish and Wildlife Service Manual [FWM] 6 RM 3.3, FWM 7 RM 7). The National Wildlife Refuge Improvement Act of 1997 (NWRIA, 16 U.S.C. 668 *et seq.*) requires a comprehensive conservation plan (CCP) be developed for each NWR. The CCP must identify and describe the wildlife and related habitats in the refuge and the actions needed to correct significant problems that may adversely affect wildlife populations and habitat (16 U.S.C. 668dd(e)). Planning also must consider alternatives and the impacts each has to wildlife (FWM 620 FW 1). Forest management on each NWR must be consistent with approved plans and cannot occur until planning is complete and management prescriptions are approved (FWM 6 RM 3.4). Because the NWRIA was not enacted until 1997, the NWRs providing habitat for the Florida black bear had not completed the CCP planning process by the time of our 1998 finding. However, Okefenokee, Florida Panther, and St. Marks NWRs had at that time approved habitat and/or fire management plans (U.S. Fish and Wildlife Service 1987, 1989, 1998) that remain valid until completion of their CCPs.[5] These approved plans in existence in 1998 required active prescribed burning and forestry programs beneficial to native species including bears. Management of these refuges adheres to national legal and policy mandates and, hence, have maintained and will continue to help maintain viable bear populations at Okefenokee NWR-Osceola NF, Apalachicola NF, and Big Cypress NP.

3. National Forests are to be administered by the Department of Agriculture through the USFS for a number of equally important purposes, including fish and wildlife, in a manner that does not impair the land's productivity (16 U.S.C. 528 *et seq.*) and that maintains forest cover characteristics to secure the maximum benefits of these uses (16 U.S.C. 1601(d)). In addition, the USFS has the specific mandate to maintain viable populations of native species (36 CFR 219.19, Forest Service Manual [FSM]

[5] The Comprehensive Conservation Plan for Florida Panther NWR was completed in March 2000. Overall goals include restoration, conservation, and monitoring of native flora and fauna, especially for providing habitat for the Florida panther. These goals continue to require the use of active prescribed fire and timber/habitat management programs that are beneficial to the bear.

2672.32). The National Forest Management Act (NFMA, 16 U.S.C. 1600 *et seq.*) fosters compliance with these directives by requiring the development and implementation of resource management plans for each unit of the National Forest system. Such plans provide for multiple use and sustained yield of products and services, but also must include coordination of wildlife with other forest uses that will ensure a diversity of plant and animal communities, wildlife protection, and monitoring and assessment of the effects of management (16 U.S.C. 1604). USFS regulations and policies implementing the NFMA further require national forests to be managed to ensure the viability of populations of native species (36 CFR 219.19). Plans must identify, evaluate the effects of proposed management on, and provide for the monitoring of indicator species and their habitats (36 CFR 219.19; FSM 2620.3, 2621.4, 2621.5). Goals, standards, prescriptions, and appropriate mitigation needed to meet goals for indicator species must be specified (FSM 2621.4). Following completion of the plan, proposed actions and site-specific management prescriptions cannot be conducted until a biological evaluation is completed that documents and determines the effects of proposed activities on listed and sensitive species and that will ensure that no loss in viability will occur (FSM 2670.32, 2672.4, 2672.32).

A management plan for the National Forests in Florida was completed in 1985 meeting the requirements of the NFMA and its implementing regulations and policies as described above (U.S. Forest Service 1985a). This plan was the basis for forest management at the time of our 1998 finding. Revision of the plan was underway at that time as well, and was setting the direction for future management of these national forests. In both the 1985 plan and draft revised plan (U.S. Forest Service 1997a) [6], the USFS detailed its management goals and prescriptions. The Florida black bear was identified as both a management indicator species and a sensitive species, ensuring that evaluations of the impacts of site-specific actions and prescriptions to this species would be conducted. During the planning process, evaluations of the impacts of the plans to bears and bear habitat were considered (U.S. Forest Service 1985b, 1997b, 1998a, 1998b). The USFS has conducted over the years, and continues to implement: (1) Prescribed burning practices that have shifted to a preference for growing-season fires beneficial to native species, (2) timber management including thinning of pine plantations, (3) uneven-age timber management, (4) retention of hardwoods for mast production, (5) the protection of wetland habitats to provide escape cover and travel corridors for bears, (6) road closures, (7) land acquisition, and (8) restrictions on visitor uses including a reduction in motorized vehicle access. These management actions are not only compatible with bears but also directly improve conditions for the species by ensuring a diversity of habitats that provide sufficient cover and a diverse seasonal food supply.

USFS' annual monitoring of its adherence to the 1985 plan demonstrates achievement of planned management actions that provide for the needs of bears. In 1998, the USFS estimated that actions planned to improve wildlife habitat, implement road closures, conduct prescribed burns, and complete land acquisition projects had achieved 116%, 197%, 145% and 8,583%, respectively, of the levels directed in the 1985 plan (U.S. Forest Service 1998c). Considering past stewardship of the National Forests in Florida under the direction of the 1985 plan and the positive status bears have achieved on these forests since that time (Kasbohm and Bentzien 1998), we had in 1998, and still have, every reason to believe that the revised plan will be carried out in a similar manner pursuant to the legal mandates of the NFMA and Forest Service policies. Furthermore, national forest management as identified in the revised plan should continue to maintain quality forested habitats that will directly ensure viability for three of the four core Florida black bear populations through the foreseeable future.

4. The Department of Defense (DOD), including the Air Force, must conserve and maintain native ecosystems, viable wildlife populations, Federal and State listed species, and habitats as vital elements of its natural resources management programs on military installations, to the extent that these requirements are consistent with the military mission (32 CFR 190.4; Dept. of Defense Instruction [DODI] 4715.3 Ch 6.2.2; Air Force Instruction [AFI] 32–7064 Ch 2.2, 7). Amendments to the Sikes Act (16 U.S.C. 670 *et seq.*) enacted in 1997 require each military department to prepare and implement an integrated natural resource management plan (INRMP) for each installation under its jurisdiction. The plan must be prepared in cooperation with the Service and the State fish and wildlife agency and must reflect the mutual agreement of these parties concerning conservation, protection, and management of wildlife resources (16 U.S.C. 670a(a)). Each INRMP must provide for wildlife, land and forest management, wildlife-oriented recreation, wildlife habitat enhancement, wetland protection, sustainable public use of natural resources that are not inconsistent with the needs of wildlife resources, and enforcement of natural resource laws (16 U.S.C. 670a(b)). The sale or lease of land, or the sale of forest products, are prohibited unless the effects of the sale or lease are compatible with the purposes of the INRMP (16 U.S.C. 670a(c)). DOD regulations mandate that resources and expertise needed to establish and implement an integrated natural resource management program are maintained (32 CFR 190.5). These regulations further define the IRNMP requirements and mandate that plans be revised every five years and that they ensure that military lands suitable for management of wildlife are actually managed to conserve wildlife resources (32 CFR Part 190, Appendix). Proposed activities and projects on installations with approved INRMPs cannot begin unless they are determined to be compatible with the plan through an environmental impact analysis that considers wildlife resources and State and Federally listed species (32 CFR Part 190, Appendix).

To implement these mandates, the DOD and the Air Force have issued policies that require installations to maintain an inventory of listed species and their habitats, and to coordinate with the State wildlife agency to ensure the INRMP agrees with State management of wildlife (AFI 32–7064 Ch 7, DODI 4715.3 ch 4.2). The Air Force has specifically directed that its facilities provide the same level of protection to State-listed species as those with Federal protection under the ESA (AFI 32–7064 Ch 7). In addition, forestry and agricultural operations must be balanced with and used to achieve or maintain the needs of listed species protection and wildlife enhancement (DODI 4715.3 Ch 4.2, AFI 32–7064 Ch 8).

The natural resource management program at Eglin AFB has complied with these mandates and directives. The AFB's Natural Resources Management Plan (Dept. of the Air Force 1993) was approved in 1993 and was under

[6] The final Revised Land and Resource Management Plan for the National Forests in Florida and its EIS were approved in February 1999. The plan continues to identify the bear as a management indicator species. Its approval finalized the USFS approach to management and monitoring of these forests as specified in the draft plan and as noted above.

revision to meet the 1997 Sikes Act amendments requirements at the time of our 1998 finding. We noted in 1998 that ongoing management actions included maintenance of habitat diversity, prescribed burning to maintain natural conditions, uneven aged forest management, restoration of longleaf pine habitat, and maintenance of riparian and forested wetlands (63 FR 67617); all of these actions were being implemented pursuant to the approved 1993 plan in 1998 when we made our finding and are continuing to provide bear habitat on Eglin AFB today. Although this population is not one of the four core populations that we concluded would maintain the species above a Federal listing threshold as dictated by the ESA (63 FR 67616), these actions help protect bears and maintain significant forested habitats for bears in the panhandle of Florida.

5. State lands in Florida, although managed by several agencies, have similar management responsibilities related to wildlife and generally must be managed in an environmentally acceptable and sustainable manner to conserve and ensure the protection, survival, and viability of plant and animal species, especially native ecosystems and State-listed species (FS 253.034, 253.036, 258.037; FAC 62–402.070; SFH 1.3, 5.3). All State lands must have an individual management plan, approved by the Board of Trustees of the Internal Improvement Trust Fund, that includes a description of how State-listed species will be identified, located, protected, and preserved (FS 253.034, FAC 40B–9.122, 40C–9.110). These plans must be revised every five years; beginning in 1998, plan revisions must include a review of the management on the area by a team composed of individuals representing, among others, the managing agency, the Commission, and a conservation organization (FS 259.036, 373.591). The review team must determine whether previous management was in accordance with the existing plan and the purposes for which the land was acquired; the review also must include an evaluation of the extent to which the existing plan provides sufficient protection to State-listed species (FS 259.036). In addition to being consistent with management objectives, all uses of uplands on State lands cannot be contrary to the public interest and all direct and indirect impacts including those to wildlife values must be considered before the use can be authorized (FAC 18–2.018).

By 1998, management plans that conformed to statutory requirements had been approved for all State lands important to the Florida black bear, including but not limited to: Apalachicola River WEA (Commission 1997a), Aucilla WMA and Big Bend WMA (Commission 1998), Caravelle Ranch WMA (Commission 1997b), Collier-Seminole State Park (FL DEP 1998a), Fakahatchee Strand State Preserve (FL DEP 1994), the Wekiva Basin GEOpark (including Lower Wekiva River State Reserve and Rock Springs Run State Reserve; FL DEP 1998b), Blackwater River State Forest (FL DOF 1994), Goethe State Forest (FL DOF 1993), Lake George State Forest (FL DOF 1998a), Picayune State Forest (FL DOF 1996a), Seminole State Forest (FL DOF 1995), Tates Hell State Forest (FL DOF 1998b), Tiger Bay State Forest (FL DOF 1998c), Withlacoochee State Forest (FL DOF 1996b), Heart Island Conservation Area (SJRWMD 1998), and Haw Creek Conservation Area (SJRWMD 1995). These plans acknowledge the presence of the Florida black bear and its threatened designation. Management practices identified in these plans that are being implemented include prescribed burning and forest management programs. Review teams have been convened and reviews conducted, including considering the needs of bears, as plans are revised.[7] Consequently, we conclude that the above mandates for State land management in Florida, the resultant management plans, and the past and continued implementation of those plans were in 1998 and continue to be compatible with maintaining viable populations of Florida black bears. We do not assume, nor do we believe it necessary, that every management goal or prescription identified in these plans has been or will be conducted. However, because the plans are required under State law, they should ensure the preservation of forested bear habitats on important State lands supporting the four core bear populations.

6. The Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*) is relevant to our evaluation of the adequacy of existing regulatory mechanisms because it affects the management of federally administered public lands. It requires that all lands designated by Congress as Wilderness Areas be managed to preserve their wilderness character. Consequently, Federal agencies must manage these areas for native habitat types primarily through natural processes. Significant amounts of land that are important to Florida bear populations are designated wilderness and thus receive these protections, including 1,433 km^2 (353,981 ac) in the Okefenokee NWR (with an additional 55 km^2 (13,660 ac) in Osceola NF), 70 km^2 (17,350 ac) on St. Marks NWR, two areas totaling 132 km^2 (32,692 ac) on Apalachicola NF, and four areas totaling 114 km^2 (28,199 ac) on Ocala NF (16 U.S.C. 1132). In the range of the Florida black bear, these protections provide additional security for habitat on public conservation lands by ensuring that Wilderness Areas are maintained in forested and other native habitat types that directly support the species.

We acknowledge that some bear habitat will be lost in the future on private lands and that existing wetland regulations and a lack of upland protections specific to bears do not provide complete protection to all existing habitat. However, because of the significant protections provided by, and the level of enforcement of, the existing laws, regulations, and policies described above, and considering the species widespread distribution on public and private lands at Apalachicola NF and Okefenokee NWR-Osceola NF, and public lands at Ocala NF, and Big Cypress NP, we concluded in 1998, and conclude again now, that existing regulatory mechanisms in 1998 that relate to habitat protection and management are adequate to maintain habitat of sufficient quantity and quality to ensure viable bear populations.

Finding

In 1998 the Service reviewed the petition, status review, available literature, and other information relevant to the conservation status of the Florida black bear. After reviewing the best scientific and commercial information available, we concluded that the continued existence of the Florida black bear was not threatened by any of the five listing factors alone or in combination. Following a subsequent legal challenge, the U.S. District Court for the District of Columbia upheld our conclusions regarding the applicability of four of the five listing factors, but ordered the Service to clarify our conclusions regarding, and further determine whether, the inadequacy of existing regulatory mechanisms in 1998 warrants listing the bear. Pursuant to that order, we have reexamined the inadequacy of existing regulatory mechanisms being undertaken and enforced at the time of our 1998 finding considering the laws, regulations, and policies that directly or indirectly

[7] Florida's land management agencies continue to meet legal requirements to revise and implement land management plans. Since 1998, revised plans have been approved for Blackwater River State Forest (FL DF, December 19, 2000), Goethe State Forest (FL DOF August 21, 2000), Seminole State Forest (FL DOF, December 19, 2000), and Fakahatchee Strand State Preserve (FL DEP, December 19, 2000).

provide protection to the bear or its habitats. Based on this review, we conclude that the existing regulatory mechanisms applicable in 1998 are not inadequate and do not warrant listing the Florida black bear.

References Cited

A complete list of all references cited in this document is available from the Jacksonville Ecological Services Field Office (*see* **ADDRESSES** section).

Author

The primary author of this notice is Dr. John W. Kasbohm (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: December 24, 2003.

Marshall P. Jones Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 04–690 Filed 1–13–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 69, No. 9

Wednesday, January 14, 2004

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–115–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

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

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the interstate movement of certain land tortoises.

DATES: We will consider all comments that we receive on or before March 15, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–115–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–115–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–115–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information on the regulations regarding the interstate movement of certain land tortoises, contact Dr. Glen I. Garris, Assistant to the Associate Deputy Administrator, Emergency Management, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737; (301) 734–8073. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Interstate Movement of Certain Land Tortoises.

OMB Number: 0579–0156.

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

Abstract: The Animal and Plant Health Inspection Service (APHIS) regulates the importation and interstate movement of certain animals and animal products to prevent the introduction into or dissemination within the United States of pests and diseases of livestock.

The regulations in 9 CFR part 93 prohibit the importation of the leopard tortoise, the African spurred tortoise, and the Bell's hingeback tortoise to prevent the introduction and spread of exotic ticks known to be vectors of heartwater disease, an acute, infectious disease of cattle and other ruminants. The regulations in 9 CFR part 74 prohibit the interstate movement of those tortoises that are already in the United States unless the tortoises are accompanied by a health certificate or certificate of veterinary inspection. The certificate must be signed by an APHIS accredited veterinarian and must state that the tortoises have been examined by that veterinarian and found free of ticks.

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

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

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

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

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

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

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.08333 hours per response.

Respondents: APHIS accredited veterinarians.

Estimated annual number of respondents: 150.

Estimated annual number of responses per respondent: 10.

Estimated annual number of responses: 1,500.

Estimated total annual burden on respondents: 125 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 7th day of January, 2004.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–734 Filed 1–13–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–112–2]

Vaccination of Wild Bison; Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments; reopening of comment period.

SUMMARY: We are reopening the comment period for an environmental assessment and finding of no significant impact that we prepared relative to the subcutaneous vaccination of wild, free-ranging bison in the Greater Yellowstone Area with Strain RB51 vaccine to help prevent the spread of brucellosis. The environmental assessment documents our review and analysis of environmental impacts associated with the vaccination and provides a basis for our conclusion that vaccination of the bison will not have a significant impact on the quality of the human environment. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before January 20, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–112–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–112–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–112–1'' on the subject line.

To obtain copies of the environmental assessment and finding of no significant impact, contact the National Center for Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–4923. The documents are also available on the Internet at *http://www.aphis.usda.gov/ppd/es/vsdocs.html.*

You may also read the environmental assessment and finding of no significant impact, and any comments we receive on those documents, in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Gertonson, Yellowstone Brucellosis Coordinator, National Center for Animal Health Programs, VS, APHIS, Building B MSC 3E13, 2150 Centre Avenue, Fort Collins, CO 80526–8117; (970) 494–7363.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 2003, we published in the **Federal Register** (68 FR 68020–68021, Docket No. 03–112–1) a notice that the Animal and Plant Health Inspection Service (APHIS) had completed an environmental assessment (EA) that examines the potential environmental effects of APHIS's involvement in a program to be initiated by the Montana Department of Livestock to vaccinate certain bison against brucellosis with Strain RB51 vaccine. The animals to be vaccinated are wild, free-ranging bison calves and non-pregnant yearlings that leave Yellowstone National Park and migrate onto State, private, or other Federal lands. Our review and analysis are documented in detail in an EA entitled ''Subcutaneous Vaccination of Wild, Free-Ranging Bison in the Greater Yellowstone Area; Environmental Assessment (November 2003).'' Based on that EA, APHIS has determined that subcutaneous vaccination of wild, free-ranging bison of the Greater Yellowstone Area with Strain RB51 vaccine will not significantly impact human health or the environment. That determination is set forth in a document titled ''Finding of No Significant Impact for Subcutaneous Vaccination of Wild, Free-Ranging Bison in the Greater Yellowstone Area; Environmental Assessment (November 2003).''

Comments on the EA and finding of no significant impact (FONSI) were required to be received on or before January 5, 2004. To provide for the submission of comments for an additional 15 days beyond that date, we are reopening the comment period on the EA and FONSI until January 20, 2004. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between January 6, 2004 (the day after the close of the original comment period) and the date of this notice.

Done in Washington, DC, this 7th day of January, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–735 Filed 1–13–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

North Forest Acres Levee/Road Project, City of Seward, Alaska

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice of a Finding of No Significant Impact according to the Environmental Assessment of the North Forest Acres Road/Levee Project.

FOR FURTHER INFORMATION CONTACT: Shirley Gammon, State Conservationist, Natural Resources Conservation Service, 800 West Evergreen, Suite 100, Palmer, Alaska 99645–6539; telephone: (907) 761–7760.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indictes that there will be no significiant environmental impacts. As a result of these findings, Shirley Gammon, State Conservationist, has determined that the project should be completed as outlined in the assessment document. The objective of the North Forest Acres Road/Levee Project is to complete one part of a suite of action undertaken to minimize flooding damages to the city of Seward. The selected alternative is approximately 4,100 feet of levee topped by an asphalt paved road. Alternatives evaluated were No Action, four west alignments of the levee, and three east alignments. The selected alternatives are the West 2b (3,530 LF)

and the East 3 (550 LF). These alternatives were selected because they have no stream crossings of Japanese Creek, and no culverts or flood gates to operate and maintain. These selected alignments mimimize impact to wetlands. Encroachment on the floodplain is mimimal and results in no significant rise of flood waters in Resurrection River.

A limited number of copies of the EA are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Shirley Gammon.

Further information on the proposed action may be obtained from Shirley Gammon, State Conservationist, at the above address.

Dated: January 8, 2004.

Shirley Gammon,

State Conservationist.

Finding of No Significant Impact

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major Federal actions significantly affecting the quality of the human environment. I have preliminarily determined, based upon the evaluation of impacts in the Environmental Assessment (EA), attached hereto and made a part hereof, and the reasons provided below, that there will be no significant individual or cumulative impacts on the quality of the human environment as a result of implementing the North Forest Acres Levee/Road Project in Seward, Alaska. In particular, there will be none of the significant adverse impacts which NEPA is intended to help decision makers avoid and mitigate against. Therefore, an EIS is not required.

The city of Seward, Alaska has experienced flooding damages from the Resurrection River and Japanese Creek several times in the past. Damages from the 1995 flood alone amounted to 9.8 million dollars. A multi-agency task force recommended five complimentary actions to minimize the risk of future damages. Three of these actions (a levee on Japanese Creek, dredging at the mouth of the Resurrection River and widening of the highway bridges) have been completed. The Resurrection River Levee/Road Project, along with widening the railroad bridges are the final components of the flood control strategy. Congress has authorized funding for this project in the Natural Resources Conservation Service (NRCS) budget.

Several meetings were held (EA, page 6) to assess public opinion and concerns regarding the project. At these meetings issues regarding impacts to the creek, concerns about commercial traffic, impacts to private property, hydrologic effects to the floodplain and road impacts to residents were identified (EA, page 4). Each of the alternatives considered in the EA is examined in regard to these concerns.

Four west alignments and three east alignments of the levee/road were examined along with a ''no action'' alternative. Each of the alternatives would extend from the completed Japanese Creek levee at the upstream end and connect with the Seward Highway at the downstream end. The selected alternatives are the West 2b (3,530 LF) and the East 3 (550 LF). These alternatives were selected because they have no stream crossings of Japanese Creek, and no culverts or flood gates to operate and maintain. These alignments minimize impact to wetlands. Encroachment on the floodplain is minimal and results in no significant rise of flood waters in Resurrection River.

Based on the information presented in the North Forest Levee/Road Project EA, I find that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, an EIS will not be prepared.

Dated: January 8, 2004.

Shirley Gammon,

Alaska State Conservationist, Natural Resources Conservation Service, USDA.

[FR Doc. 04–727 Filed 1–13–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Current Population Survey (CPS) Fertility Supplement

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c) (2) (A)).

DATES: Written comments must be submitted on or before March 15, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the internet at *DHynek@doc.gov)*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Woods, U.S. Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 763–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance for the collection of data concerning the Fertility Supplement to be conducted in conjunction with the June 2004 CPS. The Census Bureau sponsors the supplement questions, which were previously collected in June 2002, and have been asked periodically since 1971.

This survey provides information used mainly by government and private analysts to project future population growth, to analyze child spacing, and to aid policymakers in their decisions affected by changes in family size and composition. Past studies have discovered noticeable changes in the patterns of fertility rates and the timing of the first birth. Potential needs for government assistance, such as aid to families with dependent children, child care, and maternal health care for single parent households, can be estimated using CPS characteristics matched with fertility data.

II. Method of Collection

The fertility information will be collected by both personal visit and telephone interviews in conjunction with the regular June CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 0607–0610.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 30,000.

Estimated Time Per Response: 1 minute.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost: $0.

Respondents' Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 182; and Title 29, U.S.C., Sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: January 8, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–730 Filed 1–13–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review

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

ACTION: Notice of extension of time limit for preliminary results of antidumping duty new shipper review.

EFFECTIVE DATE: January 14, 2004.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Dena Aliadinov or Brandon Farlander at (202) 482–3019 or (202) 482–3362 or (202) 482–0182, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Cheng Du Wai Yuan Bee Products Co., Ltd. (Wai Yuan) and Jinfu Trading Co., Ltd. (Jinfu), in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on honey from the People's Republic of China (PRC), which has a December annual anniversary month and a June semiannual anniversary month. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China,* 66 FR 63670 (December 10, 2001). On July 31, 2003, the Department found that the requests for review met all the regulatory requirements set forth in section 351.214(b) of the Department's regulations and initiated this new shipper antidumping review covering the period December 1, 2002 through May 31, 2003. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Reviews,* 68 FR 47537 (August 11, 2003). The preliminary results are currently due no later than January 27, 2004.

Extension of Time Limits for Preliminary Results

Section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(1) of the regulations require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated, and final results of review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated, and the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. Specifically, the Department needs additional time to research the appropriate surrogate values used to value raw honey. Moreover, the Department is also researching whether the sales that form the basis of the review request are bona fide sales. In this regard, the Department has issued supplemental questionnaires requesting additional information about the bona fides of the sales under review. Given the issues in this case, the Department finds that this case is extraordinarily complicated, and cannot be completed within the statutory time limit.

Accordingly, the Department is fully extending the time limit for the completion of the preliminary results by 120 days, to May 26, 2004, in accordance with section 751(a)(2)(B)(iv) of the Act and 351.214(i)(2) of the Department's regulations. The final results will in turn be due 90 days after the date of issuance of the preliminary results, unless extended.

Dated: January 8, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–830 Filed 1–13–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122–838]

Certain Softwood Lumber Products from Canada: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: January 14, 2004.

FOR FURTHER INFORMATION CONTACT: Constance Handley at (202) 482–0631 or David Layton at (202) 482–0371, Office 5, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On May 1, 2003, the Department published a notice of opportunity to request the first administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68

FR 23281 (May 1, 2003). On May 30, 2003, in accordance with 19 CFR 351.213(b), the Coalition for Fair Lumber Imports Executive Committee (the petitioner) requested a review of producers/exporters of certain softwood lumber products. Also, between May 7, and June 2, 2003, Canadian producers requested a review on their own behalf or had a review of their company requested by a U.S. importer.

On July 1, 2003, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain softwood lumber products from Canada, covering the period May 22, 2002, through April 30, 2003. *See Notice of Initiation of Antidumping Duty Administrative Review*, 68 FR 39059 (July 1, 2003). The preliminary results are currently due no later than February 2, 2004.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit due to a number of complex issues which must be addressed prior to the issuance of those results. For example, the Department must analyze the complex corporate structures and affiliations of the eight respondents in this review, including affiliated mills and other entities both in Canada and the United States. In addition, the Department must evaluate and address a myriad of issues pertaining to the allocation of production costs and the calculation of adjustments for differences in merchandise. Further, the Department needs to evaluate and resolve the complicated issue involving treatment of random length tally sales, which are defined as sales which contain multiple lengths, for which a blended (*i.e.* average) price has been reported by the respondents. Finally, as is our practice, the Department intends to conduct verification of the eight respondents prior to the issuance of the preliminary results. We estimate that the sales and cost of production verifications will take approximately two months to complete.

Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than June 1, 2004. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

Dated: January 8, 2004.

Holly Kuga,

Acting Deputy Assistant Secretary for AD/CVD Enforcement II.

[FR Doc. 04–831 Filed 1–13–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580–835]

Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea

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

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On September 9, 2003, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on stainless steel sheet and strip in coils from the Republic of Korea for the period January 1, 2001 through December 31, 2001 (*see Notice of Preliminary Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 68 FR 53116 (September 9, 2003) (*Preliminary Results*)). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of the comments received, the Department has revised the net subsidy rate for INI Steel Company (INI)[1] and Sammi Steel Co., Ltd. (Sammi).[2] As discussed in the ''Issues and Decision Memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary for AD/CVD Enforcement II to James J. Jochum, Assistant Secretary for Import Administration concerning the Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea'' (Decision Memorandum) dated January 7, 2004, we found INI and Sammi to be cross-owned and are therefore calculating a single rate for both companies. The final net subsidy rate for the reviewed companies is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: January 14, 2004.

FOR FURTHER INFORMATION CONTACT: Carrie Farley or Darla Brown, Office of AD/CVD Enforcement VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 2003, the Department published in the **Federal Register** its *Preliminary Results*. We invited interested parties to comment on the results. Since the preliminary results, the following events have occurred.

On September 12, 2003, respondents requested an extension for submission of case and rebuttal briefs. On September 17, 2003, petitioners[3] also requested an extension of time for the submission of case and rebuttal briefs. On September 24, 2003, the Department revised the briefing schedule, granting petitioners and respondents until October 17 to file case briefs and October 24 to file rebuttal briefs. See September 24, 2003 Memorandum to the File, from the Team, re: Amended Briefing Schedule for the Countervailing Duty Administrative Review of Stainless Steel Sheet and Strip from Korea. On October 17, 2003, we received case briefs from petitioners and respondents. On October 24, 2003, we received rebuttal briefs from petitioners and respondents.

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers INI and Sammi. This review covers the period January 1, 2001 through December 31, 2001, and twenty-three programs.

Scope of the Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in

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[1] Formerly known as Inchon Iron and Steel Co. (Inchon). As of April 2001, Inchon changed its name to INI.

[2] As of April 2002, Sammi changed its name to BNG Steel Co., Ltd. (BNG).

[3] Allegheny Ludlum, AK Steel Corporation, J&L Speciality Steel, Inc., Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC (collectively, petitioners).

width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[4]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[5]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[6]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the

[4] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[5] ''Gilphy 36'' is a trademark of Imphy, S.A.

[6] ''Durphynox 17'' is a trademark of Imphy, S.A.

scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[7] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 HI-C.'' The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the Decision Memorandum, which is hereby adopted by this notice. A list of these issues contained in the Decision Memorandum is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at http://ia.ita.doc.gov, under the heading ''Federal Register Notices.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an *ad valorem* subsidy rate for INI/Sammi. For the period January 1, 2001 through December 31, 2001, we determine the net subsidy for INI/Sammi to be 0.55 percent *ad valorem*. This rate will also apply to shipments by Inchon entered or withdrawn from warehouse for the period January 1, 2001 through December 31, 2001.

We will instruct the U.S. Customs and Border Protection (CBP) to assess countervailing duties as indicated above. The Department will instruct the CBP to collect cash deposits of estimated countervailing duties in the percentage detailed above of the f.o.b. invoice prices on all shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct the CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. As of April 1, 2002, Sammi changed its name to BNG. *See* the Comment 2 of the March 19, 2003, Issues and Decision Memorandum that accompanied the *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea*, 68 FR 13267 (March 19, 2003). Thus, for cash deposit purposes, we will instruct the CBP to assign the rate for INI/Sammi's cash deposit rate to BNG. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Amended Final Results of Countervailing Duty Administrative Review*, 67 FR 8229 (February 22, 2002). This rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. In addition, for the period January 1, 2001 through December 31, 2001, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with section 751(a)(1) of the Act.

Dated: January 7, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix I - Issues and Decision Memorandum

I. METHODOLOGY AND BACKGROUND INFORMATION
- A. Same Person Test for Sammi
- B. Sammi and Cross-ownership with INI

II. SUBSIDIES VALUATION INFORMATION
- A. Allocation Period
- B. Benchmarks for Loans and Discount Rates

III. ANALYSIS OF PROGRAMS
- A. Programs Determined to Confer Subsidies
  - 1. The GOK's Direction of Credit
  - 2. Article 16 of the Tax Exemption and Reduction Control Act (TERCL): Reserve for Export Loss
  - 3. Article 17 of TERCL: Reserve for

[7] This list of uses is illustrative and provided for descriptive purposes only.

Overseas Market Development

4. Technical Development Fund under Restriction of Special Taxation (RSTA) Article 9, formerly TERCL Article 8

5. Asset Revaluation TERCL Article 56(2)

6. Investment Tax Credits

7. Electricity Discounts under the Requested Loan Adjustment Program (RLA)

8. Purchase of Sammi Specialty Steel Division by POSCO

B. Programs Determined to Be Not Used

1. Investment Tax Credits under RSTA Articles 11, 30, and 94 and TERCL Articles 24, 27, 71

2. Loans from the National Agricultural Cooperation Federation

3. Tax Incentives for Highly-Advanced Technology Businesses under the Foreign Investment and Foreign Capital Inducement Act

4. Reserve for Investment under Article 43–5 of TERCL

5. Export Insurance Rates Provided by the Korean Export Insurance Corporation

6. Special Depreciation of Assets on Foreign Exchange Earnings

7. Excessive Duty Drawback

8. Short-Term Export Financing

9. Export Industry Facility Loans

10. Research and Development

11. Local Tax Exemption on Land Outside of Metropolitan Area

C. Programs Determined To Be Not Countervailable

1. POSCO's Provision of Steel Inputs for Less than Adequate Remuneration

2. Electricity Discounts under the Voluntary Electric Power Savings Adjustment Program

3. Kangwon's Debt-to-Equity Swap

4. Debt Forgiveness Provided to Sammi by KAMCO

IV. TOTAL AD VALOREM RATE

V. ANALYSIS OF COMMENTS

Comment 1: Benchmarks for INI's and Sammi's Long-term Loans

Comment 2: Sale of Sammi's Bar and Pipe Facility at Changwon

Comment 3: Kangwon's Debt-for-Equity Swap

Comment 4: Debt Forgiveness Provided to Sammi by KAMCO

Comment 5: POSCO's Provision of Steel Inputs for Less than Adequate Remuneration

[FR Doc. 04–832 Filed 1–13–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership National Advisory Board (MEPNAB), National Institute of Standards and Technology (NIST), will meet Thursday, January 29, 2004, from 8 a.m. to 3:30 p.m. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by state, federal, and local partnerships. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to update the board on the latest program developments at MEP including a MEP Update, a MEP Metrics Update and Other Agency Collaborations. Discussions scheduled to begin at 1 p.m. and to end at 3:30 p.m. on January 29, 2004, on MEP budget issues will be closed. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Carolyn Peters no later than Tuesday, January 27, 2004 and she will provide you with instructions for admittance. Ms. Peter's e-mail address is *carolyn.peters@nist.gov* and her phone number is (301) 975–5607.

DATES: The meeting will convene January 29, 2004 at 8:00 a.m. and will adjourn at 3:30 p.m. on January 29, 2004.

ADDRESSES: The meeting will be held in the Employees' Lounge, Administration Building, at NIST, Gaithersburg, Maryland 20899. Please note admittance instructions under SUMMARY paragraph.

FOR FURTHER INFORMATION CONTACT: Carrie Hines, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–3360.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 18, 2003, that portions of the meeting which involve discussion of proposed funding of the MEP may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of the meeting which involve discussion of the staffing of positions in MEP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in that portion of the meeting is likely to reveal information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: January 7, 2004.

Arden L. Bement, Jr.,

Director.

[FR Doc. 04–720 Filed 1–13–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Stellwagen Bank National Marine Sanctuary (SBNMS) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Member (voting) seats: Research (2), Education (2), Conservation (2), Marine Transportation (1), Recreation (1), Whale Watching (1), Mobile Gear Commercial Fishing (1), Fixed Gear Commercial Fishing (1), Business/Industry (1), and At-Large (3); and the following Alternate (non-voting) seats: Research (2), Education (2), Conservation (2), Marine Transportation (1), Recreation (1), Whale Watching (1), Mobile Gear Commercial Fishing (1),

Fixed Gear Commercial Fishing (1), Business/Industry (1), and At-Large (3). The Department of Commerce General Counsel requires that all advisory committees must issue a **Federal Register** notice. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve a 2 to 3-year term, pursuant to the Council's Charter.

DATES: Applications are due by February 20, 2004.

ADDRESSES: Application kits may be obtained from Ruthetta Halbower, Administrative Secretary, SBNMS, 175 Edward Foster Road Scituate, MA 02066. Telephone: 781–545–8026 X 201. E-mail: *ruthetta.halbower@noaa.gov.* Or applications can be downloaded from the SBNMS web site: *http://stellwagen.nos.noaa.gov/management/sac/charter.html.* Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Nathalie Ward, Sanctuary Advisory Council Coordinator 175 Edward Foster Road Scituate, MA 02066. Telephone: 781–545–8026 X 206 E-mail: *nathalie.ward@noaa.gov.*

SUPPLEMENTARY INFORMATION: The SBNMS Sanctuary Advisory Council (SAC or council) is a community-based advisory group established to advise the Sanctuary Superintendent and staff on issues relevant to the effective implementation of the *Sanctuary Management Plan.* The Council is the formal organizational link to the Sanctuary's user community and others interested in the management of this nationally significant area of the marine environment.

Duties of the Council include:

- Providing advice and recommendations to the Superintendent regarding management of the Sanctuary drawing upon the expertise of its members and other sources;
- Serving as liaisons between their communities and the Sanctuary, by keeping the Sanctuary staff informed of issues and concerns, as well as performing outreach to their respective communities on the Sanctuary's behalf; and
- Serving as a forum for consultation and deliberation among its members and as a source of consensus advice to the Superintendent.

The Council membership is to be made up of 15 non-governmental voting members and six governmental ex-officio members (non-voting). The non-governmental members are selected to represent local user groups, conservation and other public interest organizations, scientific and educational organizations, or members of the public interested in the protection and multiple use management of Sanctuary resources. Representatives from the following groups will be chosen: Conservation (2), education (2), research (2), recreation (1), whale watching (1), fixed fishing gear (1), mobile fishing gear (1), marine transportation (1), business/industry (1); and citizens-at-large (3).

The governmental members are to represent agencies with regulatory authorities or other direct interests in the Sanctuary and its resources. The member organizations are:

National Marine Fisheries Service Northeast Regional Center (federal fisheries and protected species management);

New England Regional Fishery Management Council (federal fisheries management planning);

U.S. Coast Guard (federal marine resources and maritime enforcement);

Massachusetts Office of Coastal Zone Management (state-federal ocean management consistency);

Massachusetts Division of Marine Fisheries (state ocean fisheries management); and

Massachusetts Division of Law Enforcement (cooperative state-federal environmental law enforcement).

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 7, 2004.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 04–726 Filed 1–13–04; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Meeting of the Chairs of the National Marine Sanctuary Program's Sanctuary Advisory Councils

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The National Marine Sanctuary Program (NMSP) is holding a meeting of the Chairs of its eleven site-specific Sanctuary Advisory Councils (Councils). The purpose of the meeting is to hold discussion and obtain input from the Chairs on the following: NMSP policy topics discussed during 2003 meeting, reauthorization of the National Marine Sanctuaries Act, and activities of cruise ships in sanctuaries. The meeting will be open to the public. Opportunities for public comment will be provided at 8:45 a.m. and 3 p.m. on a first-come, first-served basis. Members of the public wishing to provide comments will be asked to sign up upon arrival and will likely be limited in how much time they will be allotted for comments (depending upon how many people have signed up). A maximum of twenty minutes will be allotted at 8:45 a.m. and again at 3 p.m. for public comments.

DATES: The meeting will be held on Thursday, February 26, 2004, from 8:30 a.m. to 3:20 p.m. Opportunities for public comment will be provided at 8:45 a.m. and 3 p.m.

ADDRESSES: The meeting will be held at The Marshall House, 123 East Broughton Street, Savannah, Georgia.

FOR FURTHER INFORMATION CONTACT: Karen Brubeck at (206) 842–6084 or Elizabeth Moore at (301) 713–3125 ext. 170.

SUPPLEMENTARY INFORMATION: The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to establish one or more Advisory Councils to provide advice to the Secretary regarding the designation and management of National Marine Sanctuaries. Eleven Councils exist, for the Channel Islands, Cordell Bank, Florida Keys, Gray's Reef, Gulf of the Farallones, Hawaiian Islands Humpback Whale, Monterey Bay, Olympic Coast, Stellwagen Bank, and Thunder Bay Sanctuaries and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve and proposed Sanctuary. Councils represent a wide variety of community interests and are active in various projects and issues affecting the management of their local Sanctuaries; Councils generally meet on a monthly or bimonthly basis. Each year, the NMSP hosts a meeting for all the Council Chairs and Coordinators to discuss project and topics of mutual interest (2004's meeting will be the fourth such meeting). This year, for the second time, the Chairs are being asked to provide advice to the national program leadership on policy topics important on a programmatic rather than a site-specific level. The purpose of the

meeting is to hold discussion and obtain input from the Chairs on the following: NMSP policy topics discussed during 2003 meeting, reauthorization of the National Marine Sanctuaries Act, and activities of cruise ships in sanctuaries. The meeting will be open to the public. Opportunities for public comment will be provided at 8:45 a.m. and 3 p.m. on a first-come, first-served basis. The Chairs will provide this advice only during the meeting announced by this notice, and will not become a permanent national advisory body.

Authority: 16 U.S.C. 1431 *et seq.*

Dated: January 7, 2004.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Jamison S. Hawkins,

Deputy Assistant Administrator for Management, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 04–725 Filed 1–13–04; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010804B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Management Team (HMSMT) will hold a work session, which is open to the public.

DATES: The work session will be Tuesday, January 27, 2004 from 1 p.m. until 5 p.m. and Wednesday, January 28, 2004 from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at NMFS, Southwest Fisheries Science Center, Large Conference Room, 8604 La Jolla Shores Drive, Room D–203, La Jolla, CA 92037; telephone: (858) 546–7000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The main purpose of this work session is for the HMSMT to continue work on development of initial recommendations for a limited entry program for the high seas longline fishery, including potential control dates, qualifying periods, qualifying landing amounts, capacity goals, and permit transferability considerations. This HMSMT work session is for the purpose of developing information for the Council's consideration at a future Council meeting; formal action on limited entry or other HMS fishery management plan (FMP)-related issues will not occur at this work session.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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 intent to take final action to address the emergency.

Special Accommodations

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

Dated: January 8, 2004.

Peter H. Fricke,

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

[FR Doc. 04–818 Filed 1–13–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110403A]

Endangered Species; File No. 1418

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Lawrence D. Wood, Marinelife Center of Juno Beach, 14200 U.S. Hwy. 1, Juno Beach, FL, 33408, has been issued a permit to take hawksbill sea turtles (*Eretmochelys imbricata*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Patrick Opay, (301)713–1401 or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 20, 2003, notice was published in the **Federal Register** (68 FR 27535) that a request for a scientific research permit to take hawksbill sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant will hand capture, handle, measure, Passive Integrated Transponder (PIT) and flipper tag, photograph, tissue sample, paint a number on the carapace of, and release up to 75 hawksbill sea turtles annually. Only 6 turtles will be initially marked with the painted number to test the efficacy of the this procedure, and future decisions concerning the value and use of this technique will be based on the results. The purpose of the research is to determine the abundance, distribution and movement patterns of this species. It will also provide growth rate information about these turtles and the researcher will determine the feasibility of photographic identification through unique individual characteristics. The permit duration is 5 years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 8, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–817 Filed 1–13–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Patent Cooperation Treaty.

Form Number(s): PCT RO/101, PCT/RO/134, PTO–1382, PTO–1390, PCT/IPEA/401, PTO/SB/61/PCT, PTO/SB/64/PCT, PCT/Model of power of attorney, PCT/Model of general power of attorney.

Agency Approval Number: 0651–0021.

Type of Request: Revision of a currently approved collection.

Burden: 347,889 hours annually.

Number of Respondents: 355,655 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 15 minutes (0.25 hours) to 8 hours to gather the necessary information; prepare the appropriate form, petition, or other request; and submit the information to the USPTO.

Needs and Uses: The general purpose of the Patent Cooperation Treaty (PCT) is to standardize the format and filing procedures so that applicants may file one international application in one location, in one language, and pay one initial set of fees to seek protection for an invention in more than 100 designated countries. This collection of information is necessary so that respondents can apply for an international patent and so that the USPTO can fulfill its duties to process, search, and examine international patent applications under the provisions of the PCT. Recent amendments to the PCT regulations that will be effective January 1, 2004, have simplified the application process and fee structure, resulting in the deletion of two forms from this collection, PCT/RO/144 Notice of Confirmation of Precautionary Designations and PCT/IB/328 Notice Effecting Later Elections.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local or tribal governments.

Frequency: On occasion.

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

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

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at susan.brown@uspto.gov.

Written comments and recommendations for the proposed information collection should be sent on or before February 13, 2004 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: January 8, 2004.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 04–779 Filed 1–13–04; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted a public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Rhonda Taylor, at (202) 606–5000, extension 282, (rtaylor@cns.gov); (TTY/TDD) at (202) 606–5256 between the hours of 9 a.m. and 4 p.m. eastern standard time, Monday through Friday.

Comments may be submitted, identified by the title of the information collection activity, by any of the following two methods within 30 days from the date of publication in this **Federal Register:**

(1) By fax to: (202) 395–6974, Attention: Ms. Fumie Yokota, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Fumie_Yokota@omb.eop.gov*.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Description

The President's Council on Service and Civic Participation was created by Executive Order 13285 on January 29, 2003. The Council is administered by the Corporation for National and Community Service. Under the Executive Order, the Council is directed to (among other things) design and recommend programs to recognize individuals, schools, and organizations that excel in their efforts to support volunteer service and civic participation, especially with respect to students in primary schools, secondary schools, and institutions of higher learning. The Council will bestow the President's Volunteer Service Award to meet this requirement. In order to recognize individuals, schools and organizations, the program must collect information about the individuals and organizations and their activities to verify that they have earned the award.

The information collected will be used by the program primarily to select winners of the President's Volunteer Service Awards and the Call to Service Awards (4,000 hours or more.) Individuals or organizations can be nominated by an organization. The nominations will be reviewed for compliance by the administering agency, and awards will be made on that basis. Information also will be used to assure the integrity of the program (so that, for example, an individual or organization does not receive an award twice for the same project), for reporting on the accomplishments of the program, for the public awareness campaign

(such as press releases and website information on winning projects), and to further the purposes of the Executive Order (such as fostering partnerships and coordination of projects and to promote civic engagement).

Currently, the Corporation is soliciting comments concerning the President's Volunteer Service Awards (PVSA), parts A, B, C, D and E.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: President's Volunteer Service Awards, parts A, B, C, D and E.

OMB Number: 3045–0086.

Agency Number: None.

Affected Public: All citizens of the United States.

Total Respondents: 200,000.

Frequency: On occasion.

Average Time Per Response: 20 minutes.

Estimated Total Burden Hours: 100,000 hours.

Total Burden Cost (capital/startup): 1,654,000.

Total Burden Cost (operating/maintenance): None.

Dated: January 9, 2004.

Barbara A. Taylor,

Director, Office of Public Affairs.

[FR Doc. 04–798 Filed 1–13–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 15, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Military Traffic Management Command, 200 Stovall Street, Alexandria, VA 22332–5000, ATTN: MTPP–S (Ben Jozwiak). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 325–8433.

Title, Associated Form, and OMB Number: Tender of Service and Letter of Intent for Personal Property Household Goods and Unaccompanied Baggage Shipments, DD Form 619, OMB Control Number 0702–0022.

Needs and Uses: Since household goods (HHG) move at Government expense, data is needed to choose the best service at lowest cost to the Government. The information provided by the carrier serves as a bid for contract to transport HHG, unaccompanied baggage, mobile homes, and boats. This information is collected on a regular basis, but is submitted intermittently throughout the year. Best-service-for-least-cost carrier receives the contract. DD Form 619 certifies that accessorial services were actually performed. The Government would not know which carriers to use for shipping personal property if they could not collect this information.

Affected Public: Business Or Other For-Profit.

Annual Burden Hours: 70,548.

Number of Respondents: 2,636.

Responses per Respondent: 441,677.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Tender of Service is the contractual agreement between DOD and the carrier, under which the carrier agrees to provide service in accordance with the terms and conditions cited in the Tender of Service. In accordance with the provisions of DOD 4500.9–R, the DD Form 619 is used by the household goods carrier industry to itemize packing material and other charges for billing purposes on household goods and unaccompanied baggage shipments.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–822 Filed 1–13–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments receive by March 15, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Military Traffic Management Command, 200 Stovall Street, Alexandria, VA 22332–5000, ATTN: MTPP–S (Ben Jozwiak). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 325–8433.

Title, Associated Form, and OMB Number: Uniform Tender of Rates and/or Charges for Domestic Transportation Services (DoD/USCG Sponsored Household Goods, MT Form 43–R, OMB Control Number 0702–0018.

Needs and Uses: Department of Defense approved household goods

carriers files rate to engage in the movement of DoD and United States Coast Guard sponsored shipments within the continental United States. Headquarters, Military Traffic Management Command evaluates the rates and awards the traffic to low rate responsible carriers whose rates are responsive and most advantageous to the Government.

Affected Public: Business or other for-profit.

Annual Burden Hours: 3,160.

Number of Respondents: 1,580.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: Semi-annually.

SUPPLEMENTARY INFORMATION: The method MTMC uses to procure rates for domestic personal property shipments is the voluntary submission by carriers during two intrastate filing cycles each year, May 1 to October 31 and November 1 to April 30. Historically, carriers file higher rates in the winter cycle. By accepting rates in two cycles the Government experiences lower costs during the summer months for the same services. If rates were filed less frequently, shipments would move at higher costs.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–823 Filed 1–13–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 15, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, U.S. Army Corps of Engineers, Institute for Water Resources, Corps of Engineers, Waterborne Commerce Statistics Center, P.O. Box 61280, New Orleans, LA 70161–1280, ATTN: CEWRC–NDC–C (Doug Blakemore). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 325–8433.

Title, Associated Form, and OMB Number: Shipper's Export Declaration (SED) Program, ENG Form 7513, OMB Control Number 0710–0013.

Needs and Uses: The Corps uses the data from the program to satisfy its mission. The Corps is responsible for the operation and maintenance of the nation's waterway system to ensure efficient and safe passage of commercial and recreational vessels. The support and management of economically sound navigation projects are dependent upon reliable navigation data as mandated by the River and Harbor Appropriations Act of September 22, 1922 (42 Stat. 1043), as amended and codified in 33 U.S.C. 555. The data collected on this form provide baseline, essential waterborne transportation information necessary for the Corps to perform its mission.

Affected Public: Business or other for-profit.

Annual Burden Hours: 17,600.

Number of Respondents: 14,300.

Responses per Respondent: 97,300.

Average Burden per Response: 11 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: On September 28, 1998, the Office of Management and Budget (OMB) designated the U.S. Army Corps of Engineers (Corps) as the ''central collection agency'' for the U.S. Foreign Waterborne Transportation Statistics program effective October 1, 1998. The U.S. Bureau of Census (Census) was previously responsible for this program. As central collection agency for foreign waterborne transportation statistics, the Corps is responsible for meeting the needs of other federal agencies who require these data. The Maritime Administration, the U.S. Coast Guard, the Bureau of Transportation Statistics, the Environmental Protection Agency, and the Bureau of Economic Analysis also require these data.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–824 Filed 1–13–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 15, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to U.S. Army ROTC Cadet Command, ATTN: ATCC–O1 (Elaine Krzanowski), 55 Patch Road, Building 56, Fort Monroe, VA 23651–1052. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 695–5509.

Title: Army ROTC Referral Information, ROTC Form 155–R, OMB Control Number 0702–0111.

Needs and Uses: The Army ROTC Program produces approximately 75 percent of the newly commissioned officers for the U.S. Army. The Army ROTC must have the ability to attract quality men and women who will pursue college degrees. Currently, there are 13 recruiting teams (Goldminers) located in various places across the United States aiding in this cause. Their mission is to refer quality high school students to colleges and universities offering Army ROTC. Goldminers, two officer personnel, will collect ROTC Referral information at a high school campus and document it on ROTC Cadet Command Form 155–R.

Affected Public: Individuals or households.

Annual Burden Hours: 4,075.

Number of Respondents: 16,300.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The purpose of the information is to provide prospect referral data to a Professor of Military Science to contact individuals who have expressed an interest in Army ROTC. If Goldminers did not collect referral information, we would suffer a negative impact on the recruiting effort and subsequent commissioning of new officers for the U.S. Army.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–825 Filed 1–13–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board; Request for Nominations

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Section 302 of Public Law 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. The Secretary of the Army appoints its 11 members. This notice is to solicit nominations for five (5) appointments or reappointments to two-year terms that will begin after April 5, 2004.

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20310–0103. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary of the Army (Civil Works) (703) 697–8986.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of section 302 of Public Law 99–662. The substance of those provisions is as follows:

a. Selection. Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles statistics.

b. Service. The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

c. Appointment. The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

(1) Carriers and Shippers. The law uses the terms ''primary users and shippers.'' Primary users have been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers have been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

(2) Geographical Representation. The law specifies ''various'' regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Public Law 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

(3) Commodity Representation. Waterway commerce has been aggregated into six commodity categories based on ''inland'' ton-miles shown in Waterborne Commerce of the United States. These categories are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

d. Nomination. Reflecting preceding selection criteria, the current representation by the five (5) Board members whose terms expire April 5, 2004, is two members representing region 1, one member representing region 2, one member representing region 3, and one member representing region 6. Also, these Board members represent two carriers, one shipper, and two shipper/carriers. Three of the five members whose terms expire April 5, 2004, are eligible for reappointment. Nominations to replace Board members whose terms expire April 5, 2004, may be made by individuals, firms or associations. Nominations will:

(1) State the region to be represented.

(2) State whether the nominee is representing carriers, shippers or both.

(3) Provide information on the nominee's personal qualifications.

(4) Include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to **Federal Register** notice (67 FR 47525) published on July 19, 2002, have been retained for consideration.

Renomination is not required but may be desirable.

e. Deadline for Nominations. All nominations must be received at the address shown above no later than March 5, 2004.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–826 Filed 1–13–04; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Antivesicant Compounds and Methods of Making and Using Thereof

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent No. 6,664,280 entitled ''Antivesicant Compounds and Methods of Making and Using Thereof,'' granted December 16, 2003. Foreign rights are also available (PCT/US01/23562). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Attn: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates generally to antivesicant compounds and methods of making and using thereof. In particular, the present invention relates to antivesicant compounds comprising 2-mercaptopyridine-N-oxide as a backbone structure.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–820 Filed 1–13–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Chemosensitizing Agents Against Choroquine Resistant P. Falciparum and Methods of Making and Using Thereof

AGENCY: Department of the Army, DoD.

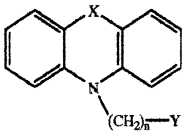
ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/849,400 entitled ''Chemosensitizing Agents Against Chloroquine Resistant P. Falciparum and Methods of Making and Using Thereof,'' filed May 7, 2001. Foreign rights are also available (PCT/USO1/14574). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

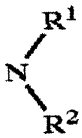
ADDRESSES: Commander, U.S. Army Medical Research and Materiel, Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 610–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A compound having the structural formula



or pharmaceutically acceptable salt or prodrug thereof, wherein X is a substituted or unsubstituted alkyl or a heteroatom; n is 4, 5 or 6; Y is a substituted or unsubsituted or alkyl, cycloalkyl, heterocycloalkyl, aryl, heteroaryl, or



wherein R1 and R2 are each independently, H, a heteroatom, substituted or unsubstituted alkyl, cycloalkl, heterocycloalkyl, aryl, or heteroaryl; and wherein each ring structure are independently substituted or unsubsituted is disclosed. Also disclosed are chemosensitizing agents and methods of modulating, attenuating, reversing, or affecting a cell's or organism's resistance to a given drug such as an antimalarial.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–821 Filed 1–13–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

Name of Committee: Inland Waterways Users Board (Board).

Date: February 19, 2004.

Location: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., in Washington, DC (1–202–628–2100).

Time: Registration will begin at 8:30 a.m. and the meeting is scheduled to adjourn at 11 a.m.

Agenda: The Board will hear briefings on the status of both the funding for inland navigation projects and studies, and the Inland Waterways Trust Fund. The Board will also consider its priorities for the next fiscal year.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, 441 G Street, NW., Washington, DC 20314–1000; Ph: 202–761–4559.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–819 Filed 1–13–04; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; State Program Improvement Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003 (To Be Awarded in FY 2004)

Catalog of Federal Domestic Assistance (CFDA) Number: 84.323A

DATES: Applications Available: January 15, 2004.

Deadline for Transmittal of Applications: February 27, 2004.

Deadline for Intergovernmental Review: April 27, 2004.

Eligible Applicants: A State educational agency (SEA) of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) that is not a current grantee as of February 1, 2004.

Estimated Available Funds: $22,000,000.

Estimated Range of Awards: Awards will be not less than $530,000, nor more than $2,243,812 in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. Pursuant to subsection 655(b) of the Individuals with Disabilities Education Act (IDEA), the Secretary has increased the maximum award to account for inflation. In the case of an outlying area awards will be not less than $84,800.

Note: Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

We will set the amount of each grant after considering—

(1) The amount of funds available for making the grants;

(2) The relative population of the State or outlying area; and

(3) The types of activities proposed by the State or outlying area.

Estimated Average Size of Awards: $1,200,000.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Not less than one year and not more than three years.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program, authorized under IDEA, is to assist SEAs and their partners, referred to in section 652(b) of IDEA, with reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv) these priorities are allowable activities specified in the statute. (*See* sections 651–655 of IDEA.)

Absolute Priority: For FY 2004 this priority is an absolute priority. Under section 653 of IDEA and 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority supports projects that assist SEAs and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

State Improvement Plan. Applicants must submit a State improvement plan that—

(a) Is integrated, to the maximum extent possible, with State plans under the Elementary and Secondary Education Act of 1965, as amended, and the Rehabilitation Act of 1973, if appropriate;

(b) Identifies those critical aspects of early intervention, general education, and special education programs (including professional development, based on an assessment of State and local needs) that must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(16) of IDEA. Specifically, applicants must include:

(1) An analysis of all information, reasonably available to the SEA, on the performance of children with disabilities in the State, including—

(i) Their performance on State assessments and other performance indicators established for all children, including drop-out rates and graduation rates;

(ii) Their participation in postsecondary education and employment; and

(iii) How their performance on the assessments and indicators compares to that of non-disabled children;

(2) An analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum:

(i) The number of personnel providing special education and related services; and

(ii) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in paragraph (b)(2)(i) with temporary certification) and on the extent of certification or retraining necessary to eliminate those shortages that is based, to the maximum extent possible, on existing assessments of personnel needs;

(3) An analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and

(4) An analysis of other information, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities;

(c) Describes a partnership agreement that—

(1) Specifies—

(i) The nature and extent of the partnership among the SEA, local educational agencies (LEAs), and other State agencies involved in, or concerned with, the education of children with disabilities, and the respective roles of each member of the partnership; and

(ii) How those agencies will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of these persons and organizations; and

(2) Is in effect for the period of the grant;

(d) Describes how grant funds will be used in undertaking the systemic-change activities, and the amount and nature of funds from any other sources, including funds under part B of IDEA retained for use at the State level under sections 611(f) and 619(d) of IDEA, that will be committed to the systemic-change activities;

(e) Describes the strategies the State will use to address the needs identified under paragraph (b), including how it will—

(1) Change State policies and procedures to address systemic barriers to improving results for children with disabilities;

(2) Hold LEAs and schools accountable for educational progress of children with disabilities;

(3) Provide technical assistance to LEAs and schools to improve results for children with disabilities;

(4) Address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services)

have the skills and knowledge necessary to meet the needs of children with disabilities, including a description of how it will—

(i) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities, including how the State will work with other States on common certification criteria;

(ii) Prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

(iii) Work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;

(iv) Work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of a program of preparation;

(v) Work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;

(vi) Enhance the ability of teachers and others to use strategies, like behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

(vii) Acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State, if appropriate, will adopt promising practices, materials, and technology;

(viii) Recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education, and related services;

(ix) Integrate its plan, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and

(x) Provide for the joint training of parents and special education, related services, and general education personnel;

(5) Address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel;

(6) Disseminate results of the local capacity-building and improvement projects funded under section 611(f)(4) of IDEA;

(7) Address improving results for children with disabilities in the geographic areas of greatest need;

(8) Assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective; and

(9) Coordinate its improvement strategies with public and private sector resources.

Required partners. Applicants must:

(a) Establish a partnership with LEAs and other State agencies involved in, or concerned with, the education of children with disabilities; and

(b) Work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including—

(1) The Governor;

(2) Parents of children with disabilities;

(3) Parents of nondisabled children;

(4) Individuals with disabilities;

(5) Organizations representing individuals with disabilities and their parents, such as the parent training and information centers;

(6) Community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(7) The lead State agency for part C of IDEA;

(8) General and special education teachers, and early intervention personnel;

(9) The State advisory panel established under part B of IDEA;

(10) The State interagency coordinating council established under part C of IDEA; and

(11) Institutions of higher education within the State.

Optional partners. A partnership established by applicants may also include—

(a) Individuals knowledgeable about vocational education;

(b) The State agency for higher education;

(c) The State vocational rehabilitation agency;

(d) Public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice; and

(e) Other individuals.

Use of funds. Each SEA that receives a State Improvement Grant under this program—

(a) May use grant funds to carry out any activities that are described in the State's application and that are consistent with the purpose of this program;

(b) Shall, consistent with its partnership agreement established under the grant, award contracts or subgrants to LEAs, institutions of higher education, and parent training and information centers, as appropriate, to carry out its State improvement plan; and

(c) May award contracts and subgrants to other public and private entities, including the lead State agency under part C of IDEA, to carry out that plan;

(d)(1) Shall use not less than 75 percent of the funds it receives under the grant for any fiscal year—

(i) To ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children; or

(ii) To work with other States on common certification criteria; or

(2) Shall use not less than 50 percent of those funds for these purposes, if the State demonstrates to the Secretary's satisfaction that it has the personnel described in paragraph (d)(1).

Program Authority: 20 U.S.C. 1461.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary Grants.

Estimated Available Funds: $22,000,000.

Estimated Range of Awards: Awards will be not less than $530,000, nor more than $2,243,812 in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. Pursuant to subsection 655(b) of IDEA the Secretary has increased the maximum award to account for inflation. In the case of an outlying area awards will be not less than $84,800.

Note: Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

We will set the amount of each grant after considering—

(1) the amount of funds available for making the grants;

(2) the relative population of the State or outlying area; and

(3) the types of activities proposed by the State or outlying area.

Estimated Average Size of Awards: $1,200,000.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Not less than one year and not more than three years.

III. Eligibility Information

1. *Eligible Applicants:* An SEA of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) that is not a current grantee as of February 1, 2004.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—

(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: 1–301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.323A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact persons listed in section VII of this notice. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A ''page'' is 8.5″ × 11″ (on one side only) with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: January 15, 2004.

Deadline for Transmittal of Applications: February 27, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program. The application package also specifies the hours of operation of the e-Application Web site. We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: April 27, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference additional regulations outlining funding restrictions in the *Applicable Regulations* heading, in section I of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Special Education—State Program Improvement Grants Program—CFDA #84.323A is one of the programs included in the pilot project. If you are an applicant under the State Program Improvement Grants Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant

application in electronic format, nor will we penalize you if you submit an application in paper format.

• You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Your e-Application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 [or enter the name of your program specific cover page] to the Application Control Center at 1–202–260–1349.

• We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the State Program Improvement Grants Program and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the persons listed elsewhere in this notice under For Further Information Contact (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the State Program Improvement Grants Program at: *http://e-grants.ed.gov*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements under the *Applicable Regulations* heading, in section I of this notice.

We reference the regulations outlining the terms and conditions of an award under the *Applicable Regulations* heading, in section I of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, each SEA that receives a grant must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

The reports must describe the progress of the State in meeting the performance goals established under Section 612(a)(16) of the Act, analyze the effectiveness of the State's strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance. Grantees must also provide information required under EDGAR at 34 CFR 80.40.

4. *Performance Measures:* The goal of the State Program Improvement Grants Program is to reform and improve State systems for providing educational, early intervention, and transitional services consistent with State-identified needs. The applicant's proposed project evaluation must describe the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data on the project's contribution to the reform and improvement of such systems.

If funded, the applicant will be expected to report such data in the projects' annual performance reports (EDGAR, 34 CFR 75.590). Data should reflect how States have used SIG funding, in addition to state resources, to achieve changes and improvements in the systems for providing services.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: 1–202–205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at 1–202–512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*.

Dated: January 8, 2004.

Troy R. Justesen,

Acting Deputy Assistant, Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–833 Filed 1–13–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance, Hearing

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming hearing of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify Ms. Hope M. Gray at (202) 219–2099 or via e-mail at *hope.gray@ed.gov* no later than Thursday, January 29, 2004. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

Dates and Times: Thursday, February 5, 2004, beginning at 9 a.m. and ending at approximately 5 p.m.

ADDRESSES: The Holiday Inn on the Hill, 415 New Jersey Avenue, NW., the Federal South Room, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202–7582 (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act (HEA) of 1965 as amended by Pub. L. 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the Committee has been charged with providing technical expertise with regard to systems of need analysis and application forms, making recommendations that result in the maintenance of access to postsecondary education for low- and middle-income students; conducting a study of institutional lending in the Stafford Student Loan Program; assisting with activities related to the 1992 reauthorization of the Higher Education Act of 1965; conducting a three-year evaluation of the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP) under the Omnibus Budget Reconciliation Act (OBRA) of 1993; and assisting Congress with the 1998 reauthorization of the Higher Education Act.

The congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title VI of the Higher Education Act. The Committee traditionally approaches its work from a set of fundamental goals: Promoting access; ensuring program integrity; integrating delivery across the Title IV programs; eliminating or avoiding program complexity; and minimizing burden on students and institutions.

The most important charge of the Advisory Committee is to make recommendations to Congress and the Secretary that will lead to the maintenance and enhancement of access to postsecondary education for low- and middle-income students. In addition to carrying out its ongoing statutory charges, the Committee dedicated itself to articulating the current state of access by developing two reports on the condition of access, *Access Denied: Restoring the Nation's Commitment to Equal Educational Opportunity and Empty Promises: The Myth of College Access in America.* As a result of the findings in its access reports, the Committee submitted its access proposal to Congress in May 2003 in preparation for reauthorization of the Higher Education Act. The Committee will review and evaluate, from an access perspective, other reauthorization proposals and ideas emanating from Congress and the higher education community.

The proposed agenda includes discussion sessions with congressional staff, Department of Education officials, and members of the higher education community focusing on the need for simplification of need analysis, forms and delivery of student aid. Specifically, the hearing will initiate an Advisory Committee simplification study conducted at the request of Congress. The hearing will explore (a) congressional interests and proposals for simplification, (b) perspectives of the higher education community and specific problems, including annual updates to the state tax allowances, (c) the student work penalty, and (d) early notification of student aid eligibility. Space is limited and you are encouraged to register early if you plan to attend. You may register through the Internet at *ADV_COMSFA@ed.gov* or *Tracy.Deanna.Jones@ed.gov*. Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register electronically, you may mail or fax your registration information to the Advisory Committee staff office at (202) 219–3032. Also, you may contact the Advisory Committee staff at (202) 219–2099. The registration deadline is Friday, January 30, 2004.

The Advisory Committee will meet in Washington, DC on Thursday, February 5, 2004, from 9 a.m. until approximately 5 p.m.

Record are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: January 8, 2004.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 04–723 Filed 1–13–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[FE Docket Nos. 03–60–NG, et al.]

Office of Fossil Energy; Reliant Energy Services, Inc., et al.; Orders Granting and Amending, Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during October 2003, it issued Orders granting and amending authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas & Petroleum.

Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000

Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 31, 2003.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING AND AMENDING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE Docket No.	Import Volume	Export Volume	Comments
1917	11–7–03	Reliant Energy Services, Inc.; 03–60–NG.	292 Bcf	292 Bcf	Import a combined total of natural gas from Canada and Mexico, and export a combined total of natural gas to Canada and Mexico, beginning on October 6, 2003, and extending through October 5, 2005.
1879–A	11–17–03	Louis Dreyfus Energy Canada LP (Successor to Louis Dreyfus Energy Canada Inc.); 03–32–NG.			Name change to blanket import authority. Change in corporate structure.
1918	11–17–03	Sempra Energy Solutions; 03–69–NG.	100 Bcf		Import natural gas from Canada, beginning on November 17, 2003, and extending through November 16, 2005.
1919	11–17–03	Vermont Gas Systems, Inc.; 03–71–NG.	20 Bcf	20 Bcf	Import and export natural gas from and to Canada, beginning on December 23, 2003, and extending through December 22, 2005.
1920	11–17–03	Phibro Inc.; 03–74–NG	400 Bcf	400 Bcf	Import a combined total of natural gas, including LNG from Canada and Mexico, and export a combined total of natural gas, including LNG to Canada and Mexico, beginning on January 1, 2004, and extending through December 31, 2005.
1921	11–17–03	Rochester Gas and Electric Corporation; 03–75–NG.	40 Bcf		Import natural gas from Canada, beginning on December 1, 2003, and extending through November 30, 2005.
1575–B	11–17–03	Shell NA LNG LLC (Formerly Shell NA LNG, Inc.); 00–16–LNG.			Name change to blanket import authority.
1922	11–20–03	Stand Energy Corporation 03–78–NG.	2 Bcf		Import and export a combined total of natural gas from and to Mexico, beginning on November 20, 2003, and extending through November 19, 2005.
1923	11–20–03	Advance Energy, Inc.; 03–79–NG.	600 Bcf		Import and export natural gas from and to Canada and Mexico, beginning on November 20, 2003, and extending through November 19, 2005.

[FR Doc. 04–781 Filed 1–13–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Funding Opportunity Announcement

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a funding opportunity announcement.

SUMMARY: Notice is hereby given of the intent to issue Funding Opportunity Announcement No. DE–PS26–04NT42074 entitled ''Solid State Energy Conversion Alliance (SECA) Core Technology Program.'' The National Energy Technology Laboratory (NETL) is seeking applications under this announcement to develop, through the Core Technology Program, science and technologies that address specific technical challenges and barriers faced by the SECA Industrial Teams. The DOE goal for SECA Industrial Teams is to develop a 3 kilowatt (kW)–10kW solid-oxide fuel cell system that has a Factory Cost of $400/kW by 2010. Development of solid-oxide fuel cell power systems that are applicable to stationary, mobile and military applications with minimal differences in core module components is desired. A goal of DOE is to encourage the entry of one or more fuel cell systems developed in the SECA Program into one or more commercial markets at the earliest possible date. Core Technology Program research and development is an integral part of the effort to achieve the aforementioned goals.

DATES: The funding opportunity announcement will be available on the ''Industry Interactive Procurement System'' (IIPS) Web page located at *http://e-center.doe.gov* on or about January 9, 2004. Applicants can obtain access to the funding opportunity announcement from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

ADDRESSES: Questions and comments regarding the content of the announcement should be submitted through the ''Submit Question'' feature of IIPS at *http://e-center.doe.gov.* Locate

the announcement on IIPS and then click on the ''Submit Question'' button. You will receive an electronic notification that your question has been answered. Responses to questions may be viewed through the ''View Questions'' feature. If no questions have been answered, a statement to that effect will appear. You should periodically check ''View Questions'' for new questions and answers.

FOR FURTHER INFORMATION CONTACT: Bonnie Dowdell, Contract Specialist, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, 626 Cochrans Mill Road, E-mail Address: *Bonnie.Dowdell@netl.doe.gov*, Telephone Number: 412–386–5879.

SUPPLEMENTARY INFORMATION: SECA supports the objectives of the Comprehensive National Energy Strategy; in addition, it addresses Presidential Initiatives including Hydrogen Fuel, FutureGen, Climate Change and Clear Skies. Specific benefits of solid-oxide fuel cell technology include:

(1) High efficiency. Even without cogeneration a solid-oxide fuel cell system can be twice as efficient as competing technologies due to the direct conversion of fuel to electrical power. With thermal recovery, system efficiency could reach 85%.

(2) Fuel cell systems promise to be one of the most reliable power generation technologies. Hospitals, hotels, and telephone companies are now using them as part of critical uninterruptible power supply systems. SECA will result in distributed generation products that will further increase grid reliability and safety.

(3) Solid-oxide fuel cell systems are clean. They generate no solid wastes, and due to the higher efficiency and the replacement of fossil fuel combustion with a lower temperature electrochemical conversion, fuel cells significantly lower emissions of nitrogen compounds and greenhouse gases.

(4) Fuel cells expand energy choices. They can be used in virtually any application for the production of useful energy from fossil fuels in a very efficient manner. As environmental requirements become more stringent, fuel cells are an important option in producing useful energy in an environmentally friendly way.

(5) Fuel cells manufactured as small scalable modules and produced cheaply by taking advantage of economies of production, are well suited for developing countries without an existing energy infrastructure, and will help meet a growing worldwide demand for energy. Solid-oxide fuel cell power systems developed in the SECA Program will not require large one-time investments of capital that characterize large central generation plants. The modules produced will be scalable allowing application of capital in smaller incremental amounts. This is a tenable economic scenario for developing countries.

The main objective of the Core Technology Program is to develop science and technologies that will be adopted by the SECA Industrial Teams to increase their success in developing commercially-viable solid-oxide fuel cell power systems. The SECA Core Technology Program provides a direct link for Core Technology participants to market new technology developments to an established customer base via the SECA Industrial Teams. It is expected that this program structure should significantly shorten the time period between Core Technology development and commercialization of same technologies. The following website provides additional information on the SECA Program including the program structure and information on the Core Technology component: *www.seca.doe.gov.*

This SECA Core Technology announcement focuses on specific sub-areas of interest under two Core Technology areas of interest: (1) Materials; and (2) Fuel Processing. Applications can only be submitted to one of the sub-areas of interest that follow:

Area of Interest 1, Materials, is comprised of four separate sub-areas of interest to which an application may be submitted.

(1) Materials—Sulfur-Tolerant Anodes
(2) Materials—Interconnects
(3) Materials—Cathode/Interconnect Contact
(4) Materials—Innovative Sealing Concepts

Area of Interest 2, Fuel Processing, is comprised of three separate sub-areas of interest to which an application may be submitted.

(1) Fuel Processing—Diesel Fuel Reformation Catalysts
(2) Fuel Processing—Integrated Diesel Fuel Injection and Mixing
(3) Fuel Processing—Carbon and Sulfur Deposition/Reaction Mechanisms for Diesel Reforming Catalysts

DOE anticipates awarding approximately thirteen (13) cooperative agreements under this Program Announcement. This particular program is covered by Section 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards and requires a cost share commitment of at least 20 percent from non-federal sources for research and development projects. Approximately $7,000,000 in total funding is expected to be available under this announcement.

Once released, the funding opportunity announcement will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The funding opportunity announcement will only be made available in IIPS, no hard (paper) copies of the funding opportunity announcement and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the funding opportunity announcement will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the announcement. The actual funding opportunity announcement document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on January 6, 2004.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 04–782 Filed 1–13–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–49–000]

Dominion Transmission, Inc.; Notice of Application

January 8, 2004.

On December 24, 2003, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, Virginia 23219, filed an application in the above referenced docket, pursuant to Section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations to construct, own, and operate certain facilities at its Fink Storage Field in Lewis County, West Virginia. The purpose of this project is to protect storage operations from both gas migration and third party

encroachment by expanding the active storage boundary by 3,163 acres; adding a 22,375 acre protective boundary; converting 15 oil wells in the Fink Oil Field to active storage use; replacing or retesting approximately 27,360 feet of main pipeline and approximately 18,200 feet of well lines in the Fink Oil Field to connect the wells to the Sweeney Compressor Station; and installing associated appurtenant facilities. It is estimated the proposed project will cost approximately $9.2 million. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to Anne E. Bomar, Managing Director, Transmission Rates and Regulation, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, Virginia 23219, telephone (804) 819–2134.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 29, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–49 Filed 1–13–04; 8:45 am]

BILLING CODE 6717–01

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–187–000 and ER04–187–001]

North Jersey Energy Associates, a Limited Partnership; Notice of Issuance of Order

January 8, 2004.

North Jersey Energy Associates, a Limited Partnership (North Jersey Energy) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of electric capacity, energy and ancillary services at market-based rates. North Jersey Energy also requested waiver of various Commission regulations. In particular, North Jersey Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by North Jersey Energy.

On December 29, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by North Jersey Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 29, 2004.

Absent a request to be heard in opposition by the deadline above, North Jersey Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of North Jersey Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of North Jersey Energy's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the e-Library (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–47 Filed 01–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–44–000, et al.]

Victory Garden Power Partners I, LLC, et al.; Electric Rate and Corporate Filings

January 5, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Victory Garden Power Partners I, LLC, ZWHC, LLC, and (not consolidated) Caithness VG Wind, LLC, Caithness 251 Wind, LLC

[Docket Nos. EC04–44–000, ER03–527–001, and ER03–522–001]

Take notice that on December 23, 2003, ZWHC, LLC (ZWHC) and Victory Garden Power Partners I, LLC (VGI) (collectively, the Sellers) and Caithness VG Wind, LLC (Caithness VG) and Caithness 251 Wind, LLC (Caithness 251) (collectively, the Purchasers) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of the sale to Purchasers (both wholly-owned subsidiaries of Caithness Energy, L.L.C., of generation assets owned by ZWHC and VGI and Notification of Change in Status.

Comment Date: January 16, 2004.

2. Citizens Communications Company, Great Bay Hydro Corporation, Vermont Electric Cooperative, Inc.

[Docket No. EC04–45–000]

Take notice that on December 24, 2003, Citizens Communications Company (Citizens), Great Bay Hydro Corporation (Great Bay), and Vermont Electric Cooperative, Inc. (VEC) (together, Applicants), filed with the Federal Energy Regulatory Commission a joint application pursuant to section 203 of the Federal Power Act for authorization to dispose of and acquire jurisdictional facilities whereby Citizens will (1) Transfer certain jurisdictional transmission facilities to Great Bay, or in the alternative, (2) transfer certain jurisdictional transmission facilities to VEC, which will subsequently transfer these facilities to Great Bay as soon as practicable. Citizens also proposes to transfer certain related assets.

The Applicants state that the above-described proposed transfer of jurisdictional transmission facilities is associated with Citizens' proposed transfer of certain generating facilities in the State of Vermont. Specifically, the application states that Citizens' proposes to transfer its hydraulic generating facilities and dams located in the State of Vermont (the Newport Generating Facility Units 1, 2, 3 and 11, the Troy Generating Facility, and the West Charleston Generating Facility) and diesel generators located at the Newport Generating Facility Units 1, 2 and 3. Applicants state that the total generating capacity of the facilities Citizens proposes to transfer is approximately 12 MW.

Comment Date: January 16, 2004.

3. Citizens Communications Company, Vermont Electric Cooperative, Inc.

[Docket No. EC04–46–000]

Take notice that on December 24, 2003, Citizens Communications Company (Citizens) and Vermont Electric Cooperative, Inc. (VEC) filed with the Federal Energy Regulatory Commission a joint application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Citizens will sell certain transmission facilities to VEC.

Comment Date: January 16, 2004.

4. Crete Energy Venture, LLC, Entergy Asset Management, Inc., and ArcLight Capital Holdings, LLC

[Docket No. EC04–47–000]

Take notice that on December 24, 2003, Crete Energy Venture, LLC (Crete), Entergy Asset Management, Inc. (EAM), and ArcLight Capital Holdings, LLC, (together, Applicants) tendered for filing a joint application for authorization under section 203 of the Federal Power Act for EAM to sell its membership interests in Crete to a wholly-owned subsidiary of ArcLight Energy Partners Fund I, L.P. and/or ArcLight Energy Partners Fund II, L.P.

Comment Date: January 16, 2004.

5. MNS Wind Company LLC

[Docket No. ER04–330–000]

Take notice that on December 24, 2003, MNS Wind Company LLC filed a Notice of Cancellation of its FERC Electric Rate Schedule No. 1. MNS Wind requests that this Notice of Cancellation be effective as of December 24, 2003.

Comment Date: January 14, 2004.

6. Southern California Edison Company

[Docket No. ER04–334–000]

Take notice that on December 24, 2003, Southern California Edison Company (SCE) tendered for filing revisions to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Second Revised Volume No. 6, Appendices I, II and III, to reflect the change in transmission rates resulting from the annual update of the Transmission Revenue Balancing Account Adjustment.

SCE states that copies of the filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator, the Cities of Azusa, Banning, Colton, Riverside, California, the Department of Water and Power of the City of Los Angeles, California and all Scheduling Coordinators certified by the California Independent System Operator.

Comment Date: January 14, 2004.

7. New England Power Pool

[Docket No. ER04–335–000]

Take notice that on December 24, 2003, the New England Power Pool (NEPOOL) Participants Committee filed revisions to NEPOOL Market Rule 1 to govern the issuance and administration of Gap RFPs in New England. A March 1, 2004, effective date is requested.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England State governors and regulatory commissions.

Comment Date: January 14, 2004.

8. Liberty Generating Company, LLC, Badger Generating Company, LLC, and Okeechobee Generating Company

[Docket No. ER04–336–000]

Take notice that on December 24, 2003, Liberty Generating Company, LLC, Badger Generating Company, LLC and Okeechobee Generating Company tendered for filing Notice of Cancellation of their respective market-based rate tariffs.

Comment Date: January 14, 2004.

9. Pacific Gas and Electric Company

[Docket No. ER04–337–000]

Take notice that on December 24, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing changes in rates included in its Transmission Owner Tariff (TO Tariff) for the Transmission Revenue Balancing Account Adjustment (TRBAA) rate, the Reliability Services (RS) rates and the Transmission Access Charge Balancing Account Adjustment (TACBAA). PG&E requests a January 1, 2004, effective for these changes in rates with the exception of the TACBAA rate.

PG&E states that copies of the filing have been served on the California Independent System Operator (ISO), Scheduling Coordinators registered with the ISO, Southern California Edison Company, San Diego Gas & Electric Company, the California Public Utilities

Commission and parties on the official service lists in recent TO Tariff rate cases, Docket Nos. ER01–1639–000, ER03–409–000 and ER04–109–000.

Comment Date: January 14, 2004.

10. Southern California Edison Company

[Docket No. ER04–338–000]

Take notice that on December 24, 2003, Southern California Edison Company (SCE) tendered for filing revised rate sheets (Revised Sheets) to the Agreement for Interconnection Service between SCE and Harbor Cogeneration Company (Harbor), Service Agreement No. 2 under SCE's FERC Electric Tariff, Second Revised Volume No. 6. SCE also tendered for filing a Reliability Management System Agreement (RMS Agreement) between SCE and Harbor. In addition, SCE also tendered for filing a Notice of Cancellation of the Interconnection Facilities Agreement between SCE and Harbor. SCE requests an effective date of November 30, 2003, for the Revised Sheets, the RMS Agreement, and the Notice of Termination.

SCE states that copies of the filing were served upon the Public Utilities Commission of the State of California and Harbor.

Comment Date: January 14, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–44 Filed 01–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–42–000, et al.]

Pittsfield Generating Company, L.P., et al.; Electric Rate and Corporate Filings

December 30, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Pittsfield Generating Company, L.P. and PE-Pittsfield LLC

[Docket Nos. EC04–42–000 and ER98–4400–006]

Take notice that on December 22, 2003, PE-Pittsfield LLC (PE-Pittsfield) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby PE-Pittsfield will become general partner of Pittsfield Generating Company, L.P., a public utility and exempt wholesale generator in Massachusetts, with a nominal capacity of 163 MW. PE-Pittsfield requests privileged treatment for certain attachments to the filing.

Comment Date: January 14, 2004.

2. Dominion Energy Kewaunee, Inc., Wisconsin Power and Light Company, and Wisconsin Public Service Corporation

[Docket No. EC04–43–000]

Take notice that on December 19, 2003, Dominion Energy Kewaunee, Inc., Wisconsin Power and Light Company and Wisconsin Public Service Corporation (collectively, Applicants) tendered for filing with the Federal Energy Regulatory Commission a joint applicant pursuant to section 203 of the Federal Power Act, seeking approvals and acceptances relating to the sale of the Kewaunee Nuclear Power Plant (nominally rated net capacity of 543 MW) and appurtenant interconnection facilities located in Kewaunee County, Wisconsin. This application contains a request for privileged treatment of the Asset Sales Agreement, which includes the Power Purchase Agreements.

Comment Date: January 13, 2004.

3. Duke Energy Vermillion, LLC

[Docket No. EG04–24–000]

On December 19, 2003, Duke Energy Vermillion, LLC (Duke Vermillion) filed an application with the Federal Energy Regulatory Commission for redetermination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations.

Comment Date: January 9, 2004.

4. City of Banning, California

[Docket No. EL04–42–000]

Take notice that on December 19, 2003, the City of Banning, California (Banning) submitted for filing changes to its Transmission Revenue Balancing Account Adjustment (TRBAA) and to Appendix I of its Transmission Owner (TO) Tariff. Banning requests a January 1, 2004, effective date for its filing. Banning further requests that the Commission waive any fees for the filing of its revised TRBAA.

Comment Date: January 9, 2004.

5. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, and New York Power Pool

[Docket Nos. ER97–1523–080, OA97–470–072, and ER97–4234–070]

Take notice that on December 12, 2003, Niagara Mohawk Power Corporation, a National Grid Company, submitted a Compliance Filing pursuant to the Commission's November 14, 2003, Order issued in the above-captioned proceedings.

Comment Date: January 13, 2004.

6. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, and New York Power Pool

[Docket Nos. ER97–1523–081, OA97–470–073, and ER97–4234–071]

Take notice that on December 15, 2003, the New York Independent System Operator, Inc., submitted a Compliance Filing pursuant to the Commission's November 14, 2003, Order issued in the above-captioned proceedings.

Comment Date: January 13, 2004.

7. Great Lakes Hydro America, LLC

[Docket No. ER02–159–007]

Take notice that on December 19, 2003, Great Lakes Hydro America LLC (GLHA) submitted for filing a notice of change in status to inform the Commission of GLHA's acquisition of the ownership interest in three companies, each owning a qualifying small power production facility.

Comment Date: January 9, 2004.

8. Las Vegas Cogeneration II, LLC

[Docket No. ER03–222–003]

Take notice that on December 19, 2003, Las Vegas Cogeneration II, LLC, tendered a compliance filing in accordance with the Commission Order issued November 17, 2003, in Docket Nos. EL01–118–000 and 001, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003).

Comment Date: January 14, 2004.

9. Alliant Energy Neenah, LLC

[Docket No. ER03–533–001]

Take notice that on December 19, 2003, Alliant Energy Neenah, LLC, tendered a compliance filing in accordance with the Commission's Order issued November 17, 2003, in Docket Nos. EL01–118–000 and 001, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003).

Comment Date: January 14, 2004.

10. Black Hills Wyoming, Inc.

[Docket No. ER03–802–001]

Take notice that on December 19, 2003, Black Hills Wyoming, Inc., tendered a compliance filing in accordance with the Commission's Order issued November 17, 2003, in Docket Nos. EL01–118–000 and 001, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003).

Comment Date: January 14, 2004.

11. Black Hills Power, Inc., Basin Electric Power Cooperative, and Powder River Energy Corporation

[Docket No. ER03–1354–002]

Take notice that on December 19, 2003, Black Hills Power, Inc., Basin Electric Power Cooperative, and Powder River Energy Corporation tendered for filing revisions to their joint open access transmission tariff with the Federal Energy Regulatory Commission.

Comment Date: January 9, 2004.

12. Craven County Wood Energy Limited Partnership

[Docket No. ER03–1379–002]

Take notice that on December 19, 2003, Craven County Wood Energy Limited Partnership submitted a compliance filing pursuant to the Commission' Order issued November 24, 2003, in Docket Nos. ER03–1379–000 and 001, requesting revisions to its rate schedule conforming to Commission's Order No. 614.

Comment Date: January 9, 2004.

13. Southern Company Services, Inc.

[Docket No. ER04–118–001]

Take notice that on December 19, 2003, Southern Company Services, Inc. submitted revisions to an informational filing required under: (1) The Unit Power Sales Agreement dated July 20, 1988, between Southern Companies (*i.e.*, Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Company Services, Inc.) and Florida Power & Light Company (FPL); (2) the Unit Power Sales Agreement dated August 17, 1988, between Southern Companies and Jacksonville Electric Authority (JEA); and (3) the Unit Power Sales Agreement dated July 19, 1988, between Southern Companies and Florida Power Corporation (FPC). The original informational filing was filed on October 30, 2003.

Southern Company Services, Inc. states that copies of the revised material have been sent to representatives of FPL, FPC, and JEA.

Comment Date: January 9, 2004.

14. Milford Power Limited Partnership

[Docket No. ER04–278–001]

Take notice that on December 19, 2003, Milford Power Limited Partnership (Milford) filed with the Federal Energy Regulatory Commission pursuant to section 205 of the Federal Power Act an Application to Amend Milford's Proposed Initial FERC Electric Rate Schedule. Milford seeks expedited review and a waiver of the 60-day pre-filing requirement under 18 CFR 35.3.

Comment Date: January 7, 2004.

15. Agway Energy Services, Inc.

[Docket No. ER04–283–001]

Take notice that on December 19, 2003, Agway Energy Services, Inc tendered for filing an amendment to the Notice of Cancellation of its Rate Schedule FERC No. 1.

Comment Date: January 9, 2004.

16. Michigan Electric Transmission Company, LLC

[Docket No. ER04–315–000]

Take notice that on December 19, 2003, Michigan Electric Transmission Company, LLC (METC) submitted an executed Cost Reimbursement Agreement between Michigan Electric Transmission Company, LLC and Michigan Public Power Agency and the executed Cost Reimbursement Agreement between Michigan Electric Transmission Company, LLC and Michigan South Central Power Agency (Cost Reimbursement Agreements). METC requests an effective date of October 1, 2003, for the Cost Reimbursement Agreements.

Comment Date: January 9, 2004.

17. Idaho Power Company

[Docket No. ER04–317–000]

Take notice that on December 19, 2003, Idaho Power Company submitted Notices of Cancellation for forty-nine rate schedules with various counterparties. Idaho Power states that it has served copies of the filing on each of the counterparties. Idaho Power seeks an effective date for the cancellations of December 31, 2003.

Comment Date: January 9, 2004.

18. Dominion Energy Kewaunee, Inc.

[Docket No. ER04–318–000]

Take notice that on December 19, 2003, Dominion Energy Kewaunee, Inc. (Dominion Energy Kewaunee) petitioned the Commission for acceptance of Dominion Energy Kewaunee, Inc. Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: January 9, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–45 Filed 01–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM02–1–000, RM02–1–001]

Standardization of Generator Interconnection Agreements and Procedures; Notice Clarifying Compliance Procedures

January 8, 2004.

1. On July 24, 2003, the Commission issued Order No. 2003, Standardization of Generator Interconnection Agreements and Procedures.[1] On September 26, 2003, the Commission issued a Notice of Extension of Time granting Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) (collectively, independent Transmission Providers) an extension of time until January 20, 2004 to comply with Order No. 2003. On October 7, 2003, the Commission granted requests to extend the effective date of the Final Rule and the date on which compliance filings are due for non-independent Transmission Providers,[2] also to January 20, 2004. 105 FERC ¶61,043 at P 17–18 (2003). This notice clarifies the process for complying with that January 20, 2004 effective date.

2. For all non-independent Transmission Providers, their open access transmission tariffs (OATT) will be deemed to be revised to include the *pro forma* Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA) in Order No. 2003 on January 20, 2004. These Transmission Providers are directed to make ministerial filings reflecting those revisions to their OATT in their next filings with the Commission. Any non-independent Transmission Provider seeking a variation from the *pro forma* LGIP and LGIA based on existing regional reliability standards must so inform the Commission on or before January 20, 2004. These filings should specify the proposed changes and why such changes are necessary. The Commission will solicit comments on these filings before acting on them. After January 20, 2004, a non-independent Transmission Provider may separately file under Federal Power Act Section 205[3] proposed changes to its LGIPs and LGIAs using the ''consistent with or superior to'' standard described in the Final Rule. Order No. 2003 at P 825.

3. Independent Transmission Providers must make compliance filings on or before January 20, 2004. Until the Commission acts on those compliance filings, the independent Transmission Provider's existing Commission-approved interconnection standards and procedures will remain in effect. An independent Transmission Provider may meet the January 20, 2004 deadline by filing: (a) A notice that it intends to adopt the Order No. 2003 *pro forma* LGIP and LGIA; or (b) new standard interconnection procedures and agreements developed according to Order No. 2003's ''independent entity variation'' standard. Order No. 2003 at P 827. If the independent Transmission Provider files the (b) option, the Commission will solicit comments on that filing before acting on it, and the independent Transmission Provider's existing, Commission-approved standards and procedures will continue to apply pending Commission action. After submitting its compliance filing, an independent Transmission Provider will continue to have the right to propose changes to its LGIP and LGIA using the ''independent entity variation'' standard.

4. We would also like to clarify that for non-independent Transmission Providers that belong to an RTO or ISO, the RTO or ISO's Commission-approved standards and procedures shall govern interconnection to its members' facilities that are under the operational control of the RTO or ISO. An interconnection to a Commission-jurisdictional facility that is owned by a non-independent Transmission Provider but is not under the operational control of the RTO or ISO shall be conducted according to the non-independent Transmission Provider's LGIP and LGIA.

The Commission Orders

The Secretary is hereby directed to publish this notice in the **Federal Register**.

By direction of the Commission.

Linda Mitry,

Acting Secretary.

[FR Doc. 04–780 Filed 1–13–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 FR 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶31,146 (2003), *reh'g pending* (Final Rule or Order No. 2003).

[2] Non-independent Transmission Providers are utilities that (a) are not RTOs or ISOs or (b) are members of RTOs or ISOs but maintain ownership and operational control over certain of their Commission-jurisdictional facilities.

[3] 16 U.S.C. § 824d (2000).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 8, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of traffic management plan.

b. *Project No:* 2496–087.

c. *Date Filed:* December 23, 2003.

d. *Applicant:* Eugene Water and Electric Board (EWEB).

e. *Name of Project:* Leaburg-Walterville Project.

f. *Location:* The project is located on the McKkenzie River in Lane County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Gale Banry, Energy Resource Project Manager, Eugene Water and Electric Board, (541) 484–2411.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for Filing Comments and or Motions:* February 9, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2496–087) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site at *http://www.ferc.gov* under the (e-Filing(link. The Commission strongly encourages e-filings.

k. *Description of Request:* The licensee filed a request to amend its approved traffic management plan (plan) filed pursuant to article 408. The amendment addresses changes to the procedures for closing the bridge across the dam during construction.

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described applications. Copies of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–48 Filed 01–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 943–083, 2145–057, and 2149–106]

Public Utility District of Chelan County and Public Utility District of Douglas County; Notice of Intent To Conduct Public Meeting Regarding License Amendment Applications and Habitat Conservation Plans for the Rock Island, Rocky Reach, and Wells Projects

January 8, 2004.

On February 11, 2004, Commission staff will be hosting a technical meeting regarding the anadromous fish agreements and habitat conservation plans filed on November 24, 2003, as license amendment applications for the Rock Island Project (FERC No. P–943), Rocky Reach Project (FERC No. P–2145), and Wells Project (FERC No. P–2149).

The meeting will allow the licensees for the projects to present the details of the amendment applications, anadromous fish agreements, and habitat conservation plans for each project to Commission staff and interested parties.

The meeting will be held on February 11, 2004, at the Federal Energy Regulatory Commission building located at 888 First Street, NE., Washington, DC, from 1 p.m. to 3 p.m. in Room 3M–2A. Intervenors and other parties interested in these issues are invited to attend and participate if they so desire.

Any questions about this notice should be directed to Bob Fletcher at the Federal Energy Regulatory Commission, (202) 502–8901 or *robert.fletcher@ferc.gov*.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–46 Filed 01–13–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0241; FRL–7317–9]

Request to State Governments for Ecological Incident Reports; Proposed Pesticide Information Collection and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this notice announces that EPA is seeking public comment on the following proposed Information Collection Request (ICR): Request to State Governments for Ecological Incident Reports (EPA ICR No. 2135.01, OMB Control No. 2070–TBD). The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPP–2003–0241, must be received on or before March 15, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a State government agency that collects data on bird kills, fish kills, and other nonhuman animal incidents caused by pesticide poisoning (''ecological incidents''), or incidents which occur to plant species via spray drift from pesticides. Potentially affected entities may include, but are not limited to:

- Regulation of Agricultural Marketing and Commodities, NAICS 92614 (State agencies engaged in the planning, administration, and coordination of agricultural programs for production, marketing, and utilization, including educational and

promotional activities. Included in this industry are government establishments responsible for regulating and controlling the grading and inspection of food, plants, animals, and other agricultural products.)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in sections 20(c) and 22(b) of the Federal Insecticide, Fungicide, and Rodenticide Act. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Copies of this Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0241. 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.

B. Electronic Access

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

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

III. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0241. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0241. In contrast to EPA's electronic public docket, EPA's e-mail

system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0241.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0241. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

B. How Should I Submit CBI to the Agency?

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

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

C. What Should I Consider when I Prepare My Comments for EPA?

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following proposed ICR:

Title: Request to State Governments for Ecological Incident Reports.

ICR numbers: EPA ICR No. 2135.01, OMB Control No. 2070–TBD.

ICR status: This is a request for a new information collection.

Abstract: This data collection program is designed to provide EPA with data on bird kills, fish kills, and other nonhuman animal incidents caused by pesticide poisoning (''ecological incidents''). In addition, incidents which occur to plant species via spray drift from pesticides will be collected. These data will be requested from state government offices that are involved in investigating and writing reports on such incidents. Data extracted from the incident reports will be stored in the Ecological Incident Information System (EIIS), a national database of ecological incidents maintained by the Environmental Fate and Effects Division (EFED), Office of Pesticide Programs. These data provide vital information on the field effects of pesticides that is necessary to conduct ecological risk assessments and make informed decisions for regulation of pesticides. The data collection ensures that the Agency is systematically collecting the ecological incidents, and therefore avoiding biased ecological risk assessments based on reports from one specific location or a particular pesticide. Ultimately, collection of these data will provide the capability for sound ecological comparative risk assessment analysis.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it 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; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 264 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: State government agencies that collect data on bird kills, fish kills, and other nonhuman animal incidents caused by pesticide poisoning (''ecological incidents''), or incidents which occur to plant species via spray drift from pesticides.

Estimated total number of potential respondents: 75

Frequency of response: Annual

Estimated total/average number of responses for each respondent: 3

Estimated total annual burden hours: 264

Estimated total annual burden costs: $17,459

VI. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 24, 2003.

William H. Sanders, III,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–561 Filed 1–13–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting

January 8, 2004.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 15, 2004, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street SW., Washington, DC. The Meeting will focus on presentations by senior agency officials regarding implementations of the agency's strategic plan and a comprehensive review of FCC policies and procedures.

Presentations will be made in five panels:

Panel One will feature the Managing Director and the Chief of the Office of Strategic Planning and Policy Analysis in a joint presentation.

Panel Two will feature the Chiefs of the Enforcement Bureau and the Consumer and Governmental Affairs Bureau.

Panel Three will feature the Chiefs of the Office of Engineering and Technology, the Wireless Telecommunications Bureau, and the International Bureau.

Panel Four will feature the General Counsel and the Director of the Office of Communications Business Opportunities.

Panel Five will feature the Chiefs of the Wireline Competition Bureau and the Media Bureau.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322.

Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events web page at *http://www.fcc.gov/realaudio*.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu*. Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, (03) 834–1470, Ext. 19; Fax (703) 834–0111.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–863 Filed 1–9–04; 5:13 pm]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011849–001.

Title: HSDG/Maersk Sealand Space Charter Agreement.

Parties: Hamburg Sudamerikanische Dampfschifffahrts-Gesellschaft K.G., and A.P. Moller-Maersk A/S.

Synopsis: The amendment deletes reference to CAT (Crowley American Transport) from the name of the agreement and as a Hamburg Sud trade name and updates Maersk's corporate name.

Agreement No.: 201129–001.

Title: Manatee/WSI Warehouse Lease.

Parties: Manatee County Port Authority and WSI of the Southeast, LLC.

Synopsis: The modification extends the term of the lease through December 31, 2008 and revises the compensation provisions.

Dated: January 9, 2004.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–814 Filed 1–13–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 04–01]

International Shipping Agency, Inc. v. the Puerto Rico Ports Authority; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed by the International Shipping Agency, Inc. (''Complainant'') against the Puerto Rico Ports Authority (''Respondent''). Complaint contends that Respondent has failed to operate in accordance with the Piers M/N/O Terminal Lease and Development Agreement, FMC Agreement No. 224–201011, has failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, has refused to deal or negotiate with Complainant, and has imposed unjust and unreasonable prejudice or disadvantage with respect to Complainant. Complainant contends that Respondent has violated sections 10(a)(3) and 10(b)(10) and sections 10(d)(1) (3) and (4) of the Shipping Act of 1984, 46 U.S.C. app. sections 1709(a)(3); 1709(b)10; and 1709(d)(1),

(3) and (4). As a result of these allegations, Complainant claims that they have suffered and will continue to suffer substantial economic damage and injury in excess of 50 million dollars. Complainant seeks an order finding Respondent to have violated the sections cited above, directing Respondent to cease and desist, reparations and attorneys fees and an order directing Respondent to establish reasonable rules and regulations.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence with the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by January 5, 2005 and a final decision of the Commission shall be issued by May 5, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–815 Filed 1–13–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR Part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Trinbago Express Shipping Services Inc., 9909 Foster Avenue, Brooklyn, NY 11236. Officers: Keith Miller, President (Qualifying Individual), Pamela Lindsay, Vice President.

Elite International Logistics, Inc., 1535 W. Walnut Parkway, Compton, CA 90220. Officers: Ouk Jin, Lee, President (Qualifying Individual), Won Rok, Choi, CFO.

CMS Logistics, Inc., 13266 Acoro Place, Cerritos, CA 90703. Officers: Jae Woo Chang, President (Qualifying Individual), Myung Shin Chang, Secretary.

Braid America Inc., 15700 Export Plaza Drive, Suite S, Houston, TX 77032. Officer: Terrance J. Hatton, Vice President (Qualifying Individual).

Beyond Shipping, Inc., 2000 Silver Hawk Drive, #2, Diamond Bar, CA 91765. Officer: Yilin Yang, President (Qualifying Individual).

American Logistics Network, LLC, 85 Chestnut Ridge Road, Montvale, NJ 07645. Officers: Douglas W. Tipton, Vice President (Qualifying Individual), Raymond P. Ebeling, President.

AFE International Group Inc., 430 W. Merrick Road, Suite #P, Valley Stream, NY 11580. Officers: Yi-Chun Wu, Vice President (Qualifying Individual), Hung-Cheung Leung, President.

J.C.C. Trans Inc., 144–29 156th Street, Jamaica, NY 11434. Officer: Sung Soo Hong, President (Qualifying Individual).

Jason Express Inc., 423 Hindry Avenue, #A1, Inglewood, CA 90301. Officers: Jason Liu, President (Qualifying Individual), Jeff Nguyen, Operations Manager.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Flash Forwarding, Inc., 169 Spencer Avenue, Lynbrook, NY 11563. Officers: Lucille Ercole, Vice President (Qualifying Individual), JoAnn Veiss, President.

PR Logistics Corp., Vista Del Morro Industrial Park, Grainger Building Lot Num. 2, Catano P.R. 00962. Officer: Ariel Rodriguez, President (Qualifying Individual).

Krown Logistics, LLC dba Krown Marine dba A.M. Forwarder, 7202 NW 84 Avenue, Miami, FL 33166. Officers: Fernando S. Cassingena, Gen. Managing Member (Qualifying Individual), Kevin Smorenburg, Sales Gen. Managing Member.

Cargo Agents, Inc. dba CAI Lines dba Cargo Agents Services, 245–06 Jericho Turnpike, Suite 105 LL, Floral Park, NY 11001. Officers: Jose Donado, Vice President (Qualifying Individual), Bonnie Sheehan, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Champion Cargo Services, LLC, 9523 Jamacha Blvd., Spring Valley, CA 91977. Officers: Leonardo T. Padilla, Gen. Manager (Qualifying Individual), Jocelyn T. Padilla, Member.

Express Solutions International, Inc. dba ESI Global Logistics, 3916 Vero Rd., Suite M, Baltimore, MD 21227. Officers: Kathleen Olsen, Vice President (Qualifying Individual), Christopher Taylor, CEO.

Hual North America, Inc., 500 North Broadway, Suite 233, Jericho, NY 11753. Officers: Roy Winograd, Vice President (Qualifying Individual), James Butcher, President.

Dated: January 8, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–816 Filed 1–13–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before March 15, 2004.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. Report title: Reports of Money Market Mutual Fund Assets

Agency form number: FR 2051a, b

OMB control number: 7100–0012

Frequency: Weekly and Monthly

Reporters: Money Market Mutual Funds

Annual reporting hours: 7,140 hours

Estimated average hours per response: 3 minutes (FR 2051a), 12 minutes (FR 2051b)

Number of respondents: 2,100 (FR 2051a), 700 (FR 2051b)

General description of report: This information collection is voluntary (12 U.S.C. 353 et. seq.) and is given confidential treatment [5 U.S.C. 552(b)(4)].

Abstract: The weekly FR 2051a collects data on total shares outstanding for approximately 2,100 money market mutual funds (MMMFs) and the monthly FR 2051b collects data on total net assets and portfolio holdings for approximately 700 funds. The data are used to construct the monetary aggregates and for the analysis of current money market conditions and banking developments.

2. Report title: Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer; Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer

Agency form number: FR MSD–4, FR MSD–5

OMB control number: 7100–0100, 7100–0101

Frequency: On occasion

Reporters: State member banks, bank holding companies, and foreign dealer banks engaging in activities as municipal securities dealers.

Annual reporting hours: 30: FR MSD–4; 18: FR MSD–5

Estimated average hours per response: 1.00: FR MSD–4; 0.25: FR MSD–5

Number of respondents: 30: FR MSD–4; 70: FR MSD–5

General description of report: These information collections are mandatory (15 U.S.C. §§ 78o–4, 78q and 78w) and are given confidential treatment (5 U.S.C. § 552(b)(6)).

Abstract: The FR MSD–4 collects information, such as personal history and professional qualifications, on an employee whom the bank wishes to assume the duties of a municipal securities principal or representative. The FR MSD–5 collects the date of, and reason for, termination of such an employee.

3. Report title: Notice By Financial Institutions of Government Securities Broker or Government Securities Dealer Activities; Notice By Financial Institutions of Termination of Activities as a Government Securities Broker or Government Securities Dealer

Agency form number: FR G–FIN, FR G–FINW

OMB control number: 7100–0224

Frequency: On occasion

Reporters: State member banks, foreign banks, uninsured state branches or state agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge corporations.

Annual reporting hours: 25: FR G–FIN; 1: FR G–FINW

Estimated average hours per response: 1.00: FR G–FIN; 0.25: FR G–FINW

Number of respondents: 25: FR G–FIN; 4: FR G–FINW

General description of report: These information collections are mandatory (15 U.S.C. 78o–5(a)(1)(B)) and are not given confidential treatment.

Abstract: The Government Securities Act of 1986 (the Act) requires financial institutions to notify their appropriate regulatory authority (ARA) of their intent to engage in government securities broker or dealer activity, to amend information submitted previously, and to record their termination of such activity. The Federal Reserve Board uses the information in its supervisory capacity to measure compliance with the Act.

Board of Governors of the Federal Reserve System, January 8, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–732 Filed 1–13–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site 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 February 6, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Central Banking Services, Inc., St. Cloud, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of St. Joseph Bancshares, Inc., St. Joseph, Minnesota, and thereby indirectly acquire First State Bank of St. Joseph, St. Joseph, Minnesota.

Board of Governors of the Federal Reserve System, January 8, 2004.

Margaret McCloskey Shanks,

Assistant Secretary of the Board.

[FR Doc. 04–797 Filed 1–13–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–22]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Indicators of the Performance of Local and State Education Agencies in HIV-prevention and Coordinated School Health Program Activities for Adolescent and School Health Programs—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). This proposed project is an annual Web-based questionnaire to assess programmatic activities among local, State and territorial education agencies (LEA, SEA and TEA) funded by CDC, National Center for Chronic Disease Prevention and Health Promotion, Division of Adolescent and School Health.

Currently, CDC does not fund a standardized annual reporting process that assesses HIV-prevention activities or coordinated school health program (CSHP) activities among LEAs, SEAs and TEAs within the National Center of Chronic Disease Prevention and Health Promotion. Data gathered from this questionnaire will: (1) Provide standardized information about how HIV-prevention and Coordinated School Health Program (CSHP) funds are used by LEAs, SEAs and TEAs; (2) assess the extent to which programmatic adjustments are indicated; (3) provide descriptive and process information about program activities; and (4) provide greater accountability for use of public funds.

There will be three Web-based questionnaires corresponding to the specific funding sources from the CDC, NCCDPHP, Division of Adolescent and School Health. Two questionnaires pertain to HIV-prevention program activities among LEAs, SEAs and TEAs. The third questionnaire pertains to CSHP activities among SEAs. The two HIV questionnaires will include questions on:

—Distribution of professional development and individualized technical assistance on school policies.
—Distribution of professional development and individualized technical assistance on education curricula and instruction.
—Distribution of professional development and individualized technical assistance assessment of student standards.
—Collaboration with external partners.
—Targeting priority populations.
—Planning and improving projects.
—Information about additional program activities.

The third questionnaire, CSHP, will also ask the questions above, however, it will focus on physical activity, nutrition, and tobacco-use prevention activities. It will include additional questions on:

—Joint activities of the State Education Agency and State Health Agency (SHA).
—Activities of the CSHP State-wide coalition.
—Health promotion programs and environmental approaches to Physical Activity, Nutrition and Tobacco (PANT).

There is no cost to respondents except for their time.

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
HIV Prevention Questionnaire: Local Education Agency Officials	18	1	7	126
HIV Prevention Questionnaire: State & Territorial Education Agency Officials	55	1	7	385
CSHP Questionnaire: State Education Agency Officials	23	1	9	207
Total				718

Dated: January 6, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–769 Filed 1–13–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: An Evaluation Survey on the Use and Effectiveness of Internet SAMMEC—N—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Since 1987, the Centers for Disease Control and Prevention (CDC) has used the Smoking-Attributable Mortality, Morbidity, and Economic Costs (SAMMEC) software to estimate the disease impact of smoking for the nation, states, and large populations. The Internet version of the SAMMEC software was released in 2002, and it contains two distinct computational programs, Adult SAMMEC and Maternal and Child Health (MCH) SAMMEC, which can be used to estimate the adverse health outcomes and disease impact of smoking on adults and infants.

More than 1230 tobacco control professionals in the State health departments and other tobacco control institutions in the country are currently using Internet SAMMEC to generate the data they need for their projects. Some of them have provided comments and sent requests for assistance. The purpose of this survey is to evaluate the use and effectiveness of the SAMMEC software and identify ways to improve the system so that it will better meet the needs of the users in tobacco control and prevention. The annualized burden for this data collection is 250 hours.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hours)
Tobacco Control Professionals/Internet SAMMEC users	1000	1	15/60

Dated: January 7, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–770 Filed 1–13–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: NIOSH Training Grant Applications 42 CFR Part 86, OMB NO. 0920–0261—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Public law 91–596 requires CDC, National Institute of Occupational Safety and Health (NIOSH) to provide an adequate supply of professionals to carry out the purposes of the Act to assure a safe and healthful work environment. NIOSH supports educational programs through training grant awards to academic institutions for the training of industrial hygienists, occupational physicians, occupational health nurses, safety professionals and other professionals in related disciplines, such as occupational epidemiologists. Grants are provided to regional Education and Research Centers (ERCs) which provide multidisciplinary graduate academic and research training for professionals, continuing education for practicing professionals and outreach programs. There are also Training Project Grants (TPGs) which provide single discipline academic and technical training throughout the country. 42 CFR part 86, ''Grants for Education Programs in Occupational Safety and Health, Subpart B—Occupational Safety and Health Training,'' provides guidelines for implementing Pub. L. 91–596.

The Training Grant Application form (CDC 2.145.A) is used by NIOSH to

collect information from applicants submitting new competing applications and from existing awardees for submitting competing renewal grants. The information is used to determine the eligibility of applicants for grant review and by peer reviewers during the peer review process to evaluate the merit of the proposed training project. The Non-Competing Application Form (CDC Form 2.145B) is used for non-competing awards to judge the annual progress of the awardee during the approved project period.

Extramural training grant awards are made annually following an extramural review process of the training grant applications including a Special Emphasis Panel, review by an internal Training Grants Council, and an internal review of non-competing applicants. The average burden per response is based on past experience using CDC Forms 2.145A and 2.145B and consultation with grantees. The annualized burden for this data collection is 10,631 hours.

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Training Grant Application (CDC 2.145 A):			
ERC	4	1	660
ERC (Supplemental)	13	1	159
TPG	16	1	65
Continuation Grant Application (CDC 2.145B):			
ERC	12	1	335
TPG	32	1	27

Dated: January 7, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–771 Filed 1–13–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Healthcare Provider Survey: Knowledge, Attitudes and Practices about Genital Human Papillomavirus (HPV) Infection and Related Conditions—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). CDC is proposing to collect information to assess health care providers' knowledge, attitudes, and practices about genital human papillomavirus and related conditions. The survey will be conducted with a nationally representative sample of clinical specialties including physicians and mid-level health care providers.

Genital HPV infection is common among sexually active populations. An estimated 50 percent of sexually active adults have been infected with one or more genital HPV types, making this the most common sexually transmitted infection in the United States (Cates, 1999). Many health care providers may not be aware of data demonstrating the high prevalence of this sexually transmitted virus, the association of certain HPV types with various clinical manifestations including cervical and other anogenital cancers, or the type-specific natural history of HPV infection. To date, no nationally representative qualitative or quantitative surveys have measured health care providers' knowledge, attitudes, and practices about genital HPV infection.

CDC proposes to fill that gap through a survey of a national sample of clinicians who care for substantial numbers of sexually active patients at risk for acquiring HPV, infected with genital HPV, or that have at least one of two clinical manifestations of HPV infection, cervical neoplasia or anogenital warts. Respondents include primary care physicians, midlevel practitioners (nurse practitioners and physician's assistants), obstetricians/gynecologists (ob/gyn), nurse midwives, dermatologists, and urologists. There will be separate data collection instruments for primary care, obstetrics/gynecology, and dermatology/urology.

The survey will provide baseline information on practicing clinicians' knowledge, attitudes and practices concerning patients at risk for or infected with HPV. The survey findings will be used to help CDC and other organizations develop clinical training materials, decision support tools, and materials to counsel and educate patients.

Data collection will involve a mail survey of a stratified random sample of practicing clinicians and other healthcare providers. Sample stratification by specialty will allow specialty comparisons on knowledge, attitudes, and practices. The estimated annualized burden for this data collection is 2,282 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Office Managers	930	1	3/60
Primary Care:			
Physicians	1634	1	30/60
Mid-level	1000	1	30/60

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Ob/Gyn:			
Physicians	500	1	35/60
Nurse Midwives	500	1	35/60
Dermatology/Urology:			
Dermatologists	500	1	20/60
Urologists	500	1	20/60

Dated: January 6, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–772 Filed 1–13–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement 04001

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement 04001.

Times and Dates: 7:30 p.m.–8 p.m., February 22, 2004 (Open); 8 p.m.–9:20 p.m., February 22, 2004 (Closed); 8 a.m.–4:40 p.m., February 23, 2004 (Closed); 8 a.m.–2:45 p.m., February 24, 2004 (Closed).

Place: Embassy Suites, 10 E. River Center Boulevard, Covington, KY 41011, Captain's View Meeting Room, Telephone (859) 261–8400.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 04001.

For Further Information Contact: Bernadine B. Kuchinski, Ph.D., Occupational Health Consultant, Office of Extramural Programs, OD/NIOSH/CDC, Cincinnati, OH, (513) 533–8511.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 8, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–773 Filed 1–13–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Quarterly Financial Report (ACF–696).

OMB No.: 0970–0163.

Description: States and territories use this form to facilitate the reporting of expenditures for the Child Care and Development Fund (CCDF) on a quarterly basis. The form provides specific data regarding expenditures, obligations, and estimates. It provides states and territories with a mechanism to request grant awards and certify the availability of state matching funds. Failure to collect this data would seriously compromise the Administration for Children and Families' (ACF) ability to monitor expenditures. This form may also be used to prepare ACF budget submissions to Congress. This information collection currently uses ACF–696 for which Office of Management and Budget approval expires on December 31, 2003, updated for electronic submission.

Respondents: States and territories that are CCDF grantees.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696	56	4	5	1120

Estimated Total Annual Burden Hours: 1120.

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., Washingotn, 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: January 8, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–774 Filed 1–13–04; 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: April 2004 Current Population Survey Supplement on Child Support.

OMB No.: 0992–0003.

Description: Collection of the data will assist legislators and policymakers in determining how effective their policymaking efforts have been over time in applying the various child support legislation to the overall child support enforcement picture. This information will help policymakers determine to what extent individuals on welfare would be able to leave the welfare rolls as a result of more stringent child support enforcement efforts.

Respondents: Individuals and households.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Support Survey	47,000	1	.0246	1156
Estimated Total Annual Burden Hours:				1156

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. 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, Attn: Desk Officer for ACF, E-mail address: *lauren_wittenberg@omb.eop.gov*.

Dated: January 8, 2003.

Robert Sargis,

Reports Clearance Office.

[FR Doc. 04–775 Filed 1–13–04; 8:45 am]

BILLING CODE 4184–0–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Animal Drug User Fee Act of 2003; Interim Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing interim procedures relating to the Animal Drug User Fee Act (ADUFA) of 2003, which was signed by the President on November 18, 2003. This act amends the Federal Food, Drug, and Cosmetic Act, and authorizes FDA to collect four types of user fees: Application fees, establishment fees, product fees, and sponsor fees. Before FDA can begin collecting these fees, enabling appropriations must be enacted. Until further notice, such fees should not be submitted to FDA. However, sponsors should continue to submit new animal drug applications as in the past until additional direction is provided. Certain types of applications submitted on or after September 1, 2003, will be subject to fees, but an invoice for those fees will not be issued until after enabling appropriations are enacted. FDA will publish another **Federal Register** notice specifying fee amounts and procedures for submitting payments.

ADDRESSES: Visit the FDA Web site that provides further information on ADUFA at: *http://www.fda.gov/oc/adufa.*

FOR FURTHER INFORMATION CONTACT: Robert Miller, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–5436; e-mail: *rmiller2@cvm.fda.gov*. For general questions, you may also contact the Center for Veterinary Medicine at: *mailto:cvmadufa@fda.gov.*

SUPPLEMENTARY INFORMATION: ADUFA authorizes FDA to collect fees for: (1) Certain types of animal drug applications and supplemental animal drug applications submitted on or after September 1, 2003, (2) certain animal drug products, (3) certain establishments where such products are manufactured in final dosage form, and (4) certain sponsors of animal drug applications or investigational animal drug submissions. However, FDA may not begin to collect these fees until enabling appropriations are enacted. After the enactment of enabling appropriations, FDA will publish a **Federal Register** notice with detailed payment procedures.

For FY 2004 through FY 2008, ADUFA establishes overall fee revenue amounts for application fees, establishment fees, product fees, and sponsor fees. Revenue amounts established for years after FY 2004 are subject to annual adjustments for inflation and workload. Fees for applications, establishments, products, and sponsors are to be established each year by FDA so that revenues will approximate the levels established in the statute, after those amounts have been first adjusted for inflation and workload. FDA will publish a **Federal Register** notice with the FY 2004 fee rates and detailed payment instructions.

In an effort to better ensure broad awareness of interim procedures relating to ADUFA, FDA has established a Web site that provides further information at *http://www.fda.gov/oc/adufa*.

Dated: January 7, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–812 Filed 1–13–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Number 2003D–0558]

Draft Compliance Policy Guide, Guidance Levels for Radionuclides in Domestic and Imported Foods, Availability; and Draft Supporting Document, Supporting Document for Guidance Levels for Radionuclides in Domestic and Imported Foods, Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft compliance policy guide (CPG) entitled ''Guidance Levels for Radionuclides in Domestic and Imported Foods.'' The draft CPG would rescind and replace the current CPG Sec. 560.750 Radionuclides in Imported Foods—Levels of Concern (CPG 7119.14). The draft CPG provides updated guidance levels for radionuclide activity concentration in food offered for import and makes these same guidance levels for radionuclide activity concentration applicable to food in domestic interstate commerce for the first time. The draft CPG also expands the scope of coverage of FDA policy from food accidentally contaminated with radionuclides to food accidentally or intentionally contaminated with radionuclides. The agency is also announcing the availability of a draft supporting document entitled ''Supporting Document for Guidance Levels for Radionuclides in Domestic and Imported Foods.''

DATES: Submit written or electronic comments concerning the draft CPG and/or the draft supporting document by March 15, 2004.

ADDRESSES: Submit written requests for single copies of the draft CPG entitled ''Guidance Levels for Radionuclides in Domestic and Imported Foods'' and/or the draft supporting document entitled ''Supporting Document for Guidance Levels for Radionuclides in Domestic and Imported Foods'' to Paul South (see **FOR FURTHER INFORMATION CONTACT**). Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to this document. Submit written comments on the draft CPG and/or draft supporting document 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: Paul South, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1640, fax: 301–436–2651, e-mail: *psouth@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has developed a draft CPG to rescind and replace CPG Sec. 560.750 Radionuclides in Imported Foods—Levels of Concern (CPG 7119.14) concerning radionuclides in food. While CPG Sec. 560.750 Radionuclides in Imported Foods—Levels of Concern (CPG 7119.14), which was issued in 1986 following the Chernobyl nuclear accident, only addresses radionuclides in food offered for import, this draft CPG is intended to provide clear policy and regulatory guidance to FDA's field and headquarters staff with regard to radionuclides in both food offered for import and domestic food in interstate commerce. In particular, the draft CPG sets forth new guidance levels for radionuclides, referred to as Derived Intervention Levels (DILs). FDA would use DILs to help determine whether food in interstate commerce or food offered for import into the United States presents a safety concern. The DILs adopted in the draft CPG are not binding on FDA, the regulated industry, or the courts. In any given case, FDA may decide to initiate an enforcement action against food with concentrations below the DILs or decide not to initiate an enforcement action against food with concentrations that meet or exceed the DILs. The scientific basis for the DILs established in the draft CPG is presented in the draft supporting document. The draft CPG also contains information that may be useful to the regulated industry and to the public.

The agency has adopted good guidance practices (GGPs) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (21 CFR § 10.115). The draft CPG is being issued as a Level 1 draft guidance consistent with GGPs. The draft CPG represents the agency's current thinking on its enforcement process concerning the adulteration of foods with radionuclides. It does not create or confer any rights for or on any person and does not operate to bind FDA, or the public.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the draft CPG and the draft supporting document at *http://www.fda.gov/ora* under ''Compliance References.''

Dated: January 7, 2004.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 04–719 Filed 1–13–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Agency Information Collection Activities (OIG–319–FN)

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice sets forth the Office of Inspector General's summary of collection activities with regard to State Medicaid Fraud Control Units' Recertification Application and Annual Reports, as required by 42 CFR 1007.15 and 1007.17 of the OIG regulations. A proposed notice of these information collection activities was published for public comment in the March 26, 2003 edition of the **Federal Register** (68 FR 14668). No public comments were received in response to that proposed collection activities notice.

SUPPLEMENTARY INFORMATION:

Type of Information Collection Request: Reinstatement of an expired collection.

Title of Information Collection: State Medicaid Fraud Control Units' Recertification Application and Annual Report as required by 42 CFR 1007.15 and 1007.17. (Previously approved by the Office of Management and Budget under control number 0990–0162.)

Use: The information contained in the annual reports and recertification application is required for certification and yearly recertification by the OIG to ensure that federal matching funds are only expended for allowable costs, and to determine if a State unit needs technical assistance.

Frequency: Annually.

Affected Public: State government.

Annual Number of Respondents: 48.

Total Annual Responses: 48.

Average Burden Per Response: 32 hours.

Total Annual Hours: 2,744 hours.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the supporting statement and any related forms for the paperwork collections referenced above, e-mail your request, including your address and phone number, to John Bettac, Office of Investigations (*Jbettac@oig.hhs.gov*), or call (202) 619–3557. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the Office of Management and Budget desk officer: OMB Human Resources and Housing Branch; Attention: Brenda Aguilar (OMB # 0990–0162); 725 17th Street, NW., New Executive Office Building; Room 10235; Washington, DC 20503.

Dated: January 5, 2004.

Brian P. Carman,

OIG Chief Information Officer.

[FR Doc. 04–746 Filed 1–13–04; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Development/Pilot Projects in Cancer Complementary and Alternative Medicine (CAM).

Date: March 8–10, 2004.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Gerald G. Lowinger, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–742 Filed 1–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, Arthritis, Musculoskeletal, and Skin Diseases Committee.

Date: February 6, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Glen H. Nuckolls, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Arthritis, Musculoskeletal, and Skin Diseases, 6701 Democracy Boulevard, Bldg. 1, Ste. 800, Bethesda, MD 20892, (301) 594–4974, *nuckollg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–737 Filed 1–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Dermatomyositis Clinical Trial Applications.

Date: January 26, 2004.

Time: 8:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A. Ansari, PhD, Scientific Review of Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Dermatomyositis Clinical Trial Applications.

Date: January 26, 2004.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–738 Filed 1–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging Brain Study.

Date: January 16, 2004.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7704, *crucew@nia.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Proteomics of Aging.

Date: January 21, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7704, *crucew@nia.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Create II.

Date: January 25–26, 2004.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, (301) 496–9666, *latonia@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Imaging of Aging Brain.

Date: January 27, 2004.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7704, *crucew@nia.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimer's Disease Study.

Date: January 29, 2004.

Time: 4:15 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 402–7700, *rv23r@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, AD/Vascular Interactions.

Date: February 25–26, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Residence Inn, 8435 West Paradise Lane, Peoria, AZ 85382.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–739 Filed 1–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice Institute of Biomedical Imaging and Bioengineering; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contact proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: January 26, 2004.

Open: 8 a.m. to 12 p.m.

Agenda: Report from the NIBIB Director and reports from the Council's two subcommittees.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering Training and Career Development Subcommittee.

Date: January 27, 2004.

Time: 8 a.m. to 9:30 a.m.

Agenda: To discuss subcommittee business.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering Strategic Plan Development Subcommittee.

Date: January 27, 2004.

Open: 9:45 a.m. to 11:15 a.m.

Agenda: To discuss subcommittee business.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Dated: January 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–740 Filed 1–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Cooperative Research for the Development of Vaccines, Adjuvants, Therapeutics, Immunotherapeutics & Diagnostics for Biodefense (VATID) and SARS.

Date: February 10–12, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Alec Ritchie, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 435–1614, *aritchie@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–741 Filed 1–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: February 5–6, 2004.

Closed: February 5, 2004, 10:30 a.m. to recess.

Agenda: To review and evaluate grant applications and the activities of the NIMH Intramural Research Programs.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Open: February 6, 2004, 8:30 a.m. to adjournment.

Agenda: Presentation of NIMH Director's report and discussion of NIMH program and policy issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, (301) 443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *www.nimh.nih.gov/council/advis.cfm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research

Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–743 Filed 1–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pathogenesis of Infant Leukemia.

Date: January 13, 2004.

Time: 12:15 p.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892. (301) 435–1767; *gubanics@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SB Member Conflict.

Date: January 29, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Paul F. Parakkal, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122 MSC 7854, Bethesda, MD 20892. (301) 435–1176; *parakkap@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Molecular Pathobiology Study Section.

Date: February 1–3, 2004.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Terrace Hotel, 1515 Rhode Island Ave, NW., Washington, DC 20005.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892. (301) 435–1779; *riverase@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 4.

Date: February 5–6, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Alexandra Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892. (301) 451–3848; *ainsztea@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Etiology Study Section.

Date: February 9–11, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Oncological Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20814–9692. (301) 435–3504; *vf6n@nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Human Embryology and Development Subcommittee 1.

Date: February 9–10, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892. (301) 435–1046.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Microenvironment.

Date: February 9–10, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892. (301) 451–4467; *choe@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Synapses, Cytoskeleton and Trafficking Study Section.

Date: February 9–10, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7850, Bethesda, MD 20892. (301) 435–1251; *bannerc@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Initial Review Group, Motor Function, Speech and Rehabilitation Study Section.

Date: February 9, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848 (for overnight mail use room # and 20817 zip), Bethesda, MD 20892. (301) 435–1507; *niw@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Metallobiochemistry Study Section.

Date: February 9, 2004.

Time: 8:30 am to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Ave., NW., Washington, DC 20037.

Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892. (301) 435–1723; *nelsonja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Biomarkers Review Meeting.

Date: February 10–12, 2004.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Centger for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892. (301) 451–8754; *bellmar@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular Neuropharmacology and Signaling Study Section.

Date: February 11–12, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Jurys Doyle, 1500 New Hampshire Ave., NW., Washington, DC 20036.

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7850, Bethesda, MD 20892. (301) 435–1224; *husains@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Medicinal Chemistry Study Section.

Date: February 11–12, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Robert Lees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7806, Bethesda, MD 20892. (301) 435–2684; *leesro@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Auditory System Study Section.

Date: February 11–12, 2004.

Time: 8:00 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892. (301) 435–1249; *kimmj@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Progression and Metastasis Study Section.

Date: February 11–12, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892. (301) 435–1717; *padaratm@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Genetics Study Section.

Date: February 12–13, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Zhiqiang Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7804, Bethesda, MD 20892. (301) 435–2398; (301) 435–2398. *zouzhiqcsr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Tropical Medicine and Parasitology Study Section.

Date: February 12–13, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3194, MSC 7808, Bethesda, MD 20892. (301) 435–1146 *hickmanj@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Reproductive Endocrinology Study Section.

Date: February 12–13, 2004.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Reproductive Endocrinology, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892. (301) 435–1042; *shaikha@csr.nih.gov.*

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Imaging Study Section.

Date: February 12–13, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892. (301) 435–1171.

Name of Committee: Genetic Sciences Integrated Review Group, Genetics Study Section.

Date: February 12–14, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, Bethesda, MD 20892. (301) 435–1038; *remondid@csr.nih.gov.*

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Radiology Study Section.

Date: February 12–13, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892. (301) 435–1179; *bradleye@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, International and Cooperative Projects 1 Study Section.

Date: February 12–13, 2004.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Sandy Warren, DMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892. (301) 435–1019; *warren@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Development, Risk and Prevention Study Section.

Date: February 12–13, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892. (301) 435–0912; *levinv@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Nutrition Study Section.

Date: February 12–13, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sooja K. Kim, Phd. RD, Scientific Review Administration, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7804, Bethesda, MD 20892. (301) 435–1780.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Community-Level Health Promotion—Non-Interventions.

Date: February 12–13, 2004.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Washington Terrace, 1515 Rhode Island Ave., NW., Washington, DC 20005.

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892. (301) 435–0681; *schwarte@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Initial Review Group, Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: February 12–13, 2004.

Time: 9 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. (301) 594–6836; *tathamt@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Community-Level Health Promotion Study Section.

Date: February 12–13, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Bob Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892. (301) 435–0694; *wellerr@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Chronic Diseases Study Section.

Date: February 12–13, 2004.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Scott Osborne, MPH, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892. (301) 435–1782; *osbornes@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Biochemical Endocrinology Study Section.

Date: February 13, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892. (301) 435–1046.

Name of Committee: Center for Scientific Review Special Emphasis Panel, F10 (29L): Minority Disability F31'S: Physiology and Pathology.

Date: February 13, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892. (301) 435–0682; *perrinp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SRB–J 50R:PAR03–032:Bioengineering Research Partnerships.

Date: February 13, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892. (301) 435–2409; *shabestb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SRB–J 50R:PAR03–032:Bioengineering Research Partnerships.

Date: February 13, 2004.

Time: 5 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892. (301) 435–2409; *shabestb@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892. 93.893, National Institutes of Health, HHS.)

Dated: January 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–736 Filed 1–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Confidentiality of Alcohol and Drug Abuse Patient Records—(OMB No. 0930–0092, extension, no change)—Statute (42 U.S.C. 290dd–2) and regulations (42 CFR part 2) require federally conducted, regulated, or directly or indirectly assisted alcohol and drug abuse programs to keep alcohol and drug abuse patient records confidential. Information requirements are (1) written disclosure to patients about Federal laws and regulations that protect the confidentiality of each patient, and (2) documenting ''medical personnel'' status of recipients of a disclosure to meet a medical emergency. The annual burden estimates for these requirements are summarized in the table below.

	Annual respondents	Responses per respondent	Burden per response (in hours)	Annual burden hours
Disclosure, 42 CFR 2.22	11,250	130	.175	255,938
Recordkeeping, 42 CFR 2.51	11,250	2	.170	3,938
Total	11,250			259,876

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 8, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 04–765 Filed 1–13–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: SAMHSA Application for Peer Grant Reviewers—OMB No. 0930–0255, extension, no change)—section 501(h) of the Public Health Service (PHS) Act (42 U.S.C. 290aa) directs the Administrator of the Substance Abuse and Mental Health Services Administration (SAMHSA) to establish such peer review groups as are needed to carry out the requirements of Title V of the PHS Act. SAMHSA administers a large discretionary grants program under authorization of Title V, and for many years SAMHSA has funded grants to provide prevention and treatment services related to substance abuse and mental health.

Recent efforts to make improvements in the grants process have been shown by the restructuring of discretionary award announcements. In support of these efforts, SAMHSA desires to expand the types of reviewers it uses on these grant review committees. To accomplish that end, SAMHSA has determined that it is important to proactively seek the inclusion of new and qualified representatives on its peer review groups, and accordingly SAMHSA has developed an application form for use by individuals who wish to apply to serve as peer reviewers.

The application form has been developed to capture the essential information about the individual applicants. Although consideration was given to requesting a resume from interested individuals, it is essential to have specific information from all applicants about their qualifications; the most consistent method to accomplish this is completion of a standard form by all interested persons. SAMHSA will use the information about knowledge, education and experience provided on the applications to identify appropriate peer grant reviewers. Depending on their experience and qualifications, applicants may be invited to serve as either grant reviewers or review group chairpersons.

The following table shows the annual response burden estimate.

Number of respondents	Responses/respondent	Burden/response (hrs.)	Total burden hours
500	1	1.5	750

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 8, 2004.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 04–767 Filed 1–13–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Community Mental Health Centers (CMHC) Construction Grantee Checklist—(OMB No. 0930–0104, extension, no change)—Recipients of Federal CMHC construction funds are obligated to use the constructed facilities to provide mental health services. The CMHS Act was repealed in 1981 except for the provision requiring grantees to continue using the facilities for mental health purposes for a 20-year period. In order for SAMHSA's Center for Mental Health Services to monitor compliance of construction grantees, the grantees are required to submit an annual report. This annual checklist enables grantees to supply necessary information efficiently and with a minimum of burden. The following table summarizes the annual burden for this program.

	Annual respondents	Responses/respondent	Hours per response	Annual burden
CMHS Grantee Construction Checklist (42 CFR 54.209(h), 42 CFR 54.213, 42 CFR 54.214)	6*	1	.42	3

*Average over the 3-year approval period as grantees with service obligations continue to complete their period of obligation.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 7, 2004.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 04–768 Filed 1–13–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–16894]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet to discuss various issues relating to pilotage on the Great Lakes. The meeting will be open to the public.

DATES: The GLPAC will meet on Thursday, January 29, 2004, from 8 a.m. to 4:30 p.m. The annual public workshop will be held from 3 to 4:30 p.m. as part of the GLPAC meeting. The meeting and public workshop may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before January 26, 2004. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before January 26, 2004.

ADDRESSES: GLPAC will meet in Room B–1 of the Anthony J. Celebrezze Federal Building at 1240 East Ninth Street, Cleveland, OH 44199–2060. Send written material and requests to make oral presentations to Margie Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Discussion on Maintaining Required Services under Declining Business Conditions.

(2) Report from the Director of Great Lakes Pilotage.

(3) Discussion on whether the Maximum Civil Penalty for Failure to Open a Bridge is Adequate.

(4) Update on Availability of Information on Water Depths at Private Berths.

(5) Pilotage Capital Improvement Programs.

(6) Discussion of Partial Rate Adjustment for Pilotage on the Great Lakes.

(7) Open workshop for public comments/questions on the Coast Guard's Great Lakes Pilotage Program.

Procedural

The meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than January 26, 2004. Written material for distribution at the meeting should reach the Coast Guard no later than January 26, 2004. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 10 copies to Margie Hegy at the address in the **ADDRESSES** section no later than January 21, 2004.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: January 9, 2004.

L.L. Hereth,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Marine Safety, Security, and Environmental Protection.

[FR Doc. 04–912 Filed 1–12–04; 2:31 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by February 13, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Stephen F. Dean, Tallahassee, FL, PRT–081139

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Craig S. Wilson, San Antonio, TX, PRT–081142

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Triple S Game Farm, Edmond, OK, PRT–076689

The applicant requests a permit to import three male and three female captive-bred Cabot's tragopan (*Tragopan caboti*) from Glen Howe, Ontario, Canada for the purpose of enhancement of the survival of the species through captive propagation.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Terrance J. Mick, Waite Park, MN, PRT–080423

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Baffin Bay polar bear population in Canada prior to February 18, 1997, for personal use.

Applicant: Robert D. McCutcheon, York, SC, PRT–081170

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population in Canada prior to February 18, 1997, for personal use.

Applicant: David L. Currier, Fargo, ND, PRT–081171

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Gulf of Boothia polar bear population in Canada prior to February 18, 1997, for personal use.

Applicant: Timothy E. Brown, Woodruff, SC, PRT–081357

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population in Canada prior to February 18, 1997, for personal use.

Dated: January 2, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–799 Filed 1–13–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–JH–24 1A]

OMB Control Number 1004–0019; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On February 7, 2003, the BLM published a notice in the **Federal Register** (68 FR 6504) requesting comment on this information collection. The comment period ended on April 8, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0019), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov.* Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Grazing Management (43 CFR 4120).

OMB Control Number: 1004–0019.

Burden Form Number(s): 4120–6 and 4120–7.

Abstract: The Bureau of Land Management (BLM) collects and uses the information to determine the terms and conditions of a Cooperative Range Improvement Agreement to construct, use and maintenance of range improvements. BLM also uses the information to authorize grazing permits to graze domestic livestock on public rangeland and to construct and maintain rangeland improvement projects.

Frequency: Occasional.

Description of Respondents: Individuals, households, farms, ranchers, or businesses.

Estimated Completion Time: 20 minutes for each form.

Annual Responses: 600 for Form 4120–6 and 60 for Form 4120–7.

Application Fee per Response: 0.

Annual Burden Hours: 660.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: January 7, 2004.

Michael H. Schwartz.

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–731 Filed 1–13–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1020–PK; HAG 04–0063]

Meeting of the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Lakeview District, Interior.

ACTION: Meeting notice for the Southeast Oregon Resource Advisory Council.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will hold a meeting for all members from 8 a.m. to 5 p.m. Pacific Time (P.T.), Monday, February 23, 2004, and 8 a.m. to 2 p.m. (P.T.) on Tuesday, February 24, 2004, at the BLM, Burns District Office. The meeting is open to the public. Members of the public may attend the meeting in person at the Burns District Office, Conference room, 28910 Hwy 20 West, Hines, Oregon 97738.

The meeting topics that may be discussed by the Council include a discussion of issues within Southeast Oregon related to: Welcome new members, elect new chair and vice-chair, charter changes and delayed RAC appointments. Comments and review on Steens/Andrews RMP. Discuss Healthy Forest legislation with Forest Service speaker and proposed projects from

units and support for funding. Solicitor from Forest Service to discuss the appeal process changes and categorical exclusions. Noxious Weeds—update report from Burns Office. Report/Update on proposed grazing regulations. SEORAC Subcommittee meetings and reports. Federal Officials' update and other issues that may come before the Council.

Information to be distributed to the Council members is requested in written format 10 days prior to the Council meeting. Public comment is scheduled for 11:15 a.m. to 11:45 a.m. (P.T.) on Monday, February 23, 2004.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SEORAC meeting may be obtained from Pam Talbott, Contact Representative, Lakeview Interagency Office, 1301 South G Street, Lakeview, OR 97630 (541) 947–6107, or *ptalbott@or.blm.gov* and/or from the following Web site *http://www.or.blm.gov/SEORAC.*

Dated: January 5, 2004.

Steven A. Ellis,

District Manager.

[FR Doc. 04–777 Filed 1–13–04; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Land Management. The lands we surveyed are:

The plat representing the supplemental plat was prepared to correct certain lotting on the plat, in T. 5 N., R. 38 E., Boise Meridian, Idaho, was accepted October 23, 2003.

The plat representing the corrective dependent resurvey and dependent resurvey of portions of the west boundary (east boundary of T. 5 S., R. 6 E.), and the dependent resurvey of portions of the south boundary, the subdivisional lines and the 1910 meanders of the left bank of the Snake River in section 31, the subdivision of section 31, the 2002 meanders of the right bank of the Snake River in section 31, and the metes-and-bounds survey of Parcel A, section 31, in T. 5 S., R. 7 E., Boise Meridian, Idaho, was accepted November 26, 2003.

The plat, in 2 sheets, constituting the entire survey record, of the dependent resurvey of portions of the east boundary of T. 6 S., R. 6 E., north boundary, and subdivisional lines, the subdivision of section 6, and the survey of an access easement in section 6, in T. 6 S., R. 7 E., Boise Meridian, Idaho, was accepted November 26, 2003.

The plat representing the dependent resurvey of a portion of the Sixth Auxiliary Meridian East (east boundary), and a portion of the subdivisional lines, and the subdivision of section 13, and a metes-and-bounds survey in section 13, in T. 6 N., R. 24 E., Boise Meridian, Idaho, was accepted December 9, 2003.

These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Indian Affairs. The lands surveyed are:

The plats representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 23, 26, 27, and 28, and the survey of the 2001–2003 meanders and informative traverse of the Blackfoot River, the north boundary of the Fort Hall Indian Reservation, and portions of the 2001–2003 median line of the Blackfoot, all in sections 22, 23, 27, and 28, in T. 3 S., R. 34 E., Boise Meridian, Idaho, were accepted October 24, 2003.

The plat representing the dependent resurvey of a portion of the north boundary, and the subdivisional lines, the subdivision of sections 2 and 11, the survey of lots 2 and 3, and a metes-and-bounds survey in section 11, in T. 36 N., R. 3 W., Boise Meridian, Idaho, was accepted November 13, 2003.

The plat representing the supplemental plat was prepared to correct certain lotting in section 19, in T. 3 S., R. 35 E., Boise Meridian, Idaho, was accepted November 21, 2003.

The plat representing the dependent resurvey of a portion of the Boise Meridian (west boundary), and the subdivisional lines and the subdivision of section 19, in T. 37 N., R. 1 E., Boise Meridian, Idaho, was accepted December 29, 2003.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 24 and 25, in T. 37 N., R. 1 W., Boise Meridian, Idaho was accepted December 29, 2003.

These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the National Park Service. The lands surveyed are:

The plat, in 2 sheets, constitutes the entire survey record of the dependent resurvey of portions of the north and east boundaries, and subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 2, 3, 11, 14, 24, and 25, in T. 6 S., R. 26 E., Boise Meridian, Idaho, was accepted November 18, 2003.

The plat constitutes the entire survey record of the dependent resurvey of portions of the south and west boundaries and subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 34 and 35, in T. 5 S., R. 26 E., Boise Meridian, Idaho, was accepted November 19, 2003.

Dated: January 8, 2004.

Gordon M. Dress,

Acting, Chief Cadastral Surveyor for Idaho.

[FR Doc. 04–776 Filed 1–13–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Humboldt Project Conveyance, Pershing and Lander Counties, NV

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public scoping meetings for the environmental impact statement.

SUMMARY: The Bureau of Reclamation (Reclamation) published a Notice of Intent on February 26, 2003, to prepare a draft environmental impact statement (DEIS) for the Humboldt Project Conveyance (FR 68 8924). Reclamation will be conducting two public scoping meetings to elicit comments on the scope and issues to be addressed in the DEIS. The DEIS is expected to be issued in the fall of 2004.

DATES: Two public scoping meetings will be held:

- Wednesday, February 18, 2004, 7–9 p.m. in Battle Mountain, Nevada.

• Thursday, February 19, 2004, 7–9 p.m. in Reno, Nevada.

Written comments on the scope of alternatives and impacts to be considered should be sent to Reclamation at the address below by March 22, 2004.

ADDRESSES: The scoping meetings will be held at:

• Battle Mountain, Nevada, at the Battle Mountain Civic Center at 6255 Broad Street.

• Reno, Nevada, at the Washoe County Bartley Ranch Park at 6000 Bartley Ranch Road.

Written comments on the scope of the proposed action should be sent to Caryn Huntt DeCarlo, Bureau of Reclamation, Lahontan Basin Area Office, 705 N Plaza, Room 320, Carson City, NV 89701; or by telephone at (775) 884–8352; or faxed to (775) 882–7592 (TDD 775–487–5933).

FOR FURTHER INFORMATION CONTACT: Caryn Huntt DeCarlo, Bureau of Reclamation, at the above address and telephone number.

SUPPLEMENTARY INFORMATION: The Humboldt Project (Project) is located along the Humboldt River in northwestern Nevada. Project features include Battle Mountain Community Pasture, Rye Patch Dam and Reservoir, and the Humboldt Sink. Reclamation is preparing a DEIS to analyze the action of conveying title of the Humboldt Project and associated lands to several entities. The conveyance is authorized under Title VIII of Public Law 107–282.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: December 17, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 04–778 Filed 1–13–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1069 (Preliminary)]

Outboard Engines From Japan

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1069 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of outboard engines, provided for in subheading 8407.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by February 23, 2004. The Commission's views are due at Commerce within five business days thereafter, or by March 1, 2004.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on January 8, 2004, by Mercury Marine, a division of Brunswick Corp., Fond du Lac, WS.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on January 29, 2004, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than January 27 to list their appearance and witnesses (if any). Parties in support of the imposition of

antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before February 3, 2004, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: January 9, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–809 Filed 1–13–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–449]

Market Conditions for Certain Wool Articles in 2002–04

AGENCY: International Trade Commission.

ACTION: Notice of second report, scheduling of public hearing, and request for public comments.

EFFECTIVE DATE: December 19, 2003.

SUMMARY: The Commission has announced the schedule for its second (and final) report on investigation No. 332–449, U.S. Market Conditions for Certain Wool Articles in 2002–04, instituted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) on January 24, 2003, at the request of the United States Trade Representative (USTR).

FOR FURTHER INFORMATION CONTACT: For general information, contact Jackie W. Jones (202–205–3466; *jones@usitc.gov*) of the Office of Industries; for information on legal aspects, contact William Gearhart (202–205–3091; *wgearhart@usitc.gov*) of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Background: As requested by the USTR, the Commission will provide information for 2003 and year-to-date 2003–04 on U.S. market conditions, including domestic demand, domestic supply, and domestic production for men's and boys' worsted wool suits, suit-type jackets, and trousers; worsted wool fabrics and yarn used in the manufacture of such clothing; and wool fibers used in the manufacture of such fabrics and yarn. Also, as requested by the USTR, the Commission will provide, to the extent possible, data on:

(1) Increases or decreases in sales and production of the subject domestically-produced worsted wool fabrics;

(2) Increases or decreases in domestic production and consumption of the subject apparel items;

(3) The ability of domestic producers of the subject worsted wool fabrics to meet the needs of domestic manufacturers of the subject apparel items in terms of quantity and ability to meet market demands for the apparel items;

(4) Sales of the subject worsted wool fabrics lost by domestic manufacturers to imports benefiting from the temporary duty reductions on certain worsted wool fabrics under the tariff-rate quotas (TRQs) provided for in headings 9902.51.11 and 9902.51.12 of the Harmonized Tariff Schedule of the United States (HTS);

(5) Loss of sales by domestic manufacturers of the subject apparel items related to the inability to purchase adequate supplies of the subject worsted wool fabrics on a cost competitive basis; and

(6) The price per square meter of imports and domestic sales of the subject worsted wool fabrics.

The USTR requested that the Commission submit the information in a confidential report by September 15, 2004. The USTR requested that the Commission issue a public version of the report as soon as possible thereafter, with any confidential business information deleted. The Commission's first report on this investigation was submitted to the USTR in October 2003.

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on March 25, 2004. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., March 9, 2004, in accordance with the requirements in the ''Submissions'' section below. In the event that, as of the close of business on March 9, 2004, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–2000) after March 9, 2004, to determine whether the hearing will be held.

Statements and Briefs: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning the investigation in accordance with the requirements in the ''Submissions'' section below. Any prehearing briefs or statements should be filed not later than 5:15 p.m., March 11, 2004; the deadline for filing post-hearing briefs or statements is 5:15 p.m., April 11, 2004. To be assured of consideration by the Commission, written statements relating to the Commission's second report on this investigation should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on April 11, 2004.

Written Submissions: All written submissions including requests to appear at the hearing, statements, and briefs should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. All written

submissions must conform with the provisions of § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8); any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.8 of the rules require that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted. Section 201.6 of the rules require that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets.

The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's Rules (1 CFR 201.8) (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

All written submissions, except for confidential business information, will be made available for inspection by interested parties. Accordingly, any confidential information received by the Commission in these investigations and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects

Tariffs, imports, wool, fabric, and suits.

Issued: January 8, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–810 Filed 1–13–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 19, 2003, and published in the **Federal Register** on September 2, 3003, (68 FR 52224), Bristol Myers Squibb Pharma Company, 1000 Stewart Avenue, Garden City, New York 11530, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of Oxycodone (9143), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the controlled substance to make finished products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Bristol Myers Squibb Pharma Company to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Bristol Myers Squibb Pharma Company to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: December 8, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–721 Filed 1–13–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Juvenile Accountability Incentive Block Grant (JAIBG) Program.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 129, page 40296 on July 7, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 13, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 agencies 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 information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Requirements: Data Collection Application for the Juvenile Accountability Incentive Block Grant Program.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: *New collection;* Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State. Pub. L. 105–405, November 13, 1997, Making Appropriations for the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1998, and for subsequent funded fiscal years.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Fifty-six (56) respondents will complete a 1-hour follow-up information form for each unit of local government receiving JAIBG funds and on funds retained by the State for program expenditure.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total burden hours associated with this information collection 4,200.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: January 8, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–744 Filed 1–13–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: 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 Employment and Training Administration is soliciting comments concerning the proposed collection of data from organizations that have been awarded H–1B Technical Skills Training Grants by the Employment and Training Administration.

DATES: Submit written comments on or before March 15, 2004.

ADDRESSES: Send comments to: Mindy Feldbaum, Federal Program Officer, Office of Workforce Investment, Employment and Training Administration, United States Department of Labor, 200 Constitution Ave. NW., Room N4665, Washington DC 20210, telephone 202–693–3382 (this is not a toll-free number), Internet address: *feldbaum.mindy@dol.gov* and fax: 202–693–2982.

SUPPLEMENTARY INFORMATION:

I. Background

The DOL/ETA intends to use the requested data and information to monitor adherence to the grant award agreement provisions, assess progress of the grantees in meeting program goals and objectives and amass data sufficient to analyze outcomes and the overall effectiveness of the H–1B Technical Skills Training Grants program as required by the American Competitiveness in the Twenty-first Century Act of 2000 (AC–21) and 29 CFR 95.51. The information and data will also be used to respond to inquiries regarding the H–1B Grants program that come from the Executive branch, Congress, the General Accounting Office, the media and others. To date, the DOL/ETA has awarded 129 grants under the H–1B Technical Skills Training Grants program.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) may be obtained by contacting the office listed in the Addressee section of this notice.

III. Current Actions

Type of Review: Existing collection in use without an OMB control number.

Agency: Employment and Training Administration.

Title: H–1B Technical Skills Training Grants Program Reporting Requirements.

Recordkeeping: H–1B Technical Skills Training Grantees are required to retain records in accordance with their respective grant award agreements.

Affected Public: Organizations awarded grants under ETA's H–1B Technical Skills Training Grants Program.

Form: The proposed collection of information will use ETA's Web-based Enterprise Information Management System (EIMS) to collect quarterly requested information. The final report will be submitted in hard copy. The information to be collected is shown on the ICR.

Total Respondents: Organizations that have received H–1B grant awards under the provisions of the American Competitiveness in the Twenty-first Century Act (AC–21) are the respondents. To date, 86 awards have been made under AC–21.

Frequency: Quarterly, for the progress report; once upon project completion for the final project report.

Total Responses: Estimated at between 332 and 484 reports annually (number of respondents multiplied by the number of reports submitted annually).

Average time per response: 12 hours for the quarterly report; 40 hours for the one-time final report.

Estimated Total Burden Hours: see Burden Table below.

BURDEN HOUR TABLE FOR H–1B.—TECHNICAL SKILLS TRAINING GRANT PROGRAM INFORMATION COLLECTION REQUEST

[DOL/ETA Reporting Burden for H–1B Technical Skills Training Grant Performance Reporting]

	FY 2004	FY 2005	FY 2006
Number of Performance reports per grantee per quarter	1	1	1
Number of Performance reports per grantee per year	2	4	4
Average number of hours required for Performance reporting per grantee per quarter per report (see Note 1).	12	12	12
Average number of hours required for Performance reporting per grantee per year	24	48	48
Number of grantees submitting Performance reports (See Note 2).	93	121	83
Average number of hours required for reporting burden per year	2,232	5,808	3,984
SF269 Financial Status Report burden hours (OMB Control 0348–0043) @ 30 minutes per grantee per quarter	186	242	166
Grantee Final Project Report burden hours @ 40 hours per grantee (see Note 3) times # of grants ending in each year	80	1,520	520
TOTAL BURDEN HOURS	2,498	7,570	4,670
Total Performance reporting, SF269 and Final Report burden cost @ $15.57 per hour (see Note 4).	$38,893.86	$117,864.90	$72,711.90

Notes:

1. The estimate of hourly reporting burden per quarter for each grantee includes the time spent by the grantee to collect necessary information and to enter the information into ETA's EIMS.
2. Number of grantees varies during the course of the year. Some grants are completed and others will start during any given year. However, each grantee will be required to submit one progress report per quarter. The total number of reports submitted during a year thus varies depending on the number of operational grants in a particular year.
3. A final report is required once from each grantee. On average, the final report burden is estimated at 40 hours, including gathering of project statistics from existing data sources and writing and editing the report.
4. The total burden cost was based upon the median hourly wage for an Administrative Assistant/Executive Assistant using data for year 2001 (latest year for which data are available) from DOL's O*Net system.

Comments submitted in response to this notice will be submitted and/or included in the request for Office of Management and Budget approval of the information collection request; they will become a part of the public record.

Dated: January 7, 2004.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training, Department of Labor.

[FR Doc. 04–785 Filed 1–13–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) for H–1B Technical Skills Training Grants; Cancellation

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of cancellation.

SUMMARY: The Department of Labor (DOL) is canceling the SGA published in the **Federal Register** of January 6, 2003 (68 FR 567), concerning the availability of grant funds for H–1B Technical Skills Training Grants for training unemployed and employed American workers.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: James Stockton, Grant Officer, Division of Federal Assistance, Telephone (202) 693–3301. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: As authorized in the ACWIA 1998 (PL 105–227, the American Competitiveness and Workforce Improvement Act of 1998) and AC–21 (PL 106–313, the American Competitiveness in the Twenty-First Century Act), DOL provides grants for technical skills training from user fees that have been paid by employers hiring foreign workers under H–1B non-immigrant visas. We identified our goals and underlying principles for these grants, along with application procedures, in an SGA published in the **Federal Register** at 68 FR 567 (January 6, 2003). In order to reconsider these goals and principles, the Department is canceling the Solicitation for Grant Applications (SGA/DFA 03–100) for H–1B Technical Skills Training Grants. This cancellation will be effective two days after the publication of this **Federal Register** notice. We will not accept applications received after 5 p.m. Eastern Standard Time on January 16, 2004. However, the Department will review applications received prior to this cancellation and may consider possible funding for those found eligible for funding in accordance with the review process specified in the SGA.

Signed in Washington, DC, this 9th day of January, 2004.

James W. Stockton,

Grant Officer.

[FR Doc. 04–805 Filed 1–13–04; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34340]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 37–30369–01; Adolor Corporation, Malvern, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Kathy Dolce Modes, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610)

337–5251, fax (610) 337–5269; or by email: *kad@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Adolor Corporation for Materials License No. 37–30369–01, to authorize release of its facility in Malvern, Pennsylvania for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Malvern, Pennsylvania facility for unrestricted use. Adolor Corporation was authorized by NRC from August 20, 1997 to use radioactive materials for research and development purposes at the site. On July 18, 2003, Adolor Corporation requested that NRC release the facility for unrestricted use. Adolor Corporation has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated Adolor Corporation's request and the results of the surveys and has concluded that the completed action complies with 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML031880271, ML032030484, ML032541074 and ML040060259). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406.

Dated at King of Prussia, Pennsylvania this 7th day of January, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–787 Filed 1–13–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Portland General Electric Company, Trojan Independent Spent Fuel Storage Installation; Notice of Docketing of Materials License SNM–2509 Amendment Application

By letter dated December 9, 2003, Portland General Electric Company (PGE) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10 CFR part 72, requesting the amendment of the Trojan Independent Spent Fuel Storage Installation (ISFSI) license (SNM–2509) and the Technical Specifications for the ISFSI located at Columbia County, Oregon. PGE is seeking Commission approval to amend the materials license and the ISFSI Technical Specifications to reflect completion of dry storage cask loading operations and incorporation of an administrative change to the Trojan ISFSI Technical Specifications to conform to a recent NRC Final Rule, ''Event Notification Requirements,'' (63 FR 33611 dated June 5, 2003).

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–17 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this amendment, see the application dated December 9, 2003, which is publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 31st day of December, 2003.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–790 Filed 1–13–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC, Monticello Nuclear Generating Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–22, issued to Nuclear Management Company, LLC (NMC), for operation of the Monticello Nuclear Generating Plant (Monticello), located in Wright County, Minnesota. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Monticello operating license to change the Monticello design bases and the Updated Safety Analysis Report (USAR). The proposed action would revise the existing analyses for the following:

- Long-term containment response to the design-basis loss-of-coolant accident (LOCA).
- Containment overpressure (the pressure above the initial containment pressure) required for adequate available net positive suction head (NPSH) for the low-pressure emergency core cooling system (ECCS) pumps following a LOCA.

NMC intends to use these analyses to justify restoring the service water temperature to its licensing-basis value of 90 degrees F. NMC administratively

limits the service water temperature to 85 degrees F because the results of previous analyses of a scenario (reactor vessel isolation with high-pressure coolant injection being unavailable) showed that the design temperature for the piping attached to the wetwell would be exceeded. NMC's revised analyses shows the design temperature is not exceeded.

The proposed action is in accordance with NMC's application of December 6, 2002, as supplemented September 24, 2003.

The Need for the Proposed Action

NMC needs this license amendment because it has determined, in accordance with 10 CFR 50.59(c)(2)(viii), that the updated containment analyses involve different evaluation methods from those currently described in Monticello's USAR and previously approved by the NRC.

Environmental Impacts of the Proposed Action

The NRC staff reviewed NMC's amendment request and will issue a safety evaluation documenting its review. The NRC staff has reviewed NMC's calculation of the mass and energy releases that are used to determine containment pressure response, including the methods and key underlying input assumptions (*e.g.*, decay heat generation).

NMC used conservative assumptions in its reanalyses which underestimate the containment pressure and overestimate the suppression pool water temperature. Some overpressure is necessary to ensure sufficient available NPSH. The conservative assumptions used in NMC's calculations and the cautions in Monticello's emergency operating procedures are intended to ensure that this pressure will be available.

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the proposed changes to the Monticello design basis and USAR. The details of the NRC staff's review of the amendment request will be provided in the related safety evaluation when it is issued by the NRC.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or amounts of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for Monticello dated November 1972.

Agencies and Persons Consulted

On January 6, 2004, the staff consulted with the Minnesota State official, Nancy Campbell of the Department of Commerce, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see NMC's letter of December 6, 2002, as supplemented September 24, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 6th day of January 2004.

For the Nuclear Regulatory Commission.

L. Raghavan,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–789 Filed 1–13–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards: Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy and on Thermal-Hydraulic Phenomena will hold a joint meeting on February 3–4, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance to discuss Argonne National Laboratory (ANL) proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday and Wednesday, February 3–4, 2004—8:30 a.m. Until the Conclusion of Business

The Subcommittees will review the resolution of certain items identified by the ACRS in NUREG–1740, ''Voltage-Based Alternative Repair Criteria,'' related to the Differing Professional Opinion on steam generator tube integrity, as well as the status of resolution of remaining items. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Bhagwat P. Jain (telephone: 301–415–7270), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are

urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: January 8, 2004.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–791 Filed 1–13–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1129, which should be mentioned in all correspondence concerning this draft guide. The proposed Revision 3 of Regulatory Guide 1.75, Draft Regulatory Guide DG–1129, ''Criteria for Independence of Electrical Safety Systems,'' is being developed to describe a method that is acceptable to the NRC staff for complying with the NRC's regulations with respect to the physical independence requirements of the circuits and electric equipment that compose or are associated with safety systems. The guide proposes to endorse the Institute of Electrical and Electronics Engineers standard IEEE Std. 384–1992, ''Standard Criteria for Independence of Class 1E Equipment and Circuits.''

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, Office of Administration, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by March 12, 2004.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC Home page (*http://www@nrc.gov*). This site provides the ability to upload comments as files (any format) if your Web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* For technical information about Draft Regulatory Guide DG–1079, contact Mr. S.K. Aggarwal at (301) 415–6005, (e-mail *SKA@NRC.GOV*).

Although a deadline is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–42056; fax (301) 415–3548; e-mail *PDR@NRC.GOV.* Requests for single copies of draft or final regulatory guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, or by fax to (301) 415–2289; e-mail *DISTRIBUTION@NRC.GOV.* Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 12th day of December 2003.

For the Nuclear Regulatory Commission.

Michael Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 04–788 Filed 1–13–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension: Rule 29, SEC File No. 270–169, OMB Control No. 3235–0149.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 29 under the Public Utility Holding Company Act of 1935, as amended, (''Act''), 15 U.S.C. 79, *et seq.*, requires that ''[a] copy of each annual report submitted by any registered holding company or any of its subsidiaries to a state commission covering operations not reported to the Federal Energy Regulatory Commission shall be filed with the Securities and Exchange Commission no later than ten days after its submission.''

The regulation requires that the same reports prepared and filed under state law be filed with the Commission. The information collected under Rule 29 permits the Commission to remain current on developments that are reported to state commissions, but that may not otherwise be reported to the Commission. This information is beneficial to the liaison the Commission maintains with state governments and is also useful in the preparation of annual reports to the U.S. Congress required under section 23 of the Act, 15 U.S.C. 79(w).

The Commission receives about 62 annual reports per year under this regulation. We estimate, on the basis of informal discussions with respondents, that the rule imposes a burden of about .25 hours each year for each respondent, which makes only one submission. Therefore, a total annual burden of 15.50 hours is imposed. The cost of this reporting burden is estimated to be $100 per hour or $1,550 total for all respondents. The responses are public documents so confidentiality is not an issue. All registered companies and their subsidiaries are required to make the filings.

The estimate of average burden hours is made solely for the purpose of the

Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Dated: January 7, 2004.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–801 Filed 1–13–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 154 [17 CFR 230.154]; SEC File No. 270–438; OMB Control No. 3235–0495.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

The federal securities laws generally prohibit an issuer, underwriter, or dealer from delivering a security for sale unless a prospectus meeting certain requirements accompanies or precedes the security. Rule 154 [17 CFR 230.154] under the Securities Act of 1933 [15 U.S.C. 77a] (the ''Securities Act'') permits, under certain circumstances, delivery of a single prospectus to investors who purchase securities from the same issuer and share the same address (''householding'') to satisfy the applicable prospectus delivery requirements.[1] The purpose of rule 154 is to reduce the amount of duplicative prospectuses delivered to investors sharing the same address.

Under rule 154, a prospectus is considered delivered to all investors at a shared address, for purposes of the federal securities laws, if the person relying on the rule delivers the prospectus to the shared address and the investors consent to the delivery of a single prospectus. The rule applies to prospectuses and prospectus supplements. Currently, the rule permits householding of all prospectuses by an issuer, underwriter, or dealer relying on the rule if, in addition to the other conditions set forth in the rule, the issuer, underwriter, or dealer has obtained from each investor written or implied consent to householding.[2] The rule requires issuers, underwriters, or dealers that wish to household prospectuses with implied consent to send a notice to each investor stating that the investors in the household will receive one prospectus in the future unless the investors provide contrary instructions. In addition, at least once a year, issuers, underwriters, or dealers, relying on rule 154 for the householding of prospectuses, must explain to investors who have provided written or implied consent how they can revoke their consent. Preparing and sending the initial notice and the annual explanation of the right to revoke are collections of information.

The rule allows issuers, underwriters, or dealers to household prospectuses and prospectus supplements if certain conditions are met. Among the conditions with which a person relying on the rule must comply are providing notice to each investor that only one prospectus will be sent to the household and, in the case of issuers that are open-end mutual funds, providing to each investor who consents to householding an annual explanation of the right to revoke consent to the delivery of a single prospectus to multiple investors sharing an address. The purpose of the notice and annual explanation requirements of the rule is to ensure that investors who wish to receive individual copies of shareholder reports are able to do so.

Although rule 154 is not limited to investment companies, the Commission believes that it is used mainly by open-end mutual funds and by broker-dealers that deliver prospectuses for open-end mutual funds. The Commission is unable to estimate the number of issuers other than mutual funds that rely on the rule.

The Commission estimates that there are approximately 3,114 open-end mutual funds, approximately 200 of which engage in direct marketing and therefore deliver their own prospectuses. The Commission estimates that each direct-marketed mutual fund will spend an average of 20 hours per year complying with the notice requirement of the rule, for a total of 4,000 hours. The Commission estimates that each direct-marketed fund will also spend 1 hour complying with the explanation of the right to revoke requirement of the rule, for a total of 200 hours. The Commission estimates that there are approximately 300 broker-dealers that carry customer accounts and, therefore, may be required to deliver mutual fund prospectuses. The Commission estimates that each affected broker-dealer will spend, on average, approximately 20 hours complying with the notice requirement of the rule, for a total of 6,000 hours. Each broker-dealer will also spend 1 hour complying with the annual explanation of the right to revoke requirement, for a total of 300 hours. Therefore, the total number of respondents for rule 154 is 500 (200 mutual funds plus 300 broker-dealers), and the estimated total hour burden is 10,500 hours (4,200 hours for mutual funds plus 6,300 hours for broker-dealers).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the

[1] The Securities Act requires the delivery of prospectuses to investors who buy securities from an issuer or from underwriters or dealers who participate in a registered distribution of securities. *See* Securities Act sections 2(a)(10), 4(1), 4(3), 5(b) [15 U.S.C. 77b(a)(10), 77d(1), 77d(3), 77e(b); *see also* rule 174 under the Securities Act [17 CFR 230.174] (regarding the prospectus delivery obligation of dealers); rule 15c2–8 under the Securities and Exchange Act of 1934 [17 CFR 240.15c2–8] (prospectus delivery obligations of brokers and dealers).

[2] Rule 154 permits the householding of prospectuses that are delivered electronically to investors only if delivery is made to a shared electronic address and the investors give written consent to householding. Implied consent is not permitted in such a situation. *See* rule 154(b)(4).

accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. The Commission will consider comments and suggestions submitted in writing within 60 days after this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 6, 2004.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–802 Filed 1–13–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49029; File No. SR–NASD–2003–145]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. To Give Authority to a 3-Member Subcommittee of NASD's Market Regulation Committee To Review Alternative Display Facility System Outage and Denial of Excused Withdrawal Determinations

January 6, 2004.

On September 25, 2003, the National Association of Securities Dealers, Inc. (''NASD'') submitted the proposed rule change to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] On November 24, 2003 and December 2, 2003, NASD filed Amendment Nos. 1[3] and 2[4] to the proposed rule change, respectively. The proposed rule change amends NASD Rules 4300A and 4619A(g) to give jurisdiction to a 3-member subcommittee of NASD's Market Regulation Committee (''MRC'') to review system outage determinations under Rule 4300A(f) and excused withdrawal denials under Rule 4619A. The **Federal Register** published the proposed rule change, as amended, for comment on December 15, 2003.[5] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6 of the Act[7] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[8] and believes that the proposed rules should enable the NASD to take advantage of the MRC committee's expertise, and at the same time continue to provide market participants a sufficient process by which to appeal system outage and excused withdraw determinations.

The Commission finds good cause for accelerating approval of the proposed rule change and Amendment Nos. 1 and 2 prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that accelerated approval will permit, without undue delay, the 3-member subcommittee of NASD's MRC to review system outage determinations and excused withdrawal denials. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[9] to approve the proposed rule change, as amended, prior to the thirtieth day after publication of the notice of filing.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2003–145), as amended, is hereby approved, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–803 Filed 1–13–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD filed a new Form 19b–4, which replaces and supersedes the original filing in its entirety.

[4] Letter from Philip A. Shaikun, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2003 (''Amendment No. 2''). Amendment No. 2 deletes the following sentence from Exhibit 1 to the Form 19b–4: ''NASD has designated the proposed rule change as concerned solely with administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(f)(3) thereunder, which renders the proposal effective upon receipt of this filing by the Commission.''

[5] Securities Exchange Act Release No. 48880 (December 4, 2003), 68 FR 69734.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49046; File No. SR–SCCP–2002–07]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of a Proposed Rule Change Relating to Ex-Clearing Account Transactions

January 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 26, 2002, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. 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 proposed rule change would amend SCCP Rule 11 (Ex-Clearing Accounts) to include a transaction in an ex-clearing account whereby both sides have agreed not to transmit the transaction from SCCP to the National Securities Clearing Corporation (''NSCC'') for clearance and settlement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to facilitate the efficient clearance and settlement of securities transactions by SCCP participants that have made their own arrangements to transmit such transactions directly to NSCC. SCCP anticipates that certain members of the Philadelphia Stock Exchange (''Phlx'') that participate in Phlx's program to trade Nasdaq securities will make arrangements for the clearing and settlement of their Nasdaq securities trading at Phlx directly with NSCC. SCCP intends to offer such Phlx members the use of an ex-clearing account for this purpose. Currently, SCCP uses ex-clearing accounts in situations where both sides have agreed to settle a transaction outside any registered clearing agency mechanism such as NSCC. This is in addition to other accounts offered by SCCP, such as a RIO account [3] and a margin account.[4]

SCCP now proposes to amend SCCP Rule 11 to add transactions whereby both sides have agreed not to transmit the transaction to NSCC for clearing and settlement via SCCP. Accordingly, both sides could agree to submit a transaction directly to NSCC instead of SCCP doing so. A SCCP ex-clearing account would then be available for the following two scenarios, where both sides have agreed to settle a transaction: (1) Outside of NSCC and (2) at NSCC but without SCCP submitting the transaction there.[5]

SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [6] which requires that the rules of a clearing agency be designed to promote the prompt and accurate settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system, and to protect SCCP, its members, investors, and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

SCCP has not solicited or received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SCCP consents, the Commission will:

(a) By order approve the proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–SCCP–2002–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at SCCP's principal office and on SCCP's Website at *http://www.phlx.com/ exchange/ memos/SCCP/ memindex_sccpproposals.html.* All submissions should refer to File No. SR–SCCP–2002–07 and should be submitted by February 4, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–800 Filed 1–13–04; 8:45 am]

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[3] RIO means regional interface organization, which is the system through which SCCP transmits to and receives trade data from NSCC. In a RIO account, SCCP records, confirms, and transmits transactions to the RIO participant's NSCC account or its correspondent account that ultimately settles directly with NSCC. SCCP makes no trade guarantees respecting RIO account transactions. SCCP is solely a trade recording, confirmation, and transmission agent of RIO account participants' transaction activity.

[4] Phlx specialists, alternate specialists, and other Phlx floor members may be specifically approved by NSCC to effect trading in a margin account. SCCP will provide margin accounts for margin members that clear and settle their transactions through SCCP's omnibus clearance and settlement account at NSCC.

[5] The use of ex-clearing accounts as proposed in this proposed rule change is not limited to trading in Nasdaq securities and may be used in any situation that otherwise meets the criteria for the use of ex-clearing accounts in this manner.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49036; File No. SR–SCCP–2003–06]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Stock Clearing Corporation of Philadelphia Relating to Fees for Philadelphia Stock Exchange Remote Specialists

January 7, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 21, 2003, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared primarily by SCCP. 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

SCCP proposes to amend its schedule of dues, fees, and charges to provide that the fees, credits and discounts that apply to Philadelphia Stock Exchange (''Phlx'') remote competing specialists will also be applicable to Phlx primary remote specialists.[2] The amendments to

[1] 15 U.S.C. 78s(b)(1).

[2] Phlx has filed a proposed rule change regarding fees to be charged in connection with the proposed expansion of the remote specialist program to

SCCP's fees proposed in this proposed rule change will be implemented by SCCP upon Commission approval of Phlx's proposed rule change to permit primary remote specialists.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On August 6, 2002, SCCP amended its fee schedule to: (1) Adopt new fees relating to remote competing specialists on the Phlx and (2) provide that certain existing fees and discounts applicable to Phlx specialists would not apply to remote competing specialists.[5] Because at that time the Phlx's remote specialist program was to be limited to remote competing (as opposed to primary) specialists, that proposed rule change applied only to Phlx remote competing specialists.[6]

Phlx now proposes to change its rules to expand its remote specialist program to include remote primary specialists in addition to remote competing specialists. The purpose of this SCCP proposed rule change is to apply the same fees, credits and discounts applicable to remote competing specialists to remote primary specialists. Accordingly, the text of SCCP's fee schedule is amended by the deletion of the word ''competing'' in items 2, 3, 4, and 13 and the first time that the word appears in the final sentence of the schedule. All existing references to ''remote specialists'' on SCCP's fee schedule will now be construed to include both remote primary specialists and remote competing specialists.[7]

SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[8] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants, in that the fees apply equally to all SCCP participants with remote specialist operations or which clear for remote specialists.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder because it establishes or changes a due, fee, or other charge. At any time within sixty 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.

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 5th Street NW., Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–SCCP–2003–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at SCCP's principal office and on SCCP's Web site at *http://www.phlx.com/exchange/memos/SCCP/sccp_rules/010604.pdf.* All submissions should refer to File No. SR–SCCP–2003–06 and should be submitted by February 4, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–804 Filed 1–13–04; 8:45 am]

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include remote primary specialists (File No. SR–Phlx–2003–78).

[3] Securities Exchange Act Release No. 48515 (Sept. 22, 2003), 68 FR 56031 (Sept. 29, 2003) [File No. SR–Phlx–2003–10].

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] Securities Exchange Act Release No. 46513 (Sept. 18, 2002), 67 FR 60276 (Sept. 25, 2002) [File No. SR–SCCP–2002–03].

[6] Phlx Rule 461, PACE Remote Specialist, and Securities Exchange Act Release No. 45184 (Dec. 21, 2001), 67 FR 622 (Jan. 4, 2002) (approving SR–Phlx–2001–98).

[7] This filing also makes a technical correction by changing the footnote number from ''1'' to ''2'' in the caption to Item 4 of the fee schedule.

[8] 15 U.S.C. 78q-1(b)(3)(D).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments. Notice of public hearing.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, and section 4(b) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the ''CAN–SPAM Act of 2003''), Public Law 108–187, the United States Sentencing Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice also provides multiple issues for comment, some of which are contained within proposed amendments.

The specific proposed amendments and issues for comment in this notice

are as follows: (1) Proposed amendment to §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport) pertaining to certain immigration offense conduct, and related issues for comment; (2) proposed amendment to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) that modifies the proposed amendment pertaining to controlled substance analogues published in the **Federal Register** on December 30, 2003 (see 68 FR 75339), by including a rule for calculating the base offense level in cases in which a controlled substance is not referenced in § 2D1.1; and (3) an issue for comment regarding the implementation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (''CAN–SPAM Act of 2003''), Public Law 108–187.

DATES: (1) Proposed Amendments and Issues for Comment.—Written public comment regarding the proposed amendment on controlled substance analogues should be received by the Commission not later than March 1, 2004. Written public comment regarding (A) the proposed amendment on immigration offenses, and related issues for comment; and (B) the issues for comment regarding the implementation of the CAN–SPAM Act of 2003, should be received by the Commission not later than March 15, 2004.

(2) Public Hearing.—The Commission has scheduled a public hearing on its proposed amendments for March 17, 2004, at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20002–8002. A person who desires to testify at the public hearing should notify Michael Courlander, Public Affairs Officer, at (202) 502–4590, not later than March 1, 2004. Written testimony for the public hearing must be received by the Commission not later than March 1, 2004. Timely submission of written testimony is a requirement for testifying at the public hearing. The Commission requests that, to the extent practicable, commentators submit an electronic version of the comment and of the testimony for the public hearing. The Commission also reserves the right to select persons to testify at any of the hearings and to structure the hearings as the Commission considers appropriate and the schedule permits. Further information regarding the public hearing, including the time of the hearing, will be provided by the Commission on its Web site at *http://www.ussc.gov.*

ADDRESS: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. 994(p).

The Commission seeks comment on the proposed amendments, issues for comment, and any other aspect of the sentencing guidelines, policy statements, and commentary.

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part on comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

The Commission also requests public comment regarding whether the Commission should specify for retroactive application to previously sentenced defendants any of the proposed amendments published in this notice. The Commission requests comment regarding which, if any, of the proposed amendments that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range).

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at *http://www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); section 4(b) of the CAN–SPAM Act of 2003, Pub. L. 108–187; USSC Rules of Practice and Procedure, Rule 4.4.

Diana E. Murphy,

Chair.

1. Proposed Amendment: Immigration Offenses

Synopsis of Proposed Amendment: This proposed amendment addresses issues involving immigration offenses. Specifically, the proposed amendment makes changes to §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport). Two issues for comment also are contained in this proposed amendment.

(1) § 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien)

(A) Entering the United States To Engage in Subversive Activity

The proposed amendment provides alternative enhancements at § 2L1.2(b)(4)(A) and (B) if the defendant smuggled, harbored or transported an alien knowing that the alien intended to enter the United States to engage in (1) a crime of violence or a controlled substance offense [; or (2) terrorist activity]. The proposal provides a [2-][4-][6-] level enhancement if the alien intended to commit a crime of violence or a controlled substance offense[, and a [12-] level enhancement, and a minimum offense level of [32], if the alien intended to engage in ''terrorist activity'' as defined in 8 U.S.C. 1182]. An increase equivalent to the terrorism adjustment at § 3A1.4 (Terrorism) was chosen to reflect the seriousness of aiding the importation of terrorists. An issue for comment follows regarding the appropriate interaction between the proposed terrorism enhancement and the terrorism adjustment at § 3A1.4.

(B) Offenses Involving Death

The amendment proposes three significant changes to the guideline in cases in which death occurred. First, the proposed amendment removes the increase of eight levels ''if death resulted'' from the current specific offense characteristic in § 2L1.1(b)(6) addressing bodily injury and places this increase in a stand alone specific offense characteristic in § 2L1.1(b)(8). This new specific offense characteristic provides an increase of [8], [10], or [12] levels and a minimum offense level of level [25–30].

Second, the cross reference at § 2L1.1(c) is expanded to cover deaths other than murder, if the resulting offense level is greater than the offense level determined under § 2L1.1. Third, the proposed amendment provides a new special instruction at § 2L1.1(d) to address cases involving multiple deaths. If applicable, the guideline will be applied as if the case involved a separate count of conviction for each death.

(C) Number of Illegal Aliens

The proposed amendment provides additional offense level increases to the table in § 2L1.1(b)(2) relating to the number of aliens involved in the offense. An increase of [11][12] levels would be applicable under the proposal if the offense involved 200 to 299 aliens, and an increase of [13–18] levels would be applicable if the offense involved 300 or more aliens. The current upward departure provision in Application Note 4 has been modified to reflect this proposed change.

(2) Immigration Documentation Fraud

The proposed amendment makes several changes to § 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport). First, the proposed amendment increases the base offense level in § 2L2.2(a) from level 8 to level [8–12]. Second, the proposed amendment increases by two levels the current enhancements in §§ 2L2.2(b)(1) (regarding unlawful aliens who have been deported on one or more occasions) and 2L2.2(b)(2) (regarding defendants who commit the instant offense after sustaining a felony conviction for an immigration and naturalization offense). Third, the proposed amendment provides an [4–10]-level enhancement in § 2L2.2(b)(3) if the defendant was a fugitive wanted for a felony offense in the United States [or any other country]. An issue for comment follows the proposed amendment regarding whether that enhancement should include fugitive status from a country other than the United States. [Finally, the proposed amendment provides an [2–8]-level enhancement at § 2L2.2(b)(4) if the defendant fraudulently obtained or used a United States passport.]

Proposed Amendment

Section 2L1.1(b)(2) is amended by striking the following:

''(C) 100 or more and 9.'',

and inserting the following:

''(C) 100–199 add 9

[(D) 200–299 add [11][12]

(E) 300 or more add [13][15][18].]''.

Section 2L1.1(b) is amended by redesignating subdivisions (4), (5) and (6) as subdivisions (5), (6), and (7), respectively; and by inserting after subdivision (3) the following:

''[(4) If the defendant smuggled, transported, or harbored an alien knowing that the alien intended to enter the United States—

(A) to engage in a crime of violence or controlled substance offense, increase by [2–6] levels; or

(B) to engage in terrorist activity, increase by [12] levels, but if the resulting offense level is less than level [32], increase to level [32].]''.

Section 2L1.1(b)(7), as redesignated by this amendment, is amended by striking ''died or''; by striking ''Death or''; by redesignating subdivisions (1), (2), and (3) as subdivisions (A), (B) and (C), respectively; by inserting a period after ''add 6 levels''; and by striking subdivision (4).

Section 2L1.1(b) is amended by adding at the end the following:

''(8) If the offense resulted in the death of any person, increase by [8–12] levels, but if the resulting offense level is less than level [25–30], increase to level [25–30].

Section 2L1.1(c) is amended by striking ''If any person'' and all that follows through ''Subpart 1.'' and inserting the following:

''(1) If death resulted, apply the appropriate homicide guideline from Chapter Two, Part A, Subpart 1, if the resulting offense level is greater than that determined above.''.

Section 2L1.1 is amended by adding at the end the following:

''(d) Special Instruction

(1) If the offense involved the death of more than one alien, Chapter Three, Part D (Multiple Counts) shall be applied as if the death of each alien had been contained in a separate count of conviction.''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 1 by striking ''For purposes of this guideline—'' and inserting ''Definitions.—For purposes of this guideline:''; and by striking '' 'Number of unlawful aliens'' and all that follows through ''include the defendant.''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 2 by inserting ''Application of Aggravating Role Adjustment.—'' before ''For purposes of''; and by striking Note 3 and inserting the following:

''3. Application of Subsection (b)(2).—For purposes of subsection (b)(2), the number of unlawful aliens smuggled, transported, or harbored does not include the defendant.''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 4 by inserting ''Upward Departure Provision.—'' before ''If''; and by striking ''100'' and inserting ''300''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 5 by inserting ''Prior Convictions Under Subsection (b)(3).—'' before ''Prior''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended by redesignating Note 6 as Note 7; and by inserting after Note 5 the following:

''[6. Application of Subsection (b)(4).—

(A) Definitions of Terms Used in Subdivision (b)(4)(A).—For purposes of subdivision (b)(4)(A):

'Controlled substance offense' has the meaning given that term in § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

'Crime of violence' has the meaning given that term in § 4B1.2.

(B) Definitions of Terms Used in Subdivision (b)(4)(B).—For purposes of subdivision (b)(4)(B):

'Engage in terrorist activity' has the meaning given that term in 8 U.S.C. § 1182(a)(3)(B)(iv).

'Terrorist activity' has the meaning given that term in 8 U.S.C. § 1182(a)(3)(B)(iii).

(C) Inapplicability of Chapter Three Adjustment.—If subdivision (b)(4)(B) applies, do not apply the adjustment from § 3A1.4 (Terrorism).]''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 7, as redesignated by this amendment, by inserting ''Application of Subsection (b)(6).—before ''Reckless''; by striking ''(b)(5)'' each place it appears, and inserting ''(b)(6)''; and by striking ''(b)(4)'' and inserting ''(b)(5)''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended by adding at the end the following:

''8. Special Instruction at Subsection (d)(1).—Subsection (d)(1) directs that if

the relevant conduct of an offense of conviction includes the death of more than one alien, whether specifically cited in the count of conviction or not, each such death shall be treated as if contained in a separate count of conviction. For the purposes of Chapter Three, Part D (Multiple Counts), multiple counts involving the death of more than one alien are not to be grouped together under § 3D1.2 (Groups of Closely Related Counts).''.

Section 2L2.2(a) is amended by striking ''8'' and inserting ''[8–12]''.

Section 2L2.2(b) is amended in subdivision (1) by striking ''2 levels'' and inserting ''[4 levels]''; and in subdivision (2) by striking ''offense, increase by 2 levels'' and inserting ''offense, increase by [4 levels]'', and by striking ''prosecution, increase by 4 levels'' and inserting ''prosecution, increase by [6 levels]''.

Section 2L2.2(b) is amended by adding at the end the following:

''(3) If the defendant was a fugitive wanted for a felony offense in the United States, [or any other country,] increase by [4–10] levels.

[(4) If the defendant fraudulently obtained or used a United States passport, increase by [2–8] levels.]''.

Issues for Comment

(1) The Commission requests comment on the proposed enhancement in § 2L1.1(b)(4)(B), which provides a significant increase and minimum offense level if the defendant smuggled, transported, or harbored an alien knowing that the alien intended to enter the United States to engage in terrorist activity. Specifically, how should this enhancement interact with the terrorism adjustment at § 3A1.4 (Terrorism), as promulgated in response to section 730 of the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104–132, and amended in response to the PATRIOT Act, Public Law 107–56? Should the proposed enhancement instead more closely track the provisions of 8 U.S.C. 1327, which prohibit, among other things, the smuggling, transporting, or harboring of an alien who is inadmissible under 8 U.S.C. 1182(a)(3)(B) (because that alien has engaged in terrorist activity, as defined in such provision)? Alternatively, should commentary be added inviting use of the upward departure provision in Application Note 4 of § 3A1.4 if the defendant smuggled, transported, or harbored an alien knowing the alien intended or was likely to engage in terrorist activity?

(2) The Commission specifically requests comment regarding whether the proposed enhancement in subsection § 2L2.2(b)(3) should include fugitive status in a country other than the United States. Are there application problems that may arise as a result of such inclusion?

2. Proposed Amendment: Analogues and Drugs Not Listed in § 2D1.1

Synopsis of Proposed Amendment: This proposed amendment revises a proposed amendment published in the **Federal Register** on December 30, 2003 (see 68 F.R. 75339), pertaining to controlled substance analogues. In addition to the proposed rule regarding analogues, the proposed amendment provides an application note regarding controlled substances not currently referenced in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy). The note directs the court to use the marihuana equivalency of the closest analogue of the controlled substance in order to determine the base offense level.

Proposed Amendment

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 5 by inserting ''Analogues and Controlled Substances Not Referenced in this Guideline.—'' before ''Any reference''; by striking ''and'' after ''includes all salts, isomers,''; by inserting ''and, except as otherwise provided, any analogue of that controlled substance'' after ''all salts of isomers''; and by adding at the end the following:

''In the case of a controlled substance that is not referenced in either the Drug Quantity Table or the Drug Equivalency Tables of Application Note 10, determine the base offense level using the marihuana equivalency of the closest analogue of that controlled substance.

For purposes of this guideline ''analogue'' has the meaning given ''controlled substance analogue'' in 21 U.S.C. 802(32).''.

3. Issues for Comment: Implementation of the CAN–SPAM Act of 2003

Section 4(b)(1) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the ''CAN–SPAM Act of 2003''), Public Law 108–187, directs the Commission to review and as appropriate amend the sentencing guidelines and policy statements to establish appropriate penalties for violations of 18 U.S.C. 1037 and other offenses that may be facilitated by the sending of a large volume of unsolicited e-mail.

Section 4(b)(2) of the CAN–SPAM Act of 2003 further directs the Commission to consider providing sentencing enhancements for—

(A) Defendants convicted under 18 U.S.C. 1037 who—

(I) Obtained e-mail addresses through improper means, including the harvesting of e-mail addresses from the users of a Web site, proprietary service, or other online public forum without authorization and the random generating of e-mail addresses by computer; or

(ii) knew that the commercial e-mail messages involved in the offense contained or advertised an internet domain for which the registrant of the domain had provided false registration information; and

(B) Defendants convicted of other offenses, including fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children, if such offenses involved the sending of large quantities of e-mail.

The Commission requests comment regarding the most appropriate amendments that might be made to the guidelines to implement the directives in section 4(b) of the CAN–SPAM Act of 2003. Specifically, the Commission requests comment on the following:

(1) What are the appropriate guideline penalties for a defendant convicted under 18 U.S.C. 1037? Section 4(a) of the CAN–SPAM Act of 2003 created the new offense at 18 U.S.C. 1037, which makes it unlawful for any person, in or affecting interstate or foreign commerce, to knowingly:

(a)(1) access a protected computer without authorization, and intentionally initiate the transmission of multiple commercial electronic mail messages from or through such computer;

(a)(2) Use a protected computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages;

(a)(3) materially falsify header information in multiple commercial electronic messages and intentionally initiate the transmission of such messages;

(a)(4) register, using information that materially falsifies the identity of the actual registrant, for five or more electronic mail accounts or online user accounts or two or more domain names, and intentionally initiate the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names; or

(a)(5) falsely represent oneself to be the registrant or the legitimate successor

in interest to the registrant of five or more Internet Protocol addresses, and intentionally initiate the transmission of multiple commercial electronic mail messages from such addresses.

The criminal penalties for a violation of 18 U.S.C. 1037 are as follows:

(b)(1) Imprisonment up to five years and/or a fine if—

(A) the offense is committed in furtherance of any other federal or State felony; or

(B) the defendant has previously been convicted under this section [18 U.S.C. 1037], under 18 U.S.C. 1030, or under any State law for sending multiple commercial e-mail messages or unauthorized access to a computer system.

(b)(2) Imprisonment up to three years and/or a fine if—

(A) the offense is under subsection (a)(1) (*i.e.*, using without authorization a protected computer to send multiple commercial e-mail messages);

(B) the offense is under subsection (a)(4) (*i.e.*, registering by false identification to e-mail accounts, online user accounts, or domain names) if the offense involved 20 or more falsified e-mail or online user account registrations or 10 or more falsified domain name registrations;

(C) the volume of e-mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period;

(D) the offense caused a loss to one or more persons of $5,000 or more during any one-year period;

(E) the defendant obtained as a result of the offense conduct anything of value of $5,000 or more during any one-year period; or

(F) the defendant acted in concert with three or more other persons and was an organizer or leader with respect to the others.

(b)(3) Imprisonment up to one year and/or a fine for any other violation of the statute.

Should the new offense(s) be referenced in Appendix A (Statutory Index) to §§ 2B1.1 (Fraud, Theft, and Property Destruction), and 2B2.3 (Trespass), and/or to some other guideline(s)? What is the appropriate base offense level for the new offense(s)? Should the base offense level vary depending on the seriousness of the offense (for example, should the base offense level for a regulatory violation under 18 U.S.C. 1037 be the same as the base offense level for a more serious violation under that statute)?

If 18 U.S.C. 1037 is referenced to § 2B1.1, should commentary be added to that guideline that ensures application of the multiple victim enhancement at § 2B1.1(b)(2)(A)(I) or the mass marketing enhancement at § 2B1.1(b)(2)(A)(ii) to a defendant convicted of 18 U.S.C. § 1037? Should a defendant convicted under 18 U.S.C. 1037 receive an enhancement under § 2B1.1(b)(2)(A)(I) or (ii) based on a threshold quantity of email messages involved in the offense, and if so, what is that threshold quantity?

Are there circumstances under which an offense under 18 U.S.C. 1037 could be considered to involve sophisticated means, and if so, would it be appropriate to add commentary to § 2B1.1 to invite application of the enhancement for sophisticated means at § 2B1.1(b)(8) under such circumstances? Alternatively, would it be appropriate to add commentary discouraging application of the enhancement for sophisticated means in certain circumstances and, if so, what would those circumstances be?

Consistent with the directive in section 4(b)(2) of the CAN–SPAM Act of 2003, should § 2B1.1 contain an enhancement for defendants convicted under 18 U.S.C. 1037 who (I) obtain e-mail addresses through improper means, including the harvesting of e-mail addresses from the users of a Web site, proprietary service, or other online public forum without authorization and the random generating of e-mail addresses by computer; or (ii) knew that the commercial e-mail messages involved in the offense contained or advertised an internet domain for which the registrant of the domain had provided false registration information?

(2) What are the appropriate guideline penalties for offenses other than 18 U.S.C. 1037 (such as those specified by section 4(b)(2) of the CAN–SPAM Act of 2003, *i.e.*, offenses involving fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children) that may be facilitated by the sending of a large volume of unsolicited e-mail?

Specifically, should the Commission consider providing an additional enhancement for the sending of a large volume of unsolicited email in any of the following: § 2B1.1 (covering fraud generally and identity theft), the guidelines in Chapter Two, Part G, Subpart 2, covering child pornography and the sexual exploitation of children, and the guidelines in Chapter Two, Part G, Subpart 3, covering obscenity? Alternatively, should the Commission amend existing enhancements, or the commentary pertaining thereto, in any of these guidelines to ensure application of those enhancements for the sending of a large volume of unsolicited email? For example, should the Commission amend the enhancements, or the commentary pertaining to the enhancements, for the use of a computer in the child pornography guidelines, §§ 2G2.1, 2G2.2, and 2G2.4, to ensure that those enhancements apply to the sending of a large volume of unsolicited email?

What constitutes a ''large volume of unsolicited email''?

(3) Section 5(d)(1) of the CAN–SPAM Act of 2003 makes it unlawful for a person to initiate in or affect interstate commerce by transmitting, to a protected computer, any commercial electronic email message that includes sexually oriented material and—

(A) fail to include in the subject heading for the electronic mail message the marks or notices prescribed by the [Federal Trade Commission] under this subsection; or

(B) fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes only—

(I) to the extent required or authorized pursuant to paragraph (2) [*i.e.*, the recipient has given prior affirmative assent to receipt of the message], any such marks or notices;

(ii) the information required to be included in the message pursuant to section 5(a) of the CAN–SPAM Act of 2003; and

(iii) instructions on how to access, or a mechanism to access, the sexually oriented material.

The criminal penalty for a violation of section 5(d)(1) of the CAN–SPAM Act of 2003 is a fine or imprisonment for not more than five years, or both.

The Commission requests comment on how it should incorporate this new offense into the guidelines. Should the Commission reference this offense in Appendix A to § 2G2.2, the guideline covering the transmission of child pornography, and/or § 2G3.1, the guideline covering the transmission of obscene matter? Are there enhancements that should be added to either of these guidelines to cover such conduct adequately?

[FR Doc. 04–806 Filed 1–13–04; 8:45 am]

BILLING CODE 2210–40–P

SMALL BUSINESS ADMINISTRATION

Notice; Small Business Administration Interest Rates

The Small Business Administration publishes an interest rate called the

optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.625 (4⅝) percent for the January–March quarter of FY 2004.

James E. Rivera,

Associate Administrator for Financial Assistance.

[FR Doc. 04–783 Filed 1–13–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4585]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Splendors of China's Forbidden City: The Glorious Reign of Emperor Qianlong''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257, I hereby determine that the objects to be included in the exhibition ''Splendors of China's Forbidden City: The Glorious Reign of Emperor Qianlong,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owner and/or custodian. I also determine that the exhibition or display of the exhibit objects at the Field Museum, Chicago, Illinois, from on or about March 12, 2004, to on or about September 12, 2004, the Dallas Museum of Art, Dallas, Texas, from on or about November 21, 2004, to on or about May 29, 2005, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Walter Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–5078). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 7, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–794 Filed 1–13–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for the Lincoln Airport under the provisions of 49 U.S.C. 4701 *et seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150 by the Lincoln Airport Authority. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for the Lincoln Airport were in compliance with applicable requirements, effective September 26, 2003, (816) 329–2645. The proposed noise compatibility program will be approved or disapproved on or before June 7, 2004.

DATES: Effective Date: The effective date of the start of FAA's review of the noise compatibility program is December 10, 2003. The public comment period ends February 9, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Schenkelberg, Federal Aviation Administration, 901 Locust, Kansas City, Missouri 64106, (816) 329–2645. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Lincoln Airport, which will be approved or disapproved on or before June 7, 2004. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for Lincoln Airport, effective on December 10, 2003. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to FAR part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 7, 2004.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Central Region, 901 Locust, Kansas City, MO 64106; Jon L. Large, Lincoln Airport, 2400 West Adams, Lincoln, NE 68504.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Kansas City, Missouri, on December 10, 2003.

George A. Hendon,

FAA Division Manager.

[FR Doc. 04–848 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–01]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 3, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 8, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15964.

Petitioner: Era Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 121.354(b).

Description of Relief Sought:

To allow Era Aviation, Inc., to operate its de Havilland Canada DHC–6 Twin Otter aircraft after March 29, 2005, without having an approved terrain awareness and warning system that meets the requirements for Class A equipment in Technical Standard Order C151 installed on the aircraft.

[FR Doc. 04–750 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–02]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–5174.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on January 8, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–9337.

Petitioner: Embraer Empresa Brasileira de Aeronautica S.A.

Section of 14 CFR Affected: 14 CFR 25.785(b).

Description of Relief Sought/Disposition: To amend a previously granted exemption regarding occupant protection requirements for persons occupying multiple-place side-facing seats during takeoff and landing on Embraer EMB 135 BJ airplanes manufactured before January 1, 2004. The amendment would remove the limitation that restricts its applicability to airplanes manufactured before January 1, 2004. *Grant of Exemption, 12/24/2003, Exemption No. 7878A.*

[FR Doc. 04–751 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–03]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 31, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2003–15452] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting

comments on the DOT electronic docket site.

- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery : Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174, Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on January 8, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: FAA–2003–15452.

Petitioner: Alaska Air Carriers Association.

Section of 14 CFR Affected:

14 CFR 43.3(g), 121.709(b)(3), and 135.443(b)(3).

Description of Relief Sought:

To permit pilots employed by air carriers who are members of the Alaska Air Carriers Association to install and remove self-contained, front instrument panel-mounted air traffic control navigational software databases and make the appropriate maintenance record entries.

[FR Doc. 04–752 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–04]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–5174.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on January 7, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2002–12399.

Petitioner: Cessna Aircraft Company.

Section of 14 CFR Affected: 14 CFR 25.785(b).

Description of Relief Sought/Disposition: To grant Cessna Aircraft Company relief from general occupant protection requirements for persons occupying multiple-place side-facing seats during takeoff and landing on Cessna Model 750 airplanes. *Grant, 12/24/2003, Exemption No. 7922A.*

Docket No.: FAA–2003–16281.

Petitioner: Gulfstream Aerospace Corporation.

Section of 14 CFR Affected: 14 CFR 25.813(e).

Description of Relief Sought/Disposition: To permit the installation of interior doors between passenger compartments on the Dassault Aviation airplane models Mystere Falcon 900 and Falcon 900EX. *Grant, 12/19/2003, Exemption No. 8199.*

[FR Doc. 04–753 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34450]

PAV Railroad, Inc.—Acquisition and Operation Exemption—Assets of N&T Railway Company LLC

PAV Railroad, Inc. (PAV), a noncarrier subsidiary of PAV Republic, Inc., has filed a notice of exemption under 49 CFR 1150.31 to acquire from N&T Railway Company LLC (N&T)[1] and operate all of N&T's interests in the subject line, including track and related properties.[2] The line extends for approximately 21 miles from a point at or near the Township of Canton, OH, to the points of interchange with the Norfolk Southern Railway Company and The Wheeling & Lake Erie Railway Company, at or near the City of Canton, OH.[3] PAV has certified that the projected annual revenues as a result of this transaction do not exceed those that would qualify it as a Class III rail carrier.[4]

The transaction was scheduled to be consummated on or after December 22, 2003 (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34450, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Charles A. Spitulnik and Alexander Menendez, McLeod, Watkinson & Miller, One Massachusetts Avenue, NW., Suite 800, Washington, DC 20001.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 6, 2004.

[1] N&T is a subsidiary of Republic Engineered Products, LLC.

[2] In a separate decision in this proceeding, served on December 19, 2003, the Board granted PAV's petition for a waiver of the Board's 60-day notice requirements at 49 CFR 1150.32(e). This proceeding is related to the bankruptcy proceeding In re: *Republic Engineered Product Holdings, LLC et al.,* Case Nos: 03–55118, 03–55120, and 03–55121 and jointly administered as Case No. 03–55118.

[3] According to PAV, there appear to be no mileposts on the line.

[4] This certification was included in a separate letter mailed to the Board on December 16, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–688 Filed 1–13–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34419]

The Indiana Rail Road Company—Lease and Operation Exemption—CSX Transportation, Inc.

The Indiana Rail Road Company (INRD), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 *et seq.*, to lease from CSX Transportation, Inc. (CSXT), and operate 1.88 miles of rail line between CSXT milepost 00Q 219.55 and CSXT milepost 00Q 217.67 in or near Bloomington, in Monroe County, IN.[1]

INRD certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. The parties contemplated consummating the transaction on or shortly after January 5, 2004.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34419, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John Broadley, 1054 31st Street, NW., Suite 200, Washington, DC 20007.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 6, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–687 Filed 1–13–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 6, 2004.

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 February 13, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1829.

Form Number: IRS Form 8836 and Schedules A & B.

Type of Review: Extension.

Title: Qualifying Children Residency Statement.

Description: Form 8836 is necessary to establish the residence of a child for purposes of the Earned Income Credit (EIC). The form will determine if the child is a qualifying child of the taxpayer when taking the EIC.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 25,000.

Estimated Burden Hours Respondent/Recordkeeper:

	Form 8836 (in minutes)	Schedule A (in minutes)	Schedule B (in minutes)
Recordkeeping	6		
Learning about the law or the form	14	5	4
Preparing the form	11	12	18
Copying, assembling, and sending the form to the IRS	20	20	20

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 38,070 hours.

OMB Number: 1545–1856.

Form Number: IRS Form 13362.

Type of Review: Revision.

Title: Consent to Disclosure of Return Information.

Description: The Consent Form is provided to external applicant that will allow the Service the ability to conduct tax checks to determine if an applicant's suitability for employment once they are determined qualified and within reach to receive an employment offer.

Respondents: Federal Government.

Estimated Number of Respondents/Recordkeepers: 46,000.

Estimated Burden Hours Respondent/Recordkeeper: 10 minutes.

Estimated Total Reporting/Recordkeeping Burden: 7,664 hours.

Clearance Officer: Robert M. Coar, (202) 622–3579, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

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. 04–795 Filed 1–13–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 8, 2004.

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.

[1] INRD indicates that it has entered into a lease agreement with CSXT.

Dates: Written comments should be received on or before February 13, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1829.

Regulation Project Number: REG–209682–94 Final.

Type of Review: Extension.

Title: Adjustments Following Sales of Partnership Interests.

Description: Partnerships, with a section 754 election in effect, are required to adjust the basis of partnership property following certain transfers of partnership interests. The regulations require the partnership to attach a statement to its partnership return indicating the adjustment and how it was allocated among the partnership property.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 226,000.

Estimated Burden Hours Respondent/Recordkeeper: 4 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 904,000 hours.

Clearance Officer: Robert M. Coar, (202) 622–3579, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

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. 04–796 Filed 1–13–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4804

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4804, Transmittal of Information Returns Reported Magnetically.

DATES: Written comments should be received on or before March 15, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Robert M. Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at CAROL.A.SAVAGE@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Transmittal of Information Returns Reported Magnetically.

OMB Number: 1545–0367.

Form Number: Form 4804.

Abstract: Under Internal Revenue Code sections 6041 and 6042, all persons engaged in a trade or business and making payments of taxable income must file reports of this income with the IRS. In certain cases, this information must be filed on magnetic media. Form 4804 is a transmittal form for the magnetic media, which indicates the payer, type of document, and total payee records.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of Responses: 71,058.

Estimated Time Per Response: 17 minutes.

Estimated Total Annual Burden Hours: 20,902.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 2004.

Robert M. Coar,

IRS Reports Clearance Officer.

[FR Doc. 04–828 Filed 1–13–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1024

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1024, Application for Recognition of Exemption Under Section 501(a).

DATES: Written comments should be received on or before March 15, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Robert M. Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at CAROL.A.SAVAGE@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Recognition of Exemption Under Section 501(a).

OMB Number: 1545–0057.

Form Number: 1024.

Abstract: Organizations seeking exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in most paragraphs of section 501(c) must use Form 1024 to apply for exemption. The information collected is used to determine whether the organization qualifies for tax-exempt status.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 4,718.

Estimated Time Per Respondent: 61 hours, 47 minutes.

Estimated Total Annual Burden Hours: 291,542.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 2004.

Robert M. Coar,

IRS Reports Clearance Officer.

[FR Doc. 04–829 Filed 1–13–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
January 14, 2004

Part II

Nuclear Regulatory Commission

10 CFR Parts 1, 2, 50, et al.

Changes to Adjudicatory Process; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 50, 51, 52, 54, 60, 63, 70, 72, 73, 75, 76, and 110

RIN 3150–AG49

Changes to Adjudicatory Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning its rules of practice to make the NRC's hearing process more effective and efficient. The final rule will fashion hearing procedures that are tailored to the differing types of licensing and regulatory activities the NRC conducts and will better focus the limited resources of involved parties and the NRC.

DATES: This final rule is effective February 13, 2004. The rules of procedure in the final rule apply to proceedings noticed on or after the effective date, unless otherwise directed by the Commission.

FOR FURTHER INFORMATION CONTACT: Geary S. Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1639, e-mail *GSM@nrc.gov.*

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I. Background

Among the very first actions taken by the Nuclear Regulatory Commission (NRC) following its creation in 1975 was an affirmation of the fundamental importance it attributes to public participation in the Commission's adjudicatory processes. Public participation, the Commission said, ''is a vital ingredient to the open and full consideration of licensing issues and in establishing public confidence in the sound discharge of the important duties which have been entrusted to us.'' N. States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI–75–1, 1 NRC 1, 2 (1975). However, the form and formality of the processes provided for public participation have long been debated, well before the NRC was established and well after the foregoing statement was made.

The Commission has taken a number of steps in recent years to reassess its processes to identify ways in which it can conduct its regulatory activities more effectively. This assessment has extended across the full range of the NRC's programs, from its oversight and inspection program to evaluate and assess licensee performance, to its internal program management activities. One of the cornerstones of the NRC's regulatory approach has always been ensuring that its review processes and decisionmaking are open, understandable, and accessible to all interested parties. Its processes for achieving this goal have been part of the reassessment as well. Recently, steps have been taken to expand the opportunities for stakeholder awareness and involvement in NRC policy and decisionmaking through greater use of public workshops in rulemaking, inviting stakeholder participation in Commission meetings, and more extensive use of public meetings with interested parties on a variety of safety and regulatory matters.

The Commission has had a longstanding concern that the adjudicatory (hearing) process in 10 CFR part 2, subpart G, associated with licensing and enforcement actions, is not as effective as it could be. Beginning with case-by-case actions in 1983, and with a final rule in 1989, the Commission took steps to move away from the trial-type, adversarial format to resolve technical disputes with respect to its materials license applications. Commission experience suggested that in most instances, the use of the full panoply of formal, trial-like adjudicatory procedures in subpart G is not essential to the development of an adequate hearing record; yet all too frequently their use resulted in protracted, costly proceedings. The Commission adopted more informal procedures with the goals of reducing the burden of litigation costs, and enhancing the role of the presiding officer as a technical fact finder by giving him or her the primary responsibility for controlling the development of the hearing record beyond the initial submissions of the parties. A significant portion of the NRC's proceedings in the past ten years has been conducted under these more informal procedures. Although the Commission's experience to date indicates that some of the original objectives have been achieved, there have also been some aspects of the more informal procedures that have continued to prolong proceedings without truly enhancing the decisionmaking process. Given the Commission's experience, and with the potential in the next few years for new proceedings to consider applications for new facilities, to renew reactor operating licenses, to reflect restructuring in the electric utility industry, and to license waste storage facilities, the Commission concluded it needs to reassess its hearing processes to identify improvements that will result in a better use of all participants' limited resources. To that end, the Commission initiated certain actions related to its hearing processes—development of a Policy Statement on the hearing process, and a reexamination of the NRC's hearing process and requirements under the Atomic Energy Act of 1954, as amended (AEA)—as a foundation for possible rule changes.

A. Policy Statement

In 1998, the Commission adopted a new Policy Statement that provides specific guidance for Licensing Boards

and presiding officers on methods to use, when appropriate, for improving the management and timely completion of proceedings. Statement of Policy on the Conduct of Adjudicatory Proceedings, CLI–98–12, 48 NRC 18 (63 FR 41872; Aug. 5, 1998). The Policy Statement is an extension of the Commission's Statement of Policy on Conduct of Licensing Proceedings, CLI–81–8, 13 NRC 452 (46 FR 28533; May 27, 1981), which provided guidance to the Atomic Safety and Licensing Boards (Boards) on methods to improve the timely conduct of licensing proceedings and ensure that hearings are fair and produce adequate records that support decisions made by the NRC.

Among other things, the 1998 Policy Statement urges presiding officers/Licensing Boards to establish schedules for deciding issues before them. It also reminds presiding officers/Licensing Boards of their authority to set schedules, resolve discovery disputes, and take other action required to regulate the course of the proceedings. Case management by the presiding officers and Licensing Boards is an essential element of a fair, efficient hearing process. The Policy Statement also provides that the Commission may set milestones for an individual proceeding. If a presiding officer/Licensing Board determines that it would miss any milestone set by the Commission by more than 30 days, it is to provide the Commission with a written explanation of the reasons for the delay.

The Policy Statement also sets forth the Commission's expectations of the parties in the proceeding. Parties are expected to adhere to the time frames set forth by the presiding officers/Licensing Boards. Petitioners are reminded, among other things, of their burden to set forth contentions that meet the standards of 10 CFR 2.714(b)(2) (§ 2.309(f) in this final rule), and that contentions are limited by the nature of the application and the regulations. This guidance is directed to management and control of adjudicatory proceedings under the existing Rules of Practice. The guidance did not address more basic changes to the hearing process itself.

B. Reexamination of NRC's Hearing Process

In late 1998, the NRC Office of the General Counsel (OGC) undertook a reexamination of the NRC's current adjudicatory practices as conducted under the AEA and the NRC's current regulations, as well as a review of the Administrative Procedure Act (APA) and the practices of other agencies and the federal courts, with a view to developing options for improving the NRC's hearing processes. This effort was documented in a Commission paper, SECY–99–006, January 8, 1999, that was made publicly available.

As part of the analysis of possible approaches, OGC reached the conclusion that, except for a very limited set of hearings—those associated with the licensing of uranium enrichment facilities—the AEA did not mandate the use of a ''formal, on-the-record'' hearing within the meaning of the APA, 5 U.S.C. 554, 556, and 557, and that the Commission enjoyed substantial latitude in devising suitable hearing processes that would accommodate the rights of participants. In contrast to informal hearings for which agencies have greater flexibility in shaping adjudicatory procedures, ''on-the-record'' hearings under the APA generally resemble adversarial trial-type proceedings with oral presentations by witnesses and cross-examination.

The key, statutory provision, Section 189.a. of the AEA, declares only that ''a hearing'' (or an opportunity for a hearing) is required for certain types of agency actions. It does not state that such hearings are to be on-the-record proceedings. Furthermore, the legislative history for the AEA provides no clear guidance whether Congress intended agency hearings to be formal, on-the-record hearings.[1] As a legal matter, where Congress provides for ''a hearing,'' and does not specify that the adjudicatory hearings are to be ''on-the-record,'' or conducted as an adjudication under 5 U.S.C. 554, 556 and 557 of the APA, it is presumed that informal hearings are sufficient. *United States* v. *Allegheny-Ludlum Steel Corp.,* 406 U.S. 742, 757 (1972), citing *Siegel* v. *AEC,* 400 F.2d 778, 785 (D.C. Cir. 1968); *United States* v. *Fla. E. Coast Ry. Co.,* 410 U.S. 224 (1973). Significantly, these Supreme Court decisions occurred more than fifteen years after the period where the Atomic Energy Commission (AEC) first enunciated its position on the hearing requirements in Section 189.a.

The AEC of the 1950s asserted that formal hearings were required by Section 189.a. At that time, the AEC saw benefits in a highly formal process, resembling a judicial trial, for deciding applications to construct and operate nuclear power plants. It was thought that the panoply of features attending a trial—parties, sworn testimony, and cross-examination—would lead to a more satisfactory resolution of the complex issues affecting the public health and safety and would build public confidence in the AEC's decisions and thus in the safety of nuclear power plants licensed by the AEC. One study concluded that the use of formal hearings developed in order to address concerns that the pressures of promotion by the AEC could have an undue influence on the AEC's assessment of safety issues. By use of an expanded hearing process, the Commission could more fully defend the objectivity of its licensing actions. *See* William H. Berman and Lee M. Hydeman, The Atomic Energy Commission and Regulating Nuclear Facilities (1961), reprinted in 2 Improving the AEC Regulatory Process, Joint Comm. on Atomic Energy, 87th Cong., at 488 (1st Sess. 1961). Thus, notwithstanding the lack of explicit language in the statute or clear direction in the legislative history for the 1954 AEA regarding the use of formal, on-the-record hearings, AEC took the official position that on-the-record hearings were not merely permissible under the AEA but required. AEC Regulatory Problems: Hearings before the Subcommittee on Legislation, Joint Committee on Atomic Energy, 87th Cong., at 60 (2d Sess. 1962) (Letter of AEC Commissioner Loren K. Olsen). However, as mentioned above, the AEC's determination in this regard was not informed by the subsequent Supreme Court decisions in *Allegheny-Ludlum Steel Corp.* and *Florida East Coast Railway Co.* The Commission believes, in light of the principles enunciated by the Supreme Court in these two decisions, that the better interpretation of Section 189.a. is that formal, on-the-record hearings are not required by that section.

However, it has been argued that two subsequent amendments to the AEA, both of which involve clauses beginning with the word ''notwithstanding,'' should be read as confirming Congress's understanding that on-the-record adjudications are required by Section 189.a. of the 1954 Act. The first occurred in 1962, when Congress amended the AEA to add a new Section 191, authorizing the use of three-member Licensing Boards rather than hearing examiners, ''notwithstanding'' certain provisions of the APA. Because those referenced APA provisions dealt with formal, on-the-record adjudication, the ''notwithstanding'' clause in the statute could be read (and by some, is read) to imply that, by 1962, Congress viewed the Atomic Energy Act as

[1] A detailed discussion of Section 189 and its legislative history can be found in the Commission's decision in *Kerr McGee Corp.* (West Chicago Rare Earths Facility), CLI–82–2, 15 NRC 232 (1982). *See also* Advanced Med. Sys., Inc., ALAB–929, 31 NRC 271, 279–288 (1990).

requiring on-the-record adjudication. The crux of the argument is that the ''notwithstanding'' clause would have been unnecessary if an on-the-record adjudication was not mandatory.

In 1978, ''notwithstanding'' made its second appearance. In that year, Congress enacted the Nuclear Non-Proliferation Act (NNPA), which provided among other things for the NRC to establish procedures for ''such public hearings [on nuclear export licenses] as the Commission deems appropriate.'' NNPA section 304, 42 U.S.C. 2155a(a). The statute said that this provision was the exclusive legal basis for any hearings on nuclear export licenses, adding: ''[N]otwithstanding section 189a. of the 1954 Act, [this] shall not require the Commission to grant any person an on-the-record hearing in such a proceeding.'' 42 U.S.C. 2155a(b). Again, the argument is that the ''notwithstanding'' clause would be unnecessary unless Congress thought on-the-record formal hearings would be called for by Section 189 of the AEA.

These two subsequent statutes do not explicitly declare the intent of the 1954 AEA, nor do they explicitly require the use of on-the-record procedures in agency proceedings—in fact, they do the opposite. Furthermore, the legislative history accompanying both statutes strongly suggests that rather than agreeing with the Commission's early interpretation of Section 189.a. of the 1954 AEA, the Congresses took the position that the Commission had latitude under the existing language of Section 189.a. to use informal hearing procedures.[2] Seen in this light, the most plausible explanation for the ''notwithstanding'' clauses, in the Commission's view, is that they were intended not as a means to overcome what were viewed as fatal legal impediments, but rather, to counter and eliminate potential legal objections to the use of informal hearing procedures that may be raised by the Commission. It would have been only prudent of the drafters to eliminate ambiguity on this point when enacting additional provisions, even if they had been convinced that the clauses were unnecessary, given the Commission's insistence that Section 189.a. required on-the-record adjudications.

In any event, the Commission believes that to focus on Congress's thought processes in 1962, when it enacted Section 191 of the AEA, and in 1978, when it passed the NNPA, runs the risk of losing sight of what any reviewing court interested in legislative intent would regard as the central question, which is what Congress intended in 1954, when it enacted Section 189.a. of the AEA. And, as discussed earlier, the Commission now believes that in 1954 Congress did not intend Section 189.a. hearings to be formal, on-the-record adjudications.

For many years, the NRC did not depart from the longstanding assumption that the AEA requires on-the-record hearings despite the fact that this assumption had never been reduced to a definitive holding. Also, consistent with its understanding of Section 189.a., in 1978 the NRC declared that the hearing it would hold on an application to construct and operate a nuclear waste repository for high-level waste (HLW) would be a formal hearing. In a final rule (46 FR 13971; Feb. 25, 1981) now codified at 10 CFR part 2, Subpart J, the Commission provided for a mandatory formal hearing at the construction authorization stage and for an opportunity for a formal hearing before authorizing receipt and possession of HLW at a geologic repository. Subsequently, Congress enacted the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10101 *et seq.* That law includes no specific hearing requirements. Instead, it seems to contemplate, at Section 114, that the NRC will apply existing laws applicable to the construction and operation of nuclear facilities. In sum, there is no statutory requirement for a formal hearing on a HLW repository, but without a rule change, the NRC's regulations would require a formal hearing. In 1990, Congress also provided that for the licensing of a uranium enrichment facility, the NRC ''shall conduct a single adjudicatory hearing on-the-record.''[3] This provision can be interpreted in one of two ways: either as one more reflection of Congress's understanding that formal adjudication was the norm in NRC facility licensing proceedings, or as the very opposite, *i.e.*, as showing that Congress understood that because of the presumption against formal hearings, explicit statutory language would be needed to make proceedings for this type of facility ''on-the-record,'' as that term is used in the APA.

In the decades since passage of the AEA, debate over the value of on-the-record adjudication for the resolution of nuclear licensing issues, and indeed for resolving scientific issues generally, has continued. There are now many observers who are skeptical that the use of formal adjudication in NRC licensing cases is the appropriate means to settle a regulatory issue; that whatever validity there may have been to the arguments for formal adjudication from the 1950s to the 1970s, they no longer have merit; and that fewer formalized proceedings could mean not only greater efficiency, but also better decisions, with more meaningful public participation and greater public acceptance of the result. *See, e.g.*, Improving Regulation of Safety at DOE Nuclear Facilities, Final Report of the Advisory Committee on External Regulation of DOE Nuclear Safety, at 39 (Dec. 1995).

However, because of the early interpretation that formal, on-the-record hearings under subpart G were required, as well as NRC's long-standing practice of conducting hearings on reactor licensing actions under subpart G, each time that NRC has explored ways of expanding the use of more informal hearing procedures, it has had to confront its own prior statements and actions on the subject. Even so, no court has rendered a definitive holding on the application of the APA's ''on-the-record'' hearing requirements to AEA proceedings. Indeed, while some court decisions reflected the agency's early assumption that ''on-the-record'' hearings were required, other decisions did not. *Compare Union of Concerned Scientists* v. *NRC,* 735 F.2d 1437, 1444 n.12 (DC Cir. 1984), cert. denied, 469 U.S. 1132 (1984) [UCS I] (''there is much to suggest that the Administrative Procedure Act's (APA) 'on-the-record' procedures * * * apply [to section 189]'') with *Union of Concerned Scientists* v. *NRC,* 920 F.2d 50, 53 n.3 (DC Cir. 1990) (''it is an open question whether Section 189(a)—which mandates only that a 'hearing' be held and does not provide that such hearing be held 'on-the-record'—nonetheless requires the NRC to employ in a licensing hearing procedures designated by the [APA] for formal adjudications''). The commentary in these and other cases is essentially *dicta*—observations not essential to the court's decision. *See also Siegel* v. *AEC,* 400 F.2d 778, 785 (DC Cir. 1968)(deciding only permissibility of informal rulemaking procedures under section 189); *Porter County Chapter of the Izaak Walton League* v. *NRC,* 606 F.2d 1363, 1368 (DC Cir. 1979) (deciding only NRC's discretion to initiate enforcement proceedings subject to Section 189 hearing); *City of West Chicago* v. *NRC,* 701 F.2d 632, 642 (7th Cir. 1983) (deciding only permissibility of informal procedures in materials licensing adjudication).

[2] See, *e.g.*, H.R. Rep. No. 87–1966, at 6 (1962), quoted in Kerr McGee Corp., CLI–82–2, 15 NRC 232, 251 (1982).

[3] Atomic Energy Act of 1954, as amended, Section 193, 42 U.S.C. 2243.

In *Chemical Waste Management* v. *EPA,* 873 F.2d 1477, 1480 (DC Cir. 1989), the DC Circuit stated that while the presence of the words ''on-the-record'' is not absolutely essential in order to find that formal adjudicatory hearings are required, there must be, in the absence of those words or similar language, evidence of ''exceptional circumstances'' demonstrating that Congress intended to require the use of formal adjudicatory procedures. Although the court suggested, again *in dicta,* that Section 189.a of the AEA might be a case where ''exceptional circumstances'' dictate formal, on-the-record hearing requirements, that observation has its roots in a *dictum* in UCS I which suggests that in 1961 ''the AEC specifically requested Congress to relieve it of its burden of 'on-the-record' adjudications under section 189(a)'' and Congress did not do so. 735 F.2d at 1444 n.12. The opposite is more nearly correct: The AEC argued in favor of formal procedures and the Joint Committee on Atomic Energy advised that informal procedures were permissible. *See* H.R. Rep. No. 87–1966, at 6 (1962), quoted in Kerr McGee Corp., CLI–82–2, 15 NRC 232, 251 (1982). More recently, in *Kelley* v. *Selin,* 42 F.3d 1501, 1511–12 (6th Cir.), cert. denied, 515 U.S. 1159 (1995), the court emphasized the NRC's latitude to determine the nature of the ''hearing'' mandated by the AEA.

The Commission's approach to expanding the use of more informal hearing procedures has been cautious, taking place in slow, incremental steps. One such step came in 1982, when the Commission, in the West Chicago case, granted an informal hearing (*i.e.*, written submissions only) on an amendment to a materials license. In doing so, it observed that the AEA did not specifically require on-the-record hearings, and it called the legislative history ''unilluminating'' as to Congress's intent in materials licensing cases. The Commission noted that while it held formal hearings in all reactor licensing cases, it had not stated explicitly whether it did so as a matter of discretion or of statutory requirement. In any event, it did not view the AEA as mandating an on-the-record hearing in every licensing case. This decision was upheld by a reviewing court. *City of West Chicago* v. *NRC,* 701 F.2d 632 (7th Cir. 1983). Subsequently, the NRC issued a new subpart L to part 2, setting forth procedures for holding informal proceedings on all materials license applications and amendments (54 FR 8276; Feb. 28, 1989). In Section 134 of the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10154, Congress specified a set of hybrid procedures for licensing expansions of spent fuel storage capacity at reactor sites. The process called for written submissions, oral argument, and an adjudicatory hearing only after specific findings by the Commission. The Commission promulgated procedures—10 CFR part 2, subpart K (50 FR 41670; Oct. 15, 1985)—to implement this legislation.

The *West Chicago* court's finding that formal hearings were not required for materials licenses opened the door considerably wider for the argument that formal hearings are not necessarily required in reactor licensing cases. The provision of the AEA that establishes the basic statutory entitlement to a ''hearing'' does not distinguish between reactor licenses and materials licenses. The first significant move toward deformalization of reactor licensing cases came in 1989, when the NRC completed what a reviewing court described as a ''bold and creative'' effort to foster standardization of nuclear power plant designs, as well as the early resolution of key safety issues. This was the issuance of a new 10 CFR part 52, which provided for issuance of design certifications and ''combined licenses'' for construction and operation of nuclear power plants (54 FR 15386; Apr. 18, 1989). The rule provided that standard designs could be approved by rulemaking, with an opportunity for an informal hearing conducted by an Atomic Safety and Licensing Board (this would be a ''paper'' hearing, unless the Licensing Board requested the authority to conduct a ''live''—that is, oral—hearing, and the Commission agreed). Subpart G formal hearings would be offered thereafter, before the issuance of the combined construction permit/operating license for a specific facility. When the facility was essentially complete and close to fuel loading and criticality, there would be an opportunity for members of the public to raise any concerns they might have about plant operation. These could fall into one of two categories: Either a claim that the facility as built did not meet the ''acceptance criteria'' specified in the original combined construction permit/operating license, or a claim that the acceptance criteria themselves (that is, the licensing requirements) were deficient. For claims in the former category, the Commission would determine whether to hold a hearing and whether it would be a formal or informal hearing. A request to modify the terms of a combined license would be handled as a request for action under 10 CFR 2.206.

Part 52 was promptly challenged after its promulgation. A panel of the U.S. Court of Appeals for the DC Circuit issued a decision that upheld some parts of the rule but set aside others, including the provisions governing the opportunities for a hearing after completion of construction and before operation. *Nuclear Info. & Res. Serv.* v. *NRC,* 918 F.2d 189 (DC Cir. 1990), vacated & rehearing *en banc* granted, 928 F.2d 465 (DC Cir. 1991). However, the decision was later vacated by the entire DC Circuit, sitting *en banc. Nuclear Information and Resource Service* v. *NRC,* 969 F.2d 1169 (DC Cir. 1992). In its brief to the full court, the NRC argued unequivocally that AEA's hearing requirement for nuclear power plant licensing did not necessarily mean a formal hearing.

The full court upheld part 52 in its entirety. However, on the question of whether hearings must be formal, it reserved judgment on the grounds that the NRC's argument that informal hearings were permissible had not been made in the rulemaking or before the original panel. 969 F.2d at 1180.

The Commission has taken two more steps to further stake out its position that the AEA does not require formal hearings. The first was a rulemaking implementing the Equal Access to Justice Act (EAJA), 5 U.S.C. 504. This statute authorizes the recovery of attorneys' fees by certain ''prevailing'' parties in ''adversary adjudications.'' The term ''adversary adjudication'' is defined in 5 U.S.C. 504(b)(1)(C) to generally mean, for purposes of the EAJA, adjudications conducted under 5 U.S.C. 554, the section of the APA applicable to adjudications required by statute to be determined on-the-record after the opportunity for an agency hearing. ''Adversary adjudications'' do not include adjudications to consider the grant or renewal of a license.

The NRC decided to authorize the payment of attorneys' fees only for adjudications under the Program Fraud Civil Remedies Act, which by law must be on-the-record, on the grounds that no other NRC adjudications (other than those for the licensing of uranium enrichment facilities under Section 193) must by law be on-the-record. 10 CFR part 12 (59 FR 23121; May 5, 1994). To date, no lawsuit has been filed challenging this determination. The second and more significant step was the recent promulgation of subpart M to part 2 (63 FR 66730; Dec. 3, 1998), to cover transfers of licenses, including those for power reactors. Here again, the rule did not provide for formal proceedings.

In a Staff Requirements Memorandum issued on July 22, 1999 (which is available to the public), the Commission directed OGC to develop a proposed rulemaking. The Commission also indicated that it would pursue legislation to confirm NRC's discretion to structure its procedures as it deemed necessary to carry out its responsibilities. The Commission further directed that the views of external stakeholders be obtained. In response, on October 26–27, 1999, OGC conducted a facilitated public meeting with stakeholders representing the industry, citizen groups, another Federal agency, academia, and the NRC's Atomic Safety and Licensing Board Panel. The transcribed views of all participants are publicly available. In addition to the broad issue of the degree of formality or informality of the hearing process, the issues addressed at this meeting encompassed matters such as requirements for standing, contentions, discovery, cross-examination, summary disposition, hearing schedules and time limits, the role of the presiding officer, and the number of different hearing ''tracks'' that might be appropriate, all having been raised directly or indirectly in SECY–99–006. The comments at this meeting are described below and have been considered in this rulemaking.

C. Comments on Policy Statement

The NRC received a number of public comments on its 1998 Policy Statement on the conduct of adjudicatory proceedings (63 FR 41872; Aug. 5, 1998). The NRC is taking this opportunity to address those comments as part of this final rulemaking.

Eleven sets of comments were received on the Policy Statement. Some of the comments came from persons who represented the views of several other named persons. Two of the sets of comments opposed the Policy Statement; the remaining nine generally supported the Policy Statement.

Comment. The Policy Statement and its suggestions for expedited proceedings that allow delays only in extreme and unavoidable circumstances is unfair, inconsistent with due process, violates the Administrative Procedure Act (APA), and emphasizes licensing over health and safety concerns. Expedited schedules are not necessary for nuclear power plant license renewal proceedings. Expedited schedules may not be reasonable for hearings with complex issues. An expedited hearing schedule is harmful to intervener groups who need more time due to their lack of funding.

Response. The NRC is unaware of any judicial decision that holds that the type of hearing procedures being proposed in the Policy Statement guidance violates due process or the APA. In fact, the Policy Statement recognizes that there is a need to balance efforts to avoid delay with procedures that will ensure fair and reasonable time frames for taking action in the adjudication. The Commission believes that the guidance in the Policy Statement strikes a proper balance among all these considerations. The Commission also believes that providing more effective hearing processes will result in a better use of all participants' limited resources.

Comment. Contrary to statements made in the Policy Statement, Licensing Boards do not have total discretion to set schedules in proceedings. For example, Licensing Boards must allow contentions to be filed anytime up to 15 days before the prehearing conference, and a board may not shorten this time.

Response. Under the Commission's existing procedures, as carried forward into this final rule, § 2.319 of the final rule (formerly § 2.718) provides the presiding officer the power to regulate the course of the proceeding. In addition, under § 2.307 of the final rule (formerly § 2.711) a presiding officer may shorten or lengthen the time required for filings for good cause. This provision expressly allows a presiding officer to set deadlines for filings, such as the filing of contentions.

Comment. Multiple Licensing Boards should not be used because it could be too burdensome for intervener groups with limited resources.

Response. The Commission recognizes that, in some instances, the use of multiple Licensing Boards to address multiple separate issues in a single proceeding can place a burden on all parties. For that reason, the NRC is careful to consider and account for the circumstances of each case and to ensure that the use of multiple boards will not prejudice any party. However, it is important to have flexibility to use multiple boards where it will not prejudice any party, as the use of more than one board can allow the effective litigation and resolution of a number of separate issues resulting in a more timely completion of the record and decision for the whole case.

Comment. The guidelines set forth in the Policy Statement should be codified through a rulemaking.

Response. The Commission is codifying appropriate portions of the Policy Statement in this rulemaking. Because the Policy Statement deals primarily with case management and control, it may not be appropriate to convert everything in the Policy Statement to hard and fast requirements. The Commission believes that it is important to retain flexibility to manage proceedings as the situation warrants.

Comment. A Licensing Board should be able to raise any safety issue that is material to health and safety, regardless of whether it is a substantial issue.

Response. If a presiding officer (including a Licensing Board) determines in the course of a hearing that a safety issue exists that has not been raised by a party, it may refer the matter to the Commission with a recommendation on how the issue should be addressed under § 2.340(a) of the final rule. Some issues raised by a presiding officer sua sponte may be addressed appropriately through adjudications, while others may not. In fact, the Commission has a process for considering the presiding officer's recommendation on sua sponte issues and that process can result in the issues being considered in the adjudication or being referred to the NRC staff for review and resolution without litigation. This final rule does not represent a significant departure from its longstanding regulation, 10 CFR 2.760a (now codified in this final rule at § 2.340).

Comment. The Commission's suggestion that the Licensing Boards limit the use of summary disposition motions goes too far.

Response. There are appropriate times for filing summary disposition motions. There may be times in the proceeding where these motions should not be entertained because consideration of the motions would unduly delay or complicate proceedings by distracting responding parties from addressing other pending issues or distracting other parties and the presiding officer from their preparation for a scheduled hearing. Moreover, there may be situations in which the time required to consider summary disposition motions and responses and to issue a ruling on these motions will substantially exceed the time needed to complete the hearing and record on the issues. The presiding officer (including a Licensing Board) is in a good position to determine when the use of summary disposition would be appropriate and would not delay the ultimate resolution of issues and the Commission will provide presiding officers the flexibility to make that determination in most proceedings. To further ensure that summary disposition motions are filed and ruled upon in a timely manner that does not detract from preparation for the oral hearing, the Commission is adopting in § 2.710 of the final rule additional requirements on the timing, consideration, and

decisions on summary disposition motions.

Comment. The limitation of discovery on the NRC staff until after the Safety Evaluation Report (SER) and final Environmental Impact Statement (EIS) is overly broad and could delay the proceeding.

Response. The most fruitful time for discovery of NRC staff review documents is after the staff has developed its position. Subjecting the NRC staff to extensive discovery early in the process will often require the staff to divert its resources from completing its review. In addition, early discovery before the NRC staff has finalized the major part of its reviews may present a misleading impression of staff views. Finally, a focus on discovery against the NRC staff diverts the focus from the real issues in a licensing proceeding, which should be the adequacy of the applicant's/licensee's proposal. Nevertheless, the Commission recognizes the importance of timely completion of the NRC staff's reviews and the staff is making a concerted effort at rigorous planning and scheduling of staff reviews. In this regard, the NRC staff has continued to refine and complete its standard review plans and its review guidance, and has moved to a more performance-goal oriented approach in an effort to improve the timeliness of its reviews. Steering and oversight committees are sometimes formed to direct the course of major technical review efforts and detailed milestone schedules are developed and tracked. NRC managers and staff are held accountable for these schedules. The NRC will continue with these efforts to improve the timeliness of licensing reviews.

Comment. The hearing should not be delayed until after the SER and the final EIS are issued as it could delay the proceedings.

Response. In proceedings where the NRC staff is a party, the staff may not be in a position to provide testimony or take a final position on some issues until these documents have been completed. This may be the case in particular with regard to the NRC staff's environmental evaluation, less so with regard to the staff's safety evaluation. In many cases, it could be unproductive and cumbersome to have a two-pronged hearing with one part of the hearing being conducted before issuance of the NRC staff documents and a second hearing after issuance of the documents.

Nonetheless, the Commission recognizes that where the NRC staff is a party, the staff could prepare testimony and evidence, and take a final position on contested matters if its safety review has been completed in areas relevant to the contested matters. The Commission also recognizes that the current regulations governing submission of the SER and/or EIS are not clear and could be misleading. To address these matters, the Commission is taking a number of actions which are described below in II.A.2.(f) in the discussion of § 2.337.

Comment. Licensing Boards should rule on standing before the submission of contentions.

Response. The Commission expects that standing issues would be among the first issues addressed by a presiding officer in an adjudication, but that does not dictate that the submission of contentions should be delayed. The Commission also expects that concrete issues of concern to the public would be raised on the basis of the application or the proposal for NRC action and can be identified at the same time the petition addresses the matter of standing.

Comment. The Commission should apply the Federal Rules of Evidence with respect to scientific testimony.

Response. Neither this final rule nor the superseded provisions of part 2 contain a special provision for scientific testimony. Scientific testimony can be tested and evaluated in the same manner as other evidence presented at a hearing. Although the Commission has not required the application of the Federal Rules of Evidence in NRC adjudicatory proceedings, presiding officers and Licensing Boards have always looked to the Federal Rules for guidance in appropriate circumstances. The Commission continues to believe that greater informality and flexibility in the presentation of evidence in hearings, rather than the inflexible use of the formal rules of evidence imposed in the Federal courts, can result in more effective and efficient issue resolution.

Comment. The Commission should place limitations on cross-examination.

Response. The final rule does place limitations on cross-examination for the less formal procedures. Under these procedures, the presiding officer may question witnesses who testify at the hearing, but parties normally may not do so. However, parties may submit to the presiding officer written suggestions for questions to be asked. The final rule also allows motions to the presiding officer to allow cross-examination by the parties where the party believes this would be necessary to develop an adequate record. As a general matter, the presiding officer may limit and control cross-examination in appropriate circumstances, under § 2.333 of the final rule. Among other things, the final rule requires the filing and use of cross-examination plans whenever a party cross-examines witnesses.

Comment. The Commission should be actively involved in overseeing proceedings and there should be expedited interlocutory review for novel legal or policy issues.

Response. Providing for a Commission ruling on significant issues before the hearing is completed can focus the issues to be addressed in a hearing, and the final rule provides for presiding officer certification of novel legal or policy issues to the Commission. However, the Commission believes that the additional delay necessarily associated with interlocutory appeals by parties outweighs any potential reduction in hearing time that may come about through a Commission decision in such an appeal, unless a party seeking interlocutory review can also demonstrate that it would be threatened with immediate and serious irreparable harm, or if the basic structure of the proceeding would be affected in a pervasive or unusual manner. Accordingly, the Commission has decided that it should not depart from existing practice by permitting interlocutory appeals by parties based solely on the existence of novel legal or policy issues.

Comment. The Commission should actively review the performance of Licensing Boards and ensure that boards make prompt decisions.

Response. The Commission has been carefully monitoring all adjudicatory proceedings to ensure that they are being appropriately managed to avoid unnecessary delay. The Commission, through its Policy Statements and case-specific orders, has been encouraging presiding officers (including Licensing Boards) to issue timely decisions consistent with presiding officers' independent decisionmaking functions. Section 2.334(b) of the final rule explicitly addresses case management and would require the presiding officers to notify the Commission when there is non-trivial delay in completion of the proceeding. The Commission wishes to emphasize, however, that the Commission's oversight of presiding officers with respect to case management is not intended to intrude on the independence of presiding officers in discharging their decisionmaking responsibilities.

D. Comments From Hearing Process Workshop

The October 26–27, 1999, hearing process workshop involved participants from the nuclear industry, states, citizen

groups, the academic community, administrative judge community, and the NRC. Transcripts from the workshop are available in NRC's Public Document Room, and are available for download on the NRC Web Page, at *http://ruleforum.llnl.gov/cgi-bin/library?source=*&library=CAP_PRULE_lib&file=**. The major comments and the Commission's responses follow.

Comment. In general, the public citizen group participants questioned whether there was a need to make any changes to the current hearing procedures. They also voiced concerns about any limitations on current discovery and cross-examination. Industry representatives advocated changes to the hearing process, which they viewed as becoming increasingly and needlessly time consuming.

Response. The Commission believes that there is a need to take some action to improve the management of the adjudicatory process to avoid needless delay and unproductive litigation. Using less formal hearing processes with simplified procedures for most types of proceedings along with a requirement for well-supported specific contentions in all cases can improve NRC hearings, limit unproductive litigation, and at the same time ease the burdens in hearing preparation and participation for all participants.

In the final rule, well-supported, specific contentions will be required in all proceedings, just as they are now required under the Commission's formal hearing procedures. See § 2.309(f). Petitioners generally have been able to meet the current specific contention requirements and the Commission would not expect the application of those requirements to informal proceedings to adversely affect public participation. Indeed, by focusing litigation efforts on specific and well-defined issues, all parties will be relieved of the burden of having to develop evidence and prepare a case to address possibly wide-ranging, vague, undefined issues.

Under the final rule, early document disclosure and witness identification will be required of all parties (except the NRC staff) in every case. See §§ 2.336, 2.704. In proceedings using hearing procedures other than Subparts G and J, no other discovery would be permitted. This approach should reduce the burden on public participants because petitioners would be given access to pertinent information without the need to file formal discovery requests, and would not be burdened with responding to formal discovery requests. In Subparts G, L, and N, the NRC staff is required to prepare a hearing file. In Subpart J proceedings, the NRC staff is required to maintain an electronic docket, and all potential parties are required to participate in the Licensing Support Network (LSN), which will afford access to all relevant documents. In sum, the Commission believes that in all hearing tracks the parties will have sufficient information available to prepare their cases.

Under the final rule, cross-examination is retained for Subpart G hearings. By contrast, in informal hearings, only the presiding officer will question witnesses. Nevertheless, the informal procedures allow the parties to suggest questions for the presiding officer to ask, and they permit motions to allow the parties themselves to cross-examine witnesses. The presiding officer may grant the motion if he or she believes that such cross-examination is necessary to develop an adequate record for decision. This should ensure that there is questioning of witnesses sufficient to develop an adequate record. However, the Commission expects that the use of cross-examination in Subparts L, M or N proceedings will be rare.

Comment. Some participants raised concerns regarding case management practices by the Licensing Boards. One concern was the perceived lack of control by presiding officers in some informal and formal proceedings. According to these participants, in informal proceedings, presiding officers too often allow pleadings to be amended or allow an unlimited number of reply briefs. Nuclear industry participants stated that discovery in formal proceedings takes too long, that the NRC staff requires too much time to issue a Final Environmental Impact Statement (FES) and Safety Evaluation Report (SER), and that the presiding officer/board takes too long to issue an initial decision.

Response. Strong case management is an integral part of an efficient and effective hearing process. The Commission expects presiding officers/boards to manage all adjudications carefully and attentively. Tools to be used to this end are reflected in the final rule. The Commission has modified the intervention requirements in Subpart L to require the submission of specific, well-supported contentions as is currently required for hearings held under Subpart G. This should result in hearings that focus on well-defined issues and obviate the need to receive evidence of questionable relevance. The Commission also modified the less formal hearing procedures in Part 2 in a manner that should reduce the amount of motion practice over what hearing procedures to use. As noted earlier, the Commission is also taking a number of actions (described below in II.A.2.(f) in the discussion of § 2.337) to ensure timely preparation of NRC staff testimony and evidence, and to clarify the NRC documents which must be admitted into evidence in different proceedings conducted under Part 2.

Comment: One of the attributes of the current formal process is cross-examination of witnesses. Nuclear industry participants urged that cross-examination not be used as it is often not an effective or efficient way to determine the validity of any particular matter. However, citizen group participants argued that cross-examination is effective and oppose any elimination of this tool. Some nuclear industry participants argued that cross-examination should only be an optional tool that can be used if it is determined that it is necessary. These representatives also asserted that cross-examination must be used in enforcement hearings. Other licensee representatives suggested that certain proceedings such as those involving license applications for activities posing low risk from a public health and safety perspective, should not use cross-examination. Citizen group participants pointed out that there may not be agreement as to which proceedings involve ''low risk'' activities.

Response. The final rule provides for cross-examination by the parties in proceedings that warrant the use of Subpart G hearing procedures. Other NRC proceedings will utilize less formal procedures that do not include cross-examination by the parties unless ordered by the presiding officer or the Commission in a particular case. *See* §§ 2.1207, 2.1204(b), 2.1405, 2.1402(c). Nonetheless, these latter proceedings involve questioning of witnesses by the presiding officer in response to lines of questioning proposed by parties, and cross-examination by the parties themselves only where the presiding officer determines that it is necessary to develop an adequate record for decision. The Commission believes that this approach strikes an appropriate balance in the use of cross-examination, and is consistent with the requirements of the Administrative Procedure Act (APA), which does not require cross-examination for on-the-record proceedings unless necessary for a ''fair and true disclosure of the facts.'' 5 U.S.C. 556(d).

Comment. Another attribute of the current formal proceedings is discovery. The representatives of citizen groups view discovery as essential because they do not have access to all of the

information that licensees and the NRC staff do and they perceive this as a disadvantage early in the proceedings. Citizen group representatives also noted ready access to information can be frustrated by the fact that the application may be incomplete and is supplemented through the NRC staff's requests for additional information (RAI). In response to the citizen group representatives' concerns, the nuclear industry representatives suggested that interested parties should attend staff-applicant meetings that take place before the submission of an application. Citizen group representatives suggested that interested individuals should be permitted to participate in these meetings instead of just observing. One option suggested by the administrative judge participant was that the NRC model its discovery rules on Rule 26 of the Federal Rules of Civil Procedure.

Response. The final rule provides that in all adjudicatory proceedings (whether formal or informal), the parties must exchange relevant documents and other information at the beginning of the proceeding. *See* §§ 2.336, 2.704. Parties other than NRC staff are also required to exchange the identity of expert witnesses,[4] as well as existing reports of their opinions. The ''mandatory disclosure'' concept is expanded in subpart J by requiring the NRC and potential parties to disclose pertinent documents by participating in the ''Licensing Support Network'' (LSN) before an application is filed. In addition, under subparts G, L, and N the NRC staff is required to prepare, make available, and update a ''hearing file'' consisting of the application and any amendments, NRC safety and environmental reports relating to the application, and any correspondence between the NRC and the applicant that is relevant to the application. A parallel concept is provided in subpart J by the requirement for the NRC staff to maintain an ''electronic docket.'' Thus, the mandatory disclosure requirement in subpart C, the hearing file provision in subparts G, L, and N the requirement for an LSN and ''electronic docket'' in subpart J, go well beyond the ''discovery'' provisions for full, on-the-record adjudicatory hearings under the APA. *See* 5 U.S.C. 554 and 556(c). Moreover, formal discovery tools, *e.g.*, interrogatories and depositions, remain for proceedings conducted under subparts G and J. *See, e.g.*, §§ 2.702 through 2.709 (subpart G), § 2.1000 (subpart J).

The Commission also encourages members of the public (including States, local governmental bodies, and Federally-recognized Indian Tribes) to attend meetings between the NRC staff and the applicant, both before and after a license application is submitted, and to review NRC staff-prepared meeting summaries. These meetings are noticed in advance and are, with limited exceptions to protect proprietary, sensitive financial and safeguards information, open to all to observe. If practical, teleconferencing access to meetings where the meeting site is not easily accessible to interested persons is provided upon request. Depending upon the nature of the meeting, the public is provided an opportunity to either ask questions of the NRC staff, or participate in a discussion of regulatory issues at designated points in the meeting. Meeting summaries prepared by the NRC staff are placed in the docket file for the application and are available through the NRC Web site and in the Public Document Room.[5] Public attendance at these meetings and review of the meeting summaries should provide individuals or groups early access to information so that they may participate more effectively in the hearing process. This may also reduce the number of issues that must be adjudicated.

In sum, the Commission believes that its current policy on public meetings, broad public access to information, mandatory disclosures under Subpart C, the requirement for a hearing file under Subparts G, L and N, the requirement for an LSN and ''electronic docket'' under Subpart J, and the availability of the full panoply of formal, trial-like discovery under Subpart G, together constitute a system for discovery which is tailored to the regulatory and licensing matters which must be resolved in NRC adjudicatory proceedings.

Comment. The representatives of citizen groups and local governments argued that the rules for standing should be liberalized. These participants noted that NRC proceedings require much time and money and are not undertaken lightly.

Response. Members of the public who have an interest that will be affected by a proposed action should be readily able to establish their standing under the standards in the final rule. At the same time, the Commission recognizes that there may be instances where persons who do not have a direct interest and cannot demonstrate standing nevertheless are able to make a substantial contribution to the development of the record in the proceeding. Accordingly, the Commission is codifying the six criteria for discretionary intervention which were first articulated in *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI–76–27, 4 NRC 610, 617 (1976): (1) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record; (2) the nature and extent of the requestor's/petitioner's property, financial or other interests in the proceeding; (3) the possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interests; (4) the availability of other means for protecting the interests of the requestor/petitioner; (5) the extent to which the requestor's/petitioner's interests will be represented by existing parties; and (6) the extent to which the requestor's/petitioner's participation will inappropriately broaden the issues or delay the proceeding. *See* § 2.309(e). Discretionary intervention, however, will not be allowed unless at least one other petitioner has established standing and at least one admissible contention.

Comment. Citizen group representatives stated that the NRC should return to its pre-1989 contention standards. Some of these participants asserted that an intervenor, under current practice, often has to prove its case in order to have a contention admitted. These participants also believe that the current contention standard has a chilling effect on citizen group participation. The citizen group representatives also stated that they had difficulty meeting the current contention standard because they lacked information about the application. In addition, the NRC staff practice of issuing requests for information (RAIs) for a purportedly incomplete application is said to place additional burdens on intervenors to continually support their contentions on a changing application.

Response. The NRC believes that the contention standard in § 2.309(f) is appropriate. The threshold standard is necessary to ensure that hearings cover only genuine and pertinent issues of

[4] Although in proceedings other than those under Subparts G and J, no further discovery will be permitted after the required disclosures, the identity of expert witnesses will allow the parties to conduct research on, and formulate challenges to the expertise and credibility of the identified witnesses.

[5] These meeting procedures are consistent with the Commission's direction in its January 8, 2002 Staff Requirements Memorandum (ADAMS Acession No. ML020080358), which approved the NRC staff's proposals for enhancing public participation in NRC meetings as described in SECY–01–0137 (July 25, 2001, ADAMS Accession No. ML012070084).

concern and that the issues are framed and supported concisely enough at the outset to ensure that the proceedings are effective and focused on real, concrete issues. The contention standard has been in effect for more than ten years and has been effective in focusing litigation on real issues. The contention standard does not contemplate a determination of the merits of a proffered contention. Ample information is provided in the application and related documents to allow the formulation and support of real, concrete issues.

Comment. All citizen group participants stated that there is a need for intervenor funding. These participants argued that if the intervenors had access to resources for participation, there could be fewer delays in the proceeding and they could better assist the NRC in reaching the correct result. One participant noted that legislation prohibits the NRC from providing intervenor funding.

Response. Congress, in Section 502 of the Energy and Water Development Appropriations Act for FY 1993, has barred the use of appropriated monies to pay the expenses of, or otherwise compensate, parties intervening in NRC adjudicatory proceedings. Public Law 102–377, Title V, section 502, 106 Stat. 1342 (1992) (codified as amended at 5 U.S.C. 504). Therefore, the final rule does not provide for assistance to intervenors.

II. Discussion of the Final Rule

A. Resolution of Public Comments on Proposed Rule; Bases for Final Rule

1. Overview of Public Comments on Proposed Rule

The public comment period for the proposed rule closed on September 14, 2001.[6] As of January 8, 2002, the NRC had received a total of 1,431[7] public comments on the proposed rule from individuals, citizen groups and the industry. In total, 1,422 comments generally opposed the proposed rulemaking, while nine (9) comments favored NRC's efforts. Of the 1,431 comments received, twenty-two (22) were substantive, with fifteen (15) opposing and seven (7) in support of the proposed rule. The vast majority of the 1,422 comments opposing the rule were postcards submitted by private citizens. Of the fifteen (15) substantive comments opposing the rule, eight (8) were from citizen groups, including the Nuclear Information and Resource Service (NIRS), Public Citizen—Critical Mass Energy and Environment Program, the Massachusetts Citizens for Safe Energy, Ohio Citizens for Responsible Energy (OCRE), and the Project on Government Oversight. The National Whistleblower Center and the Committee for Safety at Plant Zion filed a joint comment. A collection of seventy-six (76) citizen groups, from the Alliance For a Clean Environment to the Women's International League for Peace and Freedom/Tucson, filed a joint comment by their representative (Jonathan Block). The remaining substantive comments opposing the rule were from individuals, including several unaffiliated individuals (Phillip Greenberg, Carlo Popolizio, and Kurt Wilner), a self-described pro se petitioner (Sarah M. Fields), and a political science professor (Kenneth A. Dahlberg). The seven (7) substantive comments supporting the proposed rulemaking were provided by a group representing the nuclear industry (Nuclear Energy Institute (NEI)), three (3) law firms representing three (3) groups of utilities (Morgan, Lewis &Bockius; Shaw Pittman; and Winston & Strawn), three (3) utilities (Florida Power and Light; and Virginia Electric Power Co. jointly with Dominion Nuclear Connecticut), and the National Mining Association (NMA).

2. Significant Comments and Issues, and Their Resolution in Final Rule

After consideration of the public comments received on the proposed rule, as well as public comments received on the 1998 Policy Statement and in the hearing process workshop, the Commission has decided to retain the proposed rule's general approach of fashioning hearing procedures that are tailored to the different kinds of licensing and regulatory activities the Commission conducts. However, in response to public comments, the Commission has revised the scope of proceedings to be governed by a hearing track, and has created a new track to provide for ''legislative hearings.'' The Commission expects that the revised hearing procedures, ranging from informal to formal, will improve the effectiveness and efficiency of the NRC's hearing process, and better focus and use the limited resources of all involved.

The following discussion describes and sets forth the bases for the final rule, including the Commission's resolution of all significant matters raised in public comments on both individual provisions of the proposed rule, and the Commission's requests for comment on specific issues, as well as additional corrections, clarifications, and additional matters addressed by the Commission in the final rule. The Commission's response to all remaining matters raised in the public comments are contained in ''Responses to Comments Not Addressed in the Statement of Considerations for Changes to the Adjudicatory Process: Final Rule.'' This document may be inspected at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, Maryland, 20852, as well as in the NRC's Public Electronic Reading Room, *http://www.nrc.gov/NRC/ADAMS/index.html* (ADAMS Accession No. ML033510327). Conforming changes to other Commission regulations in Title 10 of the Code of Federal Regulations have not been discussed, except where additional clarification of the basis for the change was deemed necessary.

(a) Overall Organization of part 2.

To provide for a more effective and efficient hearing process, the Commission is revising 10 CFR part 2 by:

(1) Establishing a new Subpart C to consolidate the Commission's procedures for ruling on requests for hearing/petitions for leave to intervene and admission of contentions, and establishing criteria for determining the specific hearing procedures that are to be used in particular cases and to set out the hearing-related procedures of general applicability;

(2) Modifying the hearing procedures in the current subpart G and subpart L and expanding the applicability of more informal procedures;

(3) Establishing a new subpart N that will provide ''fast track'' hearing procedures;

(4) Establishing a new subpart O that the Commission will use to conduct ''legislative hearings;''

(5) Making conforming amendments as necessary throughout part 2 and the remainder of the Commission's regulations in title 10 to refer to the correct provisions of revised part 2; and

(6) Making correcting amendments to use: (i) Consistent terminology (*e.g.,* ''construction authorization for a high-level radioactive waste repository at a geologic repository operations area noticed under §§ 2.101(f)(8) or 2.105(a)(5),'' and ''proceedings on an

[6] The original comment period for the proposed rule expired on July 16, 2001 (66 FR 19610; Apr. 16, 2001). In response to several requests, the comment period was extended until September 14, 2001 (66 FR 27045; May 16, 2001).

[7] Over 1200 comments were received in the form of postcards printed with an identical message opposing the proposed rule. Where an individual submitted more than one of these postcards under the same signature, this was treated as a single comment, for purposes of determining the total number of comments received. Thus, the tally of 1,431 comments does not reflect the additional identical postcards filed by the same individual.

initial application for a license to receive and possess high-level radioactive waste at a geologic repository operations area''), (ii) proper grammar, and (iii) plain English.

New subpart C—Rules of General Applicability for NRC Adjudicatory Hearings—is the starting point for consideration of, and rulings on, all requests for hearing/petitions for leave to intervene and the admissibility of contentions, and for selecting the appropriate hearing procedures to be applied in the remainder of the case. The Commission or a designated presiding officer would rule on requests for hearing/petitions to intervene and the admissibility of proffered contentions using the standards and procedures of subpart C.

In a change from past NRC practice, the Commission may designate either an administrative law judge [8] or a three-member Atomic Safety and Licensing Board,[9] to preside over subpart G, J, K, L and N hearings. The Commission has taken this step to ensure that all of these proceedings meet the requirements with regard to a presiding officer for an on-the-record hearing under the APA, 5 U.S.C. 554, 55, 556, and 557.

When it is determined that a hearing should be held, the Commission, presiding officer, or Licensing Board would next examine the nature of the action that is the subject of the hearing and the contentions admitted for litigation, apply the criteria in subpart C to determine the specific procedures/subpart that should be used for the adjudication, and issue an order for hearing designating the procedures/subpart to be used for the remainder of the proceeding. The hearing activities would then proceed under the designated subpart, *i.e.,* Subpart G to be used for the most formal hearings, Subpart L for more informal hearings, Subpart M for license transfer cases, Subpart N for an expedited ''fast track'' hearing. The exception is Subpart O, which identifies the circumstances and procedures under which the Commission will conduct ''legislative hearings.'' These hearings may be held in the Commission's sole discretion: (1) In connection with design certification rulemakings, and (2) to assist the Commission in resolving questions on whether the Commission rules and regulations should be considered in a particular adjudication certified to it under § 2.335(d), as well as the special procedures to be utilized in such hearings. Subpart C also contains rules applicable in general to hearings conducted under the respective subparts.

The hearing procedure selection provision in § 2.310 reflects the range of proceedings for which the Commission intends to use informal hearing procedures. This is in keeping with the Commission's intent to expand the use of more informal procedures to improve the effectiveness and efficiency of the NRC's hearing processes. Subject to four exceptions, hearings will be conducted using more informal procedures. These exceptions are: (1) Licensing of uranium enrichment facilities, (2) initial authorization of the construction of a HLW geologic repository, and initial issuance of a license to receive and possess HLW at a HLW geologic repository, (3) enforcement matters (unless the parties agree to use more informal hearing procedures), and (4) parts of nuclear power plant licensing proceedings where the presiding officer by order finds that resolution of an admitted contention necessitates resolution of: (a) Issues of material fact relating to the occurrence of a past activity, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or (b) issues of motive or intent of the party or eyewitness material to the resolution of a contested factual matter. Hearings for such contentions would be conducted using Subpart G procedures; hearings for any other contentions which do not meet this test would be conducted using Subpart L (or, upon agreement of all parties, Subpart N) procedures.

The Commission is retaining essentially all of the current procedures specific to the conduct of hearings under Subpart G. The Commission is substantially modifying the existing procedures in Subpart L to correct weaknesses identified under the current rule and to build on the experience under the current procedures for hearings in Subpart M for license transfer proceedings. The primary modifications to Subparts G and M involve the removal of provisions that are generally applicable to all proceedings and the relocation of the essence of those common provisions to Subpart C. The Commission is adopting a new Subpart N containing procedures for a ''fast track'' hearing, including an expedited oral hearing and oral motions, and limits on written submissions and the sometimes protracted series of written responses they often entail. Subpart N procedures could be used in any proceeding (except a proceeding on the licensing of construction and operation of a uranium enrichment facility) upon agreement of all parties.

Finally, the Commission is also adopting a new Subpart O that will govern the conduct of ''legislative hearings'' that the Commission may, in its discretion, decide to hold in either design certification rulemakings or to assist it in resolving a question certified to it under § 2.335. Conforming changes have been made to other subparts of 10 CFR part 2 and throughout Chapter 10 to reflect the reorganization of part 2.

(b) Commission Response to Eight General Questions in Proposed Rule.

In the proposed rule the Commission requested public responses to general questions in each of eight areas of discussion. The comments and the Commission's resolution of the comments are set forth below.

Question 1: Overall Approach for More Informal Hearings

In preparing the proposed rule, the Commission carefully considered the advantages and disadvantages of both formal hearings and informal hearings, attempting to balance the competing considerations of accurate decisionmaking, ensuring protection of public health and safety, timeliness of Commission decisions, and maintaining public confidence in the decisionmaking process. The Commission recognized that various NRC stakeholders may have differing perspectives on the relative importance of these considerations and differing views on the balance to be struck among these considerations. The Commission requested public comments on the relevant considerations that should inform the Commission's decision in adopting more informal hearing procedures, and whether the Commission's strategy in moving towards more informal hearing procedures should be continued. Commenters were asked to identify any aspect of the proposed rule's informal and formal hearing procedures which the commenter believes could be improved, together with specific proposals for improvement and an assessment of the proposal against relevant considerations, including fundamental fairness, the need for timely decisionmaking, and accurate fact-finding.

A broad range of comments was received, from those supporting the move to tailored, less-formal hearings, to those who oppose the move, asserting that the NRC's legislative and agency

[8] Administrative law judges are appointed by an agency in accordance with 5 U.S.C. 3105, and are accorded some independence from the agency appointing them, because control of their compensation, promotion and tenure is vested by statute in the Office of Personnel Management.

[9] Section 191 of the Atomic Energy Act of 1954, as amended, (AEA) authorizes the Commission to use Atomic Safety and Licensing Boards as an alternative to using an administrative law judge in agency hearings.

history supports formal public hearings conducted under Subpart G. In general, all of the private individual commenters and citizen groups opposed the move away from the full panoply of hearing procedures in Subpart G and the expanded use of more-informal hearing procedures reflected in the proposed Subparts L, M, and N. Two citizen group commenters argued that the Commission's proposal to expand the use of more-informal hearing procedures in Subpart L instead of the full panoply of Subpart G hearing procedures in nuclear power plant licensing proceedings was in violation of the AEA and the APA. In support of this view, they pointed to an OGC memorandum that was prepared in 1989 on license renewal that concluded that formal hearings were likely intended by Congress under the AEA. Several citizen group commenters asserted that the use of informal hearing procedures in reactor licensing proceedings constitutes a violation of due process under the Fifth Amendment of the U.S. Constitution. Several commenters argued that it is inconsistent for NRC to decide that formal hearings for licensing of a HLW geologic repository are necessary in order to build public confidence. In their view, ''deformalizing'' public participation in the decision-making process to generate more HLW through license extensions, new licenses, and amendments essentially eliminates the time needed for public awareness and involvement. By contrast, the nuclear industry commenters generally supported the shift away from the Subpart G procedures, with a commenter specifically asserting that informal hearings should become the presumptive hearing mechanism.

For the reasons set forth in Section I.B. above, the Commission continues to believe that formal, on-the record hearings are not required by the AEA, except for the initial licensing of the construction and operation of a uranium enrichment facility under Section 193 of the AEA. Furthermore, the Commission believes that, with the adoption of the requirement in § 2.313 that hearings under Subparts G, J, K, L and N be presided over by either an administrative law judge or an Atomic Safety and Licensing Board, the hearing procedures in each of these subparts meets the requirements for an on-the-record hearing under the APA in any event.

However, as a matter of discretion the Commission has decided to provide for formal, on-the-record hearings using the full panoply of Subpart G procedures and cross-examination in certain narrowly-prescribed areas. The fact that there may have been a long-standing Commission position that hearings must be conducted under Subpart G—at least with respect to reactor licensing—does not by itself prevent the Commission from taking a different view, and providing for less-formal hearing procedures, rather than the full panoply of discovery and cross-examination under Subpart G.

The Commission also disagrees with the assertion that use of hearing procedures other than those in Subpart G in reactor licensing proceedings violates the Due Process clause of the Fifth Amendment. The commenters presented no citations to any court decision holding that the use of other than Subpart G procedures in reactor licensing proceedings is a Due Process violation. Nor did the commenters present any legal analysis using the three criteria identified by the U.S. Supreme Court in *Matthews* v. *Eldridge,* 424 U.S. 319 (1976) for evaluating claims that agency procedures violate the Fifth Amendment. The Commission notes that intervenors in reactor licensing proceedings (as opposed to reactor license applicants, and those who are the subject of an NRC enforcement action) ordinarily cannot raise constitutional Due Process issues with respect to NRC hearing procedures, inasmuch as intervenors cannot claim governmental deprivation of ''life, liberty or property'' as a result of the NRC's licensing action. *See City of West Chicago* v. *NRC,* 701 F.2d 632, 645 (7th Cir. 1983). The Commission believes that the use of these procedures raises no constitutional Due Process issues, and that the Commission possesses the discretion to adopt the use of more informal hearing procedures.

The Commission also sought comments on whether the more informal hearing processes should be augmented or even supplanted by even more informal, legislative hearing procedures. One commenter supported supplanting both the existing hearing procedures, including Subpart G to the maximum extent allowed by law, and the proposed informal procedures with legislative hearings. Another commenter suggested that proposed Subparts L and N were sufficiently flexible and informal, but that moving to an even more informal legislative hearing may also be acceptable, so long as requirements are imposed to ensure that the hearings will be clearly focused on matters in dispute, and that parties will have sufficient opportunity to challenge factual claims or expert opinions advanced by their opponents. Finally, several commenters noted their opposition to legislative hearings. One commenter opined that legislative hearings were appropriate for resolving public policy issues, but not for issues implicated in nuclear licensing. Another simply stated that it was unrealistic to envision more legislative hearings as it presupposes that the Commission, presiding officer or Licensing Board possesses the requisite experience to promptly grasp and frame the issues. Additionally, a commenter stated that the rule should not be changed to resemble legislative hearings; adjudicatory hearings should provide for a fair process before an independent tribunal. Accordingly, the commenter asserted that it is the interested person and not the presiding officer or Licensing Board that must be responsible for proposing the issues and offering sufficient evidence to support their position.

The Commission believes that legislative hearings—where there are no parties, no discovery, witnesses are called to provide testimony on agency-identified matters, and questions are propounded to witnesses by the presiding official (which may be the Commission)—are not well suited to resolving disputes of fact relating to the occurrence of a past event, where the credibility of an eyewitness may reasonably be expected to be at issue, or where the motive or intent of the party or eyewitness is at issue. Nor does the legislative hearing model appear to offer any real advantages over other informal or formal hearing procedures in resolving matters of law. Moreover, the Commission has little experience in using legislative hearing procedures in contested proceedings, making it difficult to determine what practical problems would arise if contested proceedings were conducted under a legislative hearing model. Legislative hearings, however, do appear to be suited to the development of ''legislative facts,'' viz., general facts which help a decisionmaker decide questions of policy and discretion. *See* Sidney A. Shapiro, Scientific Issues and the Function of Hearing Procedures: Evaluating the FDA's Public Board of Inquiry, 1986 Duke L.J. 288, 265–96 & nn.61–66, citing Kenneth Culp Davis, The Requirements of a Trial-type Hearing, 70 Harv. L. Rev. 193, 199 (1956).

In the Commission's view, the non-adversarial nature of a legislative-style hearing may be the best way of developing the factual and policy bases for a decision in at least two discrete, narrowly-defined circumstances. The first is in design certification rulemaking, where the Commission

identifies a significant policy issue (perhaps of potentially generic implications) either during the formulation of the proposed design certification rule, or as the result of public comments on the proposed design certification rule. In either circumstance, the Commission could, as a matter of discretion, decide to hold a legislative hearing to develop a record on the competing policy considerations that would inform a Commission decision on the underlying policy issue. The current rules, 10 CFR 52.51 and 52.63, provide for an opportunity for a commenting member of the public (or, in the event of a proposed amendment to a design certification rule, the party which applied for the certification) to request an informal hearing, but provide no guidance as to the nature of issues for which an informal hearing may be granted. Furthermore, the hearing is held only upon request; the rule is silent with regard to the Commission itself holding a hearing to gather pertinent facts and policy perspectives. The Commission believes that the design certification rulemaking process could be strengthened by incorporating an option for the Commission to hold, on its sole discretion, a legislative hearing to enable it to gather information on discrete policy matters relevant to the design certification.

The second area where a legislative hearing may prove useful is in the Commission's determination of a question certified to it by the presiding officer under § 2.335 (formerly § 2.758) regarding whether the Commission's rules and regulations should be considered in a particular adjudication. There may be circumstances where the Commission, after reviewing the question certified to it by the presiding officer, determines that there are significant policy issues regarding the certified question. As in design certification rulemaking, the Commission could, as a matter of discretion, hold a legislative hearing to develop a record on the competing policy considerations that would inform a Commission decision on the certified question.

Question 2: Hearing Tracks

A very significant part of this rulemaking involves the development of criteria for the selection of the hearing procedures to be used for the proceeding. These criteria set the course for the rest of the hearing by specifying the use of particular types or categories of procedures (*e.g.,* formal, informal, informal-fast track, hybrid) for the remainder of the proceeding. In developing the proposed rule's hearing procedure selection criteria, the Commission recognized that, with the exception for licensing of uranium enrichment facilities, the Commission has broad authority and substantial flexibility to choose among the procedures in Subpart G, more informal oral or written hearing procedures, or any combination of Subpart G and more informal hearing procedures. The proposed rule reflected the Commission's belief that there should be at least three hearing tracks—a formal hearing track, an informal hearing track, and as provided by statute for expansion of spent fuel storage at nuclear power plants, a hybrid procedure. However, the Commission requested public comment on: (1) The proposed rule's approach of multiple, specialized tracks tailored to certain types of issues, (2) whether additional specialized tracks should be considered, and (3) the desirability of adopting an alternative approach that would provide for a single formal and two informal hearing procedures, with the presiding officer given the discretion to tailor the procedures to suit the circumstances of each case.

While a number of commenters on this question generally supported the use of multiple hearing tracks tailored to certain types of issues, there was much disagreement over the kinds of proceedings which should be subject to differing hearing tracks. One commenter suggested that hearings on license applications, amendments, and transfer requests should be informal and normally conducted by means of written submittals. Additional specialized hearing tracks were not seen as necessary because the tracks in the proposed rule, with some modifications, were viewed as sufficient to address the various types of matters coming before the Commission for adjudication. One commenter specifically stated that it did not support the adoption of a single formal and two informal hearing tracks, with presiding officer discretion to tailor procedures for each case. The commenter stated that, although somewhat complex, the multiple-track approach currently proposed would provide clear directions and certainty for each type of proceeding. Two commenters asserted that providing hearing officers with wide discretion to determine the hearing process in each case would likely result in additional disputes and litigation over procedural matters, reduce the predictability of likely burdens on participants in proceedings, and risk application of inconsistent processes in similar cases. One commenter argued that, in licensing all nuclear fuel cycle activities, formal hearings should be available on request to interested persons.

The Commission has decided to adopt the proposed rule's approach of establishing three primary hearing tracks supplemented with additional hearing tracks tailored to the kind of proceedings and issues that may be addressed in such proceedings. The primary hearing tracks are: (1) Subpart G, containing the full panoply of formal, trial-type procedures; (2) Subpart L, establishing a set of more informal hearing processes; and (3) Subpart K, containing a legislatively-required hybrid hearing process.

The Commission sought public comment on whether there are better alternatives to the proposed rule's approach for defining what type of proceedings are appropriate for Subpart G hearing procedures, versus more informal hearing procedures. The Commission asked whether the proposed category of cases to which formal hearing procedures would apply was too narrow, or conversely, should the rule specify that all proceedings would be informal hearings unless one or more criteria are met for the use of formal, Subpart G hearing procedures. The Commission requested proposals for criteria for determining formal versus informal hearing procedures, indicating that commenters should identify the perceived advantages and disadvantages of suggested alternative approaches as compared with the proposed rule's approach for determining the applicability of formal and informal hearing procedures.

Industry commenters generally asserted that the proposed category of cases to which informal hearing processes would apply is too narrow. They also disagreed with the assumption that formal trial-like procedures in Subpart G will be helpful in resolving proceedings with ''numerous and complex issues.'' Instead, they proposed that informal processes such as those in proposed Subparts L and N should be used for nearly all types of proceedings. By contrast, citizen group commenters generally opposed the move to informal hearing procedures, and contended that all hearings should be formal.

The Commission has decided to continue using the approach set out in the proposed rule, whereby most adjudications would be conducted under the hearing procedures in Subpart L, unless one of the more specialized hearing tracks in Subparts G, K, M, or N, apply. With the exception of Subpart O legislative hearings, the criteria for

selecting among the specialized hearing tracks are set forth in § 2.310. The circumstances under which the Commission may decide to hold Subpart O legislative hearings, are set forth in § 2.1502. The criteria for designating the hearing track for any given proceeding are discussed further in II.A.2(f) in connection with the resolution of comments on § 2.310.

Question 3: Presiding Officer

The Commission sought comments on whether there should be criteria for determining whether a proceeding should be held before an administrative judge/Licensing Board or the Commission and, if so, what those criteria should be. In general, commenters did not embrace the possibility of the Commission itself conducting a hearing. One commenter asserted that the Commission should always serve the role of an appellate body, while all proceedings should be before administrative judges of the Atomic Safety and Licensing Board Panel. Two commenters indicated that the NRC should make greater use of the Atomic Safety and Licensing Board or a single administrative judge rather than relying upon the Commission to preside. One of these commenters noted that they would not object if the Commission were to preside over a hearing in carefully selected special cases, if time and other Commission responsibilities permitted, but observed that allowing one or more Commission members to preside would create practical difficulties on review of the initial decision. The commenter argued that the final rule should specify whether a single presiding officer or Licensing Board is to preside over particular proceedings, rather than setting forth criteria governing the selection of hearing procedures. The commenter also suggested that § 2.313 be redrafted to allow specifically for parties to request appointment of a Licensing Board or single administrative judge within a reasonable time (10 days) after a hearing is granted.

The Commission has decided that, with the exception of license transfer proceedings, the final rule should not specify the circumstances under which the Commission may choose to act as the presiding officer, inasmuch as these circumstances are likely to occur infrequently and in unusual circumstances. There seems to be little benefit in developing criteria that would be used infrequently; the Commission can address the question of the Commission itself serving as the presiding officer on a case-by-case basis. However, as discussed earlier, the Commission has decided that hearings conducted under Subparts G, J, K, L and N should be presided over by either a single administrative law judge (rather than a single administrative judge) or an Atomic Safety and Licensing Board. Hearings under Subparts M and O may be presided over by the Commission, a single administrative law judge, a single administrative judge, or an Atomic Safety and Licensing Board.

Question 4: Discovery

Unlike former Subpart G, where parties are permitted discovery ranging from document production to multiple interrogatories and depositions of other parties' witnesses, the proposed Subpart C would set forth a general requirement in every proceeding that the parties disclose and make available pertinent documents and identify witnesses. Additional discovery would be available in proceedings that use the formal hearing procedures of Subpart G. However, in view of the general availability of licensing and regulatory documents under NRC regulatory practice, it is not clear that discovery is needed in most NRC adjudications beyond the mandatory disclosures required by Subpart C and the broad public accessibility to documents provided by § 2.390 (former § 2.790). The Commission requested comments on whether discovery should be eliminated or limited to requests from the presiding officer.

Several commenters supported the use of a hearing file of the sort currently required by Subpart L, as the file contains the entire basis for NRC staff action in a particular case and, therefore, the information pertinent to a general determination whether the application meets the Commission's requirements. One commenter suggested that such a hearing file should constitute the sole form of discovery, while another supported the use of the broader disclosure provisions in Subpart C as an adjunct to the hearing file. Some commenters supported the adoption of the mandatory disclosure provisions, but found proposed §§ 2.335 (§ 2.336 in the final rule) and 2.704 overly burdensome as drafted. Other commenters opposed any changes in discovery, preferring that the Commission either maintain the existing Subpart G discovery provisions, or that discovery be governed by the Federal Rules of Civil Procedure. In general these commenters argued that the proposed discovery provisions diminished the rights of citizens and therefore should be prompted only by the most compelling reasons which the NRC failed to provide. One commenter stated that discovery is most successful when controlled by the opposing party without oversight by a presiding officer, and considered full discovery of the NRC staff to be essential.

The Commission believes that the tiered approach to discovery set forth in the proposed rule represents a significant enhancement to the Commission's existing adjudicatory procedures, and has the potential to significantly reduce the delays and resources expended by all parties in discovery. At the foundation of the Commission's approach are the provisions in Subparts C and G which provide for mandatory disclosure of a wide range of information, documents, and tangible things relevant to the contested matter in the proceeding, and the NRC's provisions for broad public access to documents in § 2.390. The mandatory disclosure provisions, which were generally modeled on Rule 26 of the Federal Rules of Civil Procedure, have been tailored to reflect the nature and requirements of NRC proceedings. Mandatory disclosure of information relevant to the contested matter (together with the hearing file and/or electronic docket, discussed later) should reduce or avoid the need to draft often-complex discovery requests such as interrogatories, prepare for time-consuming and costly depositions, and engage in extended litigation over the responsiveness of a party to a discovery request. Reducing the burden of discovery may enhance the participation of ordinary citizens in the discovery process, since they often do not have the resources to engage in protracted litigation over discovery.

The second tier of discovery is provided by the hearing file in Subpart G, L and N proceedings, and the electronic docket and LSN in Subpart J. The hearing file consists of the application, correspondence between the applicant and NRC relevant to the application, and when available, any NRC environmental impact statement or assessment, and any NRC safety report related to the application/proposed action. *See* § 2.1203(b). The NRC staff has a continuing duty to keep the hearing file up to date. *See* § 2.1203(c). Thus, all parties in a Subpart G, L, or N proceeding need only periodically check the hearing file (which is required to be placed on the NRC Web site, and/or at the NRC's Public Document Room, *see* § 2.1203(a)(3)) in order to be informed of the status of the NRC staff's consideration of the application or proposed action. In a Subpart J proceeding, rather than using a hearing file, the Secretary of the Commission will maintain an electronic docket into

which an application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area, and an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area will be placed. In addition, the electronic docket will provide all official NRC records on the application, and all exhibits tendered during the hearing. In addition, prior to the filing of any application, potential parties, including the applicant and the NRC staff, must enter all pertinent documents into the LSN which will make such documents available to all potential parties. Thus, the hearing file, the electronic docket, and the LSN provide ready public access to all public documents (*i.e.,* those not otherwise required to be protected from public disclosure, see § 2.390) on the application or enforcement action which is the subject of the hearing.

A third tier of discovery is provided for proceedings governed by the hearing procedures in Subpart G, in which ''traditional'' discovery tools such as interrogatories, depositions, subpoenas and admissions may be used, as a supplement to the required mandatory disclosures. These discovery tools may be useful in gaining information necessary to adequately prepare for hearing, in seeking to gain specific information from eyewitnesses or persons who have direct knowledge about events or incidents directly bearing on motive or intent. In addition discovery against the NRC staff may be pursued in accordance with § 2.709 (formerly §§ 2.720 and 2.744).

The Commission believes that public access to NRC documents afforded by § 2.390, mandatory disclosure for parties other than the NRC staff, and maintenance of either a hearing file or an electronic docket, will be sufficient in most proceedings to provide a party with adequate information to prepare its position and presentations at hearing (whether in written or oral form), such that the discovery under Subpart G (*e.g.*, depositions, interrogatories, and subpoenas) is unnecessary. Subpart G discovery tools are analogues to discovery tools used for litigation in trial courts of general jurisdiction. These adjudications generally involve private parties where information is not publicly disclosed nor ordinarily available to all parties, and concern disputes over a broad range of subject matters. By contrast, the vast majority of NRC proceedings concern licensing applications or enforcement actions. All documentation between the NRC and the applicant/subject of the enforcement action with respect to the licensing application or enforcement action is public (unless protected from public disclosure, *see* § 2.390), and will be placed into the hearing file or electronic docket. In addition, as discussed later, the NRC staff often holds public meetings where an application is discussed. In these circumstances, there is little or no need for the broad range of additional discovery permitted under Subpart G. Accordingly, the Commission concludes that the public access to documents afforded by § 2.390, the mandatory disclosures required by § 2.336, and the requirements for the NRC staff to maintain either a hearing file under §§ 2.336(b) and 2.1203 or an electronic docket under § 2.1011 (and the requirement for all potential parties to participate in the LSN for any HLW repository proceeding), are sufficient discovery in most NRC adjudications.

Question 5: Witnesses, Cross-Examination, and Oral Statements by the Parties

The Commission sought public comment on the degree to which oral testimony and questioning of witnesses should be used in each of the proposed hearing tracks. With respect to cross-examination, the Commission requested public comment on: (1) The relative value and drawbacks of cross-examination; (2) whether the proposed approach that would limit cross-examination in favor of questioning by the presiding officer is appropriate; (3), whether the proposed revisions to Subpart L should include traditional cross-examination as a fundamental element of an oral hearing; and (4) assuming that cross-examination is retained for some subset of oral hearings, the appropriate criteria for identifying and distinguishing between proceedings or issues where cross-examination should be used, and those where cross-examination is not necessary.

Commenters responding to this question ranged from those who supported traditional cross-examination in all proceedings, to those who preferred questioning by the presiding officer. Of those commenters preferring cross-examination by the parties in all proceedings, one commenter noted that cross-examination has long been a hallmark of NRC proceedings and that it is crucially important to intervenors who lack the resources to submit their own expert testimony, but who have valid concerns about an applicant's case. Another commenter opposed the change in cross-examination practice without a compelling reason provided by the NRC to justify such a fundamental change. One commenter requested that all hearings be formal with the right to call witnesses for direct and cross-examination. Another commenter regarded cross-examination as most effective when it is ''exploratory'' or unplanned and thus, opposed its constraint in any way. Another commenter was concerned that a presiding officer and members of the Atomic Safety and Licensing Board Panel are normally not qualified as an expert to ask the necessary follow-up questions, and noted that any competent trial judge should be able to limit excessive cross-examination. Other commenters supported limiting cross-examination to issues and proceedings where it proves useful. One commenter argued that the Subpart L approach of questioning conducted by the presiding officer should be expanded into Subpart G proceedings, where possible. This commenter continued by arguing that the assertion of a need for cross-examination to get to the truth has been repudiated by legal scholars, and that limitations on cross-examination do not deprive any party of its right to a full or fair hearing. Another commenter asserted that, with the exception of hearings under Subpart G, the presumption should be that hearings would be conducted based upon written submittals unless specific criteria are met. This commenter asserted that in some circumstances, cross-examination can assist a presiding officer by requiring witnesses to answer questions which would otherwise not be asked. The commenter also suggested that cross-examination is particularly useful in cases where the credibility or motivations of a witness or his or her recollection of events is at issue, but that it has several drawbacks. Accordingly, the commenter suggested that cross-examination be reserved for those matters in which it is likely to add appreciable value. Another commenter stated that cross-examination should be reserved for genuine issues of pure fact, and that in other instances, the proper way to rebut an expert's testimony is by filing rebuttal expert testimony.

After considering the various arguments of the commenters, the Commission continues to believe that cross-examination conducted by the parties often is not the most effective means for ensuring that all relevant and material information with respect to a contested issue is efficiently developed for the record of the proceeding. The Commission's consideration of cross-examination in the hearing process begins with the observation that parties have no fundamental right to cross-

examination, even in the most formal hearing procedures provided in Subpart G. Curators of the Univ. of Mo., CLI–95–1, 41 NRC 71, 120 (1995). Under the APA, cross-examination is authorized only if necessary for a ''full and true disclosure of the facts.'' 5 U.S.C. 556(d). Since neither due process principles nor the APA require cross-examination, the Commission's determination whether to permit cross-examination turns on whether cross-examination is necessary to elucidate relevant and material factual evidence, or whether the hearing process affords other mechanisms of assuring that the decisionmaker is privy to such evidence in a manner that conserves the decisionmaker's and the parties' time and resources. While cross-examination can be an effective mechanism for ensuring a complete and accurate hearing record, especially in circumstances involving disputes over the occurrence of an activity or the credibility of a material witness, it does not appear to be either necessary or useful in circumstances where, for example, the dispute falls on the interpretation of or inferences arising from otherwise undisputed facts. In such cases, questioning of witnesses by the presiding officer, after consideration of questions for witnesses propounded by the parties, has the potential to be the better approach for assuring the expeditious, controlled and deliberate development of an adequate record for decision. The presiding officer is ultimately responsible for the preparation of an initial decision on the contention/contested matter; it would follow that the presiding officer is best able to assess the record information as the hearing progresses, and determine where the record requires further clarification or explanation in order to provide a basis for the presiding officer's (future) decision. If there are circumstances in any proceeding where the presiding officer believes that cross-examination by the parties is needed to develop an adequate record, the presiding officer may authorize cross-examination by the parties.

Furthermore, upon further consideration and assessment of the limited comments on the matter, the Commission believes that the complexity and number of issues in nuclear power plant licensing proceedings may not, per se, lead ineluctably to the conclusion that cross-examination is necessary to ensure a fair and adequate hearing on the contested matters. Rather, it is the nature of the disputed matters themselves that most directly and significantly bears on whether the techniques of formal hearings such as cross-examination are appropriate. Accordingly, the Commission has decided to modify the proposed rule by providing for the use of Subpart G procedures (including formal discovery procedures and cross-examination at hearing) in nuclear power plant licensing only where the presiding officer by order finds that the resolution of particular contentions necessitates resolution of material issues of fact which are best determined through the use of the procedures in Subpart G. As discussed earlier, these are issues relating to the occurrence of a past event material to the issue in controversy, where the credibility of an eyewitness (not an expert witness without first-hand knowledge) may reasonably be expected to be at issue, as well as issues of motive or intent of the party or eyewitness. In these circumstances, formal trial-like procedures, with formal discovery before the hearing and cross-examination at the hearing, are useful and should result in development of an adequate record for decision on these particular types of issues. The Commission continues to believe that in proceedings using more informal hearing procedures, the presiding officer should have sole authority and responsibility to conduct the examination of witnesses, after considering suggested questions for witnesses posed by the parties. However, the presiding officer has the authority to allow cross-examination in informal proceedings upon request of a party, if the presiding officer determines that cross-examination is necessary to ensure the development of an adequate record for decision. *See, e.g.,* § 2.1204(b) (Subpart L); § 2.1322(d) (Subpart M); § 2.1402(c) (Subpart N). While the Commission acknowledges that this approach places greater emphasis and responsibility on the presiding officer to oversee the development of a full and complete record, the Commission concludes this approach will result in the fair but expeditious development of an adequate record for a final decision. In sum, the Commission expects that in hearings under Subpart L, M, and N procedures, the presiding officer will conduct the examination of witnesses, and that the presiding officer will permit cross-examination only in the rare circumstance where the presiding officer finds in the course of the hearing that his or her questioning of witnesses will not produce an adequate record for decision, and that cross-examination by the parties is the only reasonable action to ensure the development of an adequate record.

The Commission requested public comment regarding whether parties should be permitted to make oral statements of position (possibly under time limits), if the Commission decided not to afford the right of cross-examination in certain circumstances (as was proposed for Subparts L and N). The Commission received no comments specifically addressing this question, and no change to the proposed rule was made in this regard.

Question 6: Time Limitations

In the proposed rule, the Commission noted that although the existing part 2 and the proposals that follow set time limits for filings, petitions, responses, and the like,[10] there are no firm time schedules or limitations established within which major aspects of the hearing process (*e.g.,* discovery, issuance of an initial decision) must be completed. The Commission requested comment on whether firm schedules or milestones should be established in the NRC's Rules of Practice in part 2.

Several commenters supported the principle that the Commission set strong and effective schedule mileposts in the rules to ensure appropriate case management. One commenter stated that the rules (including Subparts G, L and N) should specify clear and appropriate schedules similar to existing Subpart M. The commenter continued by noting that, although the proposed rule contains some potentially effective tools to encourage Licensing Boards and presiding officers to conduct efficient and effective hearings, more is needed, and supported imposition of specific schedular milestones in all hearing tracks governing the time limits for each stage of the proceedings, similar to the milestones in Subpart N, §§ 2.1404–2.1407. Another commenter stated that the schedule should provide sufficient time for parties to prepare for and participate in the proceeding, but contended that limits should be set to prevent proceedings from becoming unduly delayed and unpredictable in duration. Another commenter suggested that the final rule should include firm hearing schedules and should provide that the Commission be notified by the presiding officer within five days if any of the milestones are missed. Another comment argued that departures from schedules should not be permitted except upon an affirmative showing that

[10] It should be noted that the proposed revisions to 10 CFR part 2 generally did not contain special extended deadlines for NRC staff responses to petitions, motions and pleadings. The elimination of the allowance of extra time for NRC staff responses is part of the Commission's effort to increase the efficiency of NRC adjudications.

specific criteria for departure from the schedule or order have been met. But at least one commenter expressed firm opposition to milestones or schedules stating that making schedules mandatory would lead to an inflexible regime which violates the APA's mandate and would further delay the time it would take for the Commission to become involved.

The Commission does not believe that a rule of general applicability such as part 2 should establish mandatory and inflexible schedules for the conduct of proceedings. The potential wide variation in the number of parties and participants (interested State, local government body, and affected, Federally-recognized Indian Tribes), number of contentions, complexity of contentions, and other case-specific circumstances and considerations may make it difficult to establish a generic schedule or set of milestones. Moreover, the Commission believes that strong case management and control by the ASLBP and its presiding officers—using the tools and reflecting the policies in the Commission's Policy Statement on the Conduct of Adjudicatory Proceedings and in the rules of practice—and the Commission's ongoing oversight of presiding officers and Licensing Boards are the key to the efficient and effective conduct of hearings. Accordingly, the final rule does not contain any generally-applicable hearing schedule or set of milestones for the conduct of proceedings. The rule does, however, require the presiding officer to establish a schedule for the proceeding, to manage the case against that schedule, and to notify the Commission when it appears that there will be slippage in the overall schedule of sixty (60) days or more. *See* §§ 2.332 and 2.334. The Commission will continue to exercise its oversight of proceedings and may revisit this issue in the future if circumstances warrant. In particular, the Commission will consider whether general sets of milestones for the principal adjudicatory tracks can be developed and added to the rules as an appendix or provided as guidance by other means.

Question 7: Request for Hearing and Contentions

The Commission requested public comment on the appropriate time frame for filing petitions/requests for hearing and contentions, *i.e.,* the simultaneous filing of requests/petitions, and contentions (specific comments on the appropriateness of forty-five (45) days, versus a different time period, are addressed below in II.A.2.(f) under ''Timing of Requests for Hearing/Petitions to Intervene''). Several commenters supported the consolidation of petitions to intervene/requests for hearing with proposed contentions. One comment noted that this change should improve the efficiency of proceedings, and eliminate ambiguities currently surrounding the timing of submission of contentions. Most citizen group commenters, however, opposed consolidated filing, arguing that the time provided for intervenors to file their request/petition—which must demonstrate standing—and contentions is unreasonably short and unduly burdens potential requestors/intervenors. One of these commenters proposed using a process whereby a request for hearing/petition to intervene is filed, standing is resolved, and thereafter contentions are due.

The Commission has retained the consolidated filing of requests for hearing/petitions to intervene and contentions in the final rule. The Commission's experience in the area of license transfers under Subpart M shows that simultaneous filing of requests/petitions and contentions is not unreasonable and generally does not impose an undue burden on potential requestors/intervenors. Moreover, unlike Subpart M, which provides for twenty (20) days to submit requests/petitions and contentions, as discussed below with respect to Section § 2.309 the Commission has considered concerns over the adequacy of the 45-day period and has decided to provide sixty (60) days for submission of requests/petitions and proposed contentions. The Commission also notes that many significant licensing actions involve pre-application meetings, which afford the public advance notice of impending applications and an early opportunity to gain information on the substance of the planned application. For these reasons, the Commission concludes that a consolidated period for filing both requests/petitions to intervene and contentions is a reasonable regulatory approach.

Question 8: Alternative Dispute Resolution

The Commission requested comments on whether the Commission's rules should require parties to engage in alternative dispute resolution (ADR). All commenters responding to this question supported the availability and use of ADR in a wide variety of cases. Another comment supported the use of ADR if all parties agreed to its use. However, no commenter supported the mandatory use of ADR.

The Commission agrees with the commenters that in the absence of a statutory requirement for the use of ADR in NRC adjudications, it is not appropriate to mandate the use of ADR. The final rule's provisions addressing ADR provide an opportunity for parties to use ADR, but do not mandate it. Apart from this rulemaking, the Commission is currently undertaking an evaluation of the use of ADR in NRC enforcement proceedings (66 FR 64890; Dec. 14, 2001). This assessment may lead to further changes in 10 CFR part 2 with respect to ADR in enforcement proceedings.

(c) Introductory provisions.

The Commission is amending § 2.4 to add a new definition of ''presiding officer,'' to make clear that when a provision in part 2 refers to a presiding officer, it may mean the Commission, a single administrative law judge, an administrative judge, an Atomic Safety and Licensing Board, or other designee, who has the authority to preside in a part 2 proceeding as determined under the provisions of part 2.

(d) Subpart A.

The Commission is amending § 2.100 to correct a typographic error (''a license, versus ''alicense''). Section 2.101 is amended to provide correct references to Subpart C and to conform paragraph (g)(2) to current **Federal Register** formatting requirements. In response to a comment, the Commission is modifying § 2.101(a)(3)(ii) and (b) to require that the applicant's notification of the availability of an application and/or environmental report should be accompanied by, *inter alia,* the email address, if one is available, of the designated applicant representative. Section 2.102 is also amended to provide correct references to Subpart C. Section 2.103 is amended to make clear that these regulatory procedures for granting and denying a license also apply to facility licenses; currently the rule does not refer to facility licenses although there is no reason why the regulatory procedures outlined should not also apply to such licenses. In addition, §§ 2.103, 2.104, 2.105 and 2.106 are amended to add a reference to part 63 (66 FR 55732; Nov. 2, 2001), and to use consistent terminology. In response to a comment, § 2.107 is corrected to provide that if an application is withdrawn before issuance of a notice of hearing, the Commission (rather than a presiding officer) dismisses the proceeding. Sections 2.108 and 2.110 are amended to provide correct references to Subpart C.

(e) Subpart B.

Section 2.206—Requests for Action Under This Subpart

The Commission is modifying paragraph (c) of § 2.206 to transfer from former § 2.772(g) (proposed rule § 2.345(g)) the authority of the Secretary to extend the time for Commission review on its own motion of a Director's denial. Director's denials under § 2.206 are not governed by the adjudicatory processes in part 2 and therefore do not belong in Subpart C, which applies only to certain specified NRC adjudicatory proceedings.

(f) Subpart C.

Section 2.302—Several corrections and clarifying changes were made to § 2.302 to: Correct the address for personal and expedited delivery upon the Secretary, and to reorder the listing of addresses so that this section and § 2.305 are consistent with each other.

Section 2.304—Formal Requirements for Documents; Acceptance for Filing

In response to a comment, § 2.304(f) is revised to correct a typographic error in the proposed rule whereby the number of paper copies of an electronically-filed document to be submitted to the NRC was not specified. Section 2.304(f) now refers to ''2 copies.''

Section 2.305—Service of Papers, Methods, Proof

Section 2.305(e)(3) of the proposed rule provided that service by electronic mail would be complete upon receipt of electronic confirmation that one or more of the addressees for a party has successfully received the transmission. A commenter argued that paper copies of documents served electronically should be provided, in part because service of hard copies is necessary to ensure consistency with pagination for citation purposes. In addition, the commenter suggested that this section be revised to provide for service by mail or fax where an electronic transmission is undeliverable.

A change in this provision is warranted since not all e-mail systems provide confirmation of delivery to the sender. Furthermore, the Commission is considering a rulemaking addressing electronic filing, which would be a better forum for the Commission to consider issues of confirmation of electronic service. Finally, the Commission agrees that paper copies should be provided to facilitate uniform citation of documents which are served electronically. Accordingly, the final rule deletes the provision for completion of service of e-mail documents through electronic confirmation, and adds a new provision in paragraph (c) requiring that a document served by e-mail must also be served by one of the other means of service provided in § 2.305.

Several corrections and clarifying changes were made to § 2.305 to: (1) Add delivery by courier as equivalent to personal delivery, (2) consistently refer to ''express'' mail, (3) add references to ''expedited delivery services'' (*e.g.*, Federal Express and other private delivery services) and to make clear that such services are equivalent to express mail, (4) provide that the presiding officer may require service of pre-filed testimony and demonstrative evidence to be made by means other than first-class mail, (5) clarify the address for delivery of documents by courier and expedited delivery services to the Secretary of the Commission; and (6) correct the email address for service of documents by e-mail to be consistent with § 2.302.

In addition, to ensure that NRC staff is kept abreast of developments in a proceeding, so that it may properly fulfill its obligations to advise the presiding officer of its decision to act on an application (*see* §§ 2.1202(a), 2.1316(a) 2.1403(a)), and to determine whether it should participate as a party in those proceedings where the NRC staff may decide whether to participate (*see* §§ 2.1202(b), 2.1316(b), 2.1403(b)), the Commission is revising § 2.305 by adding a new paragraph (f). Section 2.305(f) requires: (1) All parties to serve the NRC staff with copies of all documents required to be served upon all parties and the Secretary, in instances where the NRC chooses not to participate as a party, and (2) the NRC staff to designate the person and address for service of such documents. The NRC staff's designation must be made when it informs the presiding officer of its determination not to participate as a party.

Section 2.306—Computation of Time

In response to a comment, the Commission is modifying § 2.306 to provide that when computing time allowed for a response, no time is added if a notice or paper is served in person or by courier. In addition, the rule was modified to clarify that the period of time allowed for response commences upon receipt of the document, and to refer to ''after 5 PM'' instead of ''not received * * * before 5 PM.'' Other clarifying and conforming changes were made to: (1) Consistently refer to ''first class mail,'' (2) make clear that expedited delivery services are equivalent to express mail for purposes of determining the time for responses, and (3) make clear that delivery in person or by courier is equivalent to electronic transmission for purposes of determining the time for responses.

Section 2.309—Hearing Requests/Petitions To Intervene; Standing; Contentions Timing of Requests for Hearings/Petitions To Intervene

Section 2.309(b) of the proposed rule contained different requirements for the timely filing of requests for hearings/petitions, depending on whether notice of the proceedings and opportunity for hearing are published in the **Federal Register**. Where **Federal Register** notice is required, the proposed rule provided that the period for filing requests/petitions would be the latest of the time specified in the notice, the time specified in § 2.102(d)(3), or if the notice does not specify a time, forty-five (45) days from the date of publication. Where **Federal Register** notice is not required by statute or regulation, the proposed rule provided that a notice of agency action (for which an opportunity to request a hearing may be required) published on the NRC Web site would initiate a forty-five (45) day period in which timely requests for hearing must be filed. The Commission requested public comment on this proposal, asking commenters to identify whether there are other notification methods that the NRC could use to provide timely notice of licensing actions which are not required to be noticed in the **Federal Register**.

A commenter supported publication of actions on the NRC Web site where notice in the **Federal Register** is not required, noting that the website is broadly and easily accessible to the public. On the other hand, another commenter asserted that the NRC should continue and expand its practice of publishing notices in the **Federal Register**, explaining that while it supports publishing notice on the NRC Web site, it is not as reliable as publication in the **Federal Register**, which is legally deemed to be adequate notice.

The Commission believes that it should expand its practice of noticing on the NRC Web site some of those actions which do not require publication of notice in the **Federal Register**. The NRC Web site already makes available a broad range of information, including notices of availability of NRC reports, and notices of availability of NRC safety evaluations. The Commission has recently approved NRC staff proposals to enhance the NRC's Public Meeting Web site. *See* SECY–01–0137, Enhancing Public Participation in NRC Meetings (July 25, 2001) (ADAMS Accession No.

ML012070084). Internet access is becoming increasingly available to the general public. According to the National Telecommunications and Information Administration, in 2001 over 50 percent of U.S. households have Internet access, with 43 percent of the households having access at home. National Telecommunications and Information Administration, U.S. Department of Commerce, A Nation Online: How Americans are Expanding Their Use of the Internet (Feb. 2002).[11] Persons who do not have Internet access at home can, in many cases, obtain Internet access through local public libraries (the Federal Communications Commission's Universal Service Fund System provides funding for public libraries to provide free Internet access, *see* 47 CFR 54.503). The Commission believes that, as a practical matter, publication of notice by means of the NRC Web site provides at least as much access to the notice for the public as publication in the **Federal Register**. However, notice on the NRC Web site costs substantially less than publication in the **Federal Register** and can sometimes be done without the few days delay inherent in sending notices for publication in the **Federal Register**. Where **Federal Register** notice is not required by statute or regulation, any notice of agency action (for which an opportunity to request a hearing may be required) published on the NRC Web site initiates the period in which timely requests for hearing must be filed.

On the other hand, while the Commission agrees with the comment that the NRC's Web site is broadly and easily accessible to the public, the Commission nonetheless acknowledges that publication of notices in the **Federal Register** are, by law, deemed to be constructive notice to the public. Furthermore, the Commission recognizes that under the AEA, some notices of NRC regulatory actions are required to be published in the **Federal Register**, and for such regulatory actions a Web site notice cannot replace (although they can supplement) a **Federal Register** notice. However, in situations where notice is not required by law to be published in the **Federal Register**, the cost of **Federal Register** publication does not appear to be justified where a more cost-effective, timely and broadly-accessible alternative, viz., publication on the NRC Web site, is available. Accordingly, as will be discussed later, the Commission will direct the NRC staff to enhance and expand its efforts to provide public notice in some cases through publication on the NRC Web site where **Federal Register** notice is not required.

The Commission also requested comments on three alternative approaches for the timing of filing requests for hearing/petitions to intervene, and proposed contentions: (1) Proposed contentions to be filed as part of the initial request for hearing/petition to intervene forty-five (45) days from the date of publication (either in the **Federal Register** or on the NRC Web site) of the notice of opportunity to request a hearing (embodied in proposed § 2.309); (2) retention of the current NRC practice, viz., filing of requests for hearing within thirty (30) days of notice, and filing of contentions sometime later, or (3) a longer time, *e.g.*, seventy-five (75) days from notice of opportunity for hearing, to file a request for hearing/petition to intervene and proposed contentions.

In general, citizen group commenters opposed the proposed rule, focusing on the limited time available to file requests/petitions that address standing, while simultaneously developing contentions and their supporting bases, as required by § 2.309(f) (see comments to Commission Question 7 above). One citizen group commenter noted that the Commission previously had considered requiring simultaneous filing of requests and contentions in Subpart G, and abandoned it as unworkable. By contrast, nuclear industry commenters supported the proposed rule requirement that requests/petitions and contentions be filed no later than forty-five (45) days after NRC notice of the proposed action, with the Commission having the discretion of extending the time upon showing of good cause. One commenter stated that an expansion of time for filing is warranted only in situations where the times allowed by the rule are unworkable. One nuclear industry commenter opposed providing seventy-five (75) days for submission of contentions.

To address the comments that a forty-five (45) day period for filing requests for hearing/petitions to intervene and contentions is insufficient, as well as to ensure timely public notification of impending NRC staff actions, the Commission has decided to provide a sixty (60) day period for filing requests for hearing/petitions to intervene and proposed contentions. The limited exceptions involve facility license transfer proceedings, where the Commission is retaining the current twenty (20) day period for filing requests for hearing/petitions to intervene and contentions, and the proceeding on a HLW geologic repository where the Commission will retain the thirty (30) day period for filing requests for hearing/petitions to intervene and contentions (in view of the ample pre-application document disclosures provided by the LSN).

In addition, the Commission will direct the NRC staff to: (1) Establish a single area on the NRC Web site for publishing: (a) Notices of receipt of major applications or pre-application notifications of intent to file an application; (b) notices of docketing of major applications; and (c) notices of opportunity to request a hearing/petition to intervene for major applications and regulatory actions; and (2) develop guidelines, criteria and procedures for timely determining the types of major applications, licensing and regulatory actions for which Web site notice is appropriate. The Commission's intention is that the most important applications, licensing and regulatory actions, *e.g.*, initial nuclear power plant and fuel facility construction permits, facility license renewals, design certifications under part 52, be noticed on the NRC Web site at *http://www.nrc.gov/public-involve/major-actions.html.* This Webpage will include either a link for download of the document, a link to a webpage with the document text, or an ADAMS accession number and a link to the NRC's Public Electronic Reading Room (PERR).

The Commission believes that these notice provisions, in conjunction with an expanded period of sixty (60) days in which to file a request for hearing/petition to intervene and contentions, will provide more than ample time for a potential requestor/intervenor to review the application, prepare a filing on standing, and develop proposed contentions and references to materials in support of the contentions. Most major licensing actions for nuclear facilities (where the scope of the application is most likely to require significant review time in order to prepare a request for hearing/petition to intervene) entail pre-application filings which are docketed and are available to the public, and pre-application meetings between the applicant and the NRC staff which are open for observation to the public. As discussed earlier, the NRC staff, with Commission direction, is undertaking actions to provide more consistency in the conduct of public meetings, and the opportunities for the public to ask questions of the NRC staff at such meetings. For major licensing actions for nuclear facilities, the Web notice of pre-application meetings which the public may observe and have

[11] This report is available for download at the National Telecommunications and Information Administration Web site, at *http://www.ntia.doc.gov.*

a limited opportunity to ask questions, the availability of application-related documents for reading on the NRC Web site and/or download, and **Federal Register** and/or Web notice of the filing of an application and acceptance of the application for docketing, effectively provides the public with more than sixty (60) days to become familiar with an application and prepare an adequate request for hearing/petition for intervention and contentions. License amendments and similar regulatory approvals for nuclear facilities, by contrast, are for the most part narrow in scope in terms of regulatory permission sought, and do not involve extensive amounts of documentary material. For these actions, a period substantially less than sixty (60) days should be sufficient to become familiar with an application and prepare an adequate request for hearing/petition for intervention and contentions. Nonetheless, the Commission will set the period for filing requests for hearing/petitions to intervene and contentions at sixty (60) days for these actions too.

With respect to licensing actions for radioactive materials, most of these actions do not usually involve extensive amounts of documentary material to review, and there is no statutory requirement for publication of notice of materials licensing actions in the **Federal Register**. Thus, the sixty (60) day period provided by § 2.309(b) should be more than ample time to review the application for a radioactive materials license and prepare a request for hearing/petition to intervene and proposed contentions. For those radioactive materials licensing actions that are sufficiently complex or broad in scope, it is the Commission's intention that NRC Web site notices would be provided for pre-application meetings and notifications of intent to file an application, and notice of docketing of the application. These notices would ordinarily be published only on the NRC Web site inasmuch as there is no statutory requirement for publication in the **Federal Register**, although the Commission could, as a matter of discretion, decide to publish notices of opportunity for hearing in the **Federal Register** in individual cases if circumstances tend to indicate that such publication is desirable. The Commission believes that sixty (60) days is more than ample time to review the application for a complex and/or broad scope radioactive materials license and prepare a request for hearing/petition to intervene and contentions, in view of Web site notice of pre-application meetings, availability of application-related documents for reading on the NRC Web site and/or download, and Web site notice of the filing of an application and acceptance of the application for docketing.

If a potential requestor/petitioner believes that the period provided for filing a request for hearing/petition to intervene is insufficient, it may file an appropriate motion with the Commission to extend the deadline for submission of requests/petitions and contentions. Although the Commission expects to exercise its discretion to extend such deadlines sparingly, the availability of such relief provides additional reason to set a sixty (60) day period for filing a request for hearing/petition to intervene for the usual cases. Therefore, the final rule provides for a sixty (60) day period from notice in the **Federal Register** (if no time is specified in the **Federal Register** notice) or on the NRC Web site at *http://www.nrc.gov/public-involve/major-actions.html* for filing of requests for hearing/petitions to intervene, together with proposed contentions.

Section 2.309(b)(1) incorporates the existing twenty (20) day period for filing a request for hearing/petition to intervene and contentions on license transfers that was formerly contained in § 2.1306 (which is being removed in the final rule). Although the proposed rule indicated that § 2.1306 would be removed, a corresponding requirement for filing within twenty (20) days was not included in proposed Subpart C. Section 2.309(b)(1) of the final rule corrects this oversight. Similarly, Section 2.309(b)(2) incorporates the existing thirty (30) day period for filing a request for hearing/petition to intervene in connection with the licensing of a HLW geologic repository. Although the proposed rule indicated that § 2.1014 would be removed, a corresponding requirement for filing within thirty (30) days was not included in proposed Subpart C. Section 2.309(b)(2) corrects this oversight. To accomplish these changes, paragraphs (b)(1) and (b)(2) of proposed § 2.309 are renumbered as (b)(3) and (b)(4), and paragraph (b)(3) is modified to remove the phrase, ''the latest of.'' Finally, § 2.309(b)(3)(iii) is modified to make clear that the sixty (60) day filing period applies where the **Federal Register** notice does not specify a time for filing requests/petitions.

Standing

A nuclear industry commenter indicated that § 2.309(d) should specify that a person must establish standing in order to participate in Commission proceedings. Two citizen group commenters stated that the NRC should not rely upon NRC case law for standing requirements, but should go to the broadest judicial standards.

The Commission does not believe that § 2.309 needs to specify that a showing of standing is the general rule for participation in NRC hearings, inasmuch as the basic structure of the rule requires a demonstration of standing in order to participate as a party (standing is presumed for a State, local government, and Federally-recognized Indian Tribe where a facility is located within its political boundaries). The only exception where intervention may be permitted, despite a lack of demonstration of standing, is discretionary intervention under § 2.309(e).

While Article III of the Constitution does not constrain the NRC hearing process, our hearings therefore, are not governed by judicially-created standing doctrine, see *Envirocare of Utah, Inc.* v. *NRC,* 194 F.3d 72 (D.C. Cir. 1999), the Commission nonetheless has generally looked to judicial concepts of standing where appropriate to determine those interests affected within the meaning of Section 189.a. of the AEA. Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2), CLI–99–04, 49 NRC 185, 188 (1999), citing Portland Gen. Elec. Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI–76–27, 4 NRC 610, 613–14 (1976). The Commission contemplates no change in this practice. Accordingly, no change to the rule has been made in this regard.

A commenter, while supporting the proposed § 2.309(d) requirement that a single designated representative of an affected State, local governmental body and affected, Federally-recognized Indian Tribe (Indian Tribe) be granted party status, suggested that the designated representative must take a position on any contentions for which the affected State, local governmental body or Indian Tribe wishes to participate. The Commission believes that the language of the proposed § 2.309(d) may have led the commenter incorrectly to conclude that the Commission would permit an affected State, governmental body, or affected Indian Tribe admitted as a party under § 2.309 to ''participate as a party without taking sides.'' On the contrary, the Commission intended to maintain the distinction between a State, local governmental body, or Indian Tribe participating as parties under § 2.309, versus their participation in a hearing as an ''interested'' State, local governmental body or Indian Tribe under § 2.315(c) (formerly § 2.715(c)). A

State, local governmental body or Indian Tribe admitted as a party is entitled to the rights and bears the responsibilities of a full party, including the ability to engage in discovery, initiate motions, and take positions on the merits. By contrast, an ''interested'' State, local governmental body or Indian Tribe may participate in a hearing by filing testimony, briefs, and interrogating witnesses if parties are permitted by the rules to cross-examine witnesses, as provided in § 2.315(c). However, such participation is dependent on the existence of a hearing independent of the interested State, local governmental body or Indian Tribe participation, and such participation ends when the hearing is terminated. The Commission believes that the first sentence of proposed § 2.309(d)(2)(ii), which was intended to apply only to participation under § 2.315(c) as an ''interested'' State, local government body or Indian Tribe, may have led to the confusion with respect to the participation of a State, local governmental body or Indian Tribe as a party. Accordingly, this sentence is removed from § 2.309(d)(ii) and has been incorporated into § 2.315(c). Other minor conforming changes were made to §§ 2.309(d) and 2.315(c), to uniformly refer to ''local governmental body,'' and ''affected Federally-recognized Indian Tribe.''

Discretionary Intervention

The Commission requested public comment on whether the standard for discretionary intervention should be extended by providing an additional alternative for discretionary intervention in situations when another party has already established standing and the discretionary intervenor may ''reasonably be expected to assist in developing a sound record.'' The Commission also requested public comments on whether, as an alternative to codification of the six-part Pebble Springs standard for discretionary intervention,[12] the Commission should adopt a simpler test for permitting discretionary intervention and the nature of such a standard.

Many commenters opposed codification of the discretionary intervention standard in proposed § 2.309(e), arguing, *inter alia* that: (1) The subjectivity of the standards will likely delay presiding officers in making determinations, (2) meaningful public participation will not be hampered by continuing to apply the Pebble Springs factors without codification, and (3) discretionary intervention is not consistent with the purpose of adjudicatory proceedings and would permit parties who cannot demonstrate a direct interest in the outcome of the proceeding to extend and broaden the scope of the proceeding. Two commenters argued that there should be a presumption against discretionary intervention such that it should be allowed only in extraordinary circumstances. On the other hand, a citizen group commenter indicated that the NRC should adopt a simpler test for permitting discretionary intervention: one standard should be if a petitioner lives within a community near a licensed facility or is affected by a licensed facility; another should be the ability to raise important health, safety, environmental, and legal issues that have previously not been considered or adjudicated by the NRC.

The Commission has decided to incorporate the Pebble Springs standard for discretionary intervention into the final rule to allow consideration of discretionary intervention when at least one other requestor/petitioner has established standing and at least one admissible contention so that a hearing will be held. Those criteria presume that discretionary intervention is an extraordinary procedure, and will not be allowed unless there are compelling factors in favor of such intervention. The Commission disagrees with the claim that the subjectivity of the standards will result in delays; in the past, the Pebble Springs standards have been applied by presiding officers and Licensing Boards without apparent delay. With respect to the claim that the lack of codification will not prevent meaningful public participation, the Commission notes that codification directly into the Commission's procedures for the conduct of adjudicatory proceedings provides clear notice to the public regarding the criteria that the Commission or presiding officer will apply in evaluating requests for discretionary intervention; members of the public who are unaware of the Pebble Springs decision would not be aware of the criteria that the Commission would apply in assessing a petition for discretionary intervention. The Commission disagrees with the assertion that discretionary intervention is inconsistent with the purposes of adjudicatory proceedings. The ultimate purpose of an adjudicatory proceeding is to resolve material issues with respect to an NRC regulatory action. The discretionary intervention standards, properly applied, should ensure that only persons and entities who can meaningfully contribute to the development of a sound record on contested matters will be admitted as parties. With respect to the citizen group commenters' suggestion that discretionary intervention should be permitted for any petitioner living within a community near a licensed facility, the Commission believes that such a criterion, if adopted, would most likely be met in every circumstance and would not account for the consideration of other relevant factors. With respect to the second criterion, the Commission agrees with the citizen group commenter that one factor (indeed, the most important factor, *see* Pebble Springs, 4 NRC at 617) to be considered in assessing requests/petitions for discretionary intervention is the capability of the requestor seeking discretionary intervention to contribute to the development of a sound record on important health, safety, environmental or legal issues. However, the Commission must also be mindful that there are other factors that must be considered, *e.g.*, whether other parties already admitted in the hearing possess the same capability to represent that requestor's interest. In the Commission's view, the Pebble Springs criteria for assessing petitions for discretionary intervention provide for an appropriate balancing of the relevant competing factors. Therefore, the Commission declines to adopt the suggestion that discretionary intervention be based solely on consideration of the requestor's capability to contribute to the hearing.

Nonetheless, the Commission must emphasize that past case law and Commission policy make it clear that foremost among the factors in favor of granting discretionary intervention is whether the petitioner will assist in developing a sound record. See Pebble Springs, 4 NRC at 617 (1976). The most important factor weighing against intervention is the potential to inappropriately broaden or delay the proceeding. *Id.* The Commission fully expects that this case law and Commission policy will be followed in applying the codified discretionary intervention criteria.

Contentions

In a significant change from the existing regulations, the requirement to proffer specific, adequately-supported contentions in order to be admitted as a party is extended to informal proceedings under Subpart L. Under the existing Subpart L, petitioners need only describe ''areas of concern about the licensing activity that is the subject

[12] Portland Gen. Elec. Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI–76–27, 4 NRC 610, 616 (1976).

matter of the proceeding'' (10 CFR 2.1205(e)(3)). This sometimes leads to protracted ''paper'' litigation over ill-defined issues and the resulting development of an unnecessarily large, unfocused evidentiary record. The presiding officer is then burdened with the need to sift through the record to identify the basic issues and pertinent evidence necessary for a decision. The requirement to have specific contentions with a supporting statement of the facts alleged or expert opinion that provides the bases for them in all hearings should focus litigation on concrete issues and result in a clearer and more focused record for decision.

Several commenters supported the Commission's proposal to extend to Subpart L proceedings the requirement to proffer specific, adequately supported contentions rather than simply state issues. One commenter argued that the formulation of contentions is necessary to efficiently develop an accurate record in an informal hearing. The commenter also suggested that the Commission require that a contention show that the petitioner is entitled to relief. Other commenters opposed requiring contentions in informal proceedings, with one commenter asserting that the Commission could accomplish its goal by clarifying the ''areas of concern'' procedure, rather than forcing the public to bear the increased cost of formulating admissible contentions. Citizen group commenters also urged that the Commission adopt provisions permitting requestors/petitioners/parties to be able to freely amend or add new contentions based upon new information and documents such as the filing of the NRC staff's SER and EIS. Nuclear industry commenters, by contrast, argued that the Commission should instead take one or more actions to make clear that SERs and EISs are not necessary to resolution of contentions, and that the Commission take appropriate actions to ensure that the NRC staff is able to provide its safety position on any contention in a timely manner in a proceeding.

The Commission seeks to ensure that the adjudicatory process is used to address real, concrete, specific issues that are appropriate for litigation. The Commission continues to believe that a request for hearing/petition to intervene should include proposed contentions. The Commission should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing. This principle applies regardless of whether a hearing is to be conducted under informal or formal procedures. The § 2.309(f) contention requirement is intended to support an early NRC determination whether there are issues that are appropriate for and susceptible to NRC resolution with respect to an NRC regulatory/licensing action. The suggestion for clarifying the ''areas of concern'' approach would not accomplish that goal, inasmuch as requestors/petitioners would not have to show at the outset whether there is a real, cognizable dispute amenable to resolution by the NRC. Nonetheless, the Commission does not agree with the commenter's suggestion that still another requirement—that a contention show that the petitioner is entitled to relief, should be added to the petitioner's contention pleading burden. Such a criterion overlaps the requirement in § 2.309(d)(1)(iv) with respect to standing, requiring the request/petition to address ''the possible effect of any decision or order that may be issued in the proceedings on the requestor's/petitioner's interest.'' Because a new criterion in § 2.309(f) on this matter would place an unneeded additional requirement on the contention pleading provisions, the Commission declines to adopt the commenter's suggestion.

The Commission also declines to adopt the thrust of the suggestions to allow free amendment and addition of contentions based upon new information such as the SER. The NRC staff has the independent authority, indeed the responsibility, to review all safety matters. *See, e.g.*, S. Cal. Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB–680, 16 NRC 127, 143 (1982); Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB–678, 15 NRC 1400, 1420, n.36 (1982); Philadelphia Elec. Co. (Limerick Generating Station, Units 1 and 2), ALAB–778, 20 NRC 42, 48 (1984). The adequacy of the applicant's license application, not the NRC staff's safety evaluation, is the safety issue in any licensing proceeding, and under longstanding decisions of the agency, contentions on the adequacy of the SER are not cognizable in a proceeding. Curators of the Univ. of Mo., CLI–95–1, 41 NRC 71, 121–22 (1995), affirmed on motion for consideration, CLI–95–8, 41 NRC 386, 396 (1995), La. Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB–812, 22 NRC 5, 55–56 (1985); Pac. Gas Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB–728, 17 NRC 777, 807 (1983), review denied, CLI–83–32, 18 NRC 1309 (1983). If information in the SER bears upon an existing contention or suggests a new contention, it is appropriate for the Commission to evaluate under § 2.309(c) the possible effect that the admission of amended or new contentions may have on the course of the proceeding. The commenters' proposal appears to be based upon the misapprehension that, absent consideration in a hearing, safety concerns will not be addressed by the NRC. On the contrary, the NRC may not issue a license until all appropriate safety findings have been made. *See*, *e.g.*, Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB–678, 15 NRC 1400, 1420 n.36 (1982), citing S.C. Elec. & Gas Co. (Virgil C. Sumner Nuclear Station, Unit 1), ALAB–642, 13 NRC 881, 895–896 (1981). Furthermore, any member of the public who believes that he or she has significant safety information may, at any time, submit a request for NRC action under 10 CFR 2.206 to modify, suspend, or revoke a license, or for any other action (*e.g.*, refuse to issue a license) that may be appropriate. In sum, the hearing process is directed at resolving issues identified and conceptualized by an interested member of the public, not at supervising the NRC staff's independent safety review.

With respect to the EIS, the current regulations in 10 CFR Part 51 provide for hearing consideration of environmental matters. *See* 10 CFR 51.94. Accordingly, § 2.309(f)(2) will control the admission of amended and new contentions based upon issuance of the NRC staff's EIS, and § 2.337(g) will govern the introduction of the EIS or EA into evidence in a proceeding.

One commenter suggested that the Commission adopt a new § 2.309(f)(3) to specify, where a petitioner adopts an admitted contention of another party, that the presiding officer or Licensing Board must require one of the petitioners to act as lead. The Commission agrees that a new § 2.309(f)(3) should be adopted to include such a requirement, and concludes that the paragraph should also include an analogous requirement for a lead representative where two or more requestors/petitioners co-sponsor a contention.

Timing of Identification of Appropriate Hearing Procedures

In the proposed rule, § 2.309(g) would require that the request for hearing/petition to intervene address the question of the type of hearing procedures (*e.g.*, formal hearings under Subpart G, informal hearings under Subpart L, or ''fast track'' informal procedures under Subpart N) to be used for the proceeding. The Commission

indicated that this would not be a requirement for admission as a party to the proceeding, but a requestor/petitioner who fails to address the hearing procedure issue would not later be heard to complain in any appeal of the hearing procedure selection ruling. The Commission requested public comment on whether, if the Commission adopts the alternative proposal that requests for hearing be filed within thirty (30) days of appropriate notice, but that contentions be filed later (*e.g.*, within seventy-five (75) days of such notice), the Commission should require the petitioner to set forth its views on appropriate hearing procedures at the deadline for filing contentions, rather than in the petition/request for hearing. Commenters did not specifically address the Commission's question, and no changes were made in the final rule with respect to this matter.

Answers and Replies

In the proposed rule, § 2.309(h) would allow the applicant or licensee and the NRC staff twenty-five (25) days to file written answers to requests for hearing/petitions to intervene, and would permit the petitioner to file a written reply to the applicant/licensee and NRC staff answers within 5 days after service of any answer. No other written answers or replies would be entertained. The Commission sought public comment on whether the proposed time limits for replies and answers should be expanded.

A commenter representing a number of organizations indicated that the five (5) days allotted in § 2.309(h)(2) is too short a time to respond to NRC, applicant or licensee answers. Instead, the rule should provide for at least ten (10) days to respond. By contrast, NEI argued that the periods allowed in the proposed rule for answering requests for hearing/petitions to intervene and replies should be expanded only in situations where time limits are ''unworkable.''

The Commission has decided to provide seven (7) days for a requestor/petitioner to respond to an applicant/licensee and NRC staff answer on a request for hearing/petition to intervene. Any reply should be narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer; a seven-day period to prepare such a focused reply is not unreasonable. If there are special circumstances, the requestor/petitioner may request a short extension from the presiding officer.

A commenter suggested that Subpart C should provide that the presiding officer issue a decision on standing and admissibility of contentions within 45 days of the completion of the parties' filings on those issues. The Commission agrees with this suggestion, and a new paragraph (i) has been added to § 2.309 requiring the presiding officer to issue a decision on standing and admissibility of contentions within forty-five (45) days of the completion of the parties' filings. The Commission believes that this is an appropriate and reasonable time period for a presiding officer to issue a decision on standing and admissibility of contentions, considering the thoroughness of the petitions and responses. Additional time beyond the 45 days may be provided if circumstances warrant.

Section 2.310—Selection of Hearing Procedures

(1) Subpart G Hearing Procedures.

The Commission requested comment on the criteria for identification of cases where the use of Subpart G hearing procedures would be of benefit. Comments will be discussed under each criterion in the proposed rule.

Uranium Enrichment Facilities. The single exception to the Commission's broad authority to select hearing procedures involves proceedings on licensing the construction and operation of uranium enrichment facilities. Section 193 of the AEA requires that hearings on uranium enrichment facility construction and operation be ''on-the-record,'' thus requiring formal trial-type hearing procedures to be used. Section 2.310(b) of the proposed rule reflected this requirement by specifying that a proceeding on licensing the construction and operation of a uranium enrichment facility must be conducted using the hearing procedures of Subpart G. No comments were received on this criterion and no change to the substance of the proposed rule was made in this regard. However, the Commission reorganized § 2.310 in the final rule. Accordingly, § 2.310(c) in the final rule specifies the use of Subpart G hearing procedures in proceedings on the licensing of the construction and operation of uranium enrichment facilities.

Enforcement Matters. In its July 22, 1999 Staff Requirements Memorandum on SECY–99–006, Reexamination of the NRC Hearing Process, the Commission noted that Subpart G hearing procedures would seem to be appropriate for hearings on enforcement actions. Several participants in the October 1999 hearing process workshop agreed, noting that Subpart G hearing procedures would give the entity subject to the proposed enforcement action the opportunity to fully confront the proponent of the proposed enforcement action. The Commission requested comments on the proposal to require the application of Subpart G hearing procedures in hearings involving enforcement matters and views on whether and when to allow the use of less formal hearing procedures for these matters.

All commenters agreed that Subpart G hearing procedures should be available in enforcement cases, with one commenter noting that Subpart G should be available in enforcement actions against both individuals and licensees. However, one commenter asserted that enforcement matters should be the only proceedings where Subpart G procedures should be applied. Two commenters stated that individuals and licensees should be able to request use of informal procedures in enforcement cases. One of those commenters indicated that the NRC staff should not have ''veto power'' over a licensee's choice to use Subpart N in enforcement and civil penalty cases, while the other implicitly suggested that the NRC staff should not be able to choose to use more informal procedures.

The Commission continues to believe that Subpart G hearing procedures should be applied in enforcement actions against both individuals and licensees. The Commission does not agree with the suggestion that the subject of an enforcement action alone should be able to choose informal procedures. As one commenter pointed out, enforcement actions usually involve making determinations of intent and credibility, for which the use of Subpart G hearing procedures—in particular, cross-examination—are especially suited. On the other hand, if all parties agree to the use of one of the more informal hearing procedures in an enforcement proceeding (*e.g.*, Subpart L or Subpart N), there does not appear to be any significant public policy mitigating against such a choice by all parties. Therefore, the substance of the final rule remains unchanged from the proposed rule in providing that all parties must agree and jointly request an enforcement proceeding to be conducted under the procedures of Subpart L or Subpart N.

High Level Waste (HLW) Repository Licensing. Until the adoption of Subpart L in 1989 (54 FR 8276; Feb. 28, 1989), all proceedings conducted by the AEC and NRC were formal adjudicatory hearings. Consistent with that established practice, in 1978 the NRC declared that it would hold Subpart G hearings on an application to construct and operate a repository for HLW. In

final rules published in 1981, the Commission provided for a mandatory Subpart G hearing at the construction authorization stage and for an opportunity for a Subpart G hearing before issuing a license to receive and possess HLW at a geologic repository. Subsequently, Congress enacted the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10101 *et seq*. That law does not include any specific hearing requirements. Instead, it seems to contemplate, in Section 114, that the NRC will apply existing laws applicable to the construction and operation of nuclear facilities. In sum, there is no statutory requirement for a formal, on-the-record hearing using Subpart G procedures on a HLW repository, but without a rule change, the NRC's regulations *would* require a Subpart G hearing.

Although the Commission generally seeks to use more informal procedures for its hearings, the proposed rule reflected the Commission's tentative conclusion that the hearing procedures of Subpart G should be used in proceedings for the initial authorization to construct a HLW repository, and proceedings for issuance of an initial license to receive and possess HLW at a HLW repository. The initial authorization of construction of a HLW repository and the initial issuance of a license to receive and possess HLW are likely to be highly contested. The President's recommendation to proceed with repository development at the Yucca Mountain site has been upheld by Congress. The adjudication is likely to involve multiple parties, including the State of Nevada, as well as possible participation by other States, local governmental bodies, and Federally recognized Indian Tribes. The issues to be adjudicated will undoubtedly involve a large number of disputes over material facts. Moreover, the Commission has long taken the position that for this unique, first-of-its-kind proceeding, it would provide an on-the-record hearing under Subpart G for repository licensing, thereby creating certain public expectations on the hearing procedures to be used for this particular proceeding. A change in Commission position now to permit the use of more informal procedures for authorizing construction of a HLW geologic repository and issuance of a license to receive and possess HLW at a geologic repository operations area would not advance public confidence in the Commission's repository licensing process. Based on these considerations, § 2.310(e) of the proposed rule provided that the initial application for authorization to construct a HLW repository, and initial issuance of a license to receive and possess HLW at a geologic repository operations area use the hearing procedures of Subpart G. Section 2.310(e) of the proposed rule provided that amendments to the construction authorization for the HLW repository, and amendments to the application and/or license to receive and possess HLW at a geologic repository operations area should be subject to the same criteria as other proceedings in determining what hearing procedures will be used. The Commission requested public comment on these proposals.

In general, industry commenters opposed the use of Subpart G procedures for initial authorization to construct a geologic repository and issuance of the initial license to receive and possess HLW at a geologic repository. One industry commenter stated that the nature and subject matter of the HLW proceedings are similar to those involving reactor licensees and there is no reason to apply different hearing procedures; accordingly, the commenter argued that HLW proceedings should be conducted under proposed Subparts L or N. Another commenter indicated that the Commission should not prejudge the nature of the issues that will be raised regarding the HLW repository and instead should maintain flexibility to decide, based on the nature of contentions at the time they are raised, what kind of hearing procedure will best serve the interests of the stakeholders. Two citizen group commenters, while not directly addressing the type of procedure to be used in HLW repository authorizations, argued that it is inconsistent for the Commission to provide formal hearings for HLW authorizations, while moving to ''deformalize'' nuclear power plant and materials licensing proceedings.

The Commission continues to believe that, while not required by statute, any hearings in connection with the initial authorization to construct a HLW geologic repository, and the initial license to receive and possess HLW at a geologic repository operations area should be held using Subpart G hearing procedures. None of the comments received on this subject raised any new arguments or considerations that were not already considered by the Commission in making its tentative determination for the proposed rule. Accordingly, the hearing procedure selection provision in § 2.310(f) specifies the use of Subparts G and J hearing procedures for the initial authorization to construct a high-level radioactive waste geologic repository, and initial issuance of a license to receive and possess high-level waste at a geologic repository operations area. In response to a commenter, the Commission removed a typographic error that resulted in a partial sentence in this paragraph of the proposed rule. The Commission also modified the language to clarify that Subpart G proceedings apply only to the initial authorization to construct and to initial issuance of the license to receive and possess HLW.

Complex Issues in Reactor Licensing. Section 2.310(c) of the proposed rule included a criterion that would call for the use of the hearing procedures of Subpart G in those reactor licensing proceedings that involve a large number of complex issues which the presiding officer determines can best be resolved through the application of formal hearing procedures. The Commission requested public comments on the appropriateness of this proposed ''numerous/complex issues'' criterion, and representative examples of the type of ''complex issues'' that would benefit from the use of Subpart G hearing procedures. The Commission also requested comment on whether this criterion should be modified to instead provide for Subpart G hearings in initial power reactor construction permit proceedings, initial operating license proceedings, combined license issuance proceedings under 10 CFR Part 52, Subpart C, and hearings associated with authorizations to operate under a combined license under 10 CFR 52.103.

The nuclear industry commenters on this matter uniformly opposed the proposed numerous/complex issues criterion. Several commenters indicated that the proposed standard is too subjective and would be difficult to interpret and apply, consequently leading to overuse of this criterion. Another commenter argued that the criterion undermines the advantages to be derived from less formal procedures and creates additional opportunities for argument and litigation over procedural matters. A third commenter suggested that it is not always true that ''very complex cases'' will benefit from formal hearings, pointing out that it is the nature of the issues to be decided that determines whether formal procedures are appropriate. No citizen group specifically addressed the ''numerous/complex issues'' criterion, although their general support for Subpart G procedures for all nuclear power plant licensing proceedings implies their opposition to this criterion.

Upon reconsideration, the Commission agrees that the proposed

''numerous/complex issues'' criterion may not be well-suited for determining whether the procedures of Subpart G should be used in a given proceeding. Rather, the Commission agrees with the thrust of the commenters opposing this criterion that, inasmuch as neither the AEA [13] nor the APA require the use of the procedures provided in Subpart G, they should be utilized only where the application of such procedures are necessary to reach a correct, fair and expeditious resolution of such matters. In the Commission's view, the central feature of a Subpart G proceeding is an oral hearing where the decisionmaker has an opportunity to directly observe the demeanor of witnesses in response to appropriate cross-examination which challenges their recollection or perception of factual occurrences. This also appears to be the position of several citizen group commenters, judging by the reasons given for their opposition to greater use of Subpart L procedures. Hence, the Commission focused on criteria to identify those contested matters for which an oral hearing with right of cross-examination would appear to be necessary for a fair and expeditious resolution of the contested matters. Common sense, as well as case law, lead the Commission to conclude that oral hearings with right of cross-examination are best used to resolve issues where ''motive, intent, or credibility are at issue, or if there is a dispute over the occurrence of a past event.'' *See Union Pac. Fuels* v. *FERC*, 129 F.3d 157, 164 (DC Cir. 1997), *citing La. Ass'n of Indep. Producers & Royalty Owners* v. *FERC*, 958 F.2d 1101, 1113 (DC Cir.1992). In Union Pacific Fuels, the Court of Appeals for the DC Circuit concluded that a FERC rate determination based upon a determination of the relative importance of facilitating wellhead competition and preserving a party's risk allocation was a policy issue (as opposed to a factual and credibility issue) whose resolution would not be facilitated by a trial-type hearing. Id. Courts reached similar conclusions in a number of other cases. See, *e.g.*, *SBC Communications, Inc.* v. *FCC*, 56 F.3d 1484, 1496–97 (DC Cir. 1995) (disputed issues on legal and economic conclusions concerning market structure, competitive effect, and the public interest do not require oral evidentiary hearing), citing *United States* v. *FCC*, 652 F.2d 72, 89–90 (DC Cir. 1980) (*en banc*); *Penobscot Air Servs.*, Ltd. v. *FAA*, 164 F.3d 713, 722–725 (1st Cir. 1999) (due process does not require formal evidentiary hearing where historical facts are undisputed, and agency decision involved interpretation and application of statutes, regulations and policies); *Chemical Waste Mgmt., Inc.* v. *EPA*, 873 F. 2d 1477, 1183–1185 (DC Cir. 1989) (due process does not require formal evidentiary hearing where issues do not involve determinations of witness credibility but instead turn on technical data and policy judgements). In *Califano* v. *Yamasaki*, 442 U.S. 682 (1979), the U.S. Supreme Court held that where the relevant statute requires an agency assessment of ''fault'' and a determination whether recoupment of erroneous payments from a social security beneficiary would be ''against equity and good conscience,'' an opportunity for an oral hearing is required. The Supreme Court stated:

> ''[F]ault'' depends on an evaluation of ''all pertinent circumstances'' including the recipient's ''intelligence * * * and physical and mental condition'' as well as his good faith. 20 CFR § 404.507 (1978). We do not see how these can be evaluated absent personal contact between the recipient and the person who decides his case. Evaluating fault, like detrimental reliance, usually requires an assessment of the recipient's reliance, usually an assessment of the recipient's credibility, and written submissions are a particularly inappropriate way to distinguish a genuine hard luck story from a fabricated tall tale. *See Goldberg* v. *Kelly*, 397 U.S., at 269.

Califano, 442 U.S. at 696–97.[14]

In sum, the Commission has concluded that the procedures in Subpart G should be utilized in any nuclear power plant licensing proceeding for the resolution of a contention involving: (1) Issues of material fact relating to the occurrence of a past activity, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or (2) issues of motive or intent of the party or eyewitness material to the resolution of the contested matter. Section 2.310(d) specifies the use of Subpart G hearing procedures in these circumstances.

(2) Informal Hearing Procedures.

Expansion of Spent Fuel Storage Capacity. Subpart K contains ''hybrid'' hearing procedures for use in proceedings on the expansion of spent fuel storage capacity at civilian nuclear power reactors.

A commenter suggested that proposed § 2.310(d) should be amended to specifically state that Subpart L applies to licenses or amendments to expand spent fuel storage capacity unless a party requests the use of Subpart K, or if all parties agree to apply Subpart N. The Commission agrees with the commenter, inasmuch as § 2.1101 specifically states that the procedures of Subpart K are to be used ''upon request of any party[.]'' Accordingly, appropriate changes have been made to § 2.310(e), which now provides that proceedings for the expansion of spent fuel storage capacity at civilian nuclear power reactors will be governed by Subpart L, unless a party requests the use of Subpart K.

License Transfers. The Commission is retaining existing Subpart M, which contains informal hearing procedures for use in proceedings involving reactor or materials license transfers. Subpart M requires the use of its hearing procedures for all license transfer proceedings for which a hearing request has been granted unless the Commission directs otherwise. The hearing procedure selection provision in § 2.310(g) of the final rule (§ 2.310(f) in the proposed rule) specifies the use of Subpart M hearing procedures in license transfer proceedings. No significant comments were received on this proposal.

Other Proceedings. Section 2.310(a) (§ 2.310(g) of the proposed rule) applies the hearing procedures of the new Subpart L to all other proceedings not specifically named, *i.e.*, proceedings involving hearings on the grant, renewal, licensee-initiated amendment or termination of licenses and permits subject to 10 CFR parts 30, 32 through 35, 36 (the final rule adds part 36, which was erroneously omitted in the proposed rule), 39, 40, 50, 52, 54, 55, 61, 70 and 72. In addition, Subpart L procedures would be used in nuclear power plant licensing proceedings for the resolution of contentions which do

[13] A commenter suggested that Section 181 of the AEA requires that NRC hearings be ''on-the-record,'' and therefore subject to the full panoply of procedures required by the APA for ''on-the-record'' adjudications. The Commission regards the commenter's analysis to be incorrect. By its terms, Section 181 merely states that the APA applies; nowhere does Section 181 explicitly state that adjudications required by the AEA are to be considered ''on-the-record'' adjudications for purposes of applying the APA. The APA itself does not specify what adjudications must be ''on-the-record.''

[14] The Supreme Court also held that the 5th Amendment's Due Process Clause does not require an oral hearing even where credibility is in dispute. *Califano* v. *Yamasaki*, 442 U.S. 682, 696 (1979) (''[W]e do not think that the rare instance in which a credibility dispute is relevant to a section 204 (a) claim is sufficient to require the Secretary to * * * grant a hearing to the few [claims] that involve credibility.''). The Commission also notes that, for the most part, constitutional Due Process considerations are not at issue with respect to an intervenor-party's right to cross-examination in NRC proceedings, inasmuch as governmental deprivation of life, liberty or property of the intervenor-party are not at issue in an NRC proceeding. On the other hand, in enforcement proceedings where a licensee or individual may be subject of an enforcement action depriving them of liberty or property, the Commission believes that it is appropriate to provide the licensee or individual an opportunity to request a Subpart G adjudicatory hearing with cross-examination.

not meet the criteria set forth in section 2.310(d) for use of Subpart G hearing procedures. Under this provision, Subpart L procedures would be used, as a general matter, for hearings on power reactor construction permit and operating license applications under parts 50 and 52, power reactor license renewal applications under part 54, power reactor license amendments under part 50, reactor operator licensing under part 55, and nearly all materials and spent fuel licensing matters. This is a significant change from current hearing practice for reactor licensing matters. Under existing practice, proceedings on applications for reactor construction permits, operating licenses and operating license amendments have used the hearing procedures of Subpart G. Similarly, in the Statement of Considerations for the 1991 rule on reactor license renewal, the Commission stated that it would provide an ''opportunity for a formal public hearing'' on reactor license renewal applications (56 FR 64943, 64946; Dec. 13, 1991). The hearing procedures of Subpart L could also be applied in hearings involving enforcement matters if all parties agree.

As discussed earlier with respect to the Commission's proposed move away from use of Subpart G trial-type hearing procedures, significant comments were received that both supported and opposed this direction. The Commission has decided, also for the reasons discussed earlier, that greater use of more informal hearing procedures is desirable and has decided to adopt in large part the proposed rule's provisions expanding the use of Subpart L hearing procedures.

Subpart N—Fast Track Procedures. Proposed § 2.310(h) would apply the informal ''fast track'' hearing procedures of new Subpart N in any proceeding (other than those designated in § 2.310(a)–(g) as requiring other procedures) in which the hearing is estimated to take no more than 2 days to complete or where all parties agree to the use of the ''fast track'' hearing procedures. The Commission requested comments and suggestions on the appropriate criteria for the use of Subpart N.

A citizen group commenter asserted that the Commission should not adopt a ''fast track'' hearing procedure, arguing that to presuppose that safety issues can be handled in a fast track proceeding ''invites disaster.'' The Commission continues to believe there is a need for an expedited hearing track to provide for the expeditious resolution of issues in cases where the contentions are few and not particularly complex and might be efficiently addressed in a short hearing using simple procedures and oral presentations. The Commission views the ''fast track'' procedures of Subpart N as particularly useful for some reactor operator licensing cases or for small materials licensees cases where the parties want to be heard on the issues in a simple, inexpensive, informal proceeding that can be conducted quickly before an independent decisionmaker. The commenter provided no basis for the assertion that proper application of fast-track procedures would result in erroneous resolution of public health and safety issues. Therefore, the Commission declines to adopt the commenter's suggestion. The hearing procedure selection provision in § 2.310(h) specifies the circumstances for which Subpart N hearing procedures may be used.

Reorganization of § 2.310

The Commission has reorganized and changed the ordering of paragraphs within § 2.310 from that in the proposed rule. Paragraph (a) (paragraph (g) in the proposed rule) states the general rule that, unless otherwise determined through the application of paragraphs (b) through (h), the listed proceedings are to be conducted under Subpart L. Paragraphs (b) through (h) identify the type of proceeding (*e.g.*, enforcement proceeding) and the subpart whose procedures are to be used. Paragraph (i) indicates that in design certification rulemaking where the Commission in its discretion decides to hold a hearing under § 52.51, the hearing is to be conducted under Subpart O (legislative hearing). Paragraph (j) provides that in proceedings where the Commission grants a petition certified to it under § 2.335(b) seeking permission to consider Commission rules and regulations in a hearing, the Commission may, in its discretion, conduct a ''legislative'' hearing under Subpart O.

Section 2.311—Interlocutory Review

A commenter suggested that § 2.311(d) be revised to clarify that the only permissible grounds for challenging an order selecting a hearing process is that the selection was ''erroneous,'' and that a 10-day time limit should be placed on the ability to appeal the order selecting a hearing procedure. While the Commission agrees that § 2.311(d) should be clarified, the term, ''erroneous,'' does not accurately describe the basis for an appeal of an order selecting hearing procedures. Therefore, the Commission has instead decided to modify § 2.311(d) to refer to hearing procedure selections that were ''selected in clear contravention of the criteria set forth in § 2.310.'' The Commission also agrees that a 10-day limit should be adopted for filing of an appeal of an order selecting a hearing procedure, and § 2.311(d) has been appropriately modified in the final rule.

Section 2.313—Designation of Presiding Officer, Disqualification, Unavailability, and Substitution

As discussed earlier, the Commission decided to provide that hearings conducted under Subparts G, J, K, L and N should be presided over by either a single administrative law judge (rather than a single administrative judge) or an Atomic Safety and Licensing Board, but that hearings under Subparts M and O may be presided over by the Commission, a single administrative law judge, a single administrative judge, an Atomic Safety and Licensing Board, or other designated person. To accomplish this, paragraph (a) is modified to include appropriate references to an administrative law judge, and a sentence is added which states that only the Commission may designate the presiding officer in Subpart O legislative hearings. A related change to § 2.4 adding a definition of ''presiding officer'' is discussed earlier. The Commission is also deleting the provision in former § 2.1207(a) requiring the Chairman of the Atomic Safety and Licensing Board Panel (Chief Administrative Judge) to appoint a single member of the Atomic Safety and Licensing Board Panel as a presiding officer. As a result, the Commission is changing the discretion of the Chief Administrative Judge, and provides him or her with the discretion to choose either an Atomic Safety and Licensing Board, or an administrative law judge for a hearing conducted under Subparts G, J, K, L or N, and either an Atomic Safety and Licensing Board, an administrative law judge, or administrative judge for a hearing conducted under Subpart M.

The Commission is making other changes to simplify and clarify the rule. Paragraphs (b) and (c) of the proposed rule, both of which address disqualification, are combined into a single paragraph (b), and redesignated as subparagraphs (b)(1) and (b)(2). In redesignated paragraph (b), the phrase, ''board member,'' is changed to ''presiding officer or member of the Licensing Board,'' in order to clarify the criteria for withdrawal of a single presiding officer who is not a member of a Licensing Board. Finally, paragraph

headings are added to each paragraph of § 2.313.

Section 2.314—Appearance and Practice Before the Commission in Adjudicatory Proceedings

A commenter proposed that § 2.314(b) be amended to also refer to the ''entity'' on whose behalf a representative appears. The Commission agrees, and has modified § 2.314(b) accordingly.

Section 2.315—Participation by a Person Not a Party

A commenter proposed that § 2.315(d) be clarified that a person who is not a party who wishes to file an amicus brief should file the motion seeking leave to file together with the amicus brief. The Commission agrees and paragraph (d) has been modified to make that clear.

The Commission has also modified Section 2.315(a) to make clear that a person, even if affiliated or represented by a party (*e.g.*, a member of an organization who is a party in a proceeding), may make a limited appearance statement.

Section 2.319—Power of Presiding Officer

A commenter proposed that § 2.319(d) provide the presiding officer with the power to strike written records and oral testimony for cumulative, irrelevant or unreliable material. The Commission agrees with the apparently-underlying view of the commenter that the presiding officer should have authority to limit and/or preclude, as applicable, testimony or evidence that is cumulative, irrelevant or unreliable. However, the Commission believes that § 2.319(e), which permits the presiding officer to ''restrict irrelevant, duplicative, or repetitive evidence and/or arguments'' largely provides such authority to the presiding officer. However, the Commission has added the word, ''unreliable'' to § 2.319(e). Furthermore, because the type of arguments, evidence, and information that may be limited or stricken by the presiding officer are the same in § 2.319(d) and (e), both paragraphs have been conformed to use the same terminology, *i.e.*, ''irrelevant, immaterial, unreliable, duplicative or cumulative.''

The final rule includes two additional provisions in § 2.319 which explicitly provide the presiding officer with authority to rule on motions (analogous to the provision in former § 2.730(e)), and authority to issue orders necessary to carry out its responsibilities and duties under this part.

Section 2.323—Motions

Proposed § 2.323 incorporated the provisions in § 2.730 in Subpart G on the general form, content, timing, and requirements for motions and responses to motions. The Commission requested public comment on whether § 2.323(a) should specify a time limit of ten (10) days for filing of motions, beginning from the action or circumstance that engenders the motion. One nuclear industry commenter indicated that § 2.323 should set time limits on the filing of motions, preferably requiring them to be filed no later than ten (10) days after the occurrence or circumstance from which the motion arises. However, another nuclear industry commenter opposed setting a time limit because of the ''broad nature'' of motions. The Commission has decided that expeditious management of a hearing requires that motions be filed reasonably promptly after the underlying circumstances occur which engender a motion. Accordingly, a ten (10) day limit for filing motions is included in the final version of § 2.323(a).

Proposed § 2.323(e) included a standard for evaluating motions for reconsideration, viz., compelling circumstances, such as the ''existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid'' (this standard is also reflected in proposed § 2.344(b)). The Commission requested public comment on whether this ''compelling circumstances'' standard in the proposed rule should be adopted or eliminated from the final rule. A commenter supported inclusion of a ''compelling circumstance'' standard for reconsideration embodied in proposed § 2.323(e). Another commenter instead argued that the current standard for motions for reconsideration, as defined by NRC case law, should be retained. The existing standard allows for motions requesting the presiding officer to reexamine existing evidence that may have been misunderstood or overlooked, or to clarify a ruling on a matter. The Commission has decided that the ''compelling circumstances'' standard should be utilized for motions for reconsideration. This standard, which is a higher standard than the existing case law, is intended to permit reconsideration only where manifest injustice would occur in the absence of reconsideration, and the claim could not have been raised earlier. In the Commission's view, reconsideration should be an extraordinary action and should not be used as an opportunity to reargue facts and rationales which were (or should have been) discussed earlier.

Finally, the proposed rule addressed the referral of rulings and certified questions by the presiding officer to the Commission. With regard to referrals, proposed § 2.323(f) would provide for referrals of decisions or rulings where the presiding officer determines that the decision or ruling involves a novel issue that merits Commission review at the earliest opportunity. The proposed section also differs from the existing requirements by allowing any party to file with the presiding officer a petition for certification of issues for early Commission review and guidance. This is consistent with the Commission's direction in the 1998 Statement of Policy on Adjudicatory Proceedings stating that issues or rulings involving novel questions which would benefit from early Commission guidance should be certified to the Commission. No comments were received on this provision, and the Commission adopts § 2.323(f) without change.

Section 2.327—Official Recording; Transcript

In response to a commenter, in paragraph (c) the word, ''therefore,'' is changed to ''therefor.''

Section 2.332—General Case Scheduling and Management

Section 2.332 of the proposed rule would have required a presiding officer to consult with the parties early in the proceeding in order to set schedules, establish deadlines for discovery and motions, where appropriate, and set the ground rules for the control and management of the proceeding. The proposed rule also addressed integration of the NRC staff's preparation of its safety and environmental review documents into the hearing process schedules. The Commission requested comment on the case management provisions proposed in this section and welcomed suggestions for additional case management techniques.

Commenters proposed a variety of requirements: That the presiding officer provide copies of scheduling orders and modifications to scheduling orders to the Commission; that the relative resources of the parties be considered under § 2.332(b); that the presiding officer hold scheduling hearings within thirty (30) days of the commencement of every hearing; and a process for appeal directly to the Commission if a petitioner believes that a presiding officer is grossly mismanaging a hearing.

In the Commission's view, these suggestions are either unnecessary, or would have the Commission become too

closely involved in the detailed management of individual hearings. For example, the Commission does not believe that it should be monitoring on a day-by-day basis the scheduling orders of the presiding officer; the Commission has already provided for time limits and suggested schedules, as applicable, in Part 2. Any party that is aggrieved by the scheduling determinations of a presiding officer or by the failure of a presiding officer to adhere to the general scheduling guidance of the Commission may always submit an appropriate motion to the Commission. Accordingly, the Commission declines to adopt these case management suggestions.

Section 2.332(a)(1) was corrected in the final rule to indicate that the presiding officer's scheduling order may also modify the times for disclosure under § 2.336.

Section 2.333—Authority of the Presiding Officer To Regulate Procedure in a Hearing

In response to a comment that the Commission's Policy Statement on the conduct of adjudications should be codified, the Commission has determined that a requirement for filing of cross-examination plans in conjunction with requests/motions to conduct cross-examination should be added to the generally-applicable provisions of Subpart C. Accordingly, § 2.333(c) has been added to the final rule, requiring the presiding officer to require each party or participant who wishes to conduct cross-examination to file a cross-examination plan. The provisions in § 2.333(c) were drawn from § 2.711(c). In addition, the Commission added paragraph (d) in the final rule requiring the presiding officer to ensure that each party or participant who is permitted to conduct cross-examination conducts its cross-examination in conformance with its cross-examination plan. Finally, the Commission modified paragraph (a) to authorize the presiding officer to strike unreliable or immaterial evidence.

Section 2.334—Schedules for Proceedings

In response to a commenter, the word ''residing'' was changed to ''presiding'' officer.

Section 2.336—General Discovery

In response to comments, the Commission modified § 2.336(a)(1) to make clear that the names of only those experts whom the party may rely upon as a witness need be disclosed. Paragraph (a)(4) was deleted, inasmuch as the scope of documents to be provided under the proposed rule, viz., those that ''provide direct support for, or opposition to, the application or other proposed action that is the subject of the proceeding,'' extended beyond the scope of the contested issues in the proceeding. On the other hand, paragraph (b)(5) was revised to clarify that the NRC staff must provide a list of ''otherwise-discoverable'' documents for which the NRC staff asserts a claim of privilege or protected status.

In reviewing § 2.336, the Commission determined that the requirement in paragraph (a)(2) for disclosures of persons whom a party believes ''is likely to have discoverable information relevant to the admitted contentions'' is unnecessary, inasmuch as further discovery under Subpart C is not available. Accordingly, the final rule does not include this disclosure provision (however, this disclosure requirement is retained in § 2.704(a)(1) of Subpart G, inasmuch as Subpart G provides opportunities for additional discovery).

The Commission modified § 2.336(b) to make clear that the NRC staff's obligations with respect to a hearing file ordinarily do not apply to proceedings conducted under Subpart J. In Subpart J, the hearing file would essentially duplicate the function of the electronic docket and the LSN; hence there is no reason for the NRC staff to also maintain a hearing file.

Section 2.337—Evidence at a Hearing

A commenter suggested that the provisions of § 2.711(e), (f), (g), (h) and (i) of the proposed rule should be relocated to Subpart C, inasmuch as these are general provisions governing evidence which apply to all hearing tracks. Proposed § 2.711(e) (f), (g), (h) and (i) were drawn from former § 2.743(c) through (f), (g) and (i), and address matters relating to evidence, including admissibility, objections, and offers of proof. The Commission generally agrees with the commenter, and has relocated the provisions in proposed § 2.711 from Subpart G to Subpart C in a new § 2.337 (with proposed §§ 2.337 through 2.347 being renumbered in the final rule).

However, in response to comments submitted on both the 1998 Policy Statement on adjudicatory procedures and the proposed rule expressing concerns about delays in hearings associated with the submission of SERs and EISs, the Commission has reconsidered its current regulatory provisions with respect to NRC staff documents, including the provision in proposed § 2.711(i). As discussed earlier, commenters on the 1998 Policy Statement were concerned that late completion of the SER and EIS could result in delays in discovery and the conduct of the hearing. In addition, a nuclear industry commenter on the proposed rule suggested that the regulations should specifically direct that final NRC staff documents not be required before adjudication of safety and environmental contentions; and that the Commission establish procedures for scheduling orderly and final resolution of contested health and safety and environmental issues in adjudicatory proceedings independent of the NRC staff's scheduled completion of issuance of an SER or EIS. The commenter argued that, if necessary, the NRC staff could be directed to prepare statements of position or ''partial'' SERs or EISs on contested issues.

The Commission recognizes that the language of proposed § 2.711(i) (former § 2.734(g)), may be read to require the submission of the SER and EIS in a proceeding even if there are no contentions bearing on one of those documents, or if the NRC staff was prepared to proceed on a safety matter in advance of completion of a final SER. The Commission also recognizes that, but for the language of that paragraph, the staff could prepare testimony and take a final position on contested safety matters if its safety review has been completed in areas relevant to those contested matters. In this fashion, contested safety issues may be resolved without a completed SER. On the other hand, the NRC staff's practice has been to prepare relatively complete SERs without preparation of separate documents that specifically address matters in controversy. Nor should SERs be required to address matters in controversy as such, inasmuch as such a function is extraneous to the NRC Staff's primary authority and responsibility, viz., to review and judge the public health and safety of the applicant's proposed action.

By contrast, a final EIS is ordinarily necessary before the NRC staff may take a position on matters in controversy related to the environment and/or the adequacy of the EIS under the current regulations in 10 CFR Part 51. Inasmuch as the adequacy of the EIS is a matter which may be a subject of contention in a licensing proceeding, the EIS must be a part of the hearing record whenever the adequacy of the EIS is a matter in controversy in a proceeding.

Nonetheless, the Commission recognizes the potential for hearing delays while the NRC staff prepares an SER or EIS to support its position as a party in a proceeding. Therefore, the Commission has decided to address concerns over potential hearing delays

due to the need for staff documents as follows.

First, to avoid delays where litigation of a contention is dependent upon some NRC staff action, the Commission will direct the NRC staff to develop internal management guidance and procedures to support timely NRC staff participation in hearings, including early preparation of testimony and evidence to support the NRC staff's position on a contention/controverted matter.

Second, the Commission is including in § 2.337(g) new language which supersedes the language of proposed § 2.711(i) (former 2.743(g)) addressing the admission into evidence of NRC staff documents. Section 2.337(g)(1) provides that in proceedings involving an application for a facility construction permit, the NRC staff shall offer into evidence the ACRS report, the NRC's safety evaluation, and any environmental impact statement (EIS) prepared under 10 CFR Part 51. The need for these documents in every production and utilization facility construction permit proceeding stems from the requirement in Section 189.a.(1)(A) for a mandatory hearing for construction permits. In proceedings involving applications for other than a construction permit for a production or utilization facility, where the NRC staff is a party, § 2.337(g)(2) requires the NRC staff to offer into evidence any ACRS report on the application, at the discretion of the NRC staff either the safety evaluation prepared by the staff and/or the NRC staff statement of position on the matter in controversy provided to the presiding officer (see the fourth item below), and the EIS or environmental assessment (EA) if there are contentions/controverted matters with respect to the adequacy of the EIS or EA. This requirement applies to, for example, licensing hearings conducted under Subpart L, and all hearings conducted under Subpart G. By contrast, if the NRC staff is not a party in such proceedings, the NRC staff shall offer into evidence, and provide (with the exception of any ACRS report) one or more sponsoring witnesses, for any ACRS report on the application, at the discretion of the NRC staff the safety evaluation prepared by the NRC staff and/or the NRC staff statement of position on the matter in controversy provided to the presiding officer, and the EIS or environmental assessment (EA) if there are contentions/controverted matters with respect to the adequacy of the EIS or EA.

Third, the Commission has made a number of changes to §§ 2.1202 and 2.1210 to clarify the distinction between the presiding officer's decisionmaking on matters in controversy in Subpart L proceedings and the NRC staff's separate review of the proposed action, and to facilitate the presiding officer's timely resolution of contested matters in those Subpart L proceedings in which the NRC staff has chosen not to participate as a party. Section 2.1202(a) has been modified to require the NRC staff to provide a ''statement of position'' on matters in controversy as part of its notice to the presiding officer and parties of the NRC staff's action on the application or the underlying regulatory matter which is the subject of the hearing. This ensures that where the NRC staff takes an action before the presiding officer issues its decision (as the NRC Staff is authorized to do under § 2.1202(a)), the presiding officer and parties have the benefit of the NRC staff's views and explanation as to why, notwithstanding the pendency of matters in controversy, the NRC staff believes it is safe to take the action. It also provides information that may be useful to the presiding officer for his or her determination on whether to direct the staff to participate as a party on one or more contentions. To ensure that the Commission is the final agency arbiter where a presiding officer's decision is inconsistent with the NRC staff's notice of position and action under § 2.1202(a) and the NRC has not participated as a party, Section 2.1210(a)(ii) has been added requiring the Commission to review a presiding officer's initial decision if it is inconsistent with the NRC staff's action taken under § 2.1202(a). Section 2.1403 was revised, parallel with § 2.1202, to ensure that the presiding officer is aware of the NRC staff's action on the application/contested matter. However, neither §§ 2.1406 nor 2.1407 were revised to be parallel with § 2.1210(a)(ii), inasmuch as under § 2.1406(b), the presiding officer's decision in a Subpart N proceeding must be transmitted to the Commission for its sua sponte review. Hence, in Subpart N the Commission has the opportunity to review any inconsistency between the NRC staff's action and the presiding officer's decision, and take any necessary action, without awaiting an appeal by a party.

Finally, § 2.1210 is modified to add a new paragraph (e), and § 2.1407 is modified to add a new paragraph (c), in order to clarify that once an initial decision becomes final, the Secretary shall transmit the decision to the NRC staff for action in accordance with the decision.

Section 2.338—Settlement of Issues; Alternative Dispute Resolution (§ 2.337 in Proposed Rule)

The Commission has long encouraged the resolution of contested issues in licensing and enforcement proceedings through settlement, consistent with the hearing requirements of the Atomic Energy Act. *See* Statement of Policy on Conduct of Licensing Proceedings, CLI–81–8, 13 NRC 452 (45 FR 28533; May 27, 1981); Policy Statement on Alternative Means of Dispute Resolution (57 FR 36678; Aug. 14, 1992). In this rulemaking, the Commission considered expanding the role of alternative dispute resolution (ADR) in NRC adjudications. ADR can be defined as any technique that results in the conciliatory resolution of a dispute, including facilitation, mediation, fact finding, mini-trials, early neutral evaluation, and arbitration. Although ''unassisted'' negotiation to resolve disputes has long been effectively used in resolving disputed matters before NRC tribunals, the focus of the ADR Act, and the efforts of the Interagency Working Group on Alternative Dispute Resolution chaired by the Attorney General (Interagency Working Group), has been on ''formal'' ADR techniques that require the use of a third party neutral. The Commission's consideration of ADR techniques for use in the hearing process also focuses on these formal ADR techniques. Although the Commission believes that a broad array of ADR options could be made available to the parties in an NRC proceeding, its view at the proposed rule stage was that ''non-binding'' techniques, such as mediation, would be the most appropriate. For example, mediation is a process by which an impartial third party—a mediator—facilitates the resolution of a dispute by promoting a voluntary agreement by the parties to the dispute. The parties are free to develop a mutually acceptable resolution to their dispute. The role of the mediator is to help the parties reach this resolution. The mediator does not decide the case or dictate the terms of a settlement. In addition to the foregoing, in response to suggestions by several workshop participants, the Commission indicated that it was considering providing further guidance on the use of alternative dispute resolution (ADR) as part of its hearing procedures.

In considering expanding the role of ADR in NRC adjudications, the Commission's focus is consistent with the NRC's continuing participation in the activities of the Interagency Working Group, as well as with the Administrative Dispute Resolution Act

of 1996 (ADR Act). The Working Group was established to facilitate the implementation of a May 1, 1998, memorandum from President Clinton that directed all executive departments and Federal agencies to develop dispute resolution programs. Nonetheless, the Commission recognizes that because of the Commission's statutory responsibility under the AEA to make required public health and safety findings, the use of ADR may not be appropriate in all circumstances.

Section 2.337 of the proposed rule would not only have consolidated the former provisions in part 2 on settlement (10 CFR 2.203, 2.759, 2.1241), it would also have provided guidance on the use of settlement judges as mediators in NRC proceedings. The Commission previously endorsed the appropriate use of settlement judges in Rockwell International Corp., CLI–90–05, 31 NRC 337 (1990). The proposed rule was modeled on a provision in the Model Adjudication Rules prepared in 1993 for the Administrative Conference of the United States (ACUS). *See* Cox, The Model Adjudication Rules, 11 T.M. Cooley L. Rev. 75 (1994). The Commission sought public comment on the text of proposed § 2.337 as well as on the following questions:

- Should the Commission formally provide for the use of ADR in its hearing process?
- Should the use of ADR be codified in the Commission's regulations or provided for in some other manner, such as a policy statement?
- At what stage of the hearing process should an opportunity for ADR be provided?
- What types of issues would be amenable to resolution through ADR? What types of issues should not be considered for resolution through ADR?
- How should the use of ADR operate in the context of the hearing process? Who could propose its use? What should be the role of the presiding officer? Who should be parties to the ADR process? What should be the role of the NRC staff in the ADR process? What happens to the proceeding while the ADR process is being implemented? How would the resolution of a dispute be incorporated into the hearing process? What should the role of the Commission be in the ADR process?
- Should there be a source of third-party neutrals other than settlement judges appointed from the members of the Atomic Safety and Licensing Board Panel to assist in the ADR process, such as the roster of neutrals established by the U.S. Institute for Conflict Resolution or the National Energy Panel of the American Arbitration Association? How should such individual neutrals be selected? What arrangements should be made to compensate neutrals for their services?

A wide range of comments were received on ADR. Most commenters supported Commission efforts to encourage the use of ADR, but all indicated that ADR should not be required. While a commenter indicated that a proceeding should be suspended during ADR, other commenters argued that the use of ADR should not upset the hearing schedule. The Commission continues to believe that the use of ADR has the potential to eliminate unnecessary litigation of licensing issues, shorten the time that it takes to resolve disputes over issues, and achieve better resolution of issues with the expenditure of fewer resources. However, the Commission agrees that parties should not be forced to use ADR, and the final rule continues to make the use of ADR subject to voluntary agreement of all parties to any given contention. The Commission also believes that hearings should continue while ADR is ongoing, unless all parties agree to suspend the hearing and present an appropriate motion to the presiding officer. Thus, § 2.338 remains largely unchanged from the text of proposed § 2.337.

Section 2.337(i) of the proposed rule provided that a settlement or compromise must be embodied in a decision or order ''settling and terminating the proceeding.'' However, some settlements or compromises may resolve only some of the contentions/controverted matters, and may not result in termination of the proceedings. Accordingly, the Commission removed that phrase in § 2.338(i) of the final rule.

Section 2.340—Initial Decision in Contested Proceeding (§ 2.339 in Proposed Rule)

A commenter proposed that the Commission incorporate into this section the requirement that a presiding officer refer to the Commission for its approval the presiding officer's determination under § 2.340 (formerly § 2.760a) that a matter not placed into controversy by the parties constitutes a serious safety, environmental, or common defense and security matter which should be examined and decided by the presiding officer. The Commission agrees that the Commission's practice should be codified into part 2, since this is consistent with the direction of the Commission as announced in the Policy Statement of Conduct of Adjudicatory Proceedings (63 FR 41872; August 5, 1998) [15] which is reflected in § 2.340(a).

A public citizen commenter argued that proposed § 2.342 (final § 2.343), which provides for oral argument on a petition for review in the Commission's discretion, is redundant to proposed § 2.340(c)(1), and therefore should be deleted. The Commission agrees that these two provisions are redundant, but has instead decided to delete § 2.340(c)(1) to maintain consistency with the organization of § 2.331.

Section 2.341—Review of Decisions and Actions by Presiding Officer (§ 2.340 in Proposed Rule)

A commenter pointed out that proposed § 2.340(b)(1), which provided that the filing of a petition for review is mandatory before a party will be deemed to have exhausted its administrative remedies for purposes of seeking judicial review, is inconsistent with current case law. The Commission does not agree with the commenter's view of the current law. However, the complex jurisdictional issues raised need not be resolved here. The Commission has simply modified § 2.341(b)(1) to provide that unless otherwise authorized by law, a party must file a petition for Commission review before seeking review of an agency action. Analogous changes were also made to §§ 2.1212 and 2.1407.

In response to a separate comment that proposed § 2.340(c)(1) and § 2.342 were redundant with respect to addressing the subject of oral arguments, the Commission removed the reference to oral arguments in § 2.341(c)(1) of the final rule. The last sentence in § 2.341(d) has been corrected to refer to the standard for reconsideration in § 2.323(e).

Section 2.348—Separation of Functions (§ 2.347 in Proposed Rule)

The proposed rule contained a slight modification to paragraph (b)(3) intended to reflect the use of ''plain English.'' The Commission has decided that the language in former § 2.781(b)(3), from which this provision was drawn, is sufficiently clear and has decided to use that language in the final rule.

Section 2.390—Public Inspections, Exemptions, Requests for Withholding

The Commission corrected § 2.390 (former § 2.790) to include a footnote in paragraph (a) that was inadvertently

[15] As indicated in the Policy Statement, the Commission's policy directive is based upon the Commission's action in Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI–81–24, 14 NRC 614 (1981). 63 FR 41872, 41874 (third column).

removed from former § 2.790(a) by the Office of the Federal Register. The footnote provides that ''final NRC records and documents'' do not include handwritten notes, or draft records and documents.

(g) Subpart G.

The Commission proposed revising Subpart G by consolidating the provisions of general applicability in new Subpart C. As a result, Subpart G would contain only the provisions for the conduct of formal adjudications. Former § 2.705, which provides for the filing of an answer to a notice of hearing, is removed in the final rule; experience has shown this provision to be largely superfluous. For the same reason, former § 2.751a, which provides for a special prehearing conference in connection with construction permit and operating license proceedings, and former § 2.761a, which provides for separate hearings and decisions, are removed. The provisions of former § 2.752 are redesignated as § 2.318 in order to provide for the conduct of a prehearing conference to accomplish the same purposes as those in former § 2.751a. The provisions of former § 2.765, immediate effectiveness of an initial decision directing issuance or amendment of a license under part 61 of this chapter, are relocated to the revised Subpart L, which sets forth the provisions applicable to informal proceedings such as those under part 61.

The Commission requested public comment on whether Subpart G should be used in all initial power reactor construction permit and operating license proceedings, rather than in such proceedings involving a ''large number'' of ''complex issues.'' The public comments received and the Commission's resolution of this matter are addressed earlier in ''Complex Issues in Reactor Licensing'' under the discussion of § 2.310.

Section 2.703—Examination by Experts

In response to comments suggesting that cross-examination must be controlled, the Commission has decided to add an additional requirement that a party seeking permission to use an expert to conduct cross-examination should file a proposed cross-examination plan in accordance with § 2.711(c). Filing of a proposed cross-examination plan would assist the presiding officer in determining whether the expert proposed to conduct cross-examination is capable of doing so in a manner that will facilitate the development of a concise and adequate record on contested matters.

Section 2.704—Discovery: Required Disclosures

A commenter noted that paragraph (b)(3) failed to include the words, ''30 days after,'' from Rule 26 of the Federal Rules of Civil Procedure, and that these words should be added to the final rule. The Commission agrees that these words should be included, and the phrase, ''the disclosures must be made within thirty (30) days after'' has been added to the final version of § 2.704.

Section 2.705—Discovery—Additional Methods

A commenter noted that a footnote in proposed § 2.706(b)(1) did not appear to be relevant to that section. The footnote has been designated as a footnote to § 2.705(g)(4), and a typographic error corrected in the footnote.

Section 2.709—Discovery Against NRC Staff

The Commission has clarified § 2.709 to make clear that the Executive Director for Operations (EDO) may delegate his responsibilities to respond and object to discovery requests, and to respond to discovery orders issued under § 2.709(e) and (f) by a presiding officer, and that a presiding officer's discovery order to the EDO should reflect the authority and discretion of the EDO to so delegate his responsibilities. The final rule also corrects a reference to § 2.704(c) and (e) in the proposed rule; the correct reference should be to § 2.705(c) and (e), which contains the provisions requiring protective orders and the duty to update earlier discovery responses.

Section 2.710—Summary Disposition Motions

Section 2.710 of the proposed rule would have expanded the presiding officer's discretion not to consider a summary disposition motion unless he or she determines that resolution of the motion will serve to expedite the proceeding. The Commission requested comment on whether the proposed revision, or some other standard, should be adopted. Two comments were received on proposed § 2.710 in this regard. One commenter stated that although the presiding officer should be provided some discretion to rule on motions for summary disposition, as a general matter the presiding officer should rule on the motion unless delay would result. Another commenter opposed the proposed rule, arguing that rather than allowing such discretion the Commission should expand the use of summary disposition to resolve issues even where there is a genuine issue of material fact.

The Commission continues to believe that in many instances summary disposition involves an additional delaying step in a proceeding, and that a presiding officer's consideration of such motions at a point in time close to the scheduling of a hearing can divert all parties' and the presiding officer's attention from a hearing. These considerations in part underlies the Commission's admonition in its 1998 Policy Statement on Conduct of Adjudicatory Proceedings that Licensing Boards should forego the use of motions for summary disposition except upon a finding that such a motion will likely substantially reduce the number of issues to be decided, or otherwise expedite the proceeding. While the final rule remains generally unchanged from the proposed rule in terms of codifying that admonition (although moved to paragraph (d) of the final rule), the Commission also believes that if summary disposition motions are to be used, they must be filed soon after the end of discovery so that the presiding officer may have an opportunity to review the motions and advise the parties whether the motions will be granted in whole or part. Therefore, the Commission is adopting a number of additional provisions that will govern the filing and determination of summary disposition motions, in order to ensure that such motions serve to expedite the proceeding and do not distract the parties' and the presiding officer's attention from preparation for the oral hearing.

Section 2.710(a) of the final rule requires that all summary disposition motions must be filed no later than twenty (20) days after the close of discovery under §§ 2.702 through 2.708. By requiring a party to file its summary disposition motion soon after discovery is completed, the presiding officer will be able to determine whether the hearing may be scheduled in the near future (if no motions are submitted), or whether allowances must be made for the submission and resolution of such motions (c.f., § 2.329, with respect to a prehearing conference, and § 2.332, requiring the presiding officer to issue a scheduling order). The Commission believes that twenty (20) days is sufficient time to assess information obtained as the result of discovery and prepare summary disposition motions.

The Commission is also adopting a provision in § 2.710(e) requiring the presiding officer to issue an order no later than forty (40) days after any responses to the summary disposition motion are filed, indicating whether the motion is granted or denied, together with the bases for the presiding officer's

determination. The Commission is retaining the provisions set forth in the final two sentences of proposed § 2.710(a) allowing the presiding officer not to consider a summary disposition motion which the presiding officer believes would not expedite the proceeding if the motion were granted, and to either summarily dismiss or hold in abeyance a summary disposition motion filed shortly before or during the oral hearing, if the presiding officer believes that substantial resources must be diverted to adequately respond to the motion. The provisions, however, have been moved into new paragraph (d)(1) of § 2.710.

(h) Subpart I.

The Commission is adopting a conforming change to § 2.901to specify that the procedures for handling Restricted Data and National Security Information in Subpart I apply to proceedings under subparts G, J, K, L, M, and N. Section 2.901, which specified that Subpart I procedures apply only to proceedings conducted under subpart G, was adopted in 1962, and underwent minor changes in 1976 but was not modified to reflect the Commission's adoption of subparts J, K, L, and M. The procedures in Subpart I for handling Restricted Data and National Security Information are generic and appropriate for use in NRC adjudicatory proceedings. However, it is highly unlikely that the Commission will choose to hold Subpart O legislative-style hearings requiring the handling and consideration of Restricted Data and National Security Information. Accordingly, the final rule specifies that Subpart I procedures will apply to proceedings under subparts G, J, K, L, M, and N. However, should the Commission determine that access to Restricted Data and National Security Information should be provided in Subpart O legislative-style hearings, the Commission may specify the use of Subpart I procedures under § 2.1502(c)(6).

In a conforming change, the definition of a ''party'' in § 2.902(e) is amended to refer to §§ 2.309 (former § 2.714) and 2.315 (former § 2.715).

(i) Subpart J.

The Commission proposed a number of changes to §§ 2.1000, 2.1001, 2.1010, 2.1012, 2.1013, 2.1014, 2.1015, 2.1016, 2.1018, 2.1019, 2.1021, and 2.1023. The changes are intended to: (1) Correct references to rules of general applicability in existing Subpart G that are being transferred to Subpart C, and (2) eliminate redundant or duplicate provisions in Subpart J that would be covered by the generally applicable provisions in Subpart C.

One commenter suggested that § 2.1013(b) be clarified to provide that exhibits used in connection with cross-examination need not be tendered in advance to opposing parties. The Commission declines to adopt the commenter's suggestion. The Commission has adopted in Part 2 the principle of broad disclosure of relevant documents and information to all parties. That principle is manifested in Subpart J by the requirement for the Licensing Support Network (LSN), in which the parties are to file certain documents as described in Subpart J, including §§ 2.1003 and 2.1004. Thus, all documents that may be used in cross-examination must be disclosed to other parties. However, nothing in Subpart J requires that such documents must be identified as to their intended use by a party in the proceeding. Therefore, an exhibit to be used in cross-examination need not be identified as such, nor must that exhibit be marked to show the portions of the exhibit to be used in cross-examination. Accordingly, all parties will have access to all relevant documents, including those to be used in cross-examination, without knowing which document (if any), or portion thereof, may be used in cross-examination.

The Commission has adopted the proposed revision to Subpart J with some additional conforming and correcting changes. Section 2.1000 is revised to provide for consistent organization and terminology among all scope statements in part 2. In addition, § 2.1000 is revised to add references to provisions of Subparts C and G, where existing § 2.1000 erroneously omitted reference to the parallel provisions in former Subpart G. Section 2.1000 now references §§ 2.301 and 2.701, which authorize the Commission to use alternative procedures to the extent that the conduct of military or foreign affairs functions are involved; § 2.317(a), which permits separate hearings in a proceeding; § 2.324, which authorizes the presiding officer to determine the order of procedure; and § 2.710, which addresses the use of summary disposition motions.

Conforming changes are made in § 2.1001 to provide correct references to §§ 2.309, 2.315, and 2.1021, and to use consistent terminology. Section 2.1006 is conformed to refer to § 2.390. Section 2.1018 is conformed to refer to § 2.708. A conforming change is made to § 2.1022 to correct a reference to the general provisions governing late-filed contentions in § 2.309(c). Finally, the newly-adopted provisions in Subpart J are changed to be consistent with Subpart C of this final rule and newly-adopted 10 CFR Part 63 (66 FR 55732; Nov. 2, 2001), by referring to a ''construction authorization'' for a HLW geologic repository, and a ''license to receive and possess'' HLW at a HLW geologic repository.

(j) Subpart K.

The Commission proposed several simple changes to §§ 2.1109 and 2.1117. In addition, § 2.1111 on discovery would be removed because discovery for Subpart K hybrid hearings will be addressed by the general discovery provisions of Subpart C. The proposed changes were intended: (1) To conform Subpart K to the rules of general applicability of Subpart C, particularly with regard to the need to request hybrid hearing procedures in the petition to intervene, and (2) to make it clear that a hearing on any contentions that remain after the oral argument under Subpart K will be conducted using the informal hearing procedures of proposed Subpart L.

A commenter argued that, because the first spent fuel pool capacity expansion license amendment case to use Subpart K, Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), LBP–00–12, 51 NRC 247 (2000) (Shearon Harris), took over two (2) years to reach resolution, many changes should be made to Subpart K which are not being made at this time. Specifically, the commenter suggested that § 2.1113(a) should allow issues of whatever nature that are identified for oral argument to be heard together; § 2.1113(b) should allow experts who prepare affidavits in support of written submissions to respond directly to questions posed by the hearing examiner at the oral argument; § 2.1115(a) should establish firm deadlines after oral argument for the presiding officer to rule on whether any issues remain to be heard in an adjudicatory hearing, and all issues admitted should be heard together; and § 2.1115(b) should specify that the party raising an issue of fact or law for consideration has the burden of proof as to whether the issue meets the standards for holding such a hearing.

The Commission does not agree with the commenter's suggestion that all issues be heard together at oral argument, and resolved in an adjudicatory hearing if one is held. The commenter did not explain how the lack of provisions in Subpart K addressing these matters resulted in unnecessarily prolonging the time needed for resolution in Shearon Harris.

On the other hand, the Commission agrees with the commenter's observation that ''restrictions on oral argument''—presumably the fact that it is inappropriate for attorneys

representing their clients to make technical presentations—can make it difficult for parties to respond to interrelated technical issues. However, the Commission disagrees with the commenter's apparent proposed solution, viz., allowing experts to respond directly to questions posed by the presiding officer at the oral hearing. Rather than adapting a process to allow oral testimony by experts which would substantially depart from the statutory mandate behind Subpart K, the Commission has adopted an approach which provides an opportunity for each party to provide written responses to the written summaries and supporting facts and data submitted by the other parties. Accordingly, § 2.1113 has been modified in the final rule to provide that each party must submit its summary of all facts, data and arguments, together with the underlying facts and data, twenty-five (25) days before the oral hearing, rather than fifteen (15) days as provided in the proposed rule. Ten (10) days before the oral argument, each party may, but is not required to, submit a reply limited to addressing the written summaries, facts, data and arguments submitted by any of the other parties.

The Commission also agrees with the commenter that Subpart K should be clarified to state that while the applicant for the spent fuel pool capacity expansion license amendment bears the ultimate burden of proof (risk of non-persuasion) on admitted contentions, the proponent of an adjudicatory hearing bears the burden of demonstrating that the criteria in § 2.1115(b) have been met, and, accordingly, that an adjudicatory hearing should be held. This clarification, which is consistent with the Licensing Board's decision in Shearon Harris, 51 NRC at 254–55, is reflected in new § 2.1117. The text of proposed § 2.1117, ''Applicability of other sections,'' is now included in new § 2.1119.

The Commission made conforming and correcting changes in § 2.1103 to provide for consistent organization and terminology among all scope statements in Part 2.

(k) Subpart L.

The NRC's experience with the informal hearing procedures of the existing Subpart L has shown that some aspects are cumbersome and inefficient in the development of a record. To address these problems, the Commission proposed replacing the existing Subpart L in its entirety with new provisions that would: (1) Shift the focus of Subpart L to informal oral hearings, (2) require submission of contentions, and (3) provide the opportunity to pose questions indirectly to witnesses by proffering proposed questions to the presiding officer. The Commission requested comment on this shift in emphasis to more informal hearings conducted under the proposed revised procedures of Subpart L.

A large number of comments were received on Subpart L. Nearly all the comments expressed displeasure with Subpart L, either in its current form or as proposed to be reconstructed. However, the reasons for the discontent fell into two general categories. Citizen groups and private individuals argued that Subpart L, by moving further away from the procedures embodied in Subpart G, will effectively eliminate public participation by substituting a more burdensome and expensive procedure. The proposed elimination of cross-examination was also identified as objectionable by this group of commenters. By contrast, industry commenters generally not only supported the elimination of cross-examination, but two commenters argued that the Commission should go further by eliminating the requirement for an oral hearing. Under their proposal, an oral hearing would be held only if the presiding officer determined, after reviewing the written presentations, that an oral hearing is necessary.

The Commission believes that its Subpart L strikes the appropriate balance between public confidence in the Commission's hearing process, and the need to expeditiously resolve contested matters. As discussed earlier with respect to the use of informal procedures, the Commission does not believe that a large number of NRC hearings involve factual disputes for which the expanded panoply of discovery procedures in Subpart G are necessary. Nor does the Commission believe that there are a large number of hearings where the credibility of eyewitnesses is an issue with respect to either the occurrence of a material past event, or the motive or intent of a party, such that cross-examination is an appropriate tool for issue resolution. On the other hand, the Commission believes that if the presiding officer has the opportunity to examine the witnesses, the presiding officer will be able to gain a better understanding of the testimony, and efficiently oversee the development of evidence relevant to the resolution of the contested matter in the hearing. Written follow-up questions propounded by a presiding officer are, at best, an inefficient substitute for the ''back-and-forth'' ability of a presiding officer to question witnesses orally, and experience indicates consumes more time and resources of the presiding officer and parties. For these reasons, the Commission concludes that an oral hearing should be provided for in a Subpart L proceeding, but that cross-examination should ordinarily not be permitted.

Although cross-examination by the parties generally will not be permitted in Subpart L proceedings and all of the more informal hearing tracks, the Commission emphasizes that the ultimate burden of proof (risk of non-persuasion) remains with the applicant and/or the proponents of particular actions in these proceedings. Moreover, a party sponsoring a contention bears the burden of going forward with evidence sufficient to show that there is a material issue of fact or law, such that the applicant/proponent must meet its burden of proof. Where cross-examination is not permitted, each party must bear its burden by going forward with affirmative evidentiary presentations and testimony, its rebuttal evidence and rebuttal testimony, and well-developed questions that the party suggests the presiding officer pose to the witnesses. Thus, the responsibility for developing an adequate record for decision is on the parties, not the presiding officer. The presiding officer is responsible for overseeing the compilation of the record and for ensuring that the record is sufficiently clear and understandable to the presiding officer such that he or she can reach an initial decision. However, the parties are responsible for ensuring that there is sufficient evidence on-the-record to meet their respective burdens. The presiding officer will take the compiled record, clarified by action of the presiding officer as necessary so that it is understandable for the presiding officer's deliberations, and based upon that record determine whether the parties have met their respective burdens.

Nonetheless, to provide for the possibility in a Subpart L proceeding that, in some instances in a particular proceeding, cross-examination by parties may prove to be the best way of creating an adequate record for decision in certain situations, § 2.1204(b) allows the presiding officer to permit cross-examination upon motion of a party if the presiding officer finds that cross-examination is necessary for development of an adequate record. To ensure that cross-examination will be focused on disputed material issues of fact, § 2.1204(b) has been modified from the proposed rule to add a requirement that a motion/request for cross-examination must include a proposed cross-examination plan. The cross-

examination plan provisions in § 2.1204(b) were derived from the requirements in § 2.711(c). Furthermore, under the generally-applicable requirement in § 2.333, parties granted permission to conduct cross-examination must conduct their cross-examination in conformance with the cross-examination plan filed with the presiding officer.

The Commission also requested public comment on whether the final rule should provide explicitly for the option of the Commission or the Chief Administrative Judge to establish three-judge panels on a case-by-case basis, *e.g.*, in cases where there are likely to be both significant technical and legal issues to be resolved in the hearing.

Two comments were received on this matter. One commenter indicated that there was no need to expressly provide for appointment of a three-judge panel, since §§ 2.313 and 2.321 would already allow the Commission or Chief Administrative Judge to appoint a three-judge panel. Another commenter stated that it may be appropriate to appoint three-judge panels for initial reactor construction permit and operating license cases, as well as cases in which there is likely to be a large number of complex issues.

After reviewing the language of proposed §§ 2.313 and 2.321, the Commission agrees with the commenter that these sections provide sufficient flexibility for the Commission and Chief Administrative Judge to appoint three-judge panels in appropriate circumstances. The Commission also does not wish to limit in advance the circumstances for which the Commission or Chief Administrative Judge could appoint a single presiding officer. For these reasons, the Commission declines to adopt a further change to Part 2 addressing this subject, but notes that under revised § 2.313 the Commission and the Chief Administrative Judge are free to appoint a single presiding officer or a three-judge Atomic Safety and Licensing Board.

Several commenters asserted that § 2.1207 should be amended to address whether parties must submit in advance the questions they wish the presiding officer to pose to the witnesses, whether the questions must be exchanged with other parties, and whether parties may submit questions to the presiding officer at the oral hearing as the result of witnesses' testimony. The Commission has revised § 2.1207 to make clear that: (1) Questions must be submitted so that they are received by the presiding officer no later than five (5) days before the commencement of the hearing; (2) questions need not be exchanged with other parties; and (3) a party may not submit proposed questions to the presiding officer at the hearing, unless the presiding officer requests a party to submit such questions to assist the presiding officer in the parties' development of a sufficient record to permit a decision on the matters in controversy.

The Commission made conforming and correcting changes in § 2.1200 to provide for consistent organization and terminology among all scope statements in Part 2. In addition, the Commission revised § 2.1207 to ensure that a presiding officer treats proposed questions to be propounded to witnesses as confidential information until either the question is asked of the witness, or the presiding officer's initial decision is issued. Upon issuance of the decision, the presiding officer must transmit the questions to the Secretary so that they may be entered into the official record for the proceeding.

(l) Subpart M.

Sections 2.1306, 2.1307, 2.1308 (with the exception of paragraph (d)(2)), 2.1312, 2.1313, 2.1314, 2.1317, 2.1318, 2.1326, 2.1328, 2.1329, and 2.1330 are deleted because the substance of these sections is covered by rules of general applicability in new Subpart C. The final rule reinstates the language formerly contained in § 2.1308(d)(2), stating that Subpart M hearings are oral hearings, unless all the parties agree and file a motion that the hearing consist of written filings. The motion must be filed within fifteen (15) days of the service of the notice or order granting the hearing. This language was inadvertently designated as ''removed'' in the proposed rule, and the final rule correctly retains this language in § 2.1308.

No significant comments were received on the proposed changes, and the Commission has adopted proposed Subpart M without substantive changes. However, the Commission made conforming and correcting changes in § 2.1300 to provide for consistent organization and terminology among all scope statements in Part 2.

The Commission has corrected § 2.1315(a), so that the phrase, ''no generic issue,'' is revised to correctly read, ''no genuine issue.'' The Commission has also revised § 2.1323(d) in a manner similar to § 2.709, to clarify that a delegee of the Executive Director for Operations may designate the NRC personnel who will provide testimony in a Subpart M hearing.

(m) Subpart N.

New Subpart N is a ''fast track'' process for the expeditious resolution of issues in cases where the contentions are few and not particularly complex, and therefore may be efficiently addressed in a short hearing using simple procedures and oral presentations. This subpart may be used for more complex issues if all parties agree. Subpart N may be applied to all NRC adjudications except proceedings on uranium enrichment facility licensing, proceedings on the initial authorization to construct a high-level radioactive waste geologic repository, and proceedings for the initial issuance of a license to possess and receive HLW at a geologic repository operations area. In view of the simplified procedures and the expedited nature of the litigation involved, Subpart N allows an appeal as-of-right to the Commission so that the parties have a direct path to the Commission for review of the decision. The ''fast track'' procedures of Subpart N may be particularly useful for cases involving small materials licensees, where the parties want to be heard on the issues in a simple, inexpensive, and informal proceeding that can be conducted quickly before an independent decisionmaker. The Commission requested comments on the appropriate criteria for the use of Subpart N.

Several commenters stated that proposed § 2.310(h) would result in Subpart N being used too infrequently, because in a contested case the parties will probably not agree and it will be argued that the 2 day criterion will not be met. One commenter argued that the Commission should have only one informal track (other than Subparts K & M) and should simply state that the hearing should not take more than a specified number of days. Another commenter indicated that no specific set of criteria need to be defined in the rule for establishing whether a proceeding should be conducted under Subpart N other than a determination by the Commission, the Licensing Board or the presiding officer. The commenter instead proposed that § 2.310(h) be changed to allow the use of Subpart N if: (1) All parties agree to Subpart N; or (2) the Commission, the presiding officer, or the Licensing Board determines that the proceeding would demonstrably benefit from application of Subpart N. Another commenter indicated that a new § 2.310(i) should be added, specifying that Subpart N can be used for a portion of a hearing held under a different subpart if the Commission, the presiding officer or the Licensing Board determines that portion suitable for application of Subpart N.

The Commission believes that the procedures of Subpart N should be

limited to a relatively narrow set of proceedings where all parties agree, or where the hearing is expected to be concluded in two (2) days or less. The procedures were developed to permit a quick, relatively informal proceeding where the presiding officer could easily make an oral decision from the bench, or in a short time after conclusion of the oral phase of the hearing. The Commission is reluctant—absent all parties agreeing—to allow use in other circumstances where the issues are more complex or the hearing is drawn out over months. If experience shows that Subpart N is being underutilized, or that hearings are being conducted under other provisions such as Subpart L which, but for the 2-day limitation, would have been better conducted under Subpart N, the Commission will reconsider modifying or eliminating the 2-day limitation.

The Commission made conforming and correcting changes in § 2.1400 to provide for consistent organization and terminology among all scope statements in Part 2. The Commission also revised § 2.1407(a)(1) with respect to the need for filing an appeal with the Commission before seeking judicial review, consistent with the change to § 2.341(b)(1) discussed earlier.

(n) Subpart O.

As discussed earlier under II.A.2.(b), Commission Question 1, the Commission has decided to add a new Subpart O that will govern non-adversarial ''legislative hearings.'' The procedures in Subpart O are intended to provide a hearing forum where the Commission (or a designated presiding officer) may obtain information and differing stakeholders' perspectives on a policy issue.

The Commission could hold legislative hearings in its sole discretion in two situations delineated in Subpart O. First, the Commission may hold a legislative hearing in connection with a design certification rulemaking, either indicating as part of the notice of proposed rulemaking that it intends to hold a legislative hearing, or issuing a notice of its intent to hold a legislative hearing after reviewing the comments received on the proposed design certification rule.

Although this represents a change from former 10 CFR 52.51(b), which provided an opportunity for an informal hearing in connection with a **Federal Register** notice of proposed rulemaking for a design certification, the Commission expects that there will be little impact on the public with this change. No hearing request was submitted in any of the three design certification rulemakings to date. In addition, many of the significant generic issues associated with the first three design certification rulemakings were the subject of discussion in workshops and open meetings, so that public stakeholders could observe and provide comments on the issues before the proposed rule was published. This may have diminished the need for informal hearings as part of the design certification rulemaking. The Commission believes that providing for a discretionary ''legislative hearing'' using the procedures in Subpart O is consistent with the requirements of the AEA, inasmuch as the ''hearing'' contemplated by Section 189 for rulemakings is satisfied by opportunity for comment on the proposed design certification rule. Hence, any additional hearing, such as a legislative-style hearing under Subpart O, is an enhancement over what is legally required for rulemaking under either the AEA or the APA.[16]

The other circumstance where the Commission could decide to use a legislative hearing is where the presiding officer under § 2.335(d) has certified to the Commission a question regarding a waiver of the prohibition on consideration of a Commission rule or regulation in an agency hearing. Under the last sentence of § 2.335(d) (formerly § 2.758(d)), the Commission may ''direct further proceedings as it considers appropriate to aid its determination.'' The Commission believes that matters addressing the appropriateness of challenging or waiving existing Commission rules and regulations in a particular adjudicatory proceeding may raise the kinds of policy and regulatory issues which are suited for ''legislative hearings'' under Subpart O.

The procedures developed for this hearing are modeled to some extent upon the hearings held by Congress and other legislative bodies. Thus, under Subpart O, the Commission would determine the matters to be addressed in the legislative hearing; there would be no ''parties''—the Commission would normally determine the witnesses at the hearing (in a legislative hearing considering a petition under § 2.335, all parties to the proceeding will be invited to participate, as will interested States, governmental bodies, and affected Federally-recognized Indian Tribes participating under § 2.315(c)); the NRC staff need not participate; written testimony and exhibits would be filed; the Commission could have witnesses testify as a panel; and there would be no ''decision'' other than the Commission's final design certification rulemaking or the Commission's determination under § 2.335(d). The Commission's determination in these legislative hearings need not be based upon information developed solely in the Subpart O proceeding (inasmuch as AEA does not require NRC rulemakings to be ''on-the-record.'' Thus, only the most general procedures of Subpart C apply in the context of a Subpart O hearing.

(o) 10 CFR part 60.

In a conforming change, § 60.63(a) was revised to refer to Subpart J of part 2 instead of Subpart G, consistent with § 63.63(a) of the recently-adopted part 63 (66 FR 55732; Nov. 2, 2001). When § 60.63 was adopted in 1981 (46 FR 13971; Feb. 25, 1981), it referred to Subpart G inasmuch as Subpart J of Part 2 had yet to be adopted (54 FR 14925; May 14, 1989). The reference to Subpart G in § 60.63(a) should have been corrected to refer to Subpart J when Subpart J was adopted; thus, this final rule makes the necessary conforming change.

B. Section-by-Section Analysis

1. Implementation of Rule

The final rule will apply only to proceedings which are noticed on or after the effective date of the final rule. Current proceedings noticed before the effective date of the final rule will be governed by the former provisions of Part 2. If a decision is currently on appeal within the Commission, or to a Court of Appeals, and the decision is remanded to the NRC for further action, the remanded proceeding will continue to be governed by the former provisions of Part 2.

2. Introductory Provisions—Sections 2.1–2.8.

Conforming changes are made to §§ 2.2, 2.3, and 2.4 to reference the new section numbers in Part 2.

A new definition of ''presiding officer'' is added to § 2.4. Under this definition, a presiding officer may be the Commission, an administrative law judge, an administrative judge, an Atomic Safety and Licensing Board, or other person designated in accordance with the provisions of this part, presiding over the conduct of a hearing conducted under the provisions of this part. Section 2.313 sets forth the provisions governing which of these

[16] The Commission believes that the specific requirement for ''notice and opportunity for comment'' in the APA, 5 U.S.C. 553, is co-extensive with the AEA Sec. 189a(1)(A) requirement for a ''hearing'' in connection with a rulemaking. Therefore, satisfying the Sec. 189.a(1)(A) hearing requirement per se satisfies the APA notice and comment requirement. *Siegel* v. *AEC,* 400 F.2d 778, 785–86 (DC Cir. 1968).

entities may act as a presiding officer in any particular hearing.

3. Subpart A—Sections 2.100–2.111

Section 2.100—Scope of Subpart

Section 2.100 is corrected to remove the typographic error, ''alicense.''

Section 2.101—Filing of Application

Conforming changes are made to this section to reflect the new section numbers in Part 2, and paragraphs (a)(3)(ii) and (b) were modified to require that the applicant's notification of the availability of an application and/or environmental report should be accompanied by, inter alia, the email address, if one is available, of the designated applicant representative.

Section 2.102—Administrative Review of Application

Conforming changes are made to this section to reflect the new section numbers in Part 2.

Section 2.103—Action on Applications for Byproduct, Source, Special Nuclear Material, Facility and Operator Licenses

Section 2.103 is amended to include a reference to ''facility'' licenses in the title and the text.

Section 2.104—Notice of Hearing

Section 2.104 addresses how the Commission will provide notice to parties, the public and State, local governmental, and federally-recognized Tribal officials. Paragraph (e) is corrected to make clear that the NRC will provide notice to all parties and all other persons entitled to notice of hearing with respect to applications for construction authorization for a HLW repository under 10 CFR parts 60 and 63, and applications to receive and possess high-level waste at a HLW repository.

Section 2.105—Notice of Proposed Action

Section 2.105 addresses how the Commission will provide notices of proposed action if a hearing is not required. Paragraph (a)(5) is revised to clarify that the Commission will publish notice of proposed issuance of licenses and license amendments to receive and possess high-level waste at a geologic repository operations area under 10 CFR parts 60 and 63 if the license or amendment would authorize actions which may significantly affect the health and safety of the public, where a hearing is not otherwise required by law. Paragraph (a)(6) is revised to clarify that the Commission will publish notice of proposed issuance of an amendment to a construction authorization for a high-level radioactive waste repository under 10 CFR parts 60 and 63 if the amendment would authorize actions which may significantly affect the health and safety of the public, where a hearing is not otherwise required by law.

Section 2.106—Notice of Issuance

Section 2.106 addresses how the Commission will provide notice to the parties, the public, and State, local governmental, and federally-recognized Tribal officials of issuance of a license or amendment. Paragraph (d) was corrected to make clear that the NRC will provide notice with respect to any action on an application for construction authorization for a high level waste repository under 10 CFR parts 60 and 63, issuance of a license to receive and possess high-level waste at a HLW repository, or issuance of an amendment to such a license.

Section 2.107—Withdrawal of Application

This section describes how the Commission will process a withdrawal of an application by an applicant. The second sentence was changed to correctly state that if an application is withdrawn before the NRC issues a notice of hearing, the Commission dismisses the proceeding. The last sentence of this section was rewritten to make clear that the presiding officer determines the terms and conditions for withdrawal of an application after the NRC issues a notice of hearing.

Section 2.108—Denial of Application for Failure To Supply Information

Conforming changes were made to this section to reflect the new section numbers in part 2.

Section 2.110—Filing and Administrative Action on Submittals for Design Review or Early Review of Site Suitability Issues

Conforming changes were made to this section to reflect the new section numbers in part 2.

4. Subpart B—Sections 2.200—2.206

Section 2.206 is amended to provide the Secretary with the authority (formerly set forth in § 2.772(g)) to extend upon the Commission's motion the time for Commission review under § 2.206(c)(1) of a Director's denial of a petition submitted under § 2.206.

5. Subpart C—Sections 2.300–2.348, 2.390

Subpart C contains the rules of general applicability for considering hearing requests, petitions to intervene and proffered contentions, for determining the appropriate hearing procedures to use for a particular proceeding, and for establishing the general powers and duties of presiding officers for the NRC hearing process. The provisions of Subpart C generally apply to all NRC adjudications conducted under the authority of the Atomic Energy Act of 1954, the Energy Reorganization Act of 1974, and 10 CFR part 2.

A large part of Subpart C essentially restates and updates the substance of many of the rules of general applicability that were formerly contained in Subpart G. The Commission has prepared Table 1, which cross-references the new provisions in Subpart C and the renumbered Subpart G to the superseded provisions of Subpart G, and Table 2 which cross-references the superseded provisions of Subpart G to new Subparts C and G.

TABLE 1.—CROSS-REFERENCES BETWEEN NEW SUBPARTS C AND G AND OLD PROVISIONS OF SUBPART G

[NA = no comparable provision in former Subpart G. None = no substantive or editorial change; references to Part 2 sections are corrected]

New section	Old section	Description/modification
Cross-References to New Subpart C		
2.301	2.700a	Paragraph (b) on applicability is removed.
2.302	2.701	Addresses facsimile transmissions and electronic mail.
2.303	2.702	Clarified; no substantive change.
2.304	2.708, 2.709	Addresses electronic mail; modifies format requirements of documents.

TABLE 1.—CROSS-REFERENCES BETWEEN NEW SUBPARTS C AND G AND OLD PROVISIONS OF SUBPART G—Continued

[NA = no comparable provision in former Subpart G. None = no substantive or editorial change; references to Part 2 sections are corrected]

New section	Old section	Description/modification
2.305	2.712	Addresses facsimile and electronic mail. Adds provision requiring service by most expeditious means, and provision on service on NRC staff when not a party. Deletes provisions on proof of service and free copying.
2.306	2.710	Addresses computation of time for electronic mail and facsimile transmissions.
2.307	2.711	Clarified.
2.308	NA	New section on Secretary's duty to forward petitions/requests for hearing to Commission or Chief Judge.
2.309	2.714	Changes requirement for standing; requires filing of contentions with petition/request for hearing. Adds provision with standards for discretionary intervention, and adds provision on time limit for issuance of presiding officer's decision on petitions/requests for hearing.
2.310	NA	New section setting forth criteria for different hearing tracks.
2.311	2.714a	Clarified; adds provision on appeals with respect to selection of hearing procedure.
2.312	2.703	Clarified; adds provision on statement of hearing procedures or subpart for order or notice of hearing.
2.313	2.704	Clarified and reorganized.
2.314	2.713	Simplified and expanded.
2.315	2.715	Clarified; adds requirement for designation of single representative for interested States, local governmental bodies, and affected Federally-recognized Indian Tribes not admitted as parties.
2.316	2.715a	Clarified and simplified; expanded to cover all proceedings.
2.317	2.716, 2.761a	Simplifies provision for establishment of separate hearings; no change to provision on consolidation of proceedings.
2.318	2.717	Conforming changes made to refer to administrative law judge.
2.319	2.718, 2.1233(e)	Clarified; consolidates several provisions relating to authority of presiding officer.
2.320	2.707	None.
2.321	2.721	Conforming changes made to refer to Chief Administrative Judge.
2.322	2.722	None.
2.323	2.730	Clarified and expanded to address motions for referral, reconsideration and certification, and accuracy in filing.
2.324	2.731	None.
2.325	2.732	None.
2.326	2.734	None.
2.327	2.750	Replaces subsection on provision of free transcripts, and adds new provisions on video recordings.
2.328	2.751	None.
2.329	2.752, 2.751a	Consolidates and adds provisions on purpose and objectives of prehearing conferences.
2.330	2.753	None.
2.331	2.755	None.
2.332	NA	New section on case scheduling and management.
2.333	2.757	Clarifies authority of presiding officer, and adds provisions on cross-examination plans as conforming changes.
2.334	NA	New section setting forth schedules for proceedings.
2.335	2.758	Clarifies that paragraph (a) applies to all adjudicatory proceedings.
2.336	NA	New requirement for disclosure of materials.
2.337	2.743(c)–(f), (h), (i)	Consolidates provisions on evidence at hearing; no substantive changes.
2.338	NA	New section on Alternative Dispute Resolution (ADR).
2.339	2.761	None.
2.340	2.760a, 2.764	Consolidates provisions on effectiveness of initial decisions.
2.341	2.786	Clarified; codifies Commission practice of discretionary review of requests for interlocutory appeals; modifies provision on exhaustion of administrative remedies.
2.342	2.788	Modified to include service affected by electronic means.
2.343	2.763	None.
2.344	2.770	None.
2.345	2.771	NRC staff not provided additional time to respond to petitions for reconsideration.
2.346	2.772	Clarified; removes provision on Secretary's authority to extend time for Commission review of a Director's denial under 10 CFR 2.206(c) (now addressed in 2.206(c)).
2.347	2.780	None.
2.348	2.781	Clarified; no substantive change.
2.390	2.790	None.

TABLE 1.—CROSS-REFERENCES BETWEEN NEW SUBPARTS C AND G AND OLD PROVISIONS OF SUBPART G—Continued

[NA = no comparable provision in former Subpart G. None = no substantive or editorial change; references to Part 2 sections are corrected]

New section	Old section	Description/modification
Cross-References to New Subpart G		
2.700	2.700	Updated to reflect new scope of Subpart G.
2.701	2.700a	Applicability provision in former 2.700a(b) is removed.
2.702	2.720(a)–(h)(1)	Provisions in former 2.720(h)(2) addressing subpoenas of NRC staff transferred to 2.709.
2.703	2.733	No substantive change; new subdividing paragraphs added.
2.704	NA	New mandatory discovery provision analogous to 2.336.
2.705	NA	New mandatory discovery provision analogous to 2.336.
2.706	2.740a, 2.740b	Consolidates without substantive change provisions formerly contained in §§ 2.740a and 2.740b.
2.707	2.741	None.
2.708	2.742	None.
2.709	2.720(h)(2), 2.744	Consolidates provisions formerly contained in §§ 2.720(h)(2) and 2.744.
2.710	2.749	New requirements on timing of summary disposition motions, responses, and presiding officer consideration of the motions.
2.711	2.743	None.
2.712	2.754	None.
2.713	2.760	None.

TABLE 2.—CROSS-REFERENCES BETWEEN OLD PROVISIONS OF SUBPART G AND NEW SUBPART C

[NA = no comparable provision in former Subpart G. None = no substantive or editorial change; references to Part 2 sections are corrected]

Old section	New section	Description/modification
Cross-References to New Subpart C		
2.700a	2.301	Paragraph (b) on applicability is removed.
2.701	2.302	Addresses facsimile transmissions and electronic mail.
2.702	2.303	Clarified; no substantive change.
2.703	2.312	Clarified; adds provision on statement of hearing procedures or subpart for order or notice of hearing.
2.704	2.313	Clarified and reorganized.
2.707	2.320	None.
2.708, 2.709	2.304	Addresses electronic mail; modifies format requirements of documents.
2.710	2.306	Addresses computation of time for electronic mail and facsimile transmissions.
2.711	2.307	Clarified.
2.712	2.305	Addresses facsimile and electronic mail. Adds provision requiring service by most expeditious means, and provision on service on NRC staff when not a party. Deletes provisions on proof of service and free copying.
NA	2.308	New section on Secretary's duty to forward petitions/requests for hearing to Commission or Chief Judge.
2.713	2.314	Simplified and expanded.
2.714	2.309	Changes requirement for standing; requires filing of contentions with petition/request for hearing. Adds provision with standards for discretionary intervention, and adds provision on time limit for issuance of presiding officer's decision on petitions/requests for hearing.
NA	2.310	New section setting forth criteria for different hearing tracks.
2.714a	2.311	Clarified; added provision on appeals with respect to selection of hearing procedure.
2.715	2.315	Clarified; adds requirement for designation of single representative for interested States, local governmental bodies, and affected Federally-recognized Indian Tribes not admitted as parties.
2.715a	2.316	Clarified and simplified; expanded to cover all proceedings.
2.716, 2.761a	2.317	Simplifies provision for establishment of separate hearings; no change to provision on consolidation of proceedings.
2.717	2.318	Conforming changes made to refer to administrative law judge.
2.718, 2.1233(e)	2.319	Clarified; consolidates several provisions relating to authority of presiding officer.
2.721	2.321	Conforming changes made to refer to Chief Administrative Judge.
2.722	2.322	None.
2.730	2.323	Clarified and expanded to address motions for referral, reconsideration and certification, and accuracy in filing.
2.731	2.324	None.

TABLE 2.—CROSS-REFERENCES BETWEEN OLD PROVISIONS OF SUBPART G AND NEW SUBPART C—Continued

[NA = no comparable provision in former Subpart G. None = no substantive or editorial change; references to Part 2 sections are corrected]

Old section	New section	Description/modification
2.732	2.325	None.
2.734	2.326	None.
2.743(c)–(f), (h), (i)	2.337	Consolidates provisions on evidence at hearing; no substantive changes.
2.750	2.327	Replaces subsection on provision of free transcripts, and adds new provisions on video recordings.
2.751	2.328	None.
2.752, 2.751a	2.329	Consolidates and adds provisions on purpose and objectives of pre-hearing conferences.
2.753	2.330	None.
2.755	2.331	None.
NA	2.332	New section on case scheduling and management.
2.757	2.333	Clarifies authority of presiding officer, and adds provisions on cross-examination plans as conforming changes.
NA	2.334	New section setting forth schedules for proceedings.
2.758	2.335	Clarifies that paragraph (a) applies to all adjudicatory proceedings.
NA	2.336	New requirement for disclosure of materials.
NA	2.338	New section on Alternative Dispute Resolution (ADR).
2.761	2.339	None.
2.760a, 2.764	2.340	Consolidates provisions on effectiveness of initial decisions.
2.763	2.343	None.
2.770	2.344	None.
2.771	2.345	NRC staff not provided additional time to respond to petitions for reconsideration.
2.772	2.346	Clarified; removes provision on Secretary's authority to extend time for Commission review of a Director's denial under 10 CFR 2.206(c) (now addressed in 2.206(c)).
2.780	2.347	None.
2.781	2.348	Clarified; no substantive change.
2.786	2.341	Clarified; codifies Commission practice of discretionary review of requests for interlocutory appeals; modifies provision on exhaustion of administrative remedies.
2.788	2.342	Modified to include service affected by electronic means.
2.790	2.390	None.
Cross-References to New Subpart G		
2.700	2.700	Updated to reflect new scope of Subpart G.
2.700a	2.701	Applicability provision in former 2.700a(b) is removed.
2.720(a)–(h)(1)	2.702	Provisions in former 2.720(h)(2) addressing subpoenas of NRC staff transferred to 2.709.
2.733	2.703	No substantive change; new subdividing paragraphs added.
NA	2.704	New mandatory discovery provision analogous to 2.336.
NA	2.705	New mandatory discovery provision analogous to 2.336.
2.740a, 2.740b	2.706	Consolidates without substantive change provisions formerly contained in §§ 2.740a and 2.740b.
2.741	2.707	None.
2.742	2.708	None.
2.720(h)(2), 2.744	2.709	Consolidates provisions formerly contained in §§ 2.720(h)(2) and 2.744.
2.749	2.710	New requirements on timing of summary disposition motions, responses, and presiding officer consideration of the motions.
2.743	2.711	None.
2.754	2.712	None.
2.760	2.713	None.

Section 2.300—Scope

This section indicates that the provisions of this subpart apply to all adjudications conducted under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and 10 CFR part 2, unless otherwise specified. Subpart C by its terms does not apply to adjudications conducted under the authority of other statutes or to adjudications provided by the NRC under other parts of title 10 of the Code of Federal Regulations, *e.g.*, procedures governing access to restricted data or national security information or employment clearance under 10 CFR part 10.

Section 2.301—Exceptions

This section indicates that the Commission may use alternative adjudicative procedures where the conduct of military or foreign affairs functions is involved.

Section 2.302—Filing of Documents

This section establishes the alternatives for filing documents with the Commission in Part 2 adjudications, and provides that filing by mail, electronic mail or facsimile is considered complete as of time of

deposit in the mail, or upon electronic mail or facsimile transmission.

Section 2.303—Docket

This section requires the Secretary of the Commission to maintain docket files for each proceeding conducted under Part 2.

Section 2.304—Formal Requirements for Documents; Acceptance for Filing

This section establishes the requirements governing the formatting of documents to be filed in Part 2 adjudications, personal signature of filed documents, the number of copies to be filed with the original, and provides that the NRC may refuse to accept any documents not meeting these requirements.

Section 2.305—Service of Papers, Methods, Proof

This section describes the manner in which documents must be served on the Commission and all parties, and delineates the circumstances under which the Commission will consider service to be complete. Documents which are electronically served by e-mail or facsimile must also be simultaneously served on the Secretary by one of the other methods of service permitted by § 2.305(c). However, such electronic service will be deemed to be by e-mail for purposes of computation of time under § 2.306, unless a party claims that it did not receive the e-mail.

Section 2.305 also states that except for subpoenas, all Commission-issued orders, decisions, notices and other papers will be served upon all parties in a proceeding. Paragraph (f) requires all parties to file all documents that are required to be filed with other parties and the presiding officer, to also be filed upon the NRC staff in proceedings where the NRC staff decides not to participate as a party (as it is permitted to do in certain circumstances under Subparts L, M and N). When the NRC staff informs the presiding officer and parties of its determination not to participate, the NRC staff must designate a person and address for such fillings to be served upon the NRC staff.

Section 2.306—Computation of Time

This section describes how time periods under Part 2 must be computed.

Section 2.307—Extension and Reduction of Time Limits

This section addresses the authority of the Commission and presiding officer to both extend and reduce time limits.

Section 2.308—Treatment of Requests for Hearing/Petitions To Intervene by the Secretary

Section 2.308 is a ''housekeeping provision'' that describes the action the Secretary of the Commission would take when requests for hearing/petitions to intervene, contentions, answers and replies are received by the Secretary. Under this section, the Secretary would not take action on the merits or substance of the pleadings, but would forward the papers to the Commission or to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, as appropriate, for further action.

Section 2.309—Hearing Requests, Petitions To Intervene, Requirements for Standing and Contentions

Section 2.309 establishes the basic requirements for all requests for hearing or petitions to intervene in any NRC adjudicatory proceeding. The section incorporates the basic standing and ''one good contention'' requirements of existing § 2.714 and applies those requirements to all NRC adjudicatory proceedings, whether formal (Subpart G and J), informal (Subparts L and M), hybrid (Subpart K) or ''fast track'' (Subpart N).[17]

Standing. The requirements to establish standing for intervention, as set forth in existing § 2.714, continues under § 2.309. For intervention in the proceeding on the licensing of the HLW geologic repository, § 2.309 continues the existing Subpart J requirement that an additional factor—relating to the petitioner's compliance with prehearing disclosure requirements under Subpart J—must be considered in any ruling on intervention. Otherwise, the Commission expects its boards and presiding officers to look to the ample NRC caselaw on standing to interpret and apply this standard. The Commission intends the term, ''among other things,'' in paragraph (d)(3) to mean that it will consider the totality of information made known to it—not just information submitted in the request for hearing/petition to intervene—in determining whether standing exists.

Discretionary Intervention. Under this section, the presiding officer would consider admitting the petitioner as a matter of discretion where the petitioner has failed to establish his or her standing to intervene as-of-right, if the petitioner requests such consideration. In § 2.309(e), the Commission codifies the discretionary intervention factors that were established in its Pebble Springs decision (Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI–76–27, 4 NRC 610 (1976)) and requires a presiding officer or Licensing Board to apply those factors in all cases where a petitioner is found to lack standing to intervene under § 2.309(d) and the petitioner, in the initial petition, has asked for such consideration and addressed the pertinent factors. In this way, the Commission hopes to ''underscore the fundamental importance of meaningful public participation in [its] adjudicatory process.'' *See* N. States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI–75–1, 1 NRC 1, 2 (1975). Of these criteria, the most important weighing in favor of discretionary intervention is whether the person seeking discretionary intervention has demonstrated the capability and willingness to contribute to the development of the evidentiary record, even though they cannot show the traditional interest in the proceeding. The most important factor weighing against discretionary intervention is the potential to appropriately broaden or delay the proceeding.

Timing of Requests for Hearing/Petitions to Intervene and Contentions. Section 2.309 establishes the requirements for the filing of a petition/hearing request, the content of the request, and the standards that must be met for a late-filed request. For those proceedings for which a **Federal Register** notice has been published, the requirements are much the same as those in former § 2.714(a)(1), except that § 2.309(b)(1) incorporates the twenty (20) day period for filing of a request for hearing/petition to intervene in license transfer cases governed under Subpart M (the twenty (20) day requirement in former § 2.1306 is deleted by the final rule), § 2.309(b)(2) incorporates the thirty (30) day period for filing of a request for hearing/petition to intervene in proceedings for the licensing of a HLW geologic repository (the thirty (30) day requirement in former § 2.1014 is deleted in the final rule), and section § (b)(3) generally establishes a sixty (60) day period for submission of most requests for hearing/petitions to intervene.

Section 2.309(b)(3)(iii) provides that where a time for submission is not specified in the **Federal Register** notice, the time period is sixty (60) days from the date of publication in the **Federal Register**.

For proceedings in which a **Federal Register** notice is not published, the requirements in § 2.309(b)(4) are derived

[17] Legislative hearings under Subpart O may not be requested by any party, and are held only in the discretion of the Commission. Therefore, Subpart O legislative hearings are not addressed in § 2.309.

from former § 2.1205 but have been supplemented to allow for publication of notice on the NRC Web site at *http://www.nrc.gov/public-involve/major-actions.html,* as providing official notice for purposes of § 2.309(b)(4). Where **Federal Register** notice is not required by statute or regulation, any notice of agency action (for which an opportunity to request a hearing may be required) published on the portion of the NRC Web site designated as providing official notice for purposes of § 2.309(b)(4) initiates the sixty (60) day period in which timely requests for hearing must be filed.

Regardless of whether notice of the proceeding and opportunity for hearing is required to be published in the **Federal Register**, all proposed contentions must be filed as part of the initial request for hearing/petition to intervene. The final rule provides a minimum of sixty (60) days from the date of publication (either in the **Federal Register** or on the NRC Web site) of the notice of opportunity to request a hearing for the filing of requests/petitions to intervene and contentions, except for license transfer cases, for which a period of twenty (20) days is provided, initial authorization to construct a HLW geologic repository and the initial license to receive and posses HLW at a geological repository operations area, for which a period of thirty (30) days is provided. Late-filed requests for hearing/petitions are governed by the criteria set forth in § 2.309(c) (formerly § 2.714(a)(1)(i) through (v)).

Contentions. Section 2.309(f) requires that the petition to intervene include the contentions that the petitioner proposes for litigation along with documentation and argument supporting the admission of the proffered contentions. Paragraphs (f)(1) and (2) of § 2.309 incorporate the longstanding contention support requirements of former § 2.714—no contention will be admitted for litigation in any NRC adjudicatory proceeding unless these requirements are met. Paragraph (f)(2) addresses the standards for amending existing contentions, or submitting new contentions based upon documents or other information not available at the time that the original request for hearing/petition to intervene was required to be filed. Paragraph (f)(2) incorporates the substance of existing § 2.714 (b)(2)(iii) with regard to new or amended environmental contentions—new or amended environmental contentions may be admitted if the petitioner shows that the new or amended contention is based on data or conclusions in the NRC's environmental documents that differ significantly from the data or conclusions in the applicant's documents. Of course, new or amended environmental documents must be submitted promptly after the NRC's environmental documents are issued. For all other new or amended contentions the rule makes clear that the criteria in § 2.309(f)(2)(i) through (iii) must be satisfied for admission. Include in these standards is the requirement that it be shown that the new or amended contention has been submitted in a timely fashion based on the timing of availability of the subsequent information. See § 2.309(f)(2)(iii). This requires that the new or amended contention be filed promptly after the new information purportedly forming the basis for the new or amended contention become available. Included in these standards is the requirement that it be shown that the new or amended contention has been submitted in a timely fashion based on the availability of the subsequent information. See § 2.302(f)(iii). This requires that the new or amended contention be filed promptly after the new information purportedly forming the basis for the new or amended contention becomes available. A significant change, relative to existing requirements, is that the requirement to proffer specific, adequately supported contentions in order to be admitted as a party to the proceeding is extended to informal proceedings under Subpart L, as well as Subparts K, M, and N.

Another significant area of change is where two or more requestors/petitioners seek to co-sponsor a contention, and where a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/intervenor. Under § 2.309(f)(3), requestors/petitioners cosponsoring a contention must jointly designate a representative who shall have the authority to act for all requestors/petitioners. Similarly, if a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/intervenor, the requestor/petitioner must agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention. If the sponsoring party is subsequently dismissed from the proceeding for reasons other than resolution of its contentions, the party who adopted the contention may continue to pursue the contention, or seek dismissal.

Appropriate Hearing Procedures. Section 2.309(g) requires that the request for hearing/petition to intervene address the question of the type of hearing procedures (*e.g.*, formal hearings under Subpart G, informal hearings under Subpart L, ''fast track'' informal procedures under Subpart N) that should be used for the proceeding. This is not a requirement for admission as a party to the proceeding, but a requestor/petitioner who fails to address the hearing procedure issue would not later be heard to complain in any appeal of the hearing procedure selection ruling. In addition, the final rule requires that if the requestor/petitioner asks for a formal hearing on the basis of § 2.310(d), the request for hearing/petition to intervene must demonstrate, by reference to the contention and the bases provided and the specific procedures in Subpart G, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures.

State and Local Governments and Affected Indian Tribes. Section 2.309(d)(2) addresses the participation of States, local governmental bodies, and affected, Federally-recognized Indian Tribes as parties in NRC adjudicatory proceedings. The final rule continues the existing requirement in § 2.1014(c) that a State, local governmental body, or affected Federally-recognized Indian Tribe who wishes to be a party in a HLW geologic repository proceeding must file at least one good contention. A significant change, relative to the former requirement in § 2.714, is that a State, local governmental body, or affected Federally-recognized Indian Tribe who wishes to be a party in a proceeding for a facility which is located within its boundary are explicitly relieved of the obligation to demonstrate standing in order to be admitted as a party. A State, local governmental body, or Federally-recognized Indian Tribes who wishes to be a party in a proceeding for a facility which is not located within its boundary must address standing. However, a State, local governmental body, or Federally-recognized Indian Tribe which is adjacent to a facility or, for example, has responsibilities as an offsite government for purposes of emergency preparedness, and presents such information in its request/petition, would ordinarily be accorded standing.

Another significant change from the requirements of former § 2.714 is that under § 2.309(d)(2) each State, local governmental body, and Federally-recognized Indian Tribe who wishes to be a party in a proceeding must each designate a single representative in the proceeding (an analogous requirement requiring ''interested'' States, local governmental bodies, and Federally-recognized Indian Tribes to each

designate a representative is included in § 2.315(c) of the final rule). Where a State's constitution provides that both the Governor and another State official or State governmental body may represent the interests of the State in a proceeding, the Governor and the other State official/government body will be considered separate potential parties. Each must separately satisfy the relevant contention requirement, and each must designate its own representative (that is, the Governor must designate a single representative, and the State official must separately designate a representative).

The Commission has deleted the language in the second sentence of the proposed § 2.309(d)(ii) regarding identifying contentions on which a State, local governmental body or Federally-recognized Indian Tribe ''wishes to participate,'' inasmuch as that provision applies only to ''interested'' States, local governmental bodies, and Federally-recognized Indian Tribes under § 2.315(c).

Answers and Replies. Section 2.309(h) allows the applicant or licensee and the NRC staff twenty-five (25) days to file written answers to requests for hearing/petitions to intervene and contentions, and allows the petitioner to file a written reply to the applicant/licensee and staff answers within seven (7) days after service of any answer. No other written answers or replies will be entertained.

Decision on Request/Petition. Section 2.309(i) is a new provision that requires the presiding officer to render a decision on each request for hearing/petition to intervene within forty-five (45) days after the filing of all answers and replies under paragraph (h) of this section. If additional time is needed, § 2.309(i) permits the presiding officer to seek an extension from the Commission.

Section 2.310—Selection of Hearing Procedures

Section 2.310 of the final rule sets forth the criteria to be applied by the Commission, a presiding officer, or an Atomic Safety and Licensing Board in determining the hearing procedures to be utilized in the proceeding. Unless otherwise provided in § 2.310, proceedings involving hearings on the grant, renewal, licensee-initiated amendment or termination of licenses and permits subject to 10 CFR Parts 30, 32 through 35, 36, 39, 40, 50, 52, 54, 55, 61, 70 and 72 must ordinarily use Subpart L procedures. Thus, Subpart L procedures will be used, as a general matter, for hearings on nuclear power reactor construction permit and operating license applications under Parts 50 and 52, nuclear power reactor license renewal applications under Part 54, nuclear power reactor license amendments under Part 50, reactor operator licensing under Part 55, and nearly all materials and spent fuel storage licensing matters.

Subpart G procedures will ordinarily be used in four types of proceedings: Proceedings on the construction and operation of uranium enrichment facilities (required by Section 193 of the AEA to be a formal, ''on-the-record'' adjudication), proceedings on enforcement matters (unless all parties agree to use other procedures such as Subpart L), proceedings for the initial authorization to construct a HLW geologic repository, and proceedings for the initial issuance of a license to receive and possess HLW at a HLW geologic repository.

In addition, the final rule provides that Subpart G procedures will be used in licensing proceedings for nuclear power reactors if the Commission or presiding officer finds, based upon the materials submitted in the request for hearing/petition to intervene under § 2.309, that resolution of a proposed contention requires resolution of: (1) Issues of material fact relating to the occurrence of a past activity, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or (2) issues of motive or intent of a party or eyewitness material to the resolution of the contested matter. The first criterion contains two elements: The first is that there is a dispute of material fact concerning the occurrence of (including the nature or details of) a past activity. This includes situations where all parties agree that an activity occurred (*e.g.*, a conversation between a worker and a supervisor), but there is disagreement over the details of the activity (*e.g.*, the worker alleges that the supervisor directed him/her to do an illegal act and the supervisor denies the allegation). However, this element does not include the testimony of any expert witness who has no first hand knowledge of the activity, inasmuch as the expert is simply providing an opinion based upon the testimony of others, and cross-examination in particular of the expert witness is not necessary to evaluate the weight to be given to his or her opinion. The second element is that the credibility of the eyewitness may reasonably be expected to be at issue. Examples of such credibility disputes include whether the eyewitness possessed the physical capability to experience the activity, or whether the eyewitness accurately describes the activity. This does not include disputes between parties over the qualifications and professional ''credibility'' of expert witnesses who have no first-hand knowledge of the disputed event/facts. Subpart G procedures such as cross-examination are not necessary for parties to effectively challenge the qualifications and professional ''credibility'' of an expert.

The second alternative criterion for determining whether Subpart G procedures should be used in a proceeding is whether the contention/contested matter necessarily requires a consideration and resolution of the motive or intent of a party or eyewitness. For example, a contention alleging deliberate and knowing actions to violate NRC requirements by an applicant's representative necessarily requires resolution of the motive or intent of the applicant and its representative. Application of Subpart G procedures should be considered in such circumstances. By contrast, disputes over the motive or intent of an expert witness who was not an eyewitness are not relevant in determining whether to apply Subpart G procedures, inasmuch as such issues are not relevant to the decision criteria of the presiding officer (*e.g.*, whether the contested application meets NRC requirements), and may easily be addressed in written filings and oral argument.

If a presiding officer determines that a contention meets the criteria in § 2.310(d), resolution of that contention will proceed using Subpart G procedures. To facilitate orderly conduct of the Subpart G hearing where there are several contentions meeting § 2.310(d), the presiding officer should schedule the resolution of the contentions in parallel. If the presiding officer has determined that one or more admitted contentions do not meet the criteria in § 2.310(d), those contentions will be resolved by the presiding officer in a separate Subpart L hearing. Parties admitted only with respect to contentions to be resolved under Subpart L hearing procedures do not have any right to participate in the Subpart G hearing, and parties admitted only with respect to contentions to be resolved using Subpart G hearing procedures do not have any right to participate in the Subpart L hearing.

The special hybrid hearing procedures in Subpart K continue to apply to hearings in proceedings on the expansion of spent fuel storage capacity at civilian nuclear power reactors. Similarly, the special informal hearing procedures in Subpart M continue to apply to hearings in proceedings on reactor or material license transfers.

New, informal ''fast-track'' procedures in Subpart N may be used by direction of the Commission if the proceeding is expected to take no more than two (2) days to complete, or if all parties agree to the use of the ''fast-track'' procedures.

The Commission has added a new Subpart O that provides for procedures to be used if the Commission decides to hold ''legislative hearings.'' The legislative hearing procedures would be used in any design certification rulemaking hearings which the Commission in its discretion determined to hold under § 52.51(b). Conforming changes to § 52.51(b) are made to remove the hearing procedures currently contained in paragraph (b) of § 52.51. The legislative hearing procedures in Subpart O could be used at the Commission's discretion in developing a record to assist the Commission in resolving, under § 2.335(d), a petition filed under § 2.335(b).

Section 2.311—Interlocutory Review of Rulings on Requests for Hearing/ Petitions To Intervene and Selection of Hearing Procedures

Section 2.311 continues unchanged the provision in former § 2.714a that limits interlocutory appeal of rulings on requests for hearing and petitions to intervene to those that grant or deny a petition to intervene. However, paragraph (d) represents a new provision dealing with appeals of orders selecting hearing procedures. Appeals must be filed within ten (10) days of the order selecting hearing procedures, and the sole grounds for appeal is that the selection of hearing procedure was in contravention of the applicable criteria in § 2.310.

Section 2.313—Designation of Presiding Officer, Disqualification, Unavailability, and Substitution

Section 2.313 addresses who may be designated as a presiding officer in hearing tracks. In general, unless the Commission designates otherwise, the Chief Administrative Judge may designate either an Atomic Safety and Licensing Board or an administrative law judge as the presiding officer for a hearing conducted under Subparts G, J, K, L, or N, and may designate either an Atomic Safety and Licensing Board, an administrative law judge, or an administrative judge as the presiding officer for a hearing conducted under Subpart M. The Commission alone has authority to decide who shall be a presiding officer in a Subpart O hearing.

Section 2.313 also addresses the disqualification, unavailability and substitution of a presiding officer, and continues without substantive change the comparable provisions on disqualification, unavailability, and substitution of a presiding officer (including a member of a Licensing Board) in former § 2.704.

Section 2.314—Appearance and Practice Before the Commission in Adjudicatory Proceedings

Section 2.314 simplifies and expands the existing provisions in §§ 2.713 and 2.1215 on appearance and representation in NRC adjudications. For example, the new rule requires all persons appearing in a representative capacity to file a notice of appearance providing a facsimile number, and an e-mail address, if the person possesses either or both.

Section 2.315—Participation by a Person Not a Party

This section continues largely unchanged the provisions in former § 2.715(a) and (b). However, several clarifying changes have been made in the language of this section. For example, in paragraph (a), a sentence has been added to clarify that statements of position submitted by a person who is not a party shall not be considered evidence in the proceeding. In paragraph (d), the language has been clarified to make clear that the motion for leave to file an amicus brief may be submitted with the amicus brief itself. Regardless of the nature of participation by a person who is a non-party, that person does not possess any of the rights and privileges of a person who has attained the status of a party, including taking an appeal to the Commission, or to judicial review of an agency final decision.

Substantial changes have been made to § 2.315(c), in part to use language which is consistent with the final version of § 2.309(d), and to reflect the Commission's determination that interested States, governmental bodies (counties, municipalities or other subdivisions) and affected Federally-recognized Indian Tribes must identify prior to the commencement of the hearing the contentions on which they wish to participate. Also, the final rule, unlike existing § 2.715(c), requires each interested State, governmental body and Indian Tribe to designate a single representative for the proceeding; the Commission will no longer permit multiple agencies or offices within a political entity to separately participate under § 2.315(c).

Section 2.316—Consolidation of Parties

This section clarifies the language in former § 2.715a regarding consolidation of parties, and expands the applicability of the section from construction permit and operating license proceedings for production and utilization facilities under the former rule, to all proceedings.

Section 2.317—Separate Hearings; Consolidation of Proceedings

This section expands upon the general concept in existing § 2.761a that separate hearings may be appropriate in certain instances. In addition, this section incorporates without change the provisions for consolidation of proceedings currently in § 2.716.

Section 2.318—Commencement and Termination of Jurisdiction of Presiding Officer

This section continues without change the existing provisions in § 2.717 with respect to the commencement and termination of the jurisdiction of a presiding officer. A conforming change is made to § 2.107, ''Withdrawal of application,'' to clarify that the Commission shall dismiss a proceeding when an application has been withdrawn before a notice of hearing has been issued.

Section 2.319—Power of the Presiding Officer

This section consolidates provisions in former § 2.718 and § 2.1233(e), and identifies the authority and powers of the presiding officer. Although the substance of the regulation remains unchanged, in some cases the regulation was clarified. For example, the language in § 2.319(d) derived from former § 2.718(c) was expanded to make clear the presiding officer's power to strike any portion of a written presentation that is cumulative, irrelevant, immaterial or unreliable. In other instances, the regulation includes a provision that identifies a power that presiding officers have always possessed, but was not specifically identified in the former regulation. For example, § 2.319(c) was added to make clear the presiding officer's power to consolidate parties and proceedings, which were formerly addressed in §§ 2.715a and 2.716.

Section 2.320—Default

Section 2.320 establishes the circumstances under which a presiding officer may declare a default, and describes the actions that may be taken upon a default. This section continues without change the provisions that were formerly in § 2.707.

Section 2.321—Atomic Safety and Licensing Boards

This section addresses the Commission's establishment of Atomic Safety and Licensing Boards, and states the general authority of these boards to exercise the powers granted to presiding officers under § 2.319, as well as any other powers as enumerated in Part 2. The quorum requirements of a Licensing Board, as well as the authority of the Chief Administrative Judge to exercise powers with respect to a proceeding when a board is not in session are also set forth. This section continues without change the provisions that were formerly in § 2.721.

Section 2.322—Special Assistants to the Presiding Officer

Section 2.322 authorizes a presiding officer (including an Atomic Safety and Licensing Board), after consultation with the Chief Administrative Judge, to appoint special assistants to assist the presiding officer in taking evidence and preparing a suitable record for review. This section restates the provisions of former § 2.722 without change.

Section 2.323—Motions

This section incorporates the substance of existing § 2.730 in Subpart G on the general form, content, timing, and requirements for motions and responses to motions. The final rule departs from former § 2.730 by establishing a ''compelling circumstances'' standard for evaluating motions for reconsideration. Such circumstances include the ''existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid'' (this standard is also reflected in § 2.345(b)). Section 2.323 also addresses referral of rulings and certified questions by the presiding officer to the Commission. With regard to referrals, § 2.323(f) provides for referrals of decisions or rulings where the presiding officer determines that the decision or ruling involves a novel issue that merits Commission review at the earliest opportunity. Section 2.323 also differs from the existing requirements by including a specific provision in paragraph (f)(2) which allows any party to file with the presiding officer a petition for certification of issues for early Commission review and guidance.

Section 2.324—Order of Procedure

This section addresses the authority of the presiding officer and Commission to designate the order of procedures in a hearing, and provides that the proponent of an order will ordinarily open and close. This section restates the provisions of § 2.731 without change.

Section 2.325—Burden of Proof

This section provides that unless the presiding officer orders otherwise, the applicant or the proponent of an order bears the burden of proof (risk of non-persuasion). This section restates the provisions of § 2.732 without change.

Section 2.326—Motions To Reopen

This section governs the procedure, timing and criteria governing motions to reopen a closed record. This section restates the provisions of § 2.734 without change.

Section 2.327—Official Reporter; Transcript

This section governs the creation, correction and availability of official transcripts of NRC hearings. This section restates the provisions of § 2.750, but removes the provision on free transcripts.

Section 2.328—Hearings To Be Public

This section requires that all hearings be public, unless otherwise requested under Section 181 of the AEA. This section restates the provisions of § 2.751 without change.

Section 2.329—Prehearing Conference

This section addresses the scheduling and matters to be addressed in a prehearing conference. The prehearing conference is the primary tool by which the Commission or presiding officer, as applicable, will provide effective management of the proceeding. This section incorporates provisions in § 2.752 and § 2.751a, and eliminates reference to a ''special prehearing conference'' in production and utilization facility construction permit and operating license proceedings. Some of the provisions in those sections have been combined and clarified.

Section 2.330—Stipulations

This section addresses the use of stipulations, which the Commission encourages to focus the hearing on the contested matters between the parties. This section restates the provisions in § 2.753 without change.

Section 2.331—Oral Argument Before the Presiding Officer

This section addresses the authority of the presiding officer to determine whether oral argument will be held on any matter, and to set time limits on the oral argument. This section restates the provisions in § 2.755 without change.

Section 2.332—General Case Scheduling and Management

This section addresses general case scheduling and management. It requires a presiding officer to consult with the parties early in the proceeding in order to set schedules, establish deadlines for discovery and motions, where appropriate, and set the ground rules for the control and management of the proceeding. The section also addresses integration of the NRC staff's preparation of its safety and environmental review documents into the hearing process schedules.

Section 2.333—Authority of the Presiding Officer To Regulate Procedure in a Hearing

This section sets forth the general authority of the presiding officer to regulate the procedure in a hearing, to ensure that argumentative, repetitious, cumulative, irrelevant, unreliable, and immaterial evidence is not introduced into the record, and to provide for an orderly and expeditious conduct of the hearing.

Section 2.334—Schedules for Proceedings

Section 2.334 codifies the guidance in the Commission's 1998 Statement of Policy on the Conduct of Adjudicatory Proceedings that suggested that presiding officers should establish and maintain ''milestone'' schedules for the completion of hearings and the issuance of initial decisions. The section requires a presiding officer to establish a hearing schedule, and to notify the Commission if there are slippages that would delay the issuance of the initial decision more than sixty (60) days from the date established in the schedule. The notification must include an explanation of the reasons for the delay and a description of the actions, if any, that can be taken to avoid or mitigate the delay.

Section 2.335—Consideration of Commission Rules and Regulations in Adjudicatory Proceedings

This section, which was formerly designated § 2.758, governs situations where a party contends that an NRC rule or regulation should not be applied, or otherwise attempts to challenge the validity of the rule or regulation. No changes have been made to the regulatory language. However, the Commission notes that it has adopted a new Subpart O, ''Legislative Hearings,'' which provides the Commission with the option to conduct a ''legislative hearing'' to, *inter alia,* assist it in resolving a question certified to it by the presiding officer under § 2.335(d).

Section 2.336—General Discovery

Section 2.336 generally imposes a disclosure requirement on all parties except the NRC staff, whose disclosure obligations are addressed in 2.336(b)) in all proceedings under Part 2, except for proceedings using the procedures of Subparts G and J. This generally applicable discovery provision requires each party to disclose and/or provide the identity of witnesses and copies of the analysis or other authority upon which that person bases his or her opinion. The duty of disclosure continues during the pendency of the proceeding. If a document, data compilation, or tangible thing required to be disclosed is publicly available from another source such as at the NRC Web site, *http://www@nrc.gov,* and/or the NRC Public Document Room, a sufficient disclosure would be the location, the title and a page reference to the relevant document, data compilation, or tangible thing. Section 2.336(b) sets forth the disclosure obligations of the NRC staff, regardless of whether it is a party. The discovery required by § 2.336 constitutes the totality of the discovery that may be obtained in informal proceedings. The final rule makes clear that the mandatory disclosure obligations of the NRC staff in § 2.336 do not apply in Subpart J proceeding, unless the Commission, presiding officer, or Atomic Safety and Licensing Board specifically orders. Section 2.336 authorizes the presiding officer to impose sanctions against parties who fail to comply with this general discovery provision, including prohibiting the admission into evidence of documents or testimony that a party failed to disclose as required by this section unless there was good cause for the failure (this sanction is similar to that provided in the rules of practice of the Environmental Protection Agency, 40 CFR 22.19(a), 22.22(a)).

Section 2.337—Evidence at a Hearing

This section contains the provisions relating to evidence that were formerly in § 2.743(c)–(f), (h)–(i), relating to admissibility of evidence, offering of objections, offers of proof, receipt of exhibits into evidence, keeping of the official record, and criteria for obtaining official notice.

Section 2.377(g) governs the need for admission of NRC staff documents into the hearing record, and replaces the provisions in former § 2.743(g). Section 2.337(g)(1) provides that in proceedings involving an application for a facility construction permit, the NRC staff shall offer into evidence the ACRS report,[18] the NRC's safety evaluation, and the environmental impact statement (EIS) prepared under 10 CFR Part 51. In proceedings involving applications other than a construction permit for a production or utilization facility where the NRC staff is a party, § 2.337(g)(2) requires the NRC staff to offer into evidence any ACRS report on the application, at the discretion of the NRC staff the safety evaluation prepared by the staff and/or testimony and evidence on the contention/controverted matter, any NRC staff position on the contention/controverted matter provided to the presiding officer under § 2.1202(a)(*see* the fourth item below), and the EIS or environmental assessment (EA) if there are matters in controversy with respect to the adequacy of the EIS or EA. If the NRC staff is not a party in such proceedings (as it may choose under, *e.g.*, Subpart L), the NRC staff shall offer into evidence, together with a sponsoring witness (except in the case of the ACRS report [19]), any ACRS report on the application, at the discretion of the NRC staff the NRC staff's safety evaluation and/or testimony and evidence on the contention/controverted matter, any statement of position on the contention/controverted matter in controversy provided to the presiding officer (*see* the fourth item below), and the EIS or environmental assessment (EA) if there are matters in controversy with respect to the adequacy of the EIS or EA. However, the NRC staff is not to be treated as a party solely due to its sponsoring these documents for admission into the record of the proceeding, analogous to its role in a Subpart M proceeding where the NRC staff is not required to be a party but must nonetheless offer into evidence with a sponsoring witness the SER associated with the proposed license transfer.

Section 2.338—Settlement of Issues; Alternate Dispute Resolution

Section 2.338 is a new provision that consolidates and amplifies the previous rules pertaining to settlement (10 CFR 2.203, 2.759, 2.1241). Section 2.338 describes the required form and content of settlement agreements and provides guidance on the use of settlement judges as mediators in NRC proceedings. The Commission intends no change in the bases for accepting a settlement under the new rule.

Section 2.339—Expedited Decisionmaking Procedure

This section, formerly designated § 2.763, has not been substantively changed.

Section 2.340—Initial Decision in Contested Proceedings on Applications for Facility Operating Licenses

This section consolidates provisions on the effectiveness of initial decisions which were formerly in §§ 2.760a and 2.764. No substantive changes were made to the provisions, but conforming changes were made to reference the applicable provisions of new Subpart C that were formerly in Subpart G.

Section 2.341—Review of Decisions and Actions of a Presiding Officer

This section essentially restates former § 2.786. However, paragraph (f) clarifies that the Commission will entertain in its discretion petitions by a party for review of an interlocutory matter in the circumstances described in paragraph (f). This is consistent with the current Commission practice under former § 2.786. Minor changes are also being made to give guidance on the form and content of briefs. For example, the final rule increases the number of pages permitted for a petition for review of a decision of a presiding officer and any replies to the petition, from the current limit of ten (10) pages to twenty-five (25) pages.

Section 2.342—Stays of Decisions

This section describes the procedures and the standards for granting stays of decisions by a presiding officer (including decisions where the Commission is acting as the presiding officer). No substantive changes have been made to this provision, which was formerly designated § 2.788.

Section 2.343—Oral Argument

No substantive changes have been made to this provision, which was formerly designated § 2.763.

Section 2.344—Final Decision

No substantive changes have been made to this provision, which was formerly designated § 2.770.

Section 2.345—Petition for Reconsideration

This section continues largely unchanged the provisions in former § 2.771, but no longer provides the NRC staff with two additional days to file a reply brief. The NRC staff would be treated as any other party and have ten

[18] Although the NRC staff must offer the ACRS report into evidence, the NRC staff neigher sponsors the report nor is repsonsible for defending the content of the report, inasmuch as the ACRS is an independent advisory committee to the Commission.

[19] *See* prior footnote.

(10) days to file a reply brief to a petition for reconsideration.

Section 2.346—Authority of the Secretary

This section sets forth the authority of the Secretary to act for the Commission on matters designated in this section. It differs from its predecessor (§ 2.772) by clarifying some of the matters on which the Secretary may act, and no longer addresses the Secretary's authority to extend the time for Commission review of Director's Decisions under § 2.206 (this is now addressed in revised § 2.206(c)).

Section 2.347—Ex Parte Communications

This section sets forth the limitations on ex parte communications between interested persons and NRC adjudicatory employees. No substantive changes have been made to this provision, which was formerly designated § 2.780.

Section 2.348—Separation of Functions

This section sets forth the requirements applicable to the NRC in order to maintain separation of functions within the NRC. No change has been made to this provision, which was formerly designated § 2.781.

Section 2.390—Public Inspections, Exemptions, Requests for Withholding

This section, which was formerly designated § 2.790, sets forth provisions of generic applicability concerning the public's access to information which apply irrespectively of whether there is an NRC proceeding. Following the publication of the proposed amendments to Part 2, the Commission adopted a final rule amending § 2.790 to revise the procedures regarding the submission and agency handling and disclosure of proprietary, confidential, and copyrighted information (68 FR 18836; Apr. 17, 2003). Section 2.390 now incorporates these amendments. The final rule also reflects the addition of a footnote to paragraph (a), which provides that ''final NRC records and documents'' do not include handwritten notes, nor do they include any drafts. Drafts which are protected from disclosure include documents prepared by NRC personnel, as well as documents prepared by contractors retained by the NRC.

6. Subpart G—Sections 2.700–2.713

Subpart G is a specialized hearing track containing the Commission's procedures for the conduct of on-the-record adjudicatory proceedings. Provisions of general applicability have been removed from Subpart G and transferred to new Subpart C. Most of the remaining provisions have been restated without change except for renumbering and internal cross-reference changes. Some provisions have been amended to better reflect current Commission policy regarding the conduct of adjudicatory proceedings and current Federal practice, for example, with respect to discovery. Subpart G (as with all other specialized hearing tracks) is to be used in conjunction with the rules of general applicability contained in Subpart C. Following is a section-by-section analysis of Subpart G.

Section 2.700—Scope of Subpart G

This section reflects the revised applicability of this Subpart to a limited set of proceedings for which formal adjudicatory procedures may be used.

Section 2.701—Exceptions

This section indicates that the Commission may use alternative adjudicative procedures where the conduct of military or foreign affairs functions is involved.

Section 2.702—Subpoenas

Section 2.702 is fundamentally a restatement of former § 2.720(a)–(h)(1).

Section 2.703—Examination by Experts

This section restates, with one exception, the requirements in former § 2.733 regarding the use of experts to examine and cross-examine witnesses of other parties. However, consistent with § 2.711(c), which authorizes the presiding officer to require filing of cross-examination plans, the Commission believes that a party seeking permission to use an expert to conduct cross-examination should file a proposed cross-examination plan in accordance with § 2.711(c).

Section 2.704—Discovery—Required Disclosures

New §§ 2.704 and 2.705 revise the general provisions for discovery in Subpart G proceedings, except for discovery against the NRC staff. These new discovery provisions, which are analogous to the disclosure provisions in § 2.336, provide for the prompt and open disclosure of relevant information by the parties, without resort to formal processes, unless intercession by the presiding officer becomes necessary. Section 2.704 sets forth the disclosures that all parties must make to other parties; a party need not file a request for the information required to be disclosed under § 2.704.

Section 2.705—Discovery—Additional Methods

Section 2.705 sets forth the additional methods of discovery that are permitted. It is expected that the new regulations would eliminate or substantially limit the need for formal discovery in adjudicatory proceedings, and at the same time, make explicit the presiding officer's authority to limit the scope and quantity of discovery in a particular proceeding, should the need arise.

Sections 2.706—Depositions Upon Oral Examination and Upon Written Interrogatories; Interrogatories to Parties

This section consolidates, without substantive change, the provisions regarding depositions and interrogatories that were formerly addressed in § 2.740a and § 2.740b.

Section 2.707—Production of Documents and Things; Entry Upon Land for Inspections and Other Purposes

This section restates the provisions in former § 2.741 with minor clarifying and grammatical corrections, and revised references to sections in Subparts C and G.

Section 2.708—Admissions

This section restates the provisions in former § 2.742 without substantive change.

Section 2.709—Discovery Against the NRC Staff

This section consolidates former §§ 2.720(h)(2) and 2.744, both of which addressed discovery against the NRC. The need for formal discovery against the NRC staff should be minimal, in view of the Commission's general policy of making all available documents public (*see*, *e.g.*, 10 CFR 9.15), subject only to limited restrictions (*e.g.*, those needed to protect enforcement, proprietary information, under 10 CFR 9.17). Except for the foregoing, the substantive aspects of the former regulations are unchanged.

Section 2.709 provides that when the NRC is a party, the Executive Director for Operations (EDO) will designate the NRC staff personnel to perform a number of functions relevant to the conduct of the proceeding, including answering written interrogatories and being witnesses for oral hearing or deposition (as applicable). As is the current practice, the EDO may delegate this function to a person or persons designated by the EDO.

Section 2.710—Motions for Summary Disposition

Section 2.710 generally retains the former provisions of § 2.749 regarding summary disposition. However, § 2.710 requires that summary disposition motions be filed within twenty (20) days of the close of discovery; responses to motions must be filed twenty (20) days thereafter. The final rule requires the presiding officer to address the summary disposition motion within 40 days after the last response to the motion is filed, and delineates the presiding officer's options for addressing the motion. Apart from deciding the motion, the presiding officer is given discretion not to consider a motion for summary disposition unless he or she determines that resolution of the motion will serve to expedite the proceeding. The presiding officer may also summarily dismiss or hold in abeyance any untimely summary disposition motions filed shortly before or during the oral hearing, if the presiding officer determines that substantial resources must be diverted from the hearing to adequately address the motion.

Section 2.711—Evidence

This section restates the requirements in former § 2.743 without change.

Section 2.712—Proposed Findings and Conclusions

This section continues, without change, the provisions of former § 2.754 regarding the requirement for the submission of proposed findings of fact and conclusions of law following completion of a formal hearing.

Section 2.713—Initial Decision and Its Effect

This section restates the requirements in former § 2.760 without change.

7. Subpart I—Sections 2.900–2.913

Section 2.901 has been revised to specify that the procedures for handling Restricted Data and National Security Information in Subpart I apply to proceedings under subparts G, J, K, L, M, and N.

The definition ''party'' for this subpart has been amended to refer to §§ 2.309 and 2.315. No substantive change is intended by the corrected references.

8. Subpart J—Sections 2.1000–2.1027

The Commission is making a number of changes to §§ 2.1000, 2.1001, 2.1010, 2.1012, 2.1013, 2.1014, 2.1015, 2.1016, 2.1018, 2.1019, 2.1021, and 2.1023. The changes are intended to: (1) Correct references to rules of general applicability in former provisions of Subpart G that are being transferred to Subpart C, and (2) eliminate redundant or duplicate provisions in Subpart J that would be covered by the generally applicable provisions in Subpart C. Because these are conforming changes, a section-by-section analysis of the revisions to Subpart J is not provided.

9. Subpart K—Sections 2.1101–2.1119

Subpart K continues to be the Commission's specialized hearing track for contested proceedings on licenses or license amendments to expand spent fuel storage capacity at a civilian nuclear power plant site. Subpart K is to be used in conjunction with the rules of general applicability in Subpart C. Following is a section-by-section analysis of the revisions to Subpart K.

Section 2.1109—Requests for Oral Argument

This section is modified to clarify that a hearing on any contentions that remain after the oral argument under Subpart K will be conducted using the hearing procedures of Subpart L.

Section 2.1111

This section is removed and reserved for future use.

Section 2.1113—Oral Argument

Paragraph (a) of this section requires each party to submit a summary of the facts, data, and arguments which the party proposes to rely upon in the oral argument addressing whether the criteria in § 2.1115(b) have been met for holding an adjudicatory hearing, as well as all supporting facts and data in the form of sworn written testimony or written statements. These submissions must be made to the presiding officer and simultaneously on all other parties no later than twenty-five (25) days before the oral argument is scheduled. Paragraph (b) permits, but does not require, a party to submit a reply to the written summaries, facts, data and arguments; this reply must be filed on the presiding officer and simultaneously on all other parties no later than ten (10) days before the oral argument is scheduled. Paragraph (c) retains the requirements in former § 2.1113(b) without change.

Section 2.1117—Burden of Proof

This section states that while the applicant for the spent fuel pool expansion license amendment bears the ultimate burden of proof (risk of non-persuasion) on admitted contentions, the proponent of an adjudicatory hearing bears the burden of demonstrating that the criteria in § 2.1115(b) have been met and thus, an adjudicatory hearing should be held.

Section 2.1119—Applicability of Other Sections (§ 2.1117 in Proposed Rule)

This section is modified to add a reference to new Subpart C. By cross-referencing Subpart C, the Commission intends to make clear that the generally-applicable provisions of that Subpart, which are not addressed by more specific provisions in Subpart K, apply throughout a Subpart K proceeding. For example, the provisions in § 2.335 for directed certification of a Licensing Board determination of a petition on application of a Commission rule or regulation applies throughout the Subpart K proceeding, including the oral hearing and the presiding officer's determination under § 2.1115.

10. Subpart L—Sections 2.1200–2.1213

Subpart L constitutes the Commission's generally-applicable hearing procedure to be used in most proceedings unless one of the more specialized hearing tracks, *e.g.*, Subparts G, J, K, M, or N, applies. Subpart L is to be used in conjunction with the rules of general applicability contained in Subpart C.

The hearing procedures in this subpart are patterned after the Subpart M provisions on license transfers, but have been modified and supplemented to provide for a more generic hearing procedure as compared to Subpart M. The Subpart L procedures shift the focus to more informal oral hearings (*e.g.*, record developed through oral presentation of witnesses who are subject to questioning by the presiding officer), although all parties could agree to conduct the hearing based solely upon written submissions. Following is a section-by-section analysis of the revisions to Subpart L.

Section 2.1200—Scope of Subpart

Section 2.1200 indicates that Subpart L may be applied to all NRC adjudicatory proceedings except proceedings on the licensing of the construction and operation of a uranium enrichment facility, proceedings on an initial application for construction authorization for a high-level radioactive waste repository at a geologic repository operations area noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings on an initial application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, proceedings on enforcement matters unless all parties otherwise agree and request the application of Subpart L procedures, and proceedings for the

direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition.

Section 2.1201—Definitions

Section 2.1201 provides that Subpart L has no unique definitions but relies on the definitions in existing § 2.4.

Section 2.1202—Authority and Role of NRC Staff

Section 2.1202 describes the authority and role of the NRC staff in the informal hearings under Subpart L. Similar to the situation in license transfer cases under Subpart M, the NRC staff would be expected to conduct its own reviews and take action on the application or matter that is the subject of the hearing, despite the pendency of the hearing. Section 2.1202(a) requires the NRC staff to provide notice to the presiding officer of the NRC staff's action on the application or the underlying regulatory matter for which a hearing was provided, as applicable. The notice must include the staff's explanation why it may take action on the application or the underlying regulatory matter despite the pendency of the contested matter before the presiding officer. In licensing proceedings, that explanation should ordinarily address why the public health and safety is protected and common defense and security is promoted despite the pendency of the contested matter. In no event, however, should the staff's explanation set forth a position on, or otherwise assume an advocacy position with respect to the contested matter in the adjudication before the presiding officer. The NRC staff's action on the application or matter would be effective upon issuance except in matters involving an application to construct or operate a production or utilization facility, an application for amendment to a construction authorization for a HLW repository, an application for the construction and operation of an independent spent fuel storage installation or monitored retrievable storage facility located away from a reactor site, and production or utilization facility licensing actions that involve significant hazards considerations. Under § 2.1213, the NRC staff's action would be subject to motions for stay.

Section 2.1202(b) also provides, consistent with § 2.310, that the NRC staff may decide whether to participate as a party to most proceedings conducted under Subpart L but would be required to be a party in enforcement proceedings, in a proceeding where the NRC staff has denied (or proposes to deny) an application, and in a proceeding where the presiding officer determines that the resolution of any issue would be aided materially by the NRC staff's participation as a party. At the commencement of a proceeding, if the NRC staff decides to participate as a party, § 2.1202(b)(2) requires the NRC staff to notify the presiding officer and parties of its intent to participate as a party and the contentions on which it wishes to participate as a party within 15 days of the order granting requests for hearing/petitions to intervene and admitting contentions. If the NRC staff desires to be a party thereafter, the NRC staff shall notify the presiding officer and the parties, identify the contentions on which it wishes to participate as a party, and make the disclosures required by § 2.336(b)(3) through (5) unless accompanied by an affidavit explaining why the disclosures cannot be provided to the parties with the notice. Although the NRC staff should have continuing flexibility to enter a hearing as a party, it should not be permitted to make a delayed decision in order to avoid its disclosure obligations under § 2.336(b). In addition, the NRC staff must take the proceeding in whatever posture the hearing may be at the time that it chooses to participate as a party.

Section 2.1203—Hearing File and Prohibition on Other Discovery

Section 2.1203 requires the NRC staff to prepare and provide a hearing file and to keep the hearing file up-to-date by placing relevant documents such as the SER into the file as they become available. However, the Staff's obligation to place documents into the hearing file, by itself, has no significance with respect to the hearing schedule, and the unavailability of a staff-prepared document which is unnecessary for resolution of a contested matter must not affect the schedule for resolution.

Although the NRC has the capability to receive electronic files and make them available at the NRC's Web site, there is currently no requirement to submit documents in electronic form. Furthermore, the bulk of some electronic files, *e.g.*, files of nuclear power plant license applications, may be impractical to be available for electronic access and download, given current technologies, and may be distributed using media such as CD–ROM and DVD. Hence, the Commission expects that hearing files in the foreseeable future will consist of paper copies, electronic files, or a combination of both.

Discovery against the NRC staff is prohibited in Subpart L proceedings by § 2.1203(d), except as permitted by Subpart C.

Section 2.1204—Motions and Requests

Section 2.1204(a) makes clear that the provisions in Subpart C on motions, requests, and responses are to be applied in informal proceedings under Subpart L. Section 2.1204(b) allows the parties to request that the presiding officer permit cross-examination by the parties on particular contentions or issues. The presiding officer may allow the parties to cross-examine if he/she finds that cross-examination is necessary for the development of an adequate record for decision. However, the Commission expects that the use of cross-examination will be rare.

Section 2.1205—Summary Disposition

Section 2.1205 provides a simplified procedure for summary disposition in informal proceedings. The standards to be applied in ruling on such motions are those set out in Subpart G.

Section 2.1206—Informal Hearings

Section 2.1206 specifies that informal hearings under the new Subpart L will be oral hearings unless all the parties agree to a hearing consisting of written submissions (this is a significant change from the existing Subpart L which generally involves hearings consisting of written submissions). No motion to hold a hearing consisting of written submissions may be entertained absent unanimous consent of the parties.

Section 2.1207—Process and Schedule for Submissions and Presentations in an Oral Hearing

Section 2.1207 specifies the process and schedule for submissions and presentations in oral hearings under the revised Subpart L. This section addresses the sequence and timing for the submission of direct testimony, rebuttal testimony, statements of position, suggested questions for the presiding officer to ask witnesses, and post-hearing proposed findings of fact and conclusions of law. The section also contains provisions on the actual conduct of the hearing, including the stipulation that only the presiding officer may question witnesses.

Section 2.1208—Process and Schedule for a Hearing Consisting of Written Presentations

Section 2.1208 specifies the process for submissions in hearings consisting of written presentations. This section

addresses the sequence and timing for the submission of written statements of position, written direct testimony, written rebuttal testimony, proposed questions on the written testimony and written concluding statements of position on the contentions. Paragraph (a)(3) was revised to clarify that proposed questions may be submitted on written responses and rebuttal testimony filed under paragraph (a)(2), and that the presiding officer has the discretion whether these questions are to be posed to the sponsors of the responses and rebuttal testimony.

Section 2.1209—Findings of Fact and Conclusions of Law

Section 2.1209 requires parties to file proposed findings of fact and conclusions of law within thirty (30) days of the close of the hearing, unless the presiding officer specifies a different time.

Section 2.1210, 2.1211—Initial Decision and Its Effect, Immediate Effectiveness of Initial Decision Directing Issuance or Amendment of Licenses Under Part 61 of This Chapter

Under new § 2.1210, an initial decision resolving all issues before the presiding officer is effective upon issuance unless stayed or otherwise provided by the regulations in part 2. Under § 2.1210(a), the Commission, at its discretion, will determine whether initial decisions which are inconsistent with any staff action taken under § 2.1202(a) warrant Commission review. Once an initial decision becomes final, § 2.1210(e) provides that the Secretary transmits the decision to the NRC staff for action in accordance with the decision. Section 2.1211 restates former § 2.765, which specifies that initial decisions directing the issuance of a license or license amendment under Part 61 relating to land disposal of radioactive waste will become effective only upon the order of the Commission.

Section 2.1212—Petitions for Commission Review of Initial Decision

Section 2.1212 requires that petitions for review of an initial decision must be filed in accordance with the generally applicable review provisions of § 2.341. The second sentence of this section, which requires a party to file a petition for Commission review before seeking judicial review of an agency action, was modified to conform with the parallel provision in the second sentence of § 2.341(b).

Section 2.1213—Applications for a Stay

Section 2.1213 specifies the procedures for applications to stay the effectiveness of the NRC staff's actions on a licensing matter involved in a hearing under Subpart L. Applications for a stay of an initial decision issued under Subpart L must be filed under the stay provisions of § 2.342 in Subpart C.

11. Subpart M—Sections 2.1300–2.1331

Subpart M continues to be the Commission's specialized hearing track applicable to proceedings for the direct or indirect transfer of licenses for which prior NRC approval is required under governing statutes, the Commission's regulations, or an existing license condition. Subpart M is to be used in conjunction with the provisions of Subpart C listed in § 2.1304.

Section 2.1308 has been amended to remove provisions which are now covered under the generally-applicable provisions in Subpart C, but retains the language indicating that Subpart M hearings will ordinally be oral hearings unless the parties unanimously agree to a hearing consisting of written submissions and file a joint motion requesting a written hearing within 15 days of the notice or order granting a hearing.

Section 2.1315 states that a license amendment for an ISFSI that is intended to conform the license to reflect a license transfer, involves ''no genuine issue as to whether the health and safety of the public will be significantly affected.''

Sections 2.1321, 2.1322 and 2.1331 have been amended to remove references to deleted sections and to reflect the fact that requests for hearing/petitions to intervene for proceedings under Subpart M will be considered under the generally applicable requirements of § 2.309 in Subpart C.

Section 2.1323(d) provides that either the EDO or the EDO's delegee shall designate the NRC staff witnesses who will testify in a Subpart M hearing.

12. Subpart N—Sections 2.1400–2.1407

Subpart N is a new, specialized hearing track that contains the Commission's ''fast track'' hearing procedures. This subpart provides for the expeditious resolution of issues in cases where the contentions are few and not particularly complex and might be efficiently addressed in a short hearing using simple procedures and oral presentations. However, this subpart may be used for more complex issues if all parties agree. The Commission expects that the rendering of an initial decision should be accomplished within about two to three months of the issuance of the order granting a hearing if the issues are straightforward and deadlines are met. Subpart N is to be used in conjunction with the rules of general applicability contained in Subpart C. The following is a section-by-section analysis of Subpart N.

Section 2.1400—Purpose and Scope

This section indicates that the purpose of Subpart N is to provide for simplified procedures for conducting hearings, and identifies the proceedings where Subpart N procedures may be used.

Section 2.1401—Definitions

This section indicates that Subpart N has no unique definitions, and relies on the definitions in existing § 2.4.

Section 2.1402—General Procedures and Limitations; Requests for Other Procedures

Section 2.1402 specifies the general procedures and procedural limitations for the ''fast track'' hearing process of Subpart N. It limits the use of written motions and pleadings, prohibits discovery beyond that provided by the general disclosure provisions of Subpart C, and prohibits summary disposition. Section 2.1402 allows the presiding officer or the Commission to order that the hearing be conducted using other hearing procedures if it becomes apparent before the hearing is held that the use of the ''fast track'' procedures of this subpart are not appropriate in the particular case. It also permits any party to orally request that the presiding officer allow parties to cross-examine on particular contentions or issues. The presiding officer may grant the oral motion only if the presiding officer finds that cross-examination is necessary for the development of an adequate record for decision. The Commission expects, however, that cross-examination will rarely be used in Subpart N proceedings.

Section 2.1403—Authority and Role of the NRC Staff

Section 2.1403 describes the authority and role of the NRC staff in the ''fast track'' hearings under Subpart N. Regardless of its status as a party and similar to the situation under Subparts L and M, the NRC staff is expected to conduct its own reviews and take action on the application or matter that is the subject of the hearing, despite the pendency of the hearing. Section 2.1403(a) requires the NRC staff to provide notice to the presiding officer of the NRC's action on the application or the underlying regulatory matter for which a hearing was provided, as applicable. The notice must include the staff's explanation why it may take action on the application or the

underlying regulatory matter despite the pendency of the contested matter before the presiding officer. In licensing proceedings, that explanation should ordinarily address why the public health and safety is protected and common defense and security is promoted despite the pendency of the contested matter. In no event, however, should the staff's explanation set forth a position on, or otherwise assume an advocacy position with respect to the contested matter in the adjudication before the presiding officer. The NRC staff's action on the application or matter is effective upon issuance except in proceedings involving an application to construct and/or operate a production or utilization facility, an application for the construction and operation of an ISFSI or an MRS at a site other than a reactor site, and proposed reactor licensing actions that involve significant hazards considerations.

Similar to the situation in informal hearings under Subpart L, the NRC staff is not required to be a party in most ''fast track'' proceedings, but would be required to be a party in any Subpart N proceeding involving an application denied by the staff, an enforcement action proposed by the staff, or a proceeding where the presiding officer determines that resolution of any issue would be aided materially by the staff's participation as a party. In all other instances, the NRC staff may choose to be a party, in which case it must notify the presiding officer and the parties that it desires party status.

Section 2.1404—Prehearing Conference

Section 2.1404 requires the presiding officer to conduct a prehearing conference within forty (40) days of the issuance of the order granting requests for hearing/petitions to intervene. At the prehearing conference, each party identifies its witnesses, provides a summary of the proposed testimony of each witness, reports on its efforts at settlement, and provides questions that the party wishes the presiding officer to ask at the hearing. The presiding officer memorializes the rulings and results of the prehearing conference in a written order.

Section 2.1405—Hearing

Section 2.1405 sets forth the requirements applicable to ''fast track'' hearings. The hearing commences no later than twenty (20) days after the prehearing conference required by § 2.1404. The hearing is open to the public and transcribed. At the hearing, the presiding officer receives oral testimony and questions the witnesses. The parties may not cross-examine the witnesses, but they have had the opportunity at the prehearing conference to provide questions for the presiding officer to use at hearing. However, as mentioned above a presiding officer may permit cross-examination under § 2.1402(b) if the presiding officer finds that cross-examination by the parties is necessary for the development of an adequate record for decision.

Each party may present oral argument and a final statement of position at the close of the hearing. Written post-hearing briefs and proposed findings are prohibited unless requested by the presiding officer.

Section 2.1406—Initial Decision—Issuance and Effectiveness

Section 2.1406 encourages the presiding officer to render a decision from the bench, to be reduced to writing within twenty (20) days of the close of the hearing. Where a decision is not rendered from the bench, it must be issued in writing within thirty (30) days of the close of the hearing. These periods may be extended only with the approval of the Chief Administrative Judge or the Commission. The initial decision is effective twenty (20) days after issuance of the written decision unless a party appeals or the Commission takes review on its own motion. The initial decision is stayed if a party appeals or the Commission reviews the initial decision on its own.

Section 2.1407—Appeal and Commission Review of Initial Decision

Under § 2.1407, a party may appeal as-of-right by filing a written appeal with the Commission within fifteen (15) days after the service of the initial decision. The written appeal is limited to twenty (20) pages and must address the matters and standards for review listed in § 2.1407. Other parties may file written answers within fifteen (15) days after service of the appeal, and are limited to twenty (20) pages. If there is no appeal, or after the Commission has acted upon the appeal and the decision becomes final agency action, the Secretary shall transmit the decision to the NRC staff for action in accordance with the decision.

13. Subpart O—Sections 2.1500—2.1509

Subpart O is a specialized hearing track that contains the Commission's procedures for conducting ''legislative-style'' hearings. The purpose of this new subpart is to provide for simplified, non-adversarial hearing procedures to assist the Commission in obtaining information and varying policy perspectives on specific subjects identified by the Commission. Subpart O may be used, in the Commission's sole discretion, in design certification rulemakings under Part 52 of this chapter, and in situations where the Commission has determined, under § 2.335(d), that a legislative hearing would assist it in resolving a petition filed under § 2.335(b).

Section 2.1500—Purpose and Scope

This section specifies the matters for which the Commission may decide, as a matter of discretion, to hold a legislative hearing under this subpart.

Section 2.1501—Definitions

This section sets forth two definitions, demonstrative information, and documentary information. These definitions are used in § 2.1506 to identify the information that must be submitted in written statements to be filed before the oral hearing phase of the legislative hearing.

Section 2.1502—Commission Decision To Hold Legislative Hearing

This section addresses the procedure and timing of a Commission decision to conduct a legislative hearing and the noticing requirements. In a design certification rulemaking, the Commission could determine to hold a legislative hearing either prior to issuing the notice of proposed rulemaking or as the result of comments received on the proposed rule. If the Commission decides, before publishing a notice of proposed rulemaking in the **Federal Register**, that it wishes to conduct a legislative hearing, the notice of proposed rulemaking must identify the issues to be addressed in the legislative hearing, the parties that will be invited to participate in the legislative hearing, whether any other parties may request to participate and the criteria for granting of such requests, and any special procedures to be used. In a proceeding where a party submits a petition under § 2.335, all parties to the proceeding will be invited to participate, as will interested States, governmental bodies, and affected Federally-recognized Indian Tribes who are participating in the underlying proceeding under § 2.315(c).

Section 2.1503—Authority of Presiding Officer

This section essentially provides the presiding officer with the authority to control the conduct of the legislative hearing to ensure that the hearing is conducted in a timely and fair manner.

Section 2.1504—Participation in Legislative Hearing

This section addresses the content and timing of requests to participate in the legislative hearing.

Section 2.1505—Role of the NRC Staff

Because of the nature of the legislative hearing, the NRC staff is not required to participate in the legislative hearing, but may be requested to answer presiding officer questions or provide other assistance as the presiding officer may request. The separation of functions limitations in § 2.348 do not apply to communications between the Commission or presiding officer and the NRC staff on the matters identified under § 2.1502(c)(1) as the subject of the legislative hearing (see discussion on § 2.1509).

Section 2.1506—Written Statements and Submission of Information

Ordinarily, all participants in a legislative hearing must submit written statements and materials they wish to be considered in a legislative hearing. These written materials must be filed no later than ten (10) days prior to the oral hearing.

Section 2.1507—Oral Hearing

This section addresses the conduct of the oral phase of the legislative hearing. The purpose of the hearing is to allow various stakeholders to express their opinions, analyses, and supporting facts, with the object of informing the Commission with respect to the policy questions relevant to the subject matter of the legislative hearing. Accordingly, the procedures for the legislative hearing are intended to provide for expeditious presentation of such information to the Commission in a format that minimizes formalism. For example, there is no cross-examination; instead the presiding officer is free to ask each witness those questions the presiding officer believes are warranted, based upon the written submissions and information submitted under § 2.1506 as supplemented by any oral presentations in the oral phase of the hearing.

Section 2.1508—Recommendation of Presiding Officer

This section sets forth the responsibilities of the presiding officer following the conclusion of the oral phase of the legislative hearing to certify a recommendation to the Commission. The information that is to be included in the certification is intended to assist the Commission in resolving the subject matter of the legislative hearing.

Section 2.1509—Ex Parte Communications and Separation of Functions

This section provides that the *ex parte* limitations on communications between the Commission or presiding officer and parties in § 2.347 also applies in a legislative hearing. The separation of functions limitations in § 2.348 applies only where the legislative hearing is held on a matter certified to the Commission under § 2.335, and then only with respect to the underlying contested matter, and not the issue identified under § 2.1502(c)(1).

III. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Web site (Web). The NRC's interactive rulemaking Web site is located at *http://ruleforum.llnl.gov.* These documents may be viewed and downloaded electronically via this Web site.

NRC's Public Electronic Reading Room (PERR). The NRC's public electronic reading room is located at *http://www.nrc.gov/NRC/ADAMS/index.html.*

The NRC staff contact (NRC Staff). None.

Document	PDR	Web	PERR	NRC staff
Comments received	X	X	X	
Responses to Comments not Addressed in Statement of Considerations for Changes to the Adjudicatory Process: Final Rule.	X	.....	ML033510327	
SECY–01–0137	X	.....	ML012070084	
SRM (1–8–2002) on SECY–01–0137	X	.....	ML020080358	
SECY–02–0072	.....	.....	ML021150595	
SECY–02–0072A	.....	.....	ML022600516	
SRM (11–13–2003)	.....	.....	ML033180077	

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed by voluntary, private sector, consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This final rule changes the NRC's procedures for the conduct of hearings in 10 CFR part 2. This final rule does not constitute the establishment of a government-unique standard as defined in Office of Management and Budget (OMB) Circular A–119 (1998).

V. Environmental Impact: Categorical Exclusion

The final rule amends the adjudicatory procedures in 10 CFR part 2 and makes conforming changes to other parts of title 10, and, therefore qualifies as an action eligible for the categorical exclusion from environmental review under 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement or environmental assessment has been prepared for this final rulemaking.

VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

The final rule emanates from a longstanding concern that the Commission's hearing process, using the full panoply of formal adjudicatory procedures under former Subpart G, is not as efficient or effective as it could be, thereby resulting in protracted, costly proceedings. To avoid such protracted proceedings in the future, the Commission has developed revised rules of procedure in 10 CFR part 2 that provide for a range of hearing procedures tailored to the type of proceeding and the nature of issues to be resolved in the proceeding. The

revised procedures enhance public participation by reducing unnecessary procedural burdens, produce more timely decisions, and reduce the resources that participants expend.

The final rule requires most NRC proceedings to be conducted using more informal hearing procedures. The trend in administrative law is to move away from formal, trial-type procedures. Instead, informal hearings and use of Alternative Dispute Resolution methods, such as settlement conferences, are often viewed as better, quicker, and less-costly means to resolve disputes.

The Commission will continue to use Subpart G procedures in enforcement proceedings (unless all parties agree to use Subpart L or N procedures), in proceedings on the initial application for construction authorization for a high-level radioactive waste repository and initial application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, as well as any proceeding to construct and operate a uranium enrichment facility under Section 193 of the Atomic Energy Act of 1954, as amended, (AEA). The Commission also will use Subpart G procedures in nuclear power reactor licensing proceedings where resolution of a contention or contested matter involves resolution of: (1) Issues of material fact relating to the occurrence of a past event, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or (2) issues of motive or intent of the party or eyewitness material to the resolution of the contested matter.

The final rule should facilitate public participation in NRC proceedings by reducing some of the burdens. For example, the costs of discovery in formal adjudications should be reduced by the provision requiring parties to disclose voluntarily relevant documents at the outset of the proceeding. This should result in a diminished need for parties to file interrogatories and take depositions. By adding this form of discovery to all proceedings (formal and informal), the parties will have information that should assist in the resolution of issues and litigation of the case. Moreover, by requiring that contentions be filed in informal adjudications and providing for oral hearings (unless waived by all of the parties), informal proceedings should be more focused. This should permit parties to better focus the scope of their written and oral presentations on the specific disputes that must be resolved. By permitting the parties in informal hearings to propose questions that the presiding officer could choose to pose to witnesses, a more focused and complete record can be developed.

For less-complex disputes, a fast track option (Subpart N) is adopted. Under this option, cases can be resolved far more quickly with substantially reduced burdens to the participants as compared with the Subpart L hearing process.

Finally, the Commission is adopting ''legislative-style'' hearing procedures that may be used in the Commission's discretion in two relatively narrow situations to help develop a record on ''legislative facts'' that would assist the Commission decide questions of policy and discretion. The two situations are design certification rulemakings, and determination of a petition certified to the Commission under § 2.335 seeking consideration of a Commission rule or regulation.

The Commission does not believe the option of preserving the status quo by not proposing any rule changes is a preferred option. Experience has indicated that the agency hearing process can be improved through appropriate rule changes. The Commission believes that the final rule will improve the effectiveness of NRC hearings and at the same time reduce the overall burdens for all participants in NRC hearings: Members of the public, interested State and local governmental bodies, affected, Federally-recognized Indian Tribes, NRC staff, applicants and licensees.

This constitutes the regulatory analysis for the final rule.

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies in the context of Commission adjudicatory proceedings concerning nuclear reactors or nuclear materials. Reactor licensees are large organizations that do not fall within the definition of a small business found in Section 3 of the Small Business Regulatory Enforcement Fairness Act of 1996, 15 U.S.C. 632, within the small business standards set forth in 13 CFR part 121, or within the size standards adopted by the NRC (10 CFR 2.810). Based upon the historically low number of requests for hearings involving materials licensees, it is not expected that this rule would have any significant economic impact on a substantial number of small businesses.

IX. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule because these amendments modify the procedures to be used in NRC adjudicatory proceedings, and do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis has not been prepared for this final rule.

List of Subjects

10 CFR Part 1

Organization and function (Government Agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and

recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and record keeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Parts 1, 2, 50, 51, 52, 54, 60, 63, 70, 72, 73, 75, 76 and 110.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 2. In § 1.25, paragraph (g) is revised to read as follows:

§ 1.25 Office of the Secretary of the Commission.

* * * * *

(g) Receives, processes, and controls motions and pleadings filed with the Commission; issues and serves adjudicatory orders on behalf of the Commission; receives and distributes public comments in rulemaking proceedings; issues proposed and final rules on behalf of the Commission; maintains the official adjudicatory and rulemaking dockets of the Commission; and exercises responsibilities delegated to the Secretary in 10 CFR 2.303 and 2.346;

* * * * *

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 3. The authority citation for part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933. 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f); Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(0); sec. 102, Pub. L 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.321 also issued under secs. 102, 163, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b. i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.754, 2.712, also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553, Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub, L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42. U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart N also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

■ 4. Section 2.2 is revised to read as follows:

§ 2.2 Subparts.

Each subpart other than subpart C of this part sets forth special rules applicable to the type of proceeding described in the first section of that subpart. Subpart C sets forth general rules applicable to all types of proceedings except rulemaking, and should be read in conjunction with the subpart governing a particular proceeding. Subpart I of this part sets forth special procedures to be followed in proceedings in order to safeguard and prevent disclosure of Restricted Data.

■ 5. Section 2.3 is revised to read as follows:

§ 2.3 Resolution of conflict.

(a) In any conflict between a general rule in subpart C of this part and a special rule in another subpart or other part of this chapter applicable to a particular type of proceeding, the special rule governs.

(b) Unless otherwise specifically referenced, the procedures in this part do not apply to hearings in 10 CFR parts 4, 9, 10, 11, 12, 13, 15, 16, and subparts H and I of 10 CFR part 110.

■ 6. In § 2.4, a new definition of presiding officer is added, and the definitions of Commission adjudicatory employee, and NRC personnel are revised to read as follows:

§ 2.4 Definitions.

* * * * *

Commission adjudicatory employee means—

(1) The Commissioners and members of their personal staffs;

(2) The employees of the Office of Commission Appellate Adjudication;

(3) The members of the Atomic Safety and Licensing Board Panel and staff assistants to the Panel;

(4) A presiding officer appointed under § 2.313, and staff assistants to a presiding officer;

(5) Special assistants (as defined in § 2.322);

(6) The General Counsel, the Solicitor, the Associate General Counsel for Licensing and Regulation, and employees of the Office of the General Counsel under the supervision of the Solicitor;

(7) The Secretary and employees of the Office of the Secretary; and

(8) Any other Commission officer or employee who is appointed by the Commission, the Secretary, or the General Counsel to participate or advise in the Commission's consideration of an initial or final decision in a proceeding. Any other Commission officer or employee who, as permitted by § 2.348, participates or advises in the Commission's consideration of an initial or final decision in a proceeding must be appointed as a Commission adjudicatory employee under this paragraph and the parties to the proceeding must be given written notice of the appointment.

* * * * *

NRC personnel means:

(1) NRC employees;

(2) For the purpose of §§ 2.336, 2.702, 2.709 and 2.1018 only, persons acting in the capacity of consultants to the Commission, regardless of the form of the contractual arrangements under which such persons act as consultants to the Commission; and

(3) Members of advisory boards, committees, and panels of the NRC; members of boards designated by the Commission to preside at adjudicatory proceedings; and officers or employees of Government agencies, including military personnel, assigned to duty at the NRC.

* * * * *

Presiding officer means the Commission, an administrative law judge, an administrative judge, an Atomic Safety and Licensing Board, or other person designated in accordance with the provisions of this part, presiding over the conduct of a hearing conducted under the provisions of this part.

* * * * *

■ 7. Section 2.100 is revised to read as follows:

§ 2.100 Scope of subpart.

This subpart prescribes the procedures for issuance of a license, amendment of a license at the request of the licensee, and transfer and renewal of a license.

■ 8. In § 2.101, paragraphs (a)(3)(ii), (b), (f)(1)and (g)(2) are revised to read as follows:

§ 2.101 Filing of application.

(a) * * *

(3) * * *

(ii) Serve a copy on the chief executive of the municipality in which the facility is to be located or, if the facility is not to be located within a municipality, on the chief executive of the county, and serve a notice of availability of the application or environmental report on the chief executives of the municipalities or counties which have been identified in the application or environmental report as the location of all or part of the alternative sites, containing the following information: Docket number of the application, a brief description of the proposed site and facility; the location of the site and facility as primarily proposed and alternatively listed; the name, address, telephone number, and email address (if available) of the applicant's representative who may be contacted for further information; notification that a draft environmental impact statement will be issued by the Commission and will be made available upon request to the Commission; and notification that if a request is received from the appropriate chief executive, the applicant will transmit a copy of the application and environmental report, and any changes to such documents which affect the alternative site location, to the executive who makes the request. In complying with the requirements of this paragraph, the applicant should not make public distribution of those parts of the application subject to § 2.390(d). The applicant shall submit to the Director of Nuclear Reactor Regulation an affidavit that service of the notice of availability of the application or environmental report has been completed along with a list of names and addresses of those executives upon whom the notice was served; and

* * * * *

(b) After the application has been docketed each applicant for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee except applicants under part 61 of this chapter, who must comply with paragraph (g) of this section, shall serve a copy of the application and environmental report, as appropriate, on the chief executive of the municipality in which the activity is to be conducted or, if the activity is not to be conducted within a municipality on the chief executive of the county, and serve a notice of availability of the application or environmental report on the chief executives of the municipalities or counties which have been identified in the application or environmental report as the location of all or part of the alternative sites, containing the following information: Docket number of the application; a brief description of the proposed site and facility; the location of the site and facility as primarily proposed and alternatively listed; the name, address, telephone number, and email address (if available) of the applicant's representative who may be contacted for further information; notification that a draft environmental impact statement will be issued by the Commission and will be made available upon request to the Commission; and notification that if a request is received from the appropriate chief executive, the applicant will transmit a copy of the application and environmental report, and any changes to such documents which affect the alternative site location, to the executive who makes the request. In complying with the requirements of this paragraph the applicant should not make public distribution of those parts of the application subject to § 2.390(d). The applicant shall submit to the Director of Nuclear Material Safety and Safeguards an affidavit that service of the notice of availability of the application or environmental report has been completed along with a list of names and addresses of those executives upon whom the notice was served.

* * * * *

(f)(1) Each application for construction authorization for a HLW repository at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, and each application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, and any environmental impact statement required in connection therewith pursuant to subpart A of part 51 of this chapter shall be processed in accordance with the provisions of this paragraph.

* * * * *

(g) * * *

(2)(i) With respect to any tendered document that is acceptable for docketing, the applicant will be requested to:

(A) Submit to the Director of Nuclear Material Safety and Safeguards such additional copies as required by the regulations in part 61 and subpart A of part 51 of this chapter;

(B) Serve a copy on the chief executive of the municipality in which the waste is to be disposed of or, if the waste is not to be disposed of within a municipality, serve a copy on the chief executive of the county in which the waste is to be disposed of;

(C) Make direct distribution of additional copies to Federal, State, Indian Tribe, and local officials in accordance with the requirements of this chapter and written instructions from the Director of Nuclear Material Safety and Safeguards; and

(D) Serve a notice of availability of the application and environmental report on the chief executives or governing bodies of the municipalities or counties which have been identified in the application and environmental report as the location of all or part of the alternative sites if copies are not distributed under paragraph (g)(2)(i)(C) of this section to the executives or bodies.

(ii) All distributed copies shall be completely assembled documents identified by docket number. However, subsequently distributed amendments may include revised pages to previous submittals and, in such cases, the recipients will be responsible for inserting the revised pages. In complying with the requirements of paragraph (g) of this section the applicant may not make public distribution of those parts of the application subject to § 2.390(d).

* * * * *

■ 9. In § 2.102, paragraph (d)(3) is revised to read as follows:

§ 2.102 Administrative review of application.

* * * * *

(d) * * *

(3) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will cause the Attorney General's advice received pursuant to paragraph (d)(1) of this section to be published in the **Federal Register** promptly upon receipt, and will make such advice a part of the record in any proceeding on antitrust matters conducted in accordance with subsection 105c(5) and section 189a of the Act. The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will also cause to be published in the **Federal Register** a notice that the Attorney General has not rendered any such advice. Any notice published in the **Federal Register** under this paragraph will also include a notice of hearing, if appropriate, or will state that any person whose interest may be affected by the proceeding may, under § 2.309, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. The notice will state that petitions for leave to intervene and requests for hearing shall be filed within 30 days after publication of the notice.

■ 10. In § 2.103, the section heading and paragraph (a) are revised to read as follows:

§ 2.103 Action on applications for byproduct, source, special nuclear material, facility and operator licenses.

(a) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, finds that an application for a byproduct, source, special nuclear material, facility, or operator license complies with the requirements of the Act, the Energy Reorganization Act, and this chapter, he will issue a license. If the license is for a facility, or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, or for a construction authorization for a HLW repository at a geologic repository operations area under to parts 60 or 63 of this chapter, or if it is to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the State, Tribal and local officials specified in § 2.104(e) of the issuance of the license. For notice of issuance requirements for licenses issued under part 61 of this chapter, see § 2.106(d).

* * * * *

■ 11. In § 2.104, paragraph (e) is revised to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(e) The Secretary will give timely notice of the hearing to all parties and to other persons, if any, entitled by law to notice. The Secretary will transmit a notice of hearing on an application for a license for a production or utilization facility, for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, for a license under part 61 of this chapter, for a construction authorization for a HLW repository at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, and for a license under part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) to the governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be so located or conducted within an Indian reservation). The Secretary will transmit a notice of hearing on an application for a license under part 72 of this chapter to acquire, receive or possess spent fuel, high-level radioactive waste or radioactive material associated with high-level radioactive waste for the purpose of storage in a monitored retrievable storage installation (MRS) to the same persons who received the notice of docketing under § 72.16(e) of this chapter.

■ 12. In § 2.105, paragraphs (a)(5) and (a)(6) are revised to read as follows:

§ 2.105 Notice of proposed action.

(a) * * *

(5) A license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, or an amendment thereto, when the license or amendment would authorize actions which may significantly affect the health and safety of the public;

(6) An amendment to a construction authorization for a high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, when such an amendment would authorize actions which may significantly affect the health and safety of the public;

* * * * *

■ 13. In § 2.106, paragraph (c) is revised to read as follows:

§ 2.106 Notice of issuance.

* * * * *

(c) The Director of Nuclear Material Safety and Safeguards will also cause to be published in the **Federal Register** notice of, and will inform the State, local, and Tribal officials specified in § 2.104(e) of any action with respect to an application for construction authorization for a high-level radioactive waste repository at a

geologic repository operations area, a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, or an amendment to such license for which a notice of proposed action has been previously published.

* * * * *

■ 14. In § 2.107, paragraph (a) is revised to read as follows:

§ 2.107 Withdrawal of application.

(a) The Commission may permit an applicant to withdraw an application prior to the issuance of a notice of hearing on such terms and conditions as it may prescribe, or may, on receiving a request for withdrawal of an application, deny the application or dismiss it with prejudice. If the application is withdrawn prior to issuance of a notice of hearing, the Commission shall dismiss the proceeding. Withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe.

* * * * *

■ 15. In § 2.108, paragraph (c) is revised to read as follows:

§ 2.108 Denial of application for failure to supply information.

* * * * *

(c) When both a notice of receipt of the application and a notice of hearing have been published, the presiding officer, upon a motion made by the staff under § 2.323, will rule whether an application should be denied by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, under paragraph (a) of this section.

■ 16. In § 2.110, paragraph (a)(1) is revised to read as follows:

§ 2.110 Filing and administrative action on submittals for design review or early review of site suitability issues.

(a)(1) A submittal pursuant to appendix O of part 52 of this chapter shall be subject to §§ 2.101(a) and 2.390 to the same extent as if it were an application for a permit or license.

* * * * *

■ 17. In § 2.206, a new paragraph (c)(3) is added to read as follows:

§ 2.206 Requests for action under this subpart.

* * * * *

(c) * * *

(3) The Secretary is authorized to extend the time for Commission review on its own motion of a Director's denial under paragraph (c) of this section.

■ 18. A new subpart C is added to part 2 to read as follows:

Subpart C—Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings

Sec.

2.300 Scope of subpart C.
2.301 Exceptions.
2.302 Filing of documents.
2.303 Docket.
2.304 Formal requirements for documents; acceptance for filing.
2.305 Service of papers, methods, proof.
2.306 Computation of time.
2.307 Extension and reduction of time limits.
2.308 Treatment of requests for hearing or petitions for leave to intervene by the Secretary.
2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.
2.310 Selection of hearing procedures.
2.311 Interlocutory review of rulings on requests for hearings/petitions to intervene and selection of hearing procedures.
2.312 Notice of hearing.
2.313 Designation of presiding officer, disqualification, unavailability, and substitution.
2.314 Appearance and practice before the Commission in adjudicatory proceedings.
2.315 Participation by a person not a party.
2.316 Consolidation of parties.
2.317 Separate hearings; consolidation of proceedings.
2.318 Commencement and termination of jurisdiction of presiding officer.
2.319 Power of the presiding officer.
2.320 Default.
2.321 Atomic Safety and Licensing Boards.
2.322 Special assistants to the presiding officer.
2.323 Motions.
2.324 Order of procedure.
2.325 Burden of proof.
2.326 Motions to reopen.
2.327 Official recording; transcript.
2.328 Hearings to be public.
2.329 Prehearing conference.
2.330 Stipulations.
2.331 Oral argument before the presiding officer.
2.332 General case scheduling and management.
2.333 Authority of the presiding officer to regulate procedure in a hearing.
2.334 Schedules for proceedings.
2.335 Consideration of Commission rules and regulations in adjudicatory proceedings.
2.336 General discovery.
2.337 Evidence at a hearing.
2.338 Settlement of issues; alternative dispute resolution.
2.339 Expedited decisionmaking procedure.
2.340 Initial decision in contested proceedings on applications for facility operating licenses; immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.
2.341 Review of decisions and actions of a presiding officer.
2.342 Stays of decisions.
2.343 Oral argument.
2.344 Final decision.
2.345 Petition for reconsideration.
2.346 Authority of the Secretary.
2.347 Ex parte communications.
2.348 Separation of functions.
2.390 Public inspections, exemptions, requests for withholding.

Subpart C—Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings

§ 2.300 Scope of subpart C.

The provisions of this subpart apply to all adjudications conducted under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and 10 CFR Part 2, unless specifically stated otherwise in this subpart.

§ 2.301 Exceptions.

Consistent with 5 U.S.C. 554(a)(4) of the Administrative Procedure Act, the Commission may provide alternative procedures in adjudications to the extent that the conduct of military or foreign affairs functions is involved.

§ 2.302 Filing of documents.

(a) Documents must be filed with the Commission in adjudications subject to this part either by:

(1) First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff;

(2) Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff;

(3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;*

(4) By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

(b) All documents offered for filing must be accompanied by proof of

service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission. For purposes of service of documents, the staff of the Commission is considered a party.

(c) Filing by mail, electronic mail, or facsimile is considered complete as of the time of deposit in the mail or upon electronic mail or facsimile transmission.

§ 2.303 Docket.

The Secretary shall maintain a docket for each proceeding conducted under this part, commencing with either the initial notice of hearing, notice of proposed action, order, request for hearing or petition for leave to intervene, as appropriate. The Secretary shall maintain all files and records of proceedings, including transcripts and video recordings of testimony, exhibits, and all papers, correspondence, decisions and orders filed or issued. All documents, records, and exhibits filed in any proceeding must be filed with the Secretary as described in §§ 2.302 and 2.304.

§ 2.304 Formal requirements for documents; acceptance for filing.

(a) Each document filed in an adjudication subject to this part to which a docket number has been assigned must show the docket number and title of the proceeding.

(b) Each document must be bound on the left side and typewritten, printed, or otherwise reproduced in permanent form on good unglazed paper of standard letterhead size. Each page must begin not less than one inch from the top, with side and bottom margins of not less than one inch. Text must be double-spaced, except that quotations may be single-spaced and indented. The requirements of this paragraph do not apply to original documents or admissible copies offered as exhibits, or to specifically prepared exhibits.

(c) The original of each document must be signed in ink by the party or its authorized representative, or by an attorney having authority with respect to it. The document must state the capacity of the person signing, his or her address, and the date of signature. The signature of a person signing in a representative capacity is a representation that the document has been subscribed in the capacity specified with full authority that he or she has read it and knows the contents that to the best of his or her knowledge, information and belief the statements made in it are true, and that it is not interposed for delay. If a document is not signed, or is signed with intent to defeat the purpose of this section, it may be stricken.

(d) Except as otherwise required by this part or by order, a pleading or other document, other than correspondence, must be filed in an original and two conformed copies.

(e) The first document filed by any person in a proceeding must designate the name and address of a person on whom service may be made. This document must also designate the electronic mail address and facsimile number, if any, of the person on whom service may be made.

(f) A document filed by electronic mail or facsimile transmission need not comply with the formal requirements of paragraphs (b), (c), and (d) of this section if an original and two (2) copies otherwise complying with all of the requirements of this section are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

(g) *Acceptance for filing.* Any document that fails to conform to the requirements of this section may be refused acceptance for filing and may be returned with an indication of the reason for nonacceptance. Any document that is not accepted for filing will not be entered on the Commission's docket.

§ 2.305 Service of papers, methods, proof.

(a) Service of papers by the Commission. Except for subpoenas, the Commission will serve all orders, decisions, notices, and other papers issued by it upon all parties.

(b) Who may be served. Any paper required to be served upon a party must be served upon that person or upon the representative designated by the party or by law to receive service of papers. When a party has appeared by attorney, service must be made upon the attorney of record.

(c) How service may be made. Service may be made by personal delivery or courier, by express mail or expedited delivery service, by first class, certified or registered mail, by e-mail or facsimile transmission, or as otherwise authorized by law. If service is made by e-mail or facsimile transmission, the original signed copy must be transmitted to the Secretary by personal delivery, courier, express mail or expedited delivery service, or first class, certified, or registered mail. In addition, if service is by e-mail, a paper copy must also be served by any other service method permitted under this paragraph. Where there are numerous parties to a proceeding, the Commission may make special provision regarding the service of papers. The presiding officer shall require service by the most expeditious means that is available to all parties in the proceeding, including express mail or expedited delivery service, and/or electronic or facsimile transmission, unless the presiding officer finds that this requirement would impose undue burden or expense on some or all of the parties.

(d) Service on the Secretary. (1) All pleadings must be served on the Secretary of the Commission in the same or equivalent manner, *i.e.*, personal delivery or courier, express mail or expedited delivery service, facsimile or electronic transmission, that they are served upon the adjudicatory tribunals and the parties to the proceedings, so that the Secretary will receive the pleading at approximately the same time that it is received by the tribunal to which the pleading is directed.

(2) When pleadings are personally delivered to tribunals while they are conducting proceedings outside the Washington, DC area, service on the Secretary may be accomplished by courier, express mail or expedited delivery service, or by electronic or facsimile transmission.

(3) Service of pre-filed testimony and demonstrative evidence (*e.g.*, maps and other physical exhibits) on the Secretary may be made by first class mail in all cases, unless the presiding officer directs otherwise.

(4) The addresses for the Secretary are:

(i) First class mail: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

(ii) Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff.

(iii) E-mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* and

(iv) Facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

(e) When service is complete. Service upon a party is complete:

(1) By personal delivery, on handing the paper to the individual, or leaving it at his office with that person's clerk or other person in charge or, if there is no one in charge, leaving it in a

conspicuous place in the office, or if the office is closed or the person to be served has no office, leaving it at his usual place of residence with some person of suitable age and discretion then residing there;

(2) By mail, on deposit in the United States mail, properly stamped and addressed;

(3) By electronic mail, on transmission thereof, and service of a copy by another method of service permitted in paragraph (c) of this section;

(4) By facsimile transmission, on transmission thereof and receipt of electronic confirmation that one or more of the addressees for a party has successfully received the transmission. If the sender receives an electronic message that the facsimile transmission to an addressee was not deliverable or is otherwise informed that a transmission was unreadable, transmission to that person is not considered complete. In such an event, the sender shall reserve the document in accordance with paragraph (e)(1) through (e)(4) of this section; or

(5) When service cannot be effected in a manner provided by paragraphs (e)(1) to (4) inclusive of this section, in any other manner authorized by law.

(f) Service on the NRC staff. (1) Service shall be made upon the NRC staff of all papers and documents required to be filed with parties and the presiding officer in all proceedings, including those proceedings where the NRC staff informs the presiding officer of its determination not to participate as a party.

(2) If the NRC staff decides not to participate as a party in a proceeding, it shall, in its notification to the presiding officer and parties of its determination not to participate, designate a person and address for service of papers and documents.

§ 2.306 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon by first class mail, five (5) days are added to the prescribed period. Two (2) days are added to the prescribed period when a document is served by express mail or expedited delivery service. No time is added when the notice or paper is served in person, by courier, electronic mail or facsimile transmission. The period allotted for the recipient's response commences upon confirmation of receipt under § 2.305(e)(3) or (4), except that if a document is served in person, by courier, electronic transmission, or facsimile, and is received by a party after 5 p.m., in the recipient's time zone on the date of transmission, the recipient's response date is extended by one (1) business day.

§ 2.307 Extension and reduction of time limits.

(a) Except as otherwise provided by law, the time fixed or the period of time prescribed for an act that is required or allowed to be done at or within a specified time, may be extended or shortened either by the Commission or the presiding officer for good cause, or by stipulation approved by the Commission or the presiding officer.

(b) If this part does not prescribe a time limit for an action to be taken in the proceeding, the Commission or the presiding officer may set a time limit for the action.

§ 2.308 Treatment of requests for hearing or petitions for leave to intervene by the Secretary.

Upon receipt of a request for hearing or a petition to intervene, the Secretary will forward the request or petition and/or proffered contentions and any answers and replies either to the Commission for a ruling on the request/petition and/or proffered contentions or to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel for the designation of a presiding officer under § 2.313(a) to rule on the matter.

§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.

(a) General requirements. Any person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene and a specification of the contentions which the person seeks to have litigated in the hearing. Except as provided in paragraph (e) of this section, the Commission, presiding officer or the Atomic Safety and Licensing Board designated to rule on the request for hearing and/or petition for leave to intervene will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section. In ruling on the request for hearing/petition to intervene submitted by petitioners seeking to intervene in the proceeding on the HLW repository, the Commission, the presiding officer or the Atomic Safety and Licensing Board shall also consider any failure of the petitioner to participate as a potential party in the pre-license application phase under subpart J of this part in addition to the factors in paragraph (d) of this section. If a request for hearing or petition to intervene is filed in response to any notice of hearing or opportunity for hearing, the applicant/licensee shall be deemed to be a party.

(b) Timing. Unless otherwise provided by the Commission, the request and/or petition and the list of contentions must be filed as follows:

(1) In proceedings for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statute, or pursuant to a license condition, twenty (20) days from the date of publication of the notice in the **Federal Register**.

(2) In proceedings for the initial authorization to construct a high-level radioactive waste geologic repository, and the initial licensee to receive and process high level radioactive waste at a geological repository operations area, thirty (30) days from the date of publication of the notice in the **Federal Register**.

(3) In proceedings for which a **Federal Register** notice of agency action is published (other than a proceeding covered by paragraphs (b)(1) or (b)(2) of this section), not later than:

(i) The time specified in any notice of hearing or notice of proposed action or as provided by the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request and/or petition, which may not, with the exception of a notice provided under § 2.102(d)(3), be less than 60 days from the date of publication of the notice in the **Federal Register**;

(ii) The time provided in § 2.102(d)(3); or

(iii) If no period is specified, sixty (60) days from the date of publication of the notice.

(4) In proceedings for which a **Federal Register** notice of agency action is not published, not later than the latest of:

(i) Sixty (60) days after publication of notice on the NRC Web site at *http://www.nrc.gov/public-involve/major-actions.html,* or

(ii) Sixty (60) days after the requestor receives actual notice of a pending application, but not more than sixty (60) days after agency action on the application.

(5) For orders issued under § 2.202 the time period provided therein.

(c) Nontimely filings. (1) Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request and/or petition and contentions that the request and/or petition should be granted and/or the contentions should be admitted based upon a balancing of the following factors to the extent that they apply to the particular nontimely filing:

(i) Good cause, if any, for the failure to file on time;

(ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;

(iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;

(v) The availability of other means whereby the requestor's/petitioner's interest will be protected;

(vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;

(vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and

(viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

(2) The requestor/petitioner shall address the factors in paragraphs (c)(1)(i) through (c)(1)(viii) of this section in its nontimely filing.

(d) Standing. (1) General requirements. A request for hearing or petition for leave to intervene must state:

(i) The name, address and telephone number of the requestor or petitioner;

(ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and

(iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

(2) State, local governmental body, and affected, Federally-recognized Indian Tribe. (i) A State, local governmental body (county, municipality or other subdivision), and any affected Federally-recognized Indian Tribe that desires to participate as a party in the proceeding shall submit a request for hearing/petition to intervene. The request/petition must meet the requirements of this section (including the contention requirements in paragraph (f) of this section), except that a State, local governmental body or affected Federally-recognized Indian Tribe that wishes to be a party in a proceeding for a facility located within its boundaries need not address the standing requirements under this paragraph. The State, local governmental body, and affected Federally-recognized Indian Tribe shall, in its request/petition, each designate a single representative for the hearing.

(ii) The Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on requests for hearings or petitions for leave to intervene will admit as a party to a proceeding a single designated representative of the State, a single designated representative for each local governmental body (county, municipality or other subdivision), and a single designated representative for each affected Federally-recognized Indian Tribe. In determining the request/petition of a State, local governmental body, and any affected Federally-recognized Indian Tribe that wishes to be a party in a proceeding for a facility located within its boundaries, the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on requests for hearings or petitions for leave to intervene shall not require a further demonstration of standing.

(iii) In any proceeding on an application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, or an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, the Commission shall permit intervention by the State and local governmental body (county, municipality or other subdivision) in which such an area is located and by any affected Federally-recognized Indian Tribe as defined in parts 60 or 63 of this chapter if the requirements of paragraph (f) of this section are satisfied with respect to at least one contention. All other petitions for intervention in any such proceeding must be reviewed under the provisions of paragraphs (a) through (f) of this section.

(3) The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on requests for hearing and/or petitions for leave to intervene will determine whether the petitioner has an interest affected by the proceeding considering the factors enumerated in § 2.309(d)(1)–(2), among other things. In enforcement proceedings, the licensee or other person against whom the action is taken shall have standing.

(e) Discretionary Intervention. The presiding officer may consider a request for discretionary intervention when at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held. A requestor/petitioner may request that his or her petition be granted as a matter of discretion in the event that the petitioner is determined to lack standing to intervene as a matter of right under paragraph (d)(1) of this section. Accordingly, in addition to addressing the factors in paragraph (d)(1) of this section, a petitioner who wishes to seek intervention as a matter of discretion in the event it is determined that standing as a matter of right is not demonstrated shall address the following factors in his/her initial petition, which the Commission, the presiding officer or the Atomic Safety and Licensing Board will consider and balance:

(1) Factors weighing in favor of allowing intervention—

(i) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record;

(ii) The nature and extent of the requestor's/petitioner's property, financial or other interests in the proceeding; and

(iii) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest;

(2) Factors weighing against allowing intervention—

(i) The availability of other means whereby the requestor's/petitioner's interest will be protected;

(ii) The extent to which the requestor's/petitioner's interest will be represented by existing parties; and

(iii) The extent to which the requestor's/petitioner's participation will inappropriately broaden the issues or delay the proceeding.

(f) Contentions. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For

each contention, the request or petition must:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted;

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer upon a showing that—

(i) The information upon which the amended or new contention is based was not previously available;

(ii) The information upon which the amended or new contention is based is materially different than information previously available; and

(iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

(3) If two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

(g) Selection of hearing procedures. A request for hearing and/or petition for leave to intervene may also address the selection of hearing procedures, taking into account the provisions of § 2.310. If a request/petition relies upon § 2.310(d), the request/petition must demonstrate, by reference to the contention and the bases provided and the specific procedures in subpart G of this part, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures.

(h) Answers to requests for hearing and petitions to intervene. Unless otherwise specified by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on requests for hearings or petitions for leave to intervene—

(1) The applicant/licensee, the NRC staff, and any other party to a proceeding may file an answer to a request for a hearing, a petition to intervene and/or proffered contentions within twenty-five (25) days after service of the request for hearing, petition and/or contentions. Answers should address, at a minimum, the factors set forth in paragraphs (a) through (g) of this section insofar as these sections apply to the filing that is the subject of the answer.

(2) The requestor/petitioner may file a reply to any answer withing seven (7) days after service of that answer.

(3) No other written answers or replies will be entertained.

(i) Decision on request/petition. The presiding officer shall, within forty-five (45) days after the filing of answers and replies under paragraph (h) of this section, issue a decision on each request for hearing/petition to intervene, absent an extension from the Commission.

§ 2.310 Selection of hearing procedures.

Upon a determination that a request for hearing/petition to intervene should be granted and a hearing held, the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request/petition will determine and identify the specific hearing procedures to be used for the proceeding as follows—

(a) Except as determined through the application of paragraphs (b) through (h) of this section, proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to parts 30, 32 through 36, 39, 40, 50, 52, 54, 55, 61, 70 and 72 of this chapter may be conducted under the procedures of subpart L of this part.

(b) Proceedings on enforcement matters must be conducted under the procedures of subpart G of this part, unless all parties agree and jointly request that the proceedings be conducted under the procedures of subpart L or subpart N of this part, as appropriate.

(c) Proceedings on the licensing of the construction and operation of a uranium enrichment facility must be conducted under the procedures of subpart G of this part.

(d) In proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits for nuclear power reactors, where the presiding officer by order finds that resolution of the contention or contested matter necessitates resolution of issues of material fact relating to the occurrence of a past activity, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter, the hearing for resolution of that contention or contested matter will be conducted under subpart G of this part.

(e) Proceedings on applications for a license or license amendment to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power plant must be conducted under the procedures of subpart L of this part, unless a party requests that the proceeding be conducted under the procedures of subpart K of this part, or if all parties agree and jointly request that the proceeding be conducted under the procedures of subpart N of this part.

(f) Proceedings on an application for initial construction authorization for a high-level radioactive waste repository at a geologic repository operations area noticed pursuant to §§ 2.101(f)(8) or 2.105(a)(5), and proceedings on an initial application for a license to receive and possess high-level radioactive waste at a geologic repository operations area must be conducted under the procedures of subparts G and J of this part. Subsequent amendments to a construction authorization for a high-level radioactive geologic repository, and amendments to a license to receive and possess high level radioactive waste at a high level waste geologic repository may be conducted under the procedures of subpart L of this part, unless all parties agree and jointly request that the proceeding be conducted under the procedures of subpart N of this part.

(g) Proceedings on an application for the direct or indirect transfer of control of an NRC license which transfer requires prior approval of the NRC under the Commission's regulations, governing statutes or pursuant to a license condition shall be conducted under the procedures of subpart M of this part, unless the Commission determines otherwise in a case-specific order.

(h) Except as determined through the application of paragraphs (b) through (g) of this section, proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to parts 30, 32 through 36, 39, 40, 50, 52, 54, 55, 61, 70 and 72 of this chapter, and proceedings on an application for the direct or indirect transfer of control of an NRC license may be conducted under the procedures of subpart N of this part if—

(1) The hearing itself is expected to take no more than two (2) days to complete; or

(2) All parties to the proceeding agree that it should be conducted under the procedures of subpart N of this part.

(i) In design certification rulemaking proceedings under part 52 of this chapter, any informal hearing held under § 52.51 of this chapter must be conducted under the procedures of subpart O of this part.

(j) In proceedings where the Commission grants a petition filed under § 2.335(b), the Commission may, in its discretion, conduct a hearing under the procedures of subpart O of this part to assist the Commission in developing a record on the matters raised in the petition.

§ 2.311 Interlocutory review of rulings on requests for hearing/petitions to intervene and selection of hearing procedures.

(a) An order of the presiding officer or of the Atomic Safety and Licensing Board on a request for hearing or a petition to intervene may be appealed to the Commission, only in accordance with the provisions of this section, within ten (10) days after the service of the order. The appeal must be initiated by the filing of a notice of appeal and accompanying supporting brief. Any party who opposes the appeal may file a brief in opposition to the appeal within ten (10) days after service of the appeal. The supporting brief and any answer must conform to the requirements of § 2.341(c)(2). No other appeals from rulings on requests for hearings are allowed.

(b) An order denying a petition to intervene and/or request for hearing is appealable by the requestor/petitioner on the question as to whether the request and/or petition should have been granted.

(c) An order granting a petition to intervene and/or request for hearing is appealable by a party other than the requestor/petitioner on the question as to whether the request/petition should have been wholly denied.

(d) An order selecting a hearing procedure may be appealed by any party on the question as to whether the selection of the particular hearing procedures was in clear contravention of the criteria set forth in § 2.310. The appeal must be filed with the Commission no later than ten (10) days after issuance of the order selecting a hearing procedure.

§ 2.312 Notice of hearing.

(a) In a proceeding in which the terms of a notice of hearing are not otherwise prescribed by this part, the order or notice of hearing will state:

(1) The nature of the hearing and its time and place, or a statement that the time and place will be fixed by subsequent order;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law asserted or to be considered; and

(4) A statement describing the specific hearing procedures or subpart that will be used for the hearing.

(b) The time and place of hearing will be fixed with due regard for the convenience of the parties or their representatives, the nature of the proceeding and the public interest.

§ 2.313 Designation of presiding officer, disqualification, unavailability, and substitution.

(a) Designation of presiding officer. The Commission may provide in the notice of hearing that one or more members of the Commission, an administrative law judge, an administrative judge, an Atomic Safety and Licensing Board, or a named officer who has been delegated final authority in the matter, shall be the presiding officer. The Commission alone shall designate the presiding officer in a hearing conducted under subpart O. If the Commission does not designate the presiding officer for a hearing under subparts G, J, K, L, M, or N of this part, then the Chief Administrative Judge shall issue an order designating:

(1) An Atomic Safety and Licensing Board appointed under Section 191 of the Atomic Energy Act of 1954, as amended, or an administrative law judge appointed pursuant to 5 U.S.C. 3105, for a hearing conducted under subparts G, J, K, L, or N of this part; or

(2) An Atomic Safety and Licensing Board, an administrative law judge, or an administrative judge for a hearing conducted under subpart M of this part.

(b) Disqualification. (1) If a designated presiding officer or a designated member of an Atomic Safety and Licensing Board believes that he or she is disqualified to preside or to participate as a board member in the hearing, he or she shall withdraw by notice on the record and shall notify the Commission or the Chief Administrative Judge, as appropriate, of the withdrawal.

(2) If a party believes that a presiding officer or a designated member of an Atomic Safety and Licensing Board should be disqualified, the party may move that the presiding officer or the Licensing Board member disqualify himself or herself. The motion must be supported by affidavits setting forth the alleged grounds for disqualification. If the presiding officer does not grant the motion or the Licensing Board member does not disqualify himself, the motion must be referred to the Commission. The Commission will determine the sufficiency of the grounds alleged.

(c) Unavailability. If a presiding officer or a designated member of an Atomic Safety and Licensing Board becomes unavailable during the course of a hearing, the Commission or the Chief Administrative Judge, as appropriate, will designate another presiding officer or Atomic Safety and Licensing Board member. If he or she becomes unavailable after the hearing has been concluded, then:

(1) The Commission may designate another presiding officer;

(2) The Chief Administrative Judge or the Commission, as appropriate, may designate another Atomic Safety and Licensing Board member to participate in the decision;

(3) The Commission may direct that the record be certified to it for decision.

(d) Substitution. If a presiding officer or a designated member of an Atomic Safety and Licensing Board is substituted for the one originally designated, any motion predicated upon the substitution must be made within five (5) days after the substitution.

§ 2.314 Appearance and practice before the Commission in adjudicatory proceedings.

(a) Standards of practice. In the exercise of their functions under this subpart, the Commission, the Atomic Safety and Licensing Boards, Administrative Law Judges, and Administrative Judges function in a quasi-judicial capacity. Accordingly, parties and their representatives in proceedings subject to this subpart are expected to conduct themselves with honor, dignity, and decorum as they should before a court of law.

(b) Representation. A person may appear in an adjudication on his or her own behalf or by an attorney-at-law. A partnership, corporation, or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law. A party may be represented by an attorney-at-law if the attorney is in good standing and has been admitted to practice before any Court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States. Any person appearing in a representative capacity shall file with the Commission a written notice of appearance. The notice must state his or her name, address, telephone number, and facsimile number and email address, if any; the name and address of the person or entity on whose behalf he or she appears; and, in the case of an attorney-at-law, the basis of his or her eligibility as a representative or, in the case of another representative, the basis of his or her authority to act on behalf of the party.

(c) Reprimand, censure or suspension from the proceeding. (1) A presiding officer, or the Commission may, if necessary for the orderly conduct of a proceeding, reprimand, censure or suspend from participation in the particular proceeding pending before it any party or representative of a party who refuses to comply with its directions, or who is disorderly, disruptive, or engages in contemptuous conduct.

(2) A reprimand, censure, or a suspension that is ordered to run for one day or less must state the grounds for the action in the record of the proceeding, and must advise the person disciplined of the right to appeal under paragraph (c)(3) of this section. A suspension that is ordered for a longer period must be in writing, state the grounds on which it is based, and advise the person suspended of the right to appeal and to request a stay under paragraphs (c)(3) and (c)(4) of this section. The suspension may be stayed for a reasonable time in order for an affected party to obtain other representation if this would be necessary to prevent injustice.

(3) Anyone disciplined under this section may file an appeal with the Commission within ten (10) days after issuance of the order. The appeal must be in writing and state concisely, with supporting argument, why the appellant believes the order was erroneous, either as a matter of fact or law. The Commission shall consider each appeal on the merits, including appeals in cases in which the suspension period has already run. If necessary for a full and fair consideration of the facts, the Commission may conduct further evidentiary hearings, or may refer the matter to another presiding officer for development of a record. In the latter event, unless the Commission provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. The hearing must begin as soon as possible. In the case of an attorney, if no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, or the Commission, as appropriate, shall notify the State bar(s) to which the attorney is admitted. The notification must include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Commission.

(4) A suspension exceeding one (1) day is not effective for seventy-two (72) hours from the date the suspension order is issued. Within this time, a suspended individual may request a stay of the sanction from the appropriate reviewing tribunal pending appeal. No responses to the stay request from other parties will be entertained. If a timely stay request is filed, the suspension must be stayed until the reviewing tribunal rules on the motion. The stay request must be in writing and contain the information specified in § 2.342(b). The Commission shall rule on the stay request within ten (10) days after the filing of the motion. The Commission shall consider the factors specified in § 2.342(e)(1) and (e)(2) in determining whether to grant or deny a stay application.

§ 2.315 Participation by a person not a party.

(a) A person who is not a party (including persons who are affiliated with or represented by a party) may, in the discretion of the presiding officer, be permitted to make a limited appearance by making an oral or written statement of his or her position on the issues at any session of the hearing or any prehearing conference within the limits and on the conditions fixed by the presiding officer. However, that person may not otherwise participate in the proceeding. Such statements of position shall not be considered evidence in the proceeding.

(b) The Secretary will give notice of a hearing to any person who requests it before the issuance of the notice of hearing, and will furnish a copy of the notice of hearing to any person who requests it thereafter. If a communication bears more than one signature, the Commission will give the notice to the person first signing unless the communication clearly indicates otherwise.

(c) The presiding officer will afford an interested State, local governmental body (county, municipality or other subdivision), and affected, Federally-recognized Indian Tribe, which has not been admitted as a party under § 2.309, a reasonable opportunity to participate in a hearing. Each State, local governmental body, and affected Federally-recognized Indian Tribe shall, in its request to participate in a hearing, each designate a single representative for the hearing. The representative shall be permitted to introduce evidence, interrogate witnesses where cross-examination by the parties is permitted, advise the Commission without requiring the representative to take a position with respect to the issue, file proposed findings in those proceedings where findings are permitted, and petition for review by the Commission under § 2.341 with respect to the admitted contentions. The representative shall identify those contentions on which it will participate in advance of any hearing held.

(d) If a matter is taken up by the Commission under § 2.341 or *sua sponte,* a person who is not a party may, in the discretion of the Commission, be permitted to file a brief ''*amicus curiae.*'' Such a person shall submit the

amicus brief together with a motion for leave to do so which identifies the interest of the person and states the reasons why a brief is desirable. Unless the Commission provides otherwise, the brief must be filed within the time allowed to the party whose position the brief will support. A motion of a person who is not a party to participate in oral argument before the Commission will be granted at the discretion of the Commission.

§ 2.316 Consolidation of parties.

On motion or on its or his own initiative, the Commission or the presiding officer may order any parties in a proceeding who have substantially the same interest that may be affected by the proceeding and who raise substantially the same questions, to consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact, and conclusions of law and argument. However, it may not order any consolidation that would prejudice the rights of any party. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding, or with respect to any one or more issues thereof.

§ 2.317 Separate hearings; consolidation of proceedings.

(a) Separate hearings. On motion by the parties or upon request of the presiding officer for good cause shown, or on its own initiative, the Commission may establish separate hearings in a proceeding if it is found that the action will be conducive to the proper dispatch of its business and to the ends of justice and will be conducted in accordance with the other provisions of this subpart.

(b) Consolidation of proceedings. On motion and for good cause shown or on its own initiative, the Commission or the presiding officers of each affected proceeding may consolidate for hearing or for other purposes two or more proceedings, or may hold joint hearings with interested States and/or other Federal agencies on matters of concurrent jurisdiction, if it is found that the action will be conducive to the proper dispatch of its business and to the ends of justice and will be conducted in accordance with the other provisions of this subpart.

§ 2.318 Commencement and termination of jurisdiction of presiding officer.

(a) Unless the Commission orders otherwise, the jurisdiction of the presiding officer designated to conduct a hearing over the proceeding, including motions and procedural matters, commences when the proceeding commences. If a presiding officer has not been designated, the Chief Administrative Judge has jurisdiction or, if he or she is unavailable, another administrative judge or administrative law judge has jurisdiction. A proceeding commences when a notice of hearing or a notice of proposed action under § 2.105 is issued. When a notice of hearing provides that the presiding officer is to be an administrative judge or an administrative law judge, the Chief Administrative Judge will designate by order the administrative judge or administrative law judge, as appropriate, who is to preside. The presiding officer's jurisdiction in each proceeding terminates when the period within which the Commission may direct that the record be certified to it for final decision expires, when the Commission renders a final decision, or when the presiding officer withdraws from the case upon considering himself or herself disqualified, whichever is earliest.

(b) The Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, may issue an order and take any otherwise proper administrative action with respect to a licensee who is a party to a pending proceeding. Any order related to the subject matter of the pending proceeding may be modified by the presiding officer as appropriate for the purpose of the proceeding.

§ 2.319 Power of the presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay and to maintain order. The presiding officer has all the powers necessary to those ends, including the powers to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas authorized by law, including subpoenas requested by a participant for the attendance and testimony of witnesses or the production of evidence upon the requestor's showing of general relevance and reasonable scope of the evidence sought;

(c) Consolidate parties and proceedings in accordance with §§ 2.316 and 2.317 and/or direct that common interests be represented by a single spokesperson;

(d) Rule on offers of proof and receive evidence. In proceedings under this part, strict rules of evidence do not apply to written submissions. However, the presiding officer may, on motion or on the presiding officer's own initiative, strike any portion of a written presentation or a response to a written question that is irrelevant, immaterial, unreliable, duplicative or cumulative.

(e) Restrict irrelevant, immaterial, unreliable, duplicative or cumulative evidence and/or arguments;

(f) Order depositions to be taken as appropriate;

(g) Regulate the course of the hearing and the conduct of participants;

(h) Dispose of procedural requests or similar matters;

(i) Examine witnesses;

(j) Hold conferences before or during the hearing for settlement, simplification of contentions, or any other proper purpose;

(k) Set reasonable schedules for the conduct of the proceeding and take actions reasonably calculated to maintain overall schedules;

(l) Certify questions to the Commission for its determination, either in the presiding officer's discretion, or on motion of a party or on direction of the Commission;

(m) Reopen a proceeding for the receipt of further evidence at any time before the initial decision;

(n) Appoint special assistants from the Atomic Safety and Licensing Board Panel under § 2.322;

(o) Issue initial decisions as provided in this part;

(p) Dispose of motions by written order or by oral ruling during the course of a hearing or prehearing conference. The presiding officer should ensure that parties not present for the oral ruling are notified promptly of the ruling;

(q) Issue orders necessary to carry out the presiding officer's duties and responsibilities under this part; and

(r) Take any other action consistent with the Act, this chapter, and 5 U.S.C. 551–558.

§ 2.320 Default.

If a party fails to file an answer or pleading within the time prescribed in this part or as specified in the notice of hearing or pleading, to appear at a hearing or prehearing conference, to comply with any prehearing order entered by the presiding officer, or to comply with any discovery order entered by the presiding officer, the Commission or the presiding officer may make any orders in regard to the failure that are just, including, among others, the following:

(a) Without further notice, find the facts as to the matters regarding which the order was made in accordance with the claim of the party obtaining the order, and enter the order as appropriate; or

(b) Proceed without further notice to take proof on the issues specified.

§ 2.321 Atomic Safety and Licensing Boards.

(a) The Commission or the Chief Administrative Judge may establish one or more Atomic Safety and Licensing Boards, each comprised of three members, one of whom will be qualified in the conduct of administrative proceedings and two of whom have such technical or other qualifications as the Commission or the Chief Administrative Judge determines to be appropriate to the issues to be decided. The members of an Atomic Safety and Licensing Board shall be designated from the Atomic Safety and Licensing Board Panel established by the Commission. In proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate, the Atomic Safety and Licensing Board shall perform the adjudicatory functions that the Commission determines are appropriate.

(b) The Commission or the Chief Administrative Judge may designate an alternate qualified in the conduct of administrative proceedings, or an alternate having technical or other qualifications, or both, for an Atomic Safety and Licensing Board established under paragraph (a) of this section. If a member of a board becomes unavailable, the Commission or the Chief Administrative Judge may constitute the alternate qualified in the conduct of administrative proceedings, or the alternate having technical or other qualifications, as appropriate, as a member of the board by notifying the alternate who will, as of the date of the notification, serve as a member of the board. If an alternate is unavailable or no alternates have been designated, and a member of a board becomes unavailable, the Commission or Chief Administrative Judge may appoint a member of the Atomic Safety and Licensing Board Panel who is qualified in the conduct of administrative proceedings or a member having technical or other qualifications, as appropriate, as a member of the Atomic Safety and Licensing Board by notifying the appointee who will, as of the date of the notification, serve as a member of the board.

(c) An Atomic Safety and Licensing Board has the duties and may exercise the powers of a presiding officer as granted by § 2.319 and otherwise in this part. Any time when a board is in existence but is not actually in session, any powers which could be exercised by a presiding officer or by the Chief Administrative Judge may be exercised with respect to the proceeding by the chairman of the board having jurisdiction over it. Two members of an Atomic Safety and Licensing Board constitute a quorum if one of those members is the member qualified in the conduct of administrative proceedings.

§ 2.322 Special assistants to the presiding officer.

(a) In consultation with the Chief Administrative Judge, the presiding officer may, at his or her discretion, appoint personnel from the Atomic Safety and Licensing Board Panel established by the Commission to assist the presiding officer in taking evidence and preparing a suitable record for review. The appointment may occur at any appropriate time during the proceeding but must, at the time of the appointment, be subject to the notice and disqualification provisions as described in § 2.313. The special assistants may function as:

(1) Technical interrogators in their individual fields of expertise. The interrogators shall study the written testimony and sit with the presiding officer to hear the presentation and, where permitted in the proceeding, the cross-examination by the parties of all witnesses on the issues of the interrogators' expertise. The interrogators shall take a leading role in examining the witnesses to ensure that the record is as complete as possible;

(2) Upon consent of all the parties, special masters to hear evidentiary presentations by the parties on specific technical matters, and, upon completion of the presentation of evidence, to prepare a report that would become part of the record. Special masters may rule on evidentiary issues brought before them, in accordance with § 2.333. Appeals from special masters' rulings may be taken to the presiding officer in accordance with procedures established in the presiding officer's order appointing the special master. Special masters' reports are advisory only; the presiding officer retains final authority with respect to the issues heard by the special master;

(3) Alternate Atomic Safety and Licensing Board members to sit with the presiding officer, to participate in the evidentiary sessions on the issue for which the alternate members were designated by examining witnesses, and to advise the presiding officer of their conclusions through an on-the-record report. This report is advisory only; the presiding officer retains final authority on the issue for which the alternate member was designated; or

(4) Discovery master to rule on the matters specified in § 2.1018(a)(2).

(b) The presiding officer may, as a matter of discretion, informally seek the assistance of members of the Atomic Safety and Licensing Board Panel to brief the presiding officer on the general technical background of subjects involving complex issues that the presiding officer might otherwise have difficulty in quickly grasping. These briefings take place before the hearing on the subject involved and supplement the reading and study undertaken by the presiding officer. They are not subject to the procedures described in § 2.313.

§ 2.323 Motions.

(a) Presentation and disposition. All motions must be addressed to the Commission or other designated presiding officer. A motion must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises. All written motions must be filed with the Secretary and served on all parties to the proceeding.

(b) Form and content. Unless made orally on-the-record during a hearing, or the presiding officer directs otherwise, or under the provisions of subpart N of this part, a motion must be in writing, state with particularity the grounds and the relief sought, be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form of order. A motion must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion, and that the movant's efforts to resolve the issue(s) have been unsuccessful.

(c) Answers to motions. Within ten (10) days after service of a written motion, or other period as determined by the Secretary, the Assistant Secretary, or the presiding officer, a party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party has no right to reply, except as permitted by the Secretary, the Assistant Secretary, or the presiding officer. Permission may be granted only in compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply.

(d) Accuracy in filing. All parties are obligated, in their filings before the presiding officer and the Commission, to ensure that their arguments and assertions are supported by appropriate and accurate references to legal authority and factual basis, including, as appropriate, citations to the record. Failure to do so may result in

appropriate sanctions, including striking a matter from the record or, in extreme circumstances, dismissal of the party.

(e) Motions for reconsideration. Motions for reconsideration may not be filed except upon leave of the presiding officer or the Commission, upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid. A motion must be filed within ten (10) days of the action for which reconsideration is requested. The motion and any responses to the motion are limited to ten (10) pages.

(f) Referral and certifications to the Commission. (1) If, in the judgment of the presiding officer, prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, or if the presiding officer determines that the decision or ruling involves a novel issue that merits Commission review at the earliest opportunity, the presiding officer may refer the ruling promptly to the Commission. The presiding officer must notify the parties of the referral either by announcement on-the-record or by written notice if the hearing is not in session.

(2) A party may petition the presiding officer to certify an issue to the Commission for early review. The presiding officer shall apply the alternative standards of § 2.341(f) in ruling on the petition for certification. No motion for reconsideration of the presiding officer's ruling on a petition for certification will be entertained.

(g) Effect of filing a motion, petition, or certification of question to the Commission. Unless otherwise ordered, neither the filing of a motion, the filing of a petition for certification, nor the certification of a question to the Commission stays the proceeding or extends the time for the performance of any act.

(h) Motions to compel discovery. Parties may file answers to motions to compel discovery in accordance with paragraph (c) of this section. The presiding officer, in his or her discretion, may order that the answer be given orally during a telephone conference or other prehearing conference, rather than in writing. If responses are given over the telephone, the presiding officer shall issue a written order on the motion summarizing the views presented by the parties. This does not preclude the presiding officer from issuing a prior oral ruling on the matter effective at the time of the ruling, if the terms of the ruling are incorporated in the subsequent written order.

§ 2.324 Order of procedure.

The presiding officer or the Commission will designate the order of procedure at a hearing. The proponent of an order will ordinarily open and close.

§ 2.325 Burden of proof.

Unless the presiding officer otherwise orders, the applicant or the proponent of an order has the burden of proof.

§ 2.326 Motions to reopen.

(a) A motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:

(1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;

(2) The motion must address a significant safety or environmental issue; and

(3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

(b) The motion must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised. Evidence contained in affidavits must meet the admissibility standards of this subpart. Each of the criteria must be separately addressed, with a specific explanation of why it has been met. When multiple allegations are involved, the movant must identify with particularity each issue it seeks to litigate and specify the factual and/or technical bases which it believes support the claim that this issue meets the criteria in paragraph (a) of this section.

(c) A motion predicated in whole or in part on the allegations of a confidential informant must identify to the presiding officer the source of the allegations and must request the issuance of an appropriate protective order.

(d) A motion to reopen which relates to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions in § 2.309(c).

§ 2.327 Official recording; transcript.

(a) Recording hearings. A hearing will be recorded stenographically or by other means under the supervision of the presiding officer. If the hearing is recorded on videotape or some other video medium, before an official transcript is prepared under paragraph (b) of this section, that video recording will be considered to constitute the record of events at the hearing.

(b) Official transcript. For each hearing, a transcript will be prepared from the recording made in accordance with paragraph (a) of this section that will be the sole official transcript of the hearing. The transcript will be prepared by an official reporter who may be designated by the Commission or may be a regular employee of the Commission. Except as limited by section 181 of the Act or order of the Commission, the transcript will be available for inspection in the agency's public records system.

(c) Availability of copies. Copies of transcripts prepared in accordance with paragraph (b) of this section are available to the parties and to the public from the official reporter on payment of the charges fixed therefor. If a hearing is recorded on videotape or other video medium, copies of the recording of each daily session of the hearing may be made available to the parties and to the public from the presiding officer upon payment of a charge specified by the Chief Administrative Judge.

(d) Transcript corrections. Corrections of the official transcript may be made only in the manner provided by this paragraph. Corrections ordered or approved by the presiding officer must be included in the record as an appendix. When so incorporated, the Secretary shall make the necessary physical corrections in the official transcript so that it will incorporate the changes ordered. In making corrections, pages may not be substituted but, to the extent practicable, corrections must be made by running a line through the matter to be changed without obliteration and writing the matter as changed immediately above. If the correction consists of an insertion, it must be added by rider or interlineation as near as possible to the text which is intended to precede and follow it.

§ 2.328 Hearings to be public.

Except as may be requested under section 181 of the Act, all hearings will be public unless otherwise ordered by the Commission.

§ 2.329 Prehearing conference.

(a) Necessity for prehearing conference; timing. The Commission or

the presiding officer may, and in the case of a proceeding on an application for a construction permit or an operating license for a facility of a type described in §§ 50.21(b) or 50.22 of this chapter or a testing facility, shall direct the parties or their counsel to appear at a specified time and place for a conference or conferences before trial. A prehearing conference in a proceeding involving a construction permit or operating license for a facility of a type described in §§ 50.21(b) or 50.22 of this chapter must be held within sixty (60) days after discovery has been completed or any other time specified by the Commission or the presiding officer.

(b) Objectives. The following subjects may be discussed, as directed by the Commission or the presiding officer, at the prehearing conference:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control so that the proceeding will not be protracted because of lack of management;

(3) Discouraging wasteful prehearing activities;

(4) Improving the quality of the hearing through more thorough preparation, and;

(5) Facilitating the settlement of the proceeding or any portions of it.

(c) Other matters for consideration. As appropriate for the particular proceeding, a prehearing conference may be held to consider such matters as:

(1) Simplification, clarification, and specification of the issues;

(2) The necessity or desirability of amending the pleadings;

(3) Obtaining stipulations and admissions of fact and the contents and authenticity of documents to avoid unnecessary proof, and advance rulings from the presiding officer on the admissibility of evidence;

(4) The appropriateness and timing of summary disposition motions under subparts G and L of this part, including appropriate limitations on the page length of motions and responses thereto;

(5) The control and scheduling of discovery, including orders affecting disclosures and discovery under the discovery provisions in subpart G of this part.

(6) Identification of witnesses and documents, and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence, including the establishment of reasonable limits on the time allowed for presenting direct and, where permitted, cross-examination evidence;

(7) The disposition of pending motions;

(8) Settlement and the use of special procedures to assist in resolving any issues in the proceeding;

(9) The need to adopt special procedures for managing potentially difficult or protracted proceedings that may involve particularly complex issues, including the establishment of separate hearings with respect to any particular issue in the proceeding;

(10) The setting of a hearing schedule, including any appropriate limitations on the scope and time permitted for cross-examination where cross-examination is permitted; and

(11) Other matters that the Commission or presiding officer determines may aid in the just and orderly disposition of the proceeding.

(d) Reports. Prehearing conferences may be reported stenographically or by other means.

(e) Prehearing conference order. The presiding officer shall enter an order that recites the action taken at the conference, the amendments allowed to the pleadings and agreements by the parties, and the issues or matters in controversy to be determined in the proceeding. Any objections to the order must be filed by a party within five (5) days after service of the order. Parties may not file replies to the objections unless the presiding officer so directs. The filing of objections does not stay the decision unless the presiding officer so orders. The presiding officer may revise the order in the light of the objections presented and, as permitted by § 2.319(l), may certify for determination to the Commission any matter raised in the objections the presiding officer finds appropriate. The order controls the subsequent course of the proceeding unless modified for good cause.

§ 2.330 Stipulations.

Apart from any stipulations made during or as a result of a prehearing conference, the parties may stipulate in writing at any stage of the proceeding or orally during the hearing, any relevant fact or the contents or authenticity of any document. These stipulations may be received in evidence. The parties may also stipulate as to the procedure to be followed in the proceeding. These stipulations may, on motion of all parties, be recognized by the presiding officer to govern the conduct of the proceeding.

§ 2.331 Oral argument before the presiding officer.

When, in the opinion of the presiding officer, time permits and the nature of the proceeding and the public interest warrant, the presiding officer may allow, and fix a time for, the presentation of oral argument. The presiding officer will impose appropriate limits of time on the argument. The transcript of the argument is part of the record.

§ 2.332 General case scheduling and management.

(a) Scheduling order. The presiding officer shall, as soon as practicable after consulting with the parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that establishes limits for the time to file motions, conclude discovery, and take other actions in the proceeding. The scheduling order may also include:

(1) Modifications of the times for disclosures under §§ 2.336 and 2.704 and of the extent of discovery to be permitted;

(2) The date or dates for prehearing conferences, and hearings; and

(3) Any other matters appropriate in the circumstances of the proceeding.

(b) Modification of schedule. A schedule may not be modified except upon a finding by the presiding officer or the Commission of good cause. In making such a good cause determination, the presiding officer or the Commission should take into account the following factors, among other things:

(1) Whether the requesting party has exercised due diligence to adhere to the schedule;

(2) Whether the requested change is the result of unavoidable circumstances; and

(3) Whether the other parties have agreed to the change and the overall effect of the change on the schedule of the case.

(c) Objectives of scheduling order. The scheduling order must have as its objectives proper case management purposes such as:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control so that the proceeding will not be protracted because of lack of management;

(3) Discouraging wasteful prehearing activities;

(4) Improving the quality of the hearing through more thorough preparation; and

(5) Facilitating the settlement of the proceeding or any portions thereof, including the use of Alternative Dispute Resolution, when and if the presiding officer, upon consultation with the parties, determines that these types of efforts should be pursued.

(d) Effect of NRC staff's schedule on scheduling order. In establishing a

schedule, the presiding officer shall take into consideration the NRC staff's projected schedule for completion of its safety and environmental evaluations to ensure that the hearing schedule does not adversely impact the staff's ability to complete its reviews in a timely manner. Hearings on safety issues may be commenced before publication of the NRC staff's safety evaluation upon a finding by the presiding officer that commencing the hearings at that time would expedite the proceeding. Where an environmental impact statement (EIS) is involved, hearings on environmental issues addressed in the EIS may not commence before the issuance of the final EIS. In addition, discovery against the NRC staff on safety or environmental issues, respectively, should be suspended until the staff has issued the SER or EIS, unless the presiding officer finds that the commencement of discovery against the NRC staff (as otherwise permitted by the provisions of this part) before the publication of the pertinent document will not adversely affect completion of the document and will expedite the hearing.

§ 2.333 Authority of the presiding officer to regulate procedure in a hearing.

To prevent unnecessary delays or an unnecessarily large record, the presiding officer:

(a) May limit the number of witnesses whose testimony may be cumulative;

(b) May strike argumentative, repetitious, cumulative, unreliable, immaterial, or irrelevant evidence;

(c) Shall require each party or participant who requests permission to conduct cross-examination to file a cross-examination plan for each witness or panel of witnesses the party or participant proposes to cross-examine;

(d) Must ensure that each party or participant permitted to conduct cross-examination conducts its cross-examination in conformance with the party's or participant's cross-examination plan filed with the presiding officer;

(e) May take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination; and

(f) May impose such time limitations on arguments as the presiding officer determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

§ 2.334 Schedules for proceedings.

(a) Unless the Commission directs otherwise in a particular proceeding, the presiding officer or the Atomic Safety and Licensing Board assigned to the proceeding shall, based on information and projections provided by the parties and the NRC staff, establish and take appropriate action to maintain a schedule for the completion of the evidentiary record and, as appropriate, the issuance of its initial decision.

(b) The presiding officer or the Atomic Safety and Licensing Board assigned to the proceeding shall provide written notification to the Commission any time during the course of the proceeding when it appears that the completion of the record or the issuance of the initial decision will be delayed more than sixty (60) days beyond the time specified in the schedule established under § 2.334(a). The notification must include an explanation of the reasons for the projected delay and a description of the actions, if any, that the presiding officer or the Board proposes to take to avoid or mitigate the delay.

§ 2.335 Consideration of Commission rules and regulations in adjudicatory proceedings.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities, source material, special nuclear material, or byproduct material, is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to this part.

(b) A party to an adjudicatory proceeding subject to this part may petition that the application of a specified Commission rule or regulation or any provision thereof, of the type described in paragraph (a) of this section, be waived or an exception made for the particular proceeding. The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted. The petition must be accompanied by an affidavit that identifies the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule or regulation (or provision of it) would not serve the purposes for which the rule or regulation was adopted. The affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested. Any other party may file a response by counter affidavit or otherwise.

(c) If, on the basis of the petition, affidavit and any response permitted under paragraph (b) of this section, the presiding officer determines that the petitioning party has not made a *prima facie* showing that the application of the specific Commission rule or regulation (or provision thereof) to a particular aspect or aspects of the subject matter of the proceeding would not serve the purposes for which the rule or regulation was adopted and that application of the rule or regulation should be waived or an exception granted, no evidence may be received on that matter and no discovery, cross-examination or argument directed to the matter will be permitted, and the presiding officer may not further consider the matter.

(d) If, on the basis of the petition, affidavit and any response provided for in paragraph (b) of this section, the presiding officer determines that the *prima facie* showing required by paragraph (b) of this section has been made, the presiding officer shall, before ruling on the petition, certify the matter directly to the Commission (the matter will be certified to the Commission notwithstanding other provisions on certification in this part) for a determination in the matter of whether the application of the Commission rule or regulation or provision thereof to a particular aspect or aspects of the subject matter of the proceeding, in the context of this section, should be waived or an exception made. The Commission may, among other things, on the basis of the petition, affidavits, and any response, determine whether the application of the specified rule or regulation (or provision thereof) should be waived or an exception be made. The Commission may direct further proceedings as it considers appropriate to aid its determination.

(e) Whether or not the procedure in paragraph (b) of this section is available, a party to an initial or renewal licensing proceeding may file a petition for rulemaking under § 2.802.

§ 2.336 General discovery.

(a) Except for proceedings conducted under subparts G and J of this part or as otherwise ordered by the Commission, the presiding officer or the Atomic Safety and Licensing Board assigned to the proceeding, all parties, other than the NRC staff, to any proceeding subject to this part shall, within thirty (30) days of the issuance of the order granting a request for hearing or petition to intervene and without further order or request from any party, disclose and provide:

(1) The name and, if known, the address and telephone number of any person, including any expert, upon whose opinion the party bases its claims and contentions and may rely upon as a witness, and a copy of the analysis or other authority upon which that person bases his or her opinion;

(2)(i) A copy, or a description by category and location, of all documents and data compilations in the possession, custody, or control of the party that are relevant to the contentions, provided that if only a description is provided of a document or data compilation, a party shall have the right to request copies of that document and/or data compilation, and

(ii) A copy (for which there is no claim of privilege or protected status), or a description by category and location, of all tangible things (*e.g.,* books, publications and treatises) in the possession, custody or control of the party that are relevant to the contention.

(iii) When any document, data compilation, or other tangible thing that must be disclosed is publicly available from another source, such as at the NRC Web site, *http: //www.nrc.gov,* and/or the NRC Public Document Room, a sufficient disclosure would be the location, the title and a page reference to the relevant document, data compilation, or tangible thing.

(3) A list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

(b) Except for proceedings conducted under subpart J of this part or as otherwise ordered by the Commission, the presiding officer, or the Atomic Safety and Licensing Board assigned to the proceeding, the NRC staff shall, within thirty (30) days of the issuance of the order granting a request for hearing or petition to intervene and without further order or request from any party, disclose and/or provide, to the extent available (but excluding those documents for which there is a claim of privilege or protected status):

(1) The application and/or applicant/licensee requests associated with the application or proposed action that is the subject of the proceeding;

(2) NRC correspondence with the applicant or licensee associated with the application or proposed action that is the subject of the proceeding;

(3) All documents (including documents that provide support for, or opposition to, the application or proposed action) supporting the NRC staff's review of the application or proposed action that is the subject of the proceeding;

(4) Any NRC staff documents (except those documents for which there is a claim of privilege or protected status) representing the NRC staff's determination on the application or proposal that is the subject of the proceeding; and

(5) A list of all otherwise-discoverable documents for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

(c) Each party and the NRC staff shall make its initial disclosures under paragraphs (a) and (b) of this section, based on the information and documentation then reasonably available to it. A party, including the NRC staff, is not excused from making the required disclosures because it has not fully completed its investigation of the case, it challenges the sufficiency of another entity's disclosures, or that another entity has not yet made its disclosures. All disclosures under this section must be accompanied by a certification (by sworn affidavit) that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as of the date of the certification.

(d) The duty of disclosure under this section is continuing, and any information or documents that are subsequently developed or obtained must be disclosed within fourteen (14) days.

(e)(1)The presiding officer may impose sanctions, including dismissal of specific contentions, dismissal of the adjudication, denial or dismissal of the application or proposed action, or the use of the discovery provisions in subpart G of this part against the offending party, for the offending party's continuing unexcused failure to make the disclosures required by this section.

(2) The presiding officer may impose sanctions on a party that fails to provide any document or witness name required to be disclosed under this section, unless the party demonstrates good cause for its failure to make the disclosure required by this section. A sanction that may be imposed by the presiding officer is prohibiting the admission into evidence of documents or testimony of the witness proffered by the offending party in support of its case.

(f) The disclosures required by this section constitute the sole discovery permitted for NRC proceedings under this part unless there is further provision for discovery under the specific subpart under which the hearing will be conducted or unless the Commission provides otherwise in a specific proceeding.

§ 2.337 Evidence at a hearing.

(a) Admissibility. Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

(b) Objections. An objection to evidence must briefly state the grounds of objection. The transcript must include the objection, the grounds, and the ruling. Exception to an adverse ruling is preserved without notation on-the-record.

(c) Offer of proof. An offer of proof, made in connection with an objection to a ruling of the presiding officer excluding or rejecting proffered oral testimony, must consist of a statement of the substance of the proffered evidence. If the excluded evidence is in written form, a copy must be marked for identification. Rejected exhibits, adequately marked for identification, must be retained in the record.

(d) Exhibits. A written exhibit will not be received in evidence unless the original and two copies are offered and a copy is furnished to each party, or the parties have been previously furnished with copies or the presiding officer directs otherwise. The presiding officer may permit a party to replace with a true copy an original document admitted in evidence.

(e) Official record. An official record of a government agency or entry in an official record may be evidenced by an official publication or by a copy attested by the officer having legal custody of the record and accompanied by a certificate of his custody.

(f) Official notice. (1) The Commission or the presiding officer may take official notice of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body. Each fact officially noticed under this paragraph must be specified in the record with sufficient particularity to advise the parties of the matters which have been noticed or brought to the attention of the parties before final decision and each party adversely affected by the decision shall be given opportunity to controvert the fact.

(2) If a decision is stated to rest in whole or in part on official notice of a fact which the parties have not had a prior opportunity to controvert, a party may controvert the fact by filing an

appeal from an initial decision or a petition for reconsideration of a final decision. The appeal must clearly and concisely set forth the information relied upon to controvert the fact.

(g) Proceedings involving applications—(1) Facility construction permits. In a proceeding involving an application for construction permit for a production or utilization facility, the NRC staff shall offer into evidence any report submitted by the ACRS in the proceeding in compliance with section 182(b) of the Act, any safety evaluation prepared by the NRC staff, and any environmental impact statement prepared in the proceeding under subpart A of part 51 of this chapter by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, or his or her designee.

(2) Other applications where the NRC staff is a party. In a proceeding involving an application for other than a construction permit for a production or utilization facility, the NRC staff shall offer into evidence:

(i) Any report submitted by the ACRS in the proceeding in compliance with section 182(b) of the Act;

(ii) At the discretion of the NRC staff, a safety evaluation prepared by the NRC staff and/or NRC staff testimony and evidence on the contention/controverted matter prepared in advance of the completion of the safety evaluation;

(iii) Any NRC staff statement of position on the contention/controverted matter provided to the presiding officer under §§ 2.1202(a); and

(iv) Any environmental impact statement or environmental assessment prepared in the proceeding under subpart A of part 51 of this chapter by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, or his or her designee if there is any, but only if there are contentions/controverted matters with respect to the adequacy of the environmental impact statement or environmental assessment.

(3) Other applications where the NRC staff is not a party. In a proceeding involving an application for other than a construction permit for a production or utilization facility, the NRC staff shall offer into evidence, and (with the exception of an ACRS report) provide one or more sponsoring witnesses, for:

(i) Any report submitted by the ACRS in the proceeding in compliance with section 182(b) of the Act;

(ii) At the discretion of the NRC staff, a safety evaluation prepared by the NRC staff and/or NRC staff testimony and evidence on the contention/controverted matter prepared in advance of the completion of the safety evaluation;

(iii) Any NRC staff statement of position on the contention/controverted matter under § 2.1202(a); and

(iv) Any environmental impact statement or environmental assessment prepared in the proceeding under subpart A of part 51 of this chapter by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, or his or her designee if there is any, but only if there are contentions/controverted matters with respect to the adequacy of the environmental impact statement or environmental assessment.

§ 2.338 Settlement of issues; alternative dispute resolution.

The fair and reasonable settlement and resolution of issues proposed for litigation in proceedings subject to this part is encouraged. Parties are encouraged to employ various methods of alternate dispute resolution to address the issues without the need for litigation in proceedings subject to this part.

(a) Availability. The parties shall have the opportunity to submit a proposed settlement of some or all issues to the Commission or presiding officer, as appropriate, or submit a request for alternative dispute resolution under paragraph (b) of this section.

(b) Settlement judge; alternative dispute resolution. (1) The presiding officer, upon joint motion of the parties, may request the Chief Administrative Judge to appoint a Settlement Judge to conduct settlement negotiations or remit the proceeding to alternative dispute resolution as the Commission may provide or to which the parties may agree. The order appointing the Settlement Judge may confine the scope of settlement negotiations to specified issues. The order must direct the Settlement Judge to report to the Chief Administrative Judge at specified time periods.

(2) If a Settlement Judge is appointed, the Settlement Judge shall:

(i) Convene and preside over conferences and settlement negotiations between the parties and assess the practicalities of a potential settlement;

(ii) Report to the Chief Administrative Judge describing the status of the settlement negotiations and recommending the termination or continuation of the settlement negotiations; and

(iii) Not discuss the merits of the case with the Chief Administrative Judge or any other person, or appear as a witness in the case.

(3) Settlement negotiations conducted by the Settlement Judge terminate upon the order of the Chief Administrative Judge issued after consultation with the Settlement Judge.

(4) No decision concerning the appointment of a Settlement Judge or the termination of the settlement negotiation is subject to review by, appeal to, or rehearing by the presiding officer or the Commission.

(c) Availability of parties' attorneys or representatives. The presiding officer (or Settlement Judge) may require that the attorney or other representative who is expected to try the case for each party be present and that the parties, or agents having full settlement authority, also be present or available by telephone.

(d) Admissibility in subsequent hearing. No evidence, statements, or conduct in settlement negotiations under this section will be admissible in any subsequent hearing, except by stipulation of the parties. Documents disclosed may not be used in litigation unless obtained through appropriate discovery or subpoena.

(e) Imposition of additional requirements. The presiding officer (or Settlement Judge) may impose on the parties and persons having an interest in the outcome of the adjudication additional requirements as the presiding officer (or Settlement Judge) finds necessary for the fair and efficient resolution of the case.

(f) Effects of ongoing settlement negotiations. The conduct of settlement negotiations does not divest the presiding officer of jurisdiction and does not automatically stay the proceeding. A hearing must not be unduly delayed because of the conduct of settlement negotiations.

(g) Form. A settlement must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted. It must be signed by the consenting parties or their authorized representatives.

(h) Content of settlement agreement. The proposed settlement agreement must contain the following:

(1) An admission of all jurisdictional facts;

(2) An express waiver of further procedural steps before the presiding officer, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to seek judicial review or otherwise to contest the validity of the consent order;

(3) A statement that the order has the same force and effect as an order made after full hearing; and

(4) A statement that matters identified in the agreement, required to be adjudicated have been resolved by the proposed settlement agreement and consent order.

(i) Approval of settlement agreement. Following issuance of a notice of hearing, a settlement must be approved by the presiding officer or the Commission as appropriate in order to be binding in the proceeding. The presiding officer or Commission may order the adjudication of the issues that the presiding officer or Commission finds is required in the public interest to dispose of the proceeding. In an enforcement proceeding under subpart B of this part, the presiding officer shall accord due weight to the position of the NRC staff when reviewing the settlement. If approved, the terms of the settlement or compromise must be embodied in a decision or order. Settlements approved by a presiding officer are subject to the Commission's review in accordance with § 2.341.

§ 2.339 Expedited decisionmaking procedure.

(a) The presiding officer may determine a proceeding by an order after the conclusion of a hearing without issuing an initial decision, when:

(1) All parties stipulate that the initial decision may be omitted and waive their rights to file a petition for review, to request oral argument, and to seek judicial review;

(2) No unresolved substantial issue of fact, law, or discretion remains, and the record clearly warrants granting the relief requested; and

(3) The presiding officer finds that dispensing with the issuance of the initial decision is in the public interest.

(b) An order entered under paragraph (a) of this section is subject to review by the Commission on its own motion within forty (40) days after its date.

(c) An initial decision may be made effective immediately, subject to review by the Commission on its own motion within thirty (30) days after its date, except as otherwise provided in this chapter, when:

(1) All parties stipulate that the initial decision may be made effective immediately and waive their rights to file a petition for review, to request oral argument, and to seek judicial review;

(2) No unresolved substantial issue of fact, law, or discretion remains and the record clearly warrants granting the relief requested; and

(3) The presiding officer finds that it is in the public interest to make the initial decision effective immediately.

(d) The provisions of this section do not apply to an initial decision directing the issuance or amendment of a construction permit or construction authorization, or the issuance of an operating license or provisional operating authorization.

§ 2.340 Initial decision in contested proceedings on applications for facility operating licenses; immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

(a) Production or utilization facility operating license. In any initial decision in a contested proceeding on an application for an operating license for a production or utilization facility, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding and on matters which have been determined to be the issues in the proceeding by the Commission or the presiding officer. Matters not put into controversy by the parties will be examined and decided by the presiding officer only where he or she determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves such examination and decision upon referral of the question by the presiding officer. Depending on the resolution of those matters, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, after making the requisite findings, will issue, deny or appropriately condition the license.

(b) Immediate effectiveness of certain decisions. Except as provided in paragraphs (d) through (g) of this section, or as otherwise ordered by the Commission in special circumstances, an initial decision directing the issuance or amendment of a construction permit, a construction authorization, an operating license or a license under 10 CFR Part 72 to store spent fuel in an independent spent fuel storage installation (ISFSI) at a reactor site is effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective, subject to review thereof and further decision by the Commission upon petition for review filed by any party under § 2.341 or upon its own motion.

(c) Issuance of license after initial decision. Except as provided in paragraphs (d) through (g) of this section, or as otherwise ordered by the Commission in special circumstances, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing or granting of a petition for review, shall issue a construction permit, a construction authorization, an operating license, or a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage installation at a reactor site, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

(d) Immediate effectiveness of initial decisions on a ISFSI and MRS. An initial decision directing the issuance of an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or a monitored retrievable storage installation (MRS) under 10 CFR Part 72 becomes effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards may not issue an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or a monitored retrievable storage installation (MRS) under 10 CFR part 72 until expressly authorized to do so by the Commission.

(e) [Reserved].

(f) Nuclear power reactor construction permits—(1) Presiding officers. Presiding officers shall hear and decide all issues that come before them, indicating in their decisions the type of licensing action, if any, which their decision would authorize. The presiding officer's decisions concerning construction permits are not effective until the Commission actions outlined in paragraph (f)(2) of this section have taken place.

(2) Commission. Within sixty (60) days of the service of any presiding officer decision that would otherwise authorize issuance of a construction permit, the Commission will seek to issue a decision on any stay motions that are timely filed. These motions must be filed as provided by § 2.341. For the purpose of this paragraph, a stay motion is one that seeks to defer the effectiveness of a presiding officer decision beyond the period necessary for the Commission action described herein. If no stay papers are filed, the Commission will, within the same time period (or earlier if possible), analyze the record and construction permit decision below on its own motion and will seek to issue a decision on whether a stay is warranted. However, the

Commission will not decide that a stay is warranted without giving the affected parties an opportunity to be heard. The initial decision will be considered stayed pending the Commission's decision. In deciding these stay questions, the Commission shall employ the procedures set out in § 2.342.

(g) Nuclear power reactor operating licenses—(1) Presiding officers. Presiding officers shall hear and decide all issues that come before them, indicating in their decisions the type of licensing action, if any, which their decision would authorize. A presiding officer's decision authorizing issuance of an operating license may not become effective if it authorizes operating at greater than five (5) percent of rated power until the Commission actions outlined in paragraph (g)(2) of this section have taken place. If a decision authorizes operation up to five (5) percent, the decision is effective and the Director shall issue the appropriate license in accordance with paragraph (c) of this section.

(2) The Commission. (i) Reserving the power to step in at an earlier time, the Commission will, upon receipt of the presiding officer's decision authorizing issuance of an operating license, other than a decision authorizing only fuel loading and low power (up to five (5) percent of rated power) testing, review the matter on its own motion to determine whether to stay the effectiveness of the decision. An operating license decision will be stayed by the Commission, insofar as it authorizes other than fuel loading and low power testing, if it determines that it is in the public interest to do so, based on a consideration of the gravity of the substantive issue, the likelihood that it has been resolved incorrectly below, the degree to which correct resolution of the issue would be prejudiced by operation pending review, and other relevant public interest factors.

(ii) For operating license decisions other than those authorizing only fuel loading and low power testing consistent with the target schedule set forth below, the parties may file brief comments with the Commission pointing out matters which, in their view, pertain to the immediate effectiveness issue. To be considered, these comments must be received within ten (10) days of the presiding officer's decision. However, the Commission may dispense with comments by so advising the parties. An extensive stay will not be issued without giving the affected parties an opportunity to be heard.

(iii) The Commission intends to issue a stay decision within thirty (30) days of receipt of the presiding officer's decision. The presiding officer's initial decision will be considered stayed pending the Commission's decision insofar as it may authorize operations other than fuel loading and low power (up to five (5) percent of rated power) testing.

(iv) In announcing a stay decision, the Commission may allow the proceeding to run its ordinary course or give instructions as to the future handling of the proceeding. Furthermore, the Commission may, in a particular case, determine that compliance with existing regulations and policies may no longer be sufficient to warrant approval of a license application and may alter those regulations and policies.

(h) Lack of prejudice of Commission effectiveness decision. The Commission's effectiveness determination is entirely without prejudice to proceedings under §§ 2.341 or 2.342.

§ 2.341 Review of decisions and actions of a presiding officer.

(a)(1) Except for requests for review or appeals of actions under § 2.311 or in a proceeding on the high-level radioactive waste repository (which are governed by § 2.1015), review of decisions and actions of a presiding officer are treated under this section.

(2) Within forty (40) days after the date of a decision or action by a presiding officer, or within forty (40) days after a petition for review of the decision or action has been served under paragraph (b) of this section, whichever is greater, the Commission may review the decision or action on its own motion, unless the Commission, in its discretion, extends the time for its review.

(b)(1) Within fifteen (15) days after service of a full or partial initial decision by a presiding officer, and within fifteen (15) days after service of any other decision or action by a presiding officer with respect to which a petition for review is authorized by this part, a party may file a petition for review with the Commission on the grounds specified in paragraph (b)(4) of this section. Unless otherwise authorized by law, a party to an NRC proceeding must file a petition for Commission review before seeking judicial review of an agency action.

(2) A petition for review under this paragraph may not be longer than twenty-five (25) pages, and must contain the following:

(i) A concise summary of the decision or action of which review is sought;

(ii) A statement (including record citation) where the matters of fact or law raised in the petition for review were previously raised before the presiding officer and, if they were not, why they could not have been raised;

(iii) A concise statement why in the petitioner's view the decision or action is erroneous; and

(iv) A concise statement why Commission review should be exercised.

(3) Any other party to the proceeding may, within ten (10) days after service of a petition for review, file an answer supporting or opposing Commission review. This answer may not be longer than twenty-five (25) pages and should concisely address the matters in paragraph (b)(2) of this section to the extent appropriate. The petitioning party may file a reply brief within five (5) days of service of any answer. This reply brief may not be longer than five (5) pages.

(4) The petition for review may be granted in the discretion of the Commission, giving due weight to the existence of a substantial question with respect to the following considerations:

(i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;

(ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;

(iii) A substantial and important question of law, policy, or discretion has been raised;

(iv) The conduct of the proceeding involved a prejudicial procedural error; or

(v) Any other consideration which the Commission may deem to be in the public interest.

(5) A petition for review will not be granted to the extent that it relies on matters that could have been but were not raised before the presiding officer. A matter raised sua sponte by a presiding officer has been raised before the presiding officer for the purpose of this section.

(6) A petition for review will not be granted as to issues raised before the presiding officer on a pending motion for reconsideration.

(c) (1) If a petition for review is granted, the Commission will issue an order specifying the issues to be reviewed and designating the parties to the review proceeding. The Commission may, in its discretion, decide the matter on the basis of the petition for review or it may specify whether any briefs may be filed.

(2) Unless the Commission orders otherwise, any briefs on review may not exceed thirty (30) pages in length,

exclusive of pages containing the table of contents, table of citations, and any addendum containing appropriate exhibits, statutes, or regulations. A brief in excess of ten (10) pages must contain a table of contents with page references and a table of cases (alphabetically arranged), cited statutes, regulations and other authorities, with references to the pages of the brief where they are cited.

(d) Petitions for reconsideration of Commission decisions granting or denying review in whole or in part will not be entertained. A petition for reconsideration of a Commission decision after review may be filed within ten (10) days, but is not necessary for exhaustion of administrative remedies. However, if a petition for reconsideration is filed, the Commission decision is not final until the petition is decided. Any petition for reconsideration will be evaluated against the standard in § 2.323(e).

(e) Neither the filing nor the granting of a petition under this section stays the effect of the decision or action of the presiding officer, unless the Commission orders otherwise.

(f) Interlocutory review. (1) A question certified to the Commission under § 2.319(l), or a ruling referred or issue certified to the Commission under § 2.323(f), will be reviewed if the certification or referral raises significant and novel legal or policy issues, and resolution of the issues would materially advance the orderly disposition of the proceeding.

(2) The Commission may, in its discretion, grant interlocutory review at the request of a party despite the absence of a referral or certification by the presiding officer. A petition and answer to it must be filed within the times and in the form prescribed in paragraph (b) of this section and must be treated in accordance with the general provisions of this section. The petition for interlocutory review will be granted only if the party demonstrates that the issue for which the party seeks interlocutory review:

(i) Threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision; or

(ii) Affects the basic structure of the proceeding in a pervasive or unusual manner.

§ 2.342 Stays of decisions.

(a) Within ten (10) days after service of a decision or action of a presiding officer, any party to the proceeding may file an application for a stay of the effectiveness of the decision or action pending filing of and a decision on a petition for review. This application may be filed with the Commission or the presiding officer, but not both at the same time.

(b) An application for a stay may be no longer than ten (10) pages, exclusive of affidavits, and must contain the following:

(1) A concise summary of the decision or action which is requested to be stayed;

(2) A concise statement of the grounds for stay, with reference to the factors specified in paragraph (e) of this section; and

(3) To the extent that an application for a stay relies on facts subject to dispute, appropriate references to the record or affidavits by knowledgeable persons.

(c) Service of an application for a stay on the other parties must be by the same method, *e.g.*, electronic or facsimile transmission, mail, as the method for filing the application with the Commission or the presiding officer.

(d) Within ten (10) days after service of an application for a stay under this section, any party may file an answer supporting or opposing the granting of a stay. This answer may not be longer than ten (10) pages, exclusive of affidavits, and should concisely address the matters in paragraph (b) of this section to the extent appropriate. Further replies to answers will not be entertained. Filing of and service of an answer on the other parties must be by the same method, *e.g.*, electronic or facsimile transmission, mail, as the method for filing the application for the stay.

(e) In determining whether to grant or deny an application for a stay, the Commission or presiding officer will consider:

(1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;

(2) Whether the party will be irreparably injured unless a stay is granted;

(3) Whether the granting of a stay would harm other parties; and

(4) Where the public interest lies.

(f) In extraordinary cases, where prompt application is made under this section, the Commission or presiding officer may grant a temporary stay to preserve the status quo without waiting for filing of any answer. The application may be made orally provided the application is promptly confirmed by electronic or facsimile transmission message. Any party applying under this paragraph shall make all reasonable efforts to inform the other parties of the application, orally if made orally.

§ 2.343 Oral argument.

In its discretion, the Commission may allow oral argument upon the request of a party made in a petition for review, brief on review, or upon its own initiative.

§ 2.344 Final decision.

(a) The Commission will ordinarily consider the whole record on review, but may limit the issues to be reviewed to those identified in an order taking review.

(b) The Commission may adopt, modify, or set aside the findings, conclusions and order in the initial decision, and will state the basis of its action. The final decision will be in writing and will include:

(1) A statement of findings and conclusions, with the basis for them on all material issues of fact, law or discretion presented;

(2) All facts officially noticed;

(3) The ruling on each material issue; and

(4) The appropriate ruling, order, or denial of relief, with the effective date.

§ 2.345 Petition for reconsideration.

(a)(1) Any petition for reconsideration of a final decision must be filed by a party within ten (10) days after the date of the decision.

(2) Petitions for reconsideration of Commission decisions are subject to the requirements in § 2.341(d).

(b) A petition for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid. The petition must state the relief sought. Within ten (10) days after a petition for reconsideration has been served, any other party may file an answer in opposition to or in support of the petition.

(c) Neither the filing nor the granting of the petition stays the decision unless the Commission orders otherwise.

§ 2.346 Authority of the Secretary.

When briefs, motions or other papers are submitted to the Commission itself, as opposed to the officers who have been delegated authority to act for the Commission, the Secretary or the Assistant Secretary is authorized to:

(a) Prescribe procedures for the filing of briefs, motions, or other pleadings, when the schedules differ from those prescribed by the rules of this part or when the rules of this part do not prescribe a schedule;

(b) Rule on motions for extensions of time;

(c) Reject motions, briefs, pleadings, and other documents filed with the

Commission later then the time prescribed by the Secretary or the Assistant Secretary or established by an order, rule or regulation of the Commission unless good cause is shown for the late filing;

(d) Prescribe all procedural arrangements relating to any oral argument to be held before the Commission;

(e) Extend the time for the Commission to rule on a petition for review under §§ 2.311 and 2.341;

(f) Extend the time for the Commission to grant review on its own motion under § 2.341;

(g) Direct pleadings improperly filed before the Commission to the appropriate presiding officer for action;

(h) Deny a request for hearings, where the request fails to comply with the Commission's pleading requirements set forth in this part, and fails to set forth an arguable basis for further proceedings;

(i) Refer to the Atomic Safety and Licensing Board Panel or an Administrative Judge, as appropriate requests for hearing not falling under § 2.104, where the requestor is entitled to further proceedings; and

(j) Take action on minor procedural matters.

§ 2.347 Ex parte communications.

In any proceeding under this subpart—

(a) Interested persons outside the agency may not make or knowingly cause to be made to any Commission adjudicatory employee, any *ex parte* communication relevant to the merits of the proceeding.

(b) Commission adjudicatory employees may not request or entertain from any interested person outside the agency or make or knowingly cause to be made to any interested person outside the agency, any *ex parte* communication relevant to the merits of the proceeding.

(c) Any Commission adjudicatory employee who receives, makes, or knowingly causes to be made a communication prohibited by this section shall ensure that it, and any responses to the communication, are promptly served on the parties and placed in the public record of the proceeding. In the case of oral communications, a written summary must be served and placed in the public record of the proceeding.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Commission or other adjudicatory employee presiding in a proceeding may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation.

(e) (1) The prohibitions of this section apply—

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.312; or

(ii) Whenever the interested person or Commission adjudicatory employee responsible for the communication has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.312.

(2) The prohibitions of this section cease to apply to *ex parte* communications relevant to the merits of a full or partial initial decision when, in accordance with § 2.341, the time has expired for Commission review of the decision.

(f) The prohibitions in this section do not apply to—

(1) Requests for and the provision of status reports;

(2) Communications specifically permitted by statute or regulation;

(3) Communications made to or by Commission adjudicatory employees in the Office of the General Counsel regarding matters pending before a court or another agency; and

(4) Communications regarding generic issues involving public health and safety or other statutory responsibilities of the agency (*e.g.*, rulemakings, congressional hearings on legislation, budgetary planning) not associated with the resolution of any proceeding under this subpart pending before the NRC.

§ 2.348 Separation of functions.

(a) In any proceeding under this subpart, any NRC officer or employee engaged in the performance of any investigative or litigating function in that proceeding or in a factually related proceeding may not participate in or advise a Commission adjudicatory employee about the initial or final decision on any disputed issue in that proceeding, except—

(1) As witness or counsel in the proceeding;

(2) Through a written communication served on all parties and made on-the-record of the proceeding; or

(3) Through an oral communication made both with reasonable prior notice to all parties and with reasonable opportunity for all parties to respond.

(b) The prohibition in paragraph (a) of this section does not apply to—

(1) Communications to or from any Commission adjudicatory employee regarding—

(i) The status of a proceeding;

(ii) Matters for which the communications are specifically permitted by statute or regulation;

(iii) NRC participation in matters pending before a court or another agency; or

(iv) Generic issues involving public health and safety or other statutory responsibilities of the NRC (*e.g.*, rulemakings, congressional hearings on legislation, budgetary planning) not associated with the resolution of any proceeding under this subpart pending before the NRC.

(2) Communications to or from Commissioners, members of their personal staffs, Commission adjudicatory employees in the Office of the General Counsel, and the Secretary and employees of the Office of the Secretary, regarding—

(i) Initiation or direction of an investigation or initiation of an enforcement proceeding;

(ii) Supervision of NRC staff to ensure compliance with the general policies and procedures of the agency;

(iii) NRC staff priorities and schedules or the allocation of agency resources; or

(iv) General regulatory, scientific, or engineering principles that are useful for an understanding of the issues in a proceeding and are not contested in the proceeding.

(3) None of the communications permitted by paragraph (b)(2) (i) through (iii) of this section is to be associated by the Commission adjudicatory employee or the NRC officer or employee performing investigative or litigating functions with the resolution of any proceeding under this subpart pending before the NRC.

(c) Any Commission adjudicatory employee who receives a communication prohibited under paragraph (a) of this section shall ensure that it, and any responses to the communication, are placed in the public record of the proceeding and served on the parties. In the case of oral communications, a written summary must be served and placed in the public record of the proceeding.

(d)(1) The prohibitions in this section apply—

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.312; or

(ii) Whenever an NRC officer or employee who is or has reasonable cause to believe he or she will be engaged in the performance of an investigative or litigating function or a

Commission adjudicatory employee has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.312.

(2) The prohibitions of this section cease to apply to the disputed issues pertinent to a full or partial initial decision when the time has expired for Commission review of the decision in accordance with § 2.341.

(e) Communications to, from, and between Commission adjudicatory employees not prohibited by this section may not serve as a conduit for a communication that otherwise would be prohibited by this section or for an ex parte communication that otherwise would be prohibited by § 2.347.

(f) If an initial or final decision is stated to rest in whole or in part on fact or opinion obtained as a result of a communication authorized by this section, the substance of the communication must be specified in the record of the proceeding and every party must be afforded an opportunity to controvert the fact or opinion. If the parties have not had an opportunity to controvert the fact or opinion before the decision is filed, a party may controvert the fact or opinion by filing a petition for review of an initial decision, or a petition for reconsideration of a final decision that clearly and concisely sets forth the information or argument relied on to show the contrary. If appropriate, a party may be afforded the opportunity for cross-examination or to present rebuttal evidence.

§ 2.390 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (d), (e), and (f) of this section, final NRC records and documents,[1] including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rulemaking proceeding subject to this part shall not, in the absence of an NRC determination of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room, except for matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

(ii) Are in fact properly classified under that Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), but only if that statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types or matters to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) The procedures in this section must be followed by anyone submitting a document to the NRC who seeks to have the document, or a portion of it, withheld from public disclosure because it contains trade secrets, privileged, or confidential commercial or financial information.

(1) The submitter shall request withholding at the time the document is submitted and shall comply with the document marking and affidavit requirements set forth in this paragraph. The NRC has no obligation to review documents not so marked to determine whether they contain information eligible for withholding under paragraph (a) of this section. Any documents not so marked may be made available to the public at the NRC Web site, *http://www.nrc.gov* or at the NRC Public Document Room.

(i) The submitter shall ensure that the document containing information sought to be withheld is marked as follows:

(A) The top of the first page of the document and the top of each page containing such information must be marked with language substantially similar to: ''confidential information submitted under 10 CFR 2.390''; ''withhold from public disclosure under 10 CFR 2.390''; or ''proprietary'' to indicate it contains information the submitter seeks to have withheld.

(B) Each document, or page, as appropriate, containing information sought to be withheld from public disclosure must indicate, adjacent to the information, or at the top if the entire page is affected, the basis (*i.e.,* trade secret, personal privacy, *etc.*) for proposing that the information be withheld from public disclosure under paragraph (a) of this section.

(ii) The Commission may waive the affidavit requirements on request, or on its own initiative, in circumstances the Commission, in its discretion, deems appropriate. Otherwise, except for personal privacy information, which is not subject to the affidavit requirement, the request for withholding must be accompanied by an affidavit that—

(A) Identifies the document or part sought to be withheld;

(B) Identifies the official position of the person making the affidavit;

(C) Declares the basis for proposing the information be withheld, encompassing considerations set forth in § 2.390(a);

[1]Such records and documents do not include handwritten notes and drafts.

(D) Includes a specific statement of the harm that would result if the information sought to be withheld is disclosed to the public; and

(E) Indicates the location(s) in the document of all information sought to be withheld.

(iii) In addition, an affidavit accompanying a withholding request based on paragraph (a)(4) of this section must contain a full statement of the reason for claiming the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate paper. The affiant must designate with appropriate markings information submitted in the affidavit as a trade secret, or confidential or privileged commercial or financial information within the meaning of § 9.17(a)(4) of this chapter, and such information shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

(2) A person who submits commercial or financial information believed to be privileged or confidential or a trade secret shall be on notice that it is the policy of the Commission to achieve an effective balance between legitimate concerns for protection of competitive positions and the right of the public to be fully apprised as to the basis for and effects of licensing or rulemaking actions, and that it is within the discretion of the Commission to withhold such information from public disclosure.

(3) The Commission shall determine whether information sought to be withheld from public disclosure under this paragraph:

(i) Is a trade secret or confidential or privileged commercial or financial information; and (ii) If so, should be withheld from public disclosure.

(4) In making the determination required by paragraph (b)(3)(i) of this section, the Commission will consider:

(i) Whether the information has been held in confidence by its owner;

(ii) Whether the information is of a type customarily held in confidence by its owner and, except for voluntarily submitted information, whether there is a rational basis therefor;

(iii) Whether the information was transmitted to and received by the Commission in confidence;

(iv) Whether the information is available in public sources;

(v) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

(5) If the Commission determines, under paragraph (b)(4) of this section, that the record or document contains trade secrets or privileged or confidential commercial or financial information, the Commission will then determine whether the right of the public to be fully apprised as to the bases for and effects of the proposed action outweighs the demonstrated concern for protection of a competitive position, and whether the information should be withheld from public disclosure under this paragraph. If the record or document for which withholding is sought is deemed by the Commission to be irrelevant or unnecessary to the performance of its functions, it will be returned to the applicant.

(6) Withholding from public inspection does not affect the right, if any, of persons properly and directly concerned to inspect the document. Either before a decision of the Commission on the matter of whether the information should be made publicly available or after a decision has been made that the information should be withheld from public disclosure, the Commission may require information claimed to be a trade secret or privileged or confidential commercial or financial information to be subject to inspection under a protective agreement by contractor personnel or government officials other than NRC officials, by the presiding officer in a proceeding, and under protective order by the parties to a proceeding. *In camera* sessions of hearings may be held when the information sought to be withheld is produced or offered in evidence. If the Commission subsequently determines that the information should be disclosed, the information and the transcript of such *in camera* session will be made publicly available.

(c) The Commission either may grant or deny a request for withholding under this section.

(1) If the request is granted, the Commission will notify the submitter of its determination to withhold the information from public disclosure.

(2) If the Commission denies a request for withholding under this section, it will provide the submitter with a statement of reasons for that determination. This decision will specify the date, which will be a reasonable time thereafter, when the document will be available at the NRC Web site, *http://www.nrc.gov.* The document will not be returned to the submitter.

(3) Whenever a submitter desires to withdraw a document from Commission consideration, it may request return of the document, and the document will be returned unless the information—

(i) Forms part of the basis of an official agency decision, including but not limited to, a rulemaking proceeding or licensing activity;

(ii) Is contained in a document that was made available to or prepared for an NRC advisory committee;

(iii) Was revealed, or relied upon, in an open Commission meeting held in accordance with 10 CFR part 9, subpart C;

(iv) Has been requested in a Freedom of Information Act request; or

(v) Has been obtained during the course of an investigation conducted by the NRC Office of Investigations.

(d) The following information is considered commercial or financial information within the meaning of § 9.17(a)(4) of this chapter and is subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

(1) Correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's physical protection, classified matter protection, or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data.

(2) Information submitted in confidence to the Commission by a foreign source.

(e) Submitting information to NRC for consideration in connection with NRC licensing or regulatory activities shall be deemed to constitute authority for the NRC to reproduce and distribute sufficient copies to carry out the Commission's official responsibilities.

(f) The presiding officer, if any, or the Commission may, with reference to the NRC records and documents made available pursuant to this section, issue orders consistent with the provisions of this section and § 2.705(c).

■ 19. In § 2.402, paragraph (b) is revised to read as follows:

§ 2.402 Separate hearings on separate issues; consolidation of proceedings.

* * * * *

(b) If a separate hearing is held on a particular phase of the proceeding, the Commission or presiding officers of each affected proceeding may, under § 2.317, consolidate for hearing on that phase two or more proceedings to consider common issues relating to the applications involved in the proceedings, if it finds that this action will be conducive to the proper dispatch of its business and to the ends of justice. In specifying the place of this consolidated hearing, due regard will be given to the convenience and necessity of the parties, petitioners for leave to intervene, or the attorneys or representatives of such persons, and the public interest.

■ 20. Section 2.405 is revised to read as follows:

§ 2.405 Initial decisions in consolidated hearings.

At the conclusion of any hearing held under this subpart, the presiding officer will render a partial initial decision that may be appealed under § 2.341. No construction permit or full power operating license will be issued until an initial decision has been issued on all phases of the hearing and all issues under the Act and the National Environmental Policy Act of 1969 appropriate to the proceeding have been resolved.

■ 21. In § 2.604, paragraphs (b) and (c) are revised to read as follows:

§ 2.604 Notice of hearing on application for early review of site suitability issues.

* * * * *

(b) After docketing of part two of the application, as provided in §§ 2.101(a–1) and 2.603, a supplementary notice of hearing will be published under § 2.104 with respect to the remaining unresolved issues in the proceeding within the scope of § 2.104. This supplementary notice of hearing will provide that any person whose interest may be affected by the proceeding and who desires to participate as a party in the resolution of the remaining issues shall file a petition for leave to intervene pursuant to § 2.309 within the time prescribed in the notice. This supplementary notice will also provide appropriate opportunities for participation by a representative of an interested State under § 2.315(c) and for limited appearances under § 2.315(a).

(c) Any person who was permitted to intervene as a party under the initial notice of hearing on site suitability issues and who was not dismissed or did not withdraw as a party may continue to participate as a party to the proceeding with respect to the remaining unresolved issues, provided that within the time prescribed for filing of petitions for leave to intervene in the supplementary notice of hearing, he or she files a notice of his intent to continue as a party, along with a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which he or she wishes to continue to participate as a party and setting forth with particularity the basis for his contentions with regard to each aspect or aspects. A party who files a non-timely notice of intent to continue as a party may be dismissed from the proceeding, absent a determination that the party has made a substantial showing of good cause for failure to file on time, and with particular reference to the factors specified in §§ 2.309(c)(1)(i) through (iv) and 2.309(d). The notice will be ruled upon by the Commission or presiding officer designated to rule on petitions for leave to intervene.

* * * * *

■ 22. In § 2.606, paragraph (a) is revised to read as follows:

§ 2.606 Partial decisions on site suitability issues.

(a) The provisions of §§ 2.331, 2.339, 2.340(b), 2.343, 2.712, and 2.713 shall apply to any partial initial decision rendered in accordance with this subpart. Section 2.340(c) shall not apply to any partial initial decision rendered in accordance with this subpart. A limited work authorization may not be issued under 10 CFR 50.10(e) and no construction permit may be issued without completion of the full review required by section 102(2) of the National Environmental Policy Act of 1969, as amended, and subpart A of part 51 of this chapter. The authority of the Commission to review such a partial initial decision sua sponte, or to raise sua sponte an issue that has not been raised by the parties, will be exercised within the same time period as in the case of a full decision relating to the issuance of a construction permit.

* * * * *

■ 23. Subpart G is revised to read as follows:

Subpart G—Rules for Formal Adjudications

Sec.
2.700 Scope of subpart G.
2.701 Exceptions.
2.702 Subpoenas.
2.703 Examination by experts.
2.704 Discovery—required disclosures.
2.705 Discovery—additional methods.
2.706 Depositions upon oral examination and written interrogatories; interrogatories to parties.
2.707 Production of documents and things; entry upon land for inspection and other purposes.
2.708 Admissions.
2.709 Discovery against NRC staff.
2.710 Motions for summary disposition.
2.711 Evidence.
2.712 Proposed findings and conclusions.
2.713 Initial decision and its effect.

Subpart G—Rules for Formal Adjudications

§ 2.700 Scope of subpart G.

The provisions of this subpart apply to and supplement the provisions set forth in subpart C of this part with respect to enforcement proceedings initiated under subpart B of this part unless otherwise agreed to by the parties, proceedings conducted with respect to the initial licensing of a uranium enrichment facility, proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits for nuclear power reactors, where the presiding officer by order finds that resolution of the contention necessitates resolution of: issues of material fact relating to the occurrence of a past event, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter, proceedings for initial applications for construction authorization for high-level radioactive waste repository noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings for initial applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area, and any other proceeding as ordered by the Commission. If there is any conflict between the provisions of this subpart and those set forth in subpart C of this part, the provisions of this subpart control.

§ 2.701 Exceptions.

Consistent with 5 U.S.C. 554(a)(4) of the Administrative Procedure Act, the Commission may provide alternative procedures in adjudications to the extent that there is involved the conduct of military or foreign affairs functions.

§ 2.702 Subpoenas.

(a) On application by any party, the designated presiding officer or, if he or she is not available, the Chief Administrative Judge, or other designated officer will issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence. The officer to whom application is made may require a showing of general relevance of the testimony or evidence sought, and may withhold the subpoena if such a showing is not made. However, the officer may not determine the admissibility of evidence.

(b) Every subpoena will bear the name of the Commission, the name and office of the issuing officer and the title of the hearing, and will command the person to whom it is directed to attend and give testimony or produce specified documents or other things at a designated time and place. The subpoena will also advise of the quashing procedure provided in paragraph (f) of this section.

(c) Unless the service of a subpoena is acknowledged on its face by the witness or is served by an officer or employee of the Commission, it must be served by a person who is not a party to the hearing and is not less than eighteen (18) years of age. Service of a subpoena must be made by delivery of a copy of the subpoena to the person named in it and tendering that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Commission, fees and mileage need not be tendered and the subpoena may be served by registered mail.

(d) Witnesses summoned by subpoena must be paid the fees and mileage paid to witnesses in the district courts of the United States by the party at whose instance they appear.

(e) The person serving the subpoena shall make proof of service by filing the subpoena and affidavit or acknowledgment of service with the officer before whom the witness is required to testify or produce evidence or with the Secretary. Failure to make proof of service does not affect the validity of the service.

(f) On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the presiding officer or, if he is unavailable, the Commission may:

(1) Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or

(2) Condition denial of the motion on just and reasonable terms.

(g) On application and for good cause shown, the Commission will seek judicial enforcement of a subpoena issued to a party and which has not been quashed.

(h) The provisions of paragraphs (a) through (g) of this section are not applicable to the attendance and testimony of the Commissioners or NRC personnel, or to the production of records or documents in their custody.

§ 2.703 Examination by experts.

(a) A party may request the presiding officer to permit a qualified individual who has scientific or technical training or experience to participate on behalf of that party in the examination and cross-examination of expert witnesses. The presiding officer may permit the individual to participate on behalf of the party in the examination and cross-examination of expert witnesses, upon finding:

(1) That cross-examination by that individual would serve the purpose of furthering the conduct of the proceeding;

(2) That the individual is qualified by scientific or technical training or experience to contribute to the development of an adequate decisional record in the proceeding by the conduct of such examination or cross-examination;

(3) That the individual has read any written testimony on which he intends to examine or cross-examine and any documents to be used or referred to in the course of the examination or cross-examination; and

(4) That the individual has prepared himself to conduct a meaningful and expeditious examination or cross-examination, and has submitted a cross-examination plan in accordance with § 2.711(c).

(b) Examination or cross-examination conducted under this section must be limited to areas within the expertise of the individual conducting the examination or cross-examination. The party on behalf of whom this examination or cross-examination is conducted and his or her attorney is responsible for the conduct of examination or cross-examination by such individuals.

§ 2.704 Discovery—required disclosures.

(a) Initial disclosures. Except to the extent otherwise stipulated or directed by order of the presiding officer or the Commission, a party other than the NRC staff shall, without awaiting a discovery request, provide to other parties:

(1) The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed issues alleged with particularity in the pleadings, identifying the subjects of the information; and

(2) A copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed issues alleged with particularity in the pleadings. When any document, data compilation, or other tangible thing that must be disclosed is publicly available from another source, such as at the NRC Web site, *http://www.nrc.gov,* and/or the NRC Public Document Room, a sufficient disclosure would be the location, the title and a page reference to the relevant document, data compilation, or tangible thing;

(3) Unless otherwise stipulated or directed by the presiding officer, these disclosures must be made within forty-five (45) days after the issuance of a prehearing conference order following the initial prehearing conference specified in § 2.329. A party shall make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully completed its investigation of the case, because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures.

(b) Disclosure of expert testimony. (1) In addition to the disclosures required by paragraph (a) of this section, a party other than the NRC staff shall disclose to other parties the identity of any person who may be used at trial to present evidence under § 2.711.

(2) Except in proceedings with pre-filed written testimony, or as otherwise stipulated or directed by the presiding officer, this disclosure must be accompanied by a written report prepared and signed by the witness, containing: A complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four (4) years.

(3) These disclosures must be made at the times and in the sequence directed by the presiding officer. In the absence

of other directions from the presiding officer, or stipulation by the parties, the disclosures must be made at least ninety (90) days before the hearing commencement date or the date the matter is to be presented for hearing. If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (b)(2) of this section, the disclosures must be made within thirty (30) days after the disclosure made by the other party. The parties shall supplement these disclosures when required under paragraph (e) of this section.

(c) Pretrial disclosures. (1) In addition to the disclosures required in the preceding paragraphs, a party other than the NRC staff shall provide to other parties the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(i) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(ii) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, when available, a transcript of the pertinent portions of the deposition testimony; and

(iii) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

(2) Unless otherwise directed by the presiding officer or the Commission, these disclosures must be made at least thirty (30) days before commencement of the hearing at which the issue is to be presented.

(3) A party may object to the admissibility of documents identified under paragraph (c) of this section. A list of those objections must be served and filed within fourteen (14) days after service of the disclosures required by paragraphs (c)(1) and (2) of this section, unless a different time is specified by the presiding officer or the Commission. Objections not so disclosed, other than objections as to a document's admissibility under § 2.711(e), are waived unless excused by the presiding officer or Commission for good cause shown.

(d) Form of disclosures; filing. Unless otherwise directed by order of the presiding officer or the Commission, all disclosures under paragraphs (a) through (c) of this section must be made in writing, signed, served, and promptly filed with the presiding officer or the Commission.

(e) Supplementation of responses. A party who has made a disclosure under this section is under a duty to supplement or correct the disclosure to include information thereafter acquired if ordered by the presiding officer or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under paragraph (a) of this section within a reasonable time after a party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(2) With respect to testimony of an expert from whom a report is required under paragraph (b) of this section, the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additions or other changes to this information must be disclosed by the time the party's disclosures under § 2.704(c) are due.

§ 2.705 Discovery—additional methods.

(a) Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written interrogatories (§ 2.706); interrogatories to parties (§ 2.706); production of documents or things or permission to enter upon land or other property, for inspection and other purposes (§ 2.707); and requests for admission (§ 2.708).

(b) Scope of discovery. Unless otherwise limited by order of the presiding officer in accordance with this section, the scope of discovery is as follows:

(1) In general. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. When any book, document, or other tangible thing sought is reasonably available from another source, such as at the NRC Web site, *http://www.nrc.gov*, and/or the NRC Public Document Room, sufficient response to an interrogatory on materials would be the location, the title and a page reference to the relevant book, document, or tangible thing. In a proceeding on an application for a construction permit or an operating license for a production or utilization facility, discovery begins only after the prehearing conference and relates only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of that prehearing conference. In such a proceeding, discovery may not take place after the beginning of the prehearing conference held under § 2.329 except upon leave of the presiding officer upon good cause shown. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Limitations. Upon his or her own initiative after reasonable notice or in response to a motion filed under paragraph (c) of this section, the presiding officer may alter the limits in these rules on the number of depositions and interrogatories, and may also limit the length of depositions under § 2.706 and the number of requests under §§ 2.707 and 2.708. The presiding officer shall limit the frequency or extent of use of the discovery methods otherwise permitted under these rules if he or she determines that:

(i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The party seeking discovery has had ample opportunity by discovery in the proceeding to obtain the information sought; or

(iii) The burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the proceeding, the parties' resources, the importance of the issue in the proceeding, and the importance of the proposed discovery in resolving the issues.

(3) Trial preparation materials. A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (b)(1) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of this case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing

has been made, the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney for a party concerning the proceeding.

(4) Claims of privilege or protection of trial preparation materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. Identification of these privileged materials must be made within the time provided for disclosure of the materials, unless otherwise extended by order of the presiding officer or the Commission.

(5) Nature of interrogatories. Interrogatories may seek to elicit factual information reasonably related to a party's position in the proceeding, including data used, assumptions made, and analyses performed by the party. Interrogatories may not be addressed to, or be construed to require:

(i) Reasons for not using alternative data, assumptions, and analyses where the alternative data, assumptions, and analyses were not relied on in developing the party's position; or

(ii) Performance of additional research or analytical work beyond that which is needed to support the party's position on any particular matter.

(c) Protective order. (1) Upon motion by a party or the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the presiding officer, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(iii) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(iv) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(v) That discovery be conducted with no one present except persons designated by the presiding officer;

(vi) That, subject to the provisions of §§ 2.709 and 2.390, a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or

(vii) That studies and evaluations not be prepared.

(2) If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(d) Sequence and timing of discovery. Except when authorized under these rules or by order of the presiding officer, or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by paragraph (f) of this section, nor may a party seek discovery after the time limit established in the proceeding for the conclusion of discovery. Unless the presiding officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay any other party's discovery.

(e) Supplementation of responses. A party who responded to a request for discovery with a response is under a duty to supplement or correct the response to include information thereafter acquired if ordered by the presiding officer or, with respect to a response to an interrogatory, request for production, or request for admission, within a reasonable time after a party learns that the response is in some material respect incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Meeting of parties; planning for discovery. Except when otherwise ordered, the parties shall, as soon as practicable and in any event no more than thirty (30) days after the issuance of a prehearing conference order following the initial prehearing conference specified in § 2.329, meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the proceeding or any portion thereof, to make or arrange for the disclosures required by § 2.704, and to develop a proposed discovery plan.

(1) The plan must indicate the parties' views and proposals concerning:

(i) What changes should be made in the timing, form, or requirement for disclosures under § 2.704, including a statement as to when disclosures under § 2.704(a)(1) were made or will be made;

(ii) The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(iii) What changes should be made in the limitations on discovery imposed under these rules, and what other limitations should be imposed; and

(iv) Any other orders that should be entered by the presiding officer under paragraph (c) of this section.

(2) The attorneys of record and all unrepresented parties that have appeared in the proceeding are jointly responsible for arranging and being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the presiding officer within ten (10) days after the meeting a written report outlining the plan.

(g) Signing of disclosures, discovery requests, responses, and objections. (1) Every disclosure made in accordance with § 2.704 must be signed by at least one attorney of record in the attorney's individual name, whose address must be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every discovery request, response, or objection made by a party represented by an attorney must be signed by at least one attorney of record in the attorney's individual name, whose address must be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(i) Consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) Not unreasonable or unduly burdensome or expensive, given the

needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(3) If a request, response, or objection is not signed, it must be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(4) If a certification is made in violation of the rule without substantial justification, the presiding officer, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may, in appropriate circumstances, include termination of that person's right to participate in the proceeding.

(h) Motion to compel discovery. (1) If a deponent or party upon whom a request for production of documents or answers to interrogatories is served fails to respond or objects to the request, or any part thereof, or fails to permit inspection as requested, the deposing party or the party submitting the request may move the presiding officer, within ten (10) days after the date of the response or after failure of a party to respond to the request, for an order compelling a response or inspection in accordance with the request. The motion must set forth the nature of the questions or the request, the response or objection of the party upon whom the request was served, and arguments in support of the motion. The motion must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the presiding officer. Failure to answer or respond may not be excused on the ground that the discovery sought is objectionable unless the person or party failing to answer or respond has applied for a protective order pursuant to paragraph (c) of this section. For purposes of this paragraph, an evasive or incomplete answer or response will be treated as a failure to answer or respond.

(2) In ruling on a motion made under this section, the presiding officer may issue a protective order under paragraph (c) of this section.

(3) This section does not preclude an independent request for issuance of a subpoena directed to a person not a party for production of documents and things. This section does not apply to requests for the testimony or interrogatories of the NRC staff under § 2.709(a), or the production of NRC documents under §§ 2.709(b) or § 2.390, except for paragraphs (c) and (e) of this section.

§ 2.706 Depositions upon oral examination and written interrogatories; interrogatories to parties.

(a) Depositions upon oral examination and written interrogatories. (1) Any party desiring to take the testimony of any party or other person by deposition on oral examination or written interrogatories shall, without leave of the Commission or the presiding officer, give reasonable notice in writing to every other party, to the person to be examined and to the presiding officer of the proposed time and place of taking the deposition; the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him or the class or group to which he belongs; the matters upon which each person will be examined and the name or descriptive title and address of the officer before whom the deposition is to be taken.

(2) [Reserved]

(3) Within the United States, a deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Outside of the United States, a deposition may be taken before a secretary of an embassy or legation, a consul general, vice consul or consular agent of the United States, or a person authorized to administer oaths designated by the Commission.

(4) Before any questioning, the deponent shall either be sworn or affirm the truthfulness of his or her answers. Examination and cross-examination must proceed as at a hearing. Each question propounded must be recorded and the answer taken down in the words of the witness. Objections on questions of evidence must be noted in short form without the arguments. The officer may not decide on the competency, materiality, or relevancy of evidence but must record the evidence subject to objection. Objections on questions of evidence not made before the officer will not be considered waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(5) When the testimony is fully transcribed, the deposition must be submitted to the deponent for examination and signature unless he or she is ill, cannot be found, or refuses to sign. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign, and shall promptly forward the deposition by registered mail to the Commission.

(6) Where the deposition is to be taken on written interrogatories, the party taking the deposition shall serve a copy of the interrogatories, showing each interrogatory separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be taken. Within ten (10) days after service, any other party may serve cross-interrogatories. The interrogatories, cross-interrogatories, and answers must be recorded and signed, and the deposition certified, returned, and filed as in the case of a deposition on oral examination.

(7) A deposition will not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts. A party does not make a person his or her own witness for any purpose by taking his deposition.

(8) A deponent whose deposition is taken and the officer taking a deposition are entitled to the same fees as are paid for like services in the district courts of the United States. The fees must be paid by the party at whose instance the deposition is taken.

(9) The witness may be accompanied, represented, and advised by legal counsel.

(10) The provisions of paragraphs (a)(1) through (a)(9) of this section are not applicable to NRC personnel. Testimony of NRC personnel by oral examination and written interrogatories addressed to NRC personnel are subject to the provisions of § 2.709.

(b) Interrogatories to parties. (1) Any party may serve upon any other party (other than the NRC staff) written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings must be filed with the Secretary of the Commission, and must be served on the presiding officer and all parties to the proceeding.

(2) Each interrogatory must be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection must be stated in lieu of an answer. The answers must be signed by the person making them, and the

objections by the attorney making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within fourteen (14) days after service of the interrogatories, or within such shorter or longer period as the presiding officer may allow. Answers may be used in the same manner as depositions (see § 2.706(a)(7)).

§ 2.707 Production of documents and things; entry upon land for inspections and other purposes.

(a) Request for discovery. Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his or her behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which are within the scope of § 2.704 and which are in the possession, custody, or control of the party upon whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property, within the scope of § 2.704.

(b) Service. The request may be served on any party without leave of the Commission or the presiding officer. Except as otherwise provided in § 2.704, the request may be served after the proceeding is set for hearing.

(c) Contents. The request must identify the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request must specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) Response. The party upon whom the request is served shall serve on the party submitting the request a written response within thirty (30) days after the service of the request. The response must state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reasons for objection must be stated. If objection is made to part of an item or category, the part must be specified.

(e) NRC records and documents. The provisions of paragraphs (a) through (d) of this section do not apply to the production for inspection and copying or photographing of NRC records or documents. Production of NRC records or documents is subject to the provisions of §§ 2.709 and 2.390.

§ 2.708 Admissions.

(a) Apart from any admissions made during or as a result of a prehearing conference, at any time after his or her answer has been filed, a party may file a written request for the admission of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact. A copy of the document for which an admission of genuineness and authenticity is requested must be delivered with the request unless a copy has already been furnished.

(b)(1) Each requested admission is considered made unless, within a time designated by the presiding officer or the Commission, and not less than ten (10) days after service of the request or such further time as may be allowed on motion, the party to whom the request is directed serves on the requesting party either:

(i) A sworn statement denying specifically the relevant matters of which an admission is requested or setting forth in detail the reasons why he can neither truthfully admit nor deny them; or

(ii) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(2) Answers on matters to which such objections are made may be deferred until the objections are determined. If written objections are made to only a part of a request, the remainder of the request must be answered within the time designated.

(c) Admissions obtained under the procedure in this section may be used in evidence to the same extent and subject to the same objections as other admissions.

§ 2.709 Discovery against NRC staff.

(a)(1) In a proceeding in which the NRC staff is a party, the NRC staff will make available one or more witnesses, designated by the Executive Director for Operations or a delegee of the Executive Director for Operations, for oral examination at the hearing or on deposition regarding any matter, not privileged, that is relevant to the issues in the proceeding. The attendance and testimony of the Commissioners and named NRC personnel at a hearing or on deposition may not be required by the presiding officer, by subpoena or otherwise. However, the presiding officer may, upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations or a delegee of the Executive Director for Operations, require the attendance and testimony of named NRC personnel.

(2) A party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts, as designated by the Executive Director for Operations, or a delegee of the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the NRC staff answer the interrogatories.

(3) A deposition of a particular named NRC employee or answer to interrogatories by NRC personnel under paragraphs (a)(1) and (2) of this section may not be required before the matters in controversy in the proceeding have been identified by order of the Commission or the presiding officer, or after the beginning of the prehearing conference held in accordance with § 2.329, except upon leave of the presiding officer for good cause shown.

(4) The provisions of § 2.704(c) and (e) apply to interrogatories served under this paragraph.

(5) Records or documents in the custody of the Commissioners and NRC personnel are available for inspection and copying or photographing under paragraph (b) of this section and § 2.390.

(b) A request for the production of an NRC record or document not available under § 2.390 by a party to an initial licensing proceeding may be served on the Executive Director for Operations or a delegee of the Executive Director for Operations, without leave of the Commission or the presiding officer. The request must identify the records or documents requested, either by individual item or by category, describe each item or category with reasonable particularity, and state why that record or document is relevant to the proceeding.

(c) If the Executive Director for Operations, or a delegee of the Executive Director for Operations, objects to producing a requested record or document on the ground that it is not relevant or it is exempted from disclosure under § 2.390 and the disclosure is not necessary to a proper decision in the proceeding or the document or the information therein is

reasonably obtainable from another source, the Executive Director for Operations, or a delegee of the Executive Director for Operations, shall advise the requesting party.

(d) If the Executive Director for Operations, or a delegee of the Executive Director for Operations, objects to producing a record or document, the requesting party may apply to the presiding officer, in writing, to compel production of that record or document. The application must set forth the relevancy of the record or document to the issues in the proceeding. The application will be processed as a motion in accordance with § 2.323 (a) through (d). The record or document covered by the application must be produced for the *in camera* inspection of the presiding officer, exclusively, if requested by the presiding officer and only to the extent necessary to determine:

(1) The relevancy of that record or document;

(2) Whether the document is exempt from disclosure under § 2.390;

(3) Whether the disclosure is necessary to a proper decision in the proceeding; and

(4) Whether the document or the information therein is reasonably obtainable from another source.

(e) Upon a determination by the presiding officer that the requesting party has demonstrated the relevancy of the record or document and that its production is not exempt from disclosure under § 2.390 or that, if exempt, its disclosure is necessary to a proper decision in the proceeding, and the document or the information therein is not reasonably obtainable from another source, the presiding officer shall order the Executive Director for Operations, or a delegee of the Executive Director for Operations, to produce the document.

(f) In the case of requested documents and records (including Safeguards Information referred to in sections 147 and 181 of the Atomic Energy Act, as amended) exempt from disclosure under § 2.390, but whose disclosure is found by the presiding officer to be necessary to a proper decision in the proceeding, any order to the Executive Director for Operations or a delegee of the Executive Director for Operations, to produce the document or records (or any other order issued ordering production of the document or records) may contain any protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in the proceeding, to interested States and other governmental entities participating under § 2.315(c), and to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, is received and possessed by a party other than the Commission staff, it must also be protected according to the requirements of § 73.21 of this chapter. The presiding officer may also prescribe additional procedures to effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed under § 2.205. For the purpose of imposing the criminal penalties contained in Section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information is considered to be an order issued under Section 161.b of the Atomic Energy Act.

(g) A ruling by the presiding officer or the Commission for the production of a record or document will specify the time, place, and manner of production.

(h) A request under this section may not be made or entertained before the matters in controversy have been identified by the Commission or the presiding officer, or after the beginning of the prehearing conference held under § 2.329 except upon leave of the presiding officer for good cause shown.

(i) The provisions of § 2.705 (c) and (e) apply to production of NRC records and documents under this section.

§ 2.710 Motions for summary disposition.

(a) Any party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. Summary disposition motions must be filed no later than twenty (20) days after the close of discovery. The moving party shall attach to the motion a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Any other party may serve an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. The party shall attach to any answer opposing the motion a separate, short, and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be considered to be admitted unless controverted by the statement required to be served by the opposing party. The opposing party may, within ten (10) days after service, respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses thereto will be entertained.

(b) Affidavits must set forth the facts that would be admissible in evidence, and must demonstrate affirmatively that the affiant is competent to testify to the matters stated in the affidavit. The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his answer. The answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no answer is filed, the decision sought, if appropriate, must be rendered.

(c) Should it appear from the affidavits of a party opposing the motion that he or she cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the presiding officer may refuse the application for summary decision, order a continuance to permit affidavits to be obtained, or make an order as is appropriate. A determination to that effect must be made a matter of record.

(d)(1) The presiding officer need not consider a motion for summary disposition unless its resolution will serve to expedite the proceeding if the motion is granted. The presiding officer may dismiss summarily or hold in abeyance untimely motions filed shortly before the hearing commences or during the hearing if the other parties or the presiding officer would be required to divert substantial resources from the hearing in order to respond adequately to the motion and thereby extend the proceeding.

(2) The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of

law. However, in any proceeding involving a construction permit for a production or utilization facility, the procedure described in this section may be used only for the determination of specific subordinate issues and may not be used to determine the ultimate issue as to whether the permit shall be issued.

(e) The presiding officer shall issue an order no later than forty (40) days after any responses to the summary disposition motion are filed, indicating whether the motion is granted, or denied, and the bases therefore.

§ 2.711 Evidence.

(a) General. Every party to a proceeding has the right to present oral or documentary evidence and rebuttal evidence and to conduct, in accordance with an approved cross-examination plan that contains the information specified in paragraph (c) of this section, any cross-examination required for full and true disclosure of the facts.

(b) Testimony. The parties shall submit direct testimony of witnesses in written form, unless otherwise ordered by the presiding officer on the basis of objections presented. In any proceeding in which advance written testimony is to be used, each party shall serve copies of its proposed written testimony on every other party at least fifteen (15) days in advance of the session of the hearing at which its testimony is to be presented. The presiding officer may permit the introduction of written testimony not so served, either with the consent of all parties present or after they have had a reasonable opportunity to examine it. Written testimony must be incorporated into the transcript of the record as if read or, in the discretion of the presiding officer, may be offered and admitted in evidence as an exhibit.

(c) Cross-examination. (1) The presiding officer shall require a party seeking an opportunity to cross-examine to request permission to do so in accordance with a schedule established by the presiding officer. A request to conduct cross-examination must be accompanied by a cross-examination plan containing the following information:

(i) A brief description of the issue or issues on which cross-examination will be conducted;

(ii) The objective to be achieved by cross-examination; and

(iii) The proposed line of questions that may logically lead to achieving the objective of the cross-examination.

(2) The cross-examination plan may be submitted only to the presiding officer and must be kept by the presiding officer in confidence until issuance of the initial decision on the issue being litigated. The presiding officer shall then provide each cross-examination plan to the Commission's Secretary for inclusion in the official record of the proceeding.

(d) Non-applicability to subpart B proceedings. Paragraphs (b) and (c) of this section do not apply to proceedings initiated under subpart B of this part for modification, suspension, or revocation of a license or to proceedings for imposition of a civil penalty, unless otherwise directed by the presiding officer.

(e) Admissibility. Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

(f) Objections. An objection to evidence must briefly state the grounds of objection. The transcript must include the objection, the grounds, and the ruling. Exception to an adverse ruling is preserved without notation on-the-record.

(g) Offer of proof. An offer of proof, made in connection with an objection to a ruling of the presiding officer excluding or rejecting proffered oral testimony, must consist of a statement of the substance of the proffered evidence. If the excluded evidence is in written form, a copy must be marked for identification. Rejected exhibits, adequately marked for identification, must be retained in the record.

(h) Exhibits. A written exhibit will not be received in evidence unless the original and two copies are offered and a copy is furnished to each party, or the parties have been previously furnished with copies or the presiding officer directs otherwise. The presiding officer may permit a party to replace with a true copy an original document admitted in evidence.

(i) Official record. An official record of a government agency or entry in an official record may be evidenced by an official publication or by a copy attested by the officer having legal custody of the record and accompanied by a certificate of his custody.

(j) Official notice. (1) The Commission or the presiding officer may take official notice of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body. Each fact officially noticed under this paragraph must be specified in the record with sufficient particularity to advise the parties of the matters which have been noticed or brought to the attention of the parties before final decision and each party adversely affected by the decision shall be given opportunity to controvert the fact.

(2) If a decision is stated to rest in whole or in part on official notice of a fact which the parties have not had a prior opportunity to controvert, a party may controvert the fact by filing an appeal from an initial decision or a petition for reconsideration of a final decision. The appeal must clearly and concisely set forth the information relied upon to controvert the fact.

§ 2.712 Proposed findings and conclusions.

(a) Any party to a proceeding may, or if directed by the presiding officer shall, file proposed findings of fact and conclusions of law, briefs and a proposed form of order or decision within the time provided by this section, except as otherwise ordered by the presiding officer:

(1) The party who has the burden of proof shall, within thirty (30) days after the record is closed, file proposed findings of fact and conclusions of law and briefs, and a proposed form of order or decision.

(2) Other parties may file proposed findings, conclusions of law and briefs within forty (40) days after the record is closed.

(3) A party who has the burden of proof may reply within five (5) days after filing of proposed findings and conclusions of law and briefs by other parties.

(b) Failure to file proposed findings of fact, conclusions of law, or briefs when directed to do so may be considered a default, and an order or initial decision may be entered accordingly.

(c) Proposed findings of fact must be clearly and concisely set forth in numbered paragraphs and must be confined to the material issues of fact presented on-the-record, with exact citations to the transcript of record and exhibits in support of each proposed finding. Proposed conclusions of law must be set forth in numbered paragraphs as to all material issues of law or discretion presented on-the-record. An intervenor's proposed findings of fact and conclusions of law must be confined to issues which that party placed in controversy or sought to place in controversy in the proceeding.

§ 2.713 Initial decision and its effect.

(a) After hearing, the presiding officer will render an initial decision which will constitute the final action of the Commission forty (40) days after its date unless any party petitions for Commission review in accordance with § 2.341 or the Commission takes review sua sponte.

(b) Where the public interest so requires, the Commission may direct that the presiding officer certify the record to it without an initial decision, and may:

(1) Prepare its own decision which will become final unless the Commission grants a petition for reconsideration under § 2.345; or

(2) Omit an initial decision on a finding that due and timely execution of its functions imperatively and unavoidably so requires.

(c) An initial decision will be in writing and will be based on the whole record and supported by reliable, probative, and substantial evidence. The initial decision will include:

(1) Findings, conclusions, and rulings, with the reasons or basis for them, on all material issues of fact, law, or discretion presented on-the-record;

(2) All facts officially noticed and relied on in making the decision;

(3) The appropriate ruling, order, or denial of relief with the effective date;

(4) The time within which a petition for review of the decision may be filed, the time within which answers in support of or in opposition to a petition for review filed by another party may be filed and, in the case of an initial decision which may become final in accordance with paragraph (a) of this section, the date when it may become final.

■ 24. Section 2.901 is revised to read as follows:

§ 2.901 Scope of subpart I.

This subpart applies, as applicable, to all proceedings under subparts G, J, K, L, M, and N of this part.

■ 25. In § 2.902, paragraph (e) is revised to read as follows:

§ 2.902 Definitions.

* * * * *

(e) *Party,* in the case of proceedings subject to this subpart includes a person admitted as a party under § 2.309 or an interested State admitted under § 2.315(c).

■ 26. Section 2.1000 is revised to read as follows:

§ 2.1000 Scope of subpart J.

The rules in this subpart, together with the rules in subparts C and G of this part, govern the procedure for an application for authorization to construct a high-level radioactive waste repository at a geologic repository operations area noticed under §§ 2.101(f)(8) or 2.105(a)(5), and for an application for a license to receive and possess high level radioactive waste at a geologic repository operations area. The procedures in this subpart take precedence over those in 10 CFR part 2, subpart C, except for the following provisions: §§ 2.301; 2.303; 2.307; 2.309; 2.312; 2.313; 2.314; 2.315; 2.316; 2.317(a); 2.318; 2.319; 2.320; 2.321; 2.322; 2.323; 2.324; 2.325; 2.326; 2.327; 2.328; 2.330; 2.331; 2.333; 2.335; 2.338; 2.339; 2.342; 2.343; 2.344; 2.345; 2.346; 2.348; and 2.390. The procedures in this subpart take precedence over those in 10 CFR part 2, subpart G, except for the following provisions: §§ 2.701, 2.702; 2.703; 2.708; 2.709; 2.710; 2.711; 2.712.

■ 27. In § 2.1001, the definitions of Documentary material, Interested governmental participant, Licensing Support Network, Party, and Pre-license application phase are revised to read as follows:

§ 2.1001 Definitions

* * * * *

Documentary material means:

(1) Any information upon which a party, potential party, or interested governmental participant intends to rely and/or to cite in support of its position in the proceeding for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter;

(2) Any information that is known to, and in the possession of, or developed by the party that is relevant to, but does not support, that information or that party's position; and

(3) All reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related ''circulated drafts,'' relevant to both the license application and the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. The scope of documentary material shall be guided by the topical guidelines in the applicable NRC Regulatory Guide.

* * * * *

Interested governmental participant means any person admitted under § 2.315(c) of this part to the proceeding on an application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, and an application for a license to receive and possess high level radioactive waste at a geologic repository operations area under parts 60 and 63 of this chapter.

Licensing Support Network means the combined system that makes documentary material available electronically to parties, potential parties, and interested governmental participants to a proceeding for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area, and an application for a license to receive and possess high level radioactive waste at a geologic repository operations area under parts 60 and 63 of this chapter.

* * * * *

Party for the purpose of this subpart means the DOE, the NRC staff, the host State, any affected unit of local government as defined in Section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), any affected Indian Tribe as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), and a person admitted under § 2.309 to the proceeding on an application for construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, and an application for a license to receive and possess high level radioactive waste at a geologic repository operations area under parts 60 and 63 of this chapter; provided that a host State, affected unit of local government, or affected Indian Tribe files a list of contentions in accordance with the provisions of § 2.309.

* * * * *

Pre-license application phase means the time period before a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter is docketed under § 2.101(f)(3), and the time period before a license application to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 is docketed under § 2.101(f)(3).

* * * * *

28. In § 2.1003, the introductory text of paragraph (a) is revised to read as follows:

§ 2.1003 Availability of material.

(a) Subject to the exclusions in § 2.1005 and paragraphs (b) and (c) of this section, DOE shall make available, no later than six months in advance of submitting its application for either a construction authorization for a HLW repository at a geologic repository operations area under parts 60 or 63 of this chapter, or a license to receive and possess high-level radioactive waste at a

geologic repository operations area under parts 60 or 63 of this chapter, the NRC shall make available no later than thirty days after the DOE certification of compliance under § 2.1009(b), and each other potential party, interested governmental participant or party shall make available no later than ninety days after the DOE certification of compliance under § 2.1009(b):

* * * * *

29. In § 2.1006, paragraph (a) is revised to read as follows:

§ 2.1006 Privilege.

(a) Subject to the requirements in § 2.1003(a)(4), the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in § 2.390 may be asserted by potential parties, interested States, local governmental bodies, Federally-recognized Indian Tribes, and parties. In addition to Federal agencies, the deliberative process privilege may also be asserted by States, local governmental bodies, and Federally-recognized Indian Tribes.

* * * * *

■ 30. In § 2.1010, paragraph (e) is revised to read as follows:

§ 2.1010 Pre-license application presiding officer.

* * * * *

(e) The Pre-License Application presiding officer possesses all the general powers specified in §§ 2.319 and 2.321(c).

* * * * *

■ 31. In § 2.1012, paragraph (b) is revised to read as follows:

§ 2.1012 Compliance.

* * * * *

(b)(1) A person, including a potential party given access to the Licensing Support Network under this subpart, may not be granted party status under § 2.309, or status as an interested governmental participant under § 2.315, if it cannot demonstrate substantial and timely compliance with the requirements of § 2.1003 at the time it requests participation in the HLW licensing proceeding under § 2.309 or § 2.315.

(2) A person denied party status or interested governmental participant status under paragraph (b)(1) of this section may request party status or interested governmental participant status upon a showing of subsequent compliance with the requirements of § 2.1003. Admission of such a party or interested governmental participant under §§ 2.309 or 2.315, respectively, is conditioned on accepting the status of the proceeding at the time of admission.

* * * * *

■ 32. In § 2.1013, paragraphs (a)(1), (a)(2), (b) and (c)(1) are revised to read as follows:

§ 2.1013 Use of the electronic docket during the proceeding.

(a)(1) As specified in § 2.303, the Secretary of the Commission will maintain the official docket of the proceeding on the application for construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, and for applications for a license to receive and possess high level radioactive waste at a geologic repository operations area under parts 60 or 63 of this Chapter.

(2) Commencing with the docketing in an electronic form of an application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, or an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, the Secretary of the Commission, upon determining that the application can be properly accessed under the Commission's electronic docket rules, will establish an electronic docket to contain the official record materials of the high-level radioactive waste licensing proceeding in searchable full text, or, for material that is not suitable for entry in searchable full text, by header and image, as appropriate.

(b) Absent good cause, all exhibits tendered during the hearing must have been made available to the parties in electronic form before the commencement of that portion of the hearing in which the exhibit will be offered. The electronic docket will contain a list of all exhibits, showing where in the transcript each was marked for identification and where it was received into evidence or rejected. For any hearing sessions recorded stenographically or by other means, transcripts will be entered into the electronic docket on a daily basis in order to afford next-day availability at the hearing. However, for any hearing sessions recorded on videotape or other video medium, if a copy of the video recording is made available to all parties on a daily basis that affords next-day availability at the hearing, a transcript of the session prepared from the video recording will be entered into the electronic docket within twenty-four (24) hours of the time the transcript is tendered to the electronic docket by the transcription service.

(c)(1) All filings in the adjudicatory proceeding on an application for either a construction authorization for a HLW repository at a geologic repository operations area under parts 60 or 63 of this chapter, or a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, shall be transmitted electronically by the submitter to the presiding officer, parties, and the Secretary of the Commission, according to established format requirements. Parties and interested governmental participants will be required to use a password security code for the electronic transmission of these documents.

* * * * *

§ 2.1014 [Removed]

■ 33. Section 20.1014 is removed.

■ 34. In § 2.1015, paragraphs (b) and (d) are revised to read as follows:

§ 2.1015 Appeals.

* * * * *

(b) A notice of appeal from a Pre-License Application presiding officer order issued under § 2.1010, a presiding officer prehearing conference order issued under § 2.1021, a presiding officer order granting or denying a motion for summary disposition issued in accordance with § 2.1025, or a presiding officer order granting or denying a petition to amend one or more contentions under § 2.309, must be filed with the Commission no later than ten (10) days after service of the order. A supporting brief must accompany the notice of appeal. Any other party, interested governmental participant, or potential party may file a brief in opposition to the appeal no later than ten (10) days after service of the appeal.

* * * * *

(d) When, in the judgment of a Pre-License Application presiding officer or presiding officer, prompt appellate review of an order not immediately appealable under paragraph (b) of this section is necessary to prevent detriment to the public interest or unusual delay or expense, the Pre-License Application presiding officer or presiding officer may refer the ruling promptly to the Commission, and shall provide notice of this referral to the parties, interested governmental participants, or potential parties. The parties, interested governmental participants, or potential parties may also request that the Pre-License Application presiding officer or presiding officer certify under § 2.319

rulings not immediately appealable under paragraph (b) of this section.

* * * * *

§ 2.1016 [Removed]

■ 35. Section 2.1016 is removed.

■ 36. In § 2.1018, paragraphs (a)(1)(v), (c), (f)(3), and (g) are revised to read as follows:

§ 2.1018 Discovery.

(a)(1) * * *

(v) Requests for admissions pursuant to § 2.708;

* * * * *

(c)(1) Upon motion by a party, potential party, interested governmental participant, or the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order that justice requires to protect a party, potential party, interested governmental participant, or other person from annoyance, embarrassment, oppression, or undue burden, delay, or expense, including one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(iii) That the discovery may be had only by a method of discovery other than that selected by the party, potential party, or interested governmental participant seeking discovery;

(iv) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(v) That discovery be conducted with no one present except persons designated by the presiding officer;

(vi) That, subject to the provisions of § 2.390 of this part, a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or

(vii) That studies and evaluations not be prepared.

(2) If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party, potential party, interested governmental participant or other person provide or permit discovery.

* * * * *

(f) * * *

(3) An independent request for issuance of a subpoena may be directed to a nonparty for production of documents. This section does not apply to requests for the testimony of the NRC regulatory staff under § 2.709.

(g) The presiding officer, under § 2.322, may appoint a discovery master to resolve disputes between parties concerning informal requests for information as provided in paragraphs (a)(1) and (a)(2) of this section.

§ 2.1019 [Amended]

■ 37. In § 2.1019, paragraph (j) is removed.

■ 38. In § 2.1021, the introductory sentence of paragraph (a) is revised to read as follows:

§ 2.1021 First prehearing conference.

(a) In any proceeding involving an application for a construction authorization for a HLW repository at a geologic repository operations area under parts 60 or 63 of this chapter, or an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, the Commission or the presiding officer will direct the parties, interested governmental participants and any petitioners for intervention, or their counsel, to appear at a specified time and place, within seventy days after the notice of hearing is published, or such other time as the Commission or the presiding officer may deem appropriate, for a conference to:

* * * * *

■ 39. In § 2.1022, the introductory text of paragraph (a), and paragraph (a)(1) are revised to read as follows:

§ 2.1022 Second prehearing conference.

(a) The Commission or the presiding officer in a proceeding on either an application for construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, or an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, shall direct the parties, interested governmental participants, or their counsel to appear at a specified time and place not later than thirty days after the Safety Evaluation Report is issued by the NRC staff for a conference to consider:

(1) Any amended contentions submitted, which must be reviewed under the criteria in § 2.309(c) of this part;

* * * * *

■ 40. In § 2.1023, paragraph (a) and (b)(2) are revised to read as follows:

§ 2.1023 Immediate effectiveness.

(a) Pending review and final decision by the Commission, and initial decision resolving all issues before the presiding officer in favor of issuance or amendment of either an authorization to construct a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, or a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter will be immediately effective upon issuance except:

(1) As provided in any order issued in accordance with § 2.342 that stays the effectiveness of an initial decision; or

(2) As otherwise provided by the Commission in special circumstances.

* * * * *

(b) * * *

(2) As provided in any order issued in accordance with § 2.342 of this part that stays the effectiveness of an initial decision; or

* * * * *

■ 41. In § 2.1026, paragraph (b)(1) is revised to read as follows:

§ 2.1026 Schedule.

* * * * *

(b)(1) Pursuant to § 2.307, the presiding officer may approve extensions of no more than fifteen (15) days beyond any required time set forth in this subpart for a filing by a party to the proceeding. Except in the case of exceptional and unforseen circumstances, requests for extensions of more than fifteen (15) days must be filed no later than five (5) days in advance of the required time set forth in this subpart for a filing by a party to the proceeding.

* * * * *

■ 42. Section 2.1027 is revised to read as follows:

§ 2.1027 Sua sponte.

In any initial decision in a proceeding on an application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, or an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, the Presiding Officer, other than the Commission, shall make findings of fact and conclusions of law on, and otherwise give consideration to, only those matters put into controversy by the parties and determined to be litigable issues in the proceeding.

■ 43. Section 2.1103 is revised to read as follows:

§ 2.1103 Scope of subpart K.

The provisions of this subpart, together with subpart C and applicable

provisions of subparts G and L of this part, govern all adjudicatory proceedings on applications filed after January 7, 1983, for a license or license amendment under part 50 of this chapter, to expand the spent fuel storage capacity at the site of a civilian nuclear power plant, through the use of high density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means. This subpart also applies to proceedings on applications for a license under part 72 of this chapter to store spent nuclear fuel in an independent spent fuel storage installation located at the site of a civilian nuclear power reactor. This subpart shall not apply to the first application for a license or license amendment to expand the spent fuel storage capacity at a particular site through the use of a new technology not previously approved by the Commission for use at any other nuclear power plant. This subpart shall not apply to proceedings on applications for transfer of a license issued under part 72 of this chapter. Subpart M of this part applies to license transfer proceedings.

■ 44. In § 2.1109, paragraphs (a)(1) and (c) are revised to read as follows:

§ 2.1109 Requests for oral argument.

(a)(1) In its request for hearing/petition to intervene filed in accordance with § 2.309 or in the applicant's or the NRC staff's response to a request for a hearing/petition to intervene, any party may invoke the hybrid hearing procedures in this Subpart by requesting an oral argument. If it is determined that a hearing will be held, the presiding officer shall grant a timely request for oral argument.

* * * * *

(c) If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, the presiding officer shall conduct the proceeding in accordance with the subpart under which the proceeding was initially conducted as determined in accordance with § 2.310.

* * * * *

§ 2.1111 [Reserved]

■ 45. Section 2.1111 is removed.

■ 46. In § 2.1113, paragraph (b) is redesignated as paragraph (c), paragraph (a) is revised, and a new paragraph (b) is added to read as follows:

§ 2.1113 Oral argument.

(a) Twenty-five (25) days prior to the date set for oral argument, each party, including the NRC staff, shall submit to the presiding officer a detailed written summary of all the facts, data, and arguments which are known to the party at such time and on which the party proposes to rely at the oral argument either to support or to refute the existence of a genuine and substantial dispute of fact. Each party shall also submit all supporting facts and data in the form of sworn written testimony or other sworn written submission. Each party's written summary and supporting information shall be simultaneously served on all other parties to the proceeding.

(b) Ten (10) days prior to the date set for oral argument, each party, including the NRC staff, may submit to the presiding officer a reply limited to addressing whether the written summaries, facts, data, and arguments filed under paragraph (a) of this section support or refute the existence of a genuine and substantial dispute of fact. Each party's reply shall be simultaneously served on all other parties to the proceeding.

* * * * *

■ 47. Section 2.1117 is revised to read as follows:

§ 2.1117 Burden of proof.

The applicant bears the ultimate burden of proof (risk of non-persuasion) with respect to the contention in the proceeding. The proponent of the request for an adjudicatory hearing bears the burden of demonstrating under § 2.1115(b) that an adjudicatory hearing should be held.

■ 48. A new § 2.1119 is added to read as follows:

§ 2.1119 Applicability of other sections.

In proceedings subject to this part, the provisions of subparts A, C, and L of this part are also applicable, except where inconsistent with the provisions of this subpart.

■ 49. Subpart L is revised to read as follows:

Subpart L—Informal Hearing Procedures for NRC Adjudications

Sec.
2.1200 Scope of subpart L.
2.1201 Definitions.
2.1202 Authority and role of NRC staff.
2.1203 Hearing file; prohibition on discovery.
2.1204 Motions and requests.
2.1205 Summary disposition.
2.1206 Informal hearings.
2.1207 Process and schedule for submissions and presentations in an oral hearing.
2.1208 Process and schedule for a hearing consisting of written presentations.
2.1209 Findings of fact and conclusions of law.
2.1210 Initial decision and its effect.
2.1211 Immediate effectiveness of initial decision directing issuance or amendment of licenses under part 61 of this chapter.
2.1212 Petitions for Commission review of initial decisions.
2.1213 Application for a stay.

Subpart L—Informal Hearing Procedures for NRC Adjudications

§ 2.1200 Scope of subpart L.

The provisions of this subpart, together with subpart C of this part, govern all adjudicatory proceedings conducted under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act, and 10 CFR part 2, except for proceedings on the licensing of the construction and operation of a uranium enrichment facility, proceedings on an initial application for construction authorization for a high-level radioactive waste geologic repository at a geologic repository operations area noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings on an initial application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, proceedings on enforcement matters unless all parties otherwise agree and request the application of Subpart L procedures, and proceedings for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition.

§ 2.1201 Definitions.

The definitions of terms contained in § 2.4 apply to this subpart unless a different definition is provided in this subpart.

§ 2.1202 Authority and role of NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its own review of the application or matter which is the subject of the hearing and as authorized by law, the NRC staff is expected to issue its approval or denial of the application promptly, or take other appropriate action on the underlying regulatory matter for which a hearing was provided. When the NRC staff takes its action, it shall notify the presiding officer and the parties to the proceeding of its action. That notice must include the NRC staff's position on the matters in controversy before the presiding officer with respect to the staff

action. The NRC staff's action on the matter is effective upon issuance by the staff, except in matters involving:

(1) An application to construct and/or operate a production or utilization facility;

(2) An application for an amendment to a construction authorization for a high-level radioactive waste repository at a geologic repository operations area falling under either 10 CFR 60.32(c)(1) or 10 CFR part 63;

(3) An application for the construction and operation of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or a monitored retrievable storage installation (MRS) under 10 CFR part 72; and

(4) Production or utilization facility licensing actions that involve significant hazards considerations as defined in 10 CFR 50.92.

(b)(1) The NRC staff is not required to be a party to a proceeding under this subpart, except where:

(i) The proceeding involves an application denied by the NRC staff or an enforcement action proposed by the NRC staff; or

(ii) The presiding officer determines that the resolution of any issue in the proceeding would be aided materially by the NRC staff's participation in the proceeding as a party and orders the staff to participate as a party for the identified issue. In the event that the presiding officer determines that the NRC staff's participation is necessary, the presiding officer shall issue an order identifying the issue(s) on which the staff is to participate as well as setting forth the basis for the determination that staff participation will materially aid in resolution of the issue(s).

(2) Within fifteen (15) days of the issuance of the order granting requests for hearing/petitions to intervene and admitting contentions, the NRC staff shall notify the presiding officer and the parties whether it desires to participate as a party, and identify the contentions on which it wishes to participate as a party. If the NRC staff desires to be a party thereafter, the NRC staff shall notify the presiding officer and the parties, identify the contentions on which it wishes to participate as a party, and make the disclosures required by § 2.336(b)(3) through (5) unless accompanied by an affidavit explaining why the disclosures cannot be provided to the parties with the notice.

(3) Once the NRC staff chooses to participate as a party, it shall have all the rights and responsibilities of a party with respect to the admitted contention/matter in controversy on which the staff chooses to participate.

§ 2.1203 Hearing file; prohibition on discovery.

(a)(1) Within thirty (30) days of the issuance of the order granting requests for hearing/petitions to intervene and admitting contentions, the NRC staff shall file in the docket, present to the presiding officer, and make available to the parties to the proceeding a hearing file.

(2) The hearing file must be made available to the parties either by service of hard copies or by making the file available at the NRC Web site, *http://www.nrc.gov.*

(3) The hearing file also must be made available for public inspection and copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

(b) The hearing file consists of the application, if any, and any amendment to the application, and, when available, any NRC environmental impact statement or assessment and any NRC report related to the proposed action, as well as any correspondence between the applicant/licensee and the NRC that is relevant to the proposed action. Hearing file documents already available at the NRC Web site and/or the NRC Public Document Room when the hearing request/petition to intervene is granted may be incorporated into the hearing file at those locations by a reference indicating where at those locations the documents can be found. The presiding officer shall rule upon any issue regarding the appropriate materials for the hearing file.

(c) The NRC staff has a continuing duty to keep the hearing file up to date with respect to the materials set forth in paragraph (b) of this section and to provide those materials as required in paragraphs (a) and (b) of this section.

(d) Except as otherwise permitted by subpart C of this part, a party may not seek discovery from any other party or the NRC or its personnel, whether by document production, deposition, interrogatories or otherwise.

§ 2.1204 Motions and requests.

(a) General requirements. In proceedings under this subpart, requirements for motions and requests and responses to them are as specified in § 2.323.

(b) Requests for cross-examination by the parties. (1) In any oral hearing under this subpart, a party may file a motion with the presiding officer to permit cross-examination by the parties on particular admitted contentions or issues. The motion must be accompanied by a cross-examination plan containing the following information:

(i) A brief description of the issue or issues on which cross-examination will be conducted;

(ii) The objective to be achieved by cross-examination; and

(iii) The proposed line of questions that may logically lead to achieving the objective of the cross-examination.

(2) The cross-examination plan may be submitted only to the presiding officer and must be kept by the presiding officer in confidence until issuance of the initial decision on the issue being litigated. The presiding officer shall then provide each cross-examination plan to the Commission's Secretary for inclusion in the official record of the proceeding.

(3) The presiding officer shall allow cross-examination by the parties only if the presiding officer determines that cross-examination by the parties is necessary to ensure the development of an adequate record for decision.

§ 2.1205 Summary disposition.

(a) Unless the presiding officer or the Commission directs otherwise, motions for summary disposition may be submitted to the presiding officer by any party no later than forty-five (45) days before the commencement of hearing. The motions must be in writing and must include a written explanation of the basis of the motion, and affidavits to support statements of fact. Motions for summary disposition must be served on the parties and the Secretary at the same time that they are submitted to the presiding officer.

(b) Any other party may serve an answer supporting or opposing the motion within twenty (20) days after service of the motion.

(c) The presiding officer shall issue a determination on each motion for summary disposition no later than fifteen (15) days before the date scheduled for commencement of hearing. In ruling on motions for summary disposition, the presiding officer shall apply the standards for summary disposition set forth in subpart G of this part.

§ 2.1206 Informal hearings.

Hearings under this subpart will be oral hearings as described in § 2.1207, unless, within fifteen (15) days of the service of the order granting the request for hearing, the parties unanimously agree and file a joint motion requesting a hearing consisting of written submissions. A motion to hold a hearing consisting of written submissions will not be entertained unless there is unanimous consent of the parties.

§ 2.1207 Process and schedule for submissions and presentations in an oral hearing.

(a) Unless otherwise limited by this subpart or by the presiding officer, participants in an oral hearing may submit and sponsor in the hearings:

(1) Initial written statements of position and written testimony with supporting affidavits on the admitted contentions. These materials must be filed on the dates set by the presiding officer.

(2) Written responses and rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants. These materials must be filed within twenty (20) days of the service of the materials submitted under paragraph (a)(1) of this section unless the presiding officer directs otherwise.

(3)(i) Proposed questions for the presiding officer to consider for propounding to the persons sponsoring the testimony. Unless the presiding officer directs otherwise, these questions must be received by the presiding officer no later than twenty (20) days after the service of the materials submitted under paragraph (a)(1) of this section, unless that date is less than five (5) days before the scheduled commencement of the oral hearing, in which case the questions must be received by the presiding officer no later than five (5) days before the scheduled commencement of the hearing. Proposed questions need not be filed with any other party.

(ii) Proposed questions directed to rebuttal testimony for the presiding officer to consider for propounding to persons sponsoring the testimony. Unless the presiding officer directs otherwise, these questions must be received by the presiding officer no later than seven (7) days after the service of the rebuttal testimony submitted under paragraph (a)(2) of this section, unless that date is less than five (5) days before the scheduled commencement of the oral hearing, in which case the questions must be received by the presiding officer no later than five (5) days before the scheduled commencement of the hearing. Proposed questions directed to rebuttal need not be filed with any other party.

(iii) Questions submitted under paragraphs (a)(3)(i) and (ii) of this section may be propounded at the discretion of the presiding officer. All questions must be kept by the presiding officer in confidence until they are either propounded by the presiding officer, or until issuance of the initial decision on the issue being litigated. The presiding officer shall then provide all proposed questions to the Commission's Secretary for inclusion in the official record of the proceeding.

(b) Oral hearing procedures. (1) The oral hearing must be transcribed.

(2) Written testimony will be received into evidence in exhibit form.

(3) Participants may designate and present their own witnesses to the presiding officer.

(4) Testimony for the NRC staff will be presented only by persons designated by the Executive Director for Operations or his delegee for that purpose.

(5) The presiding officer may accept written testimony from a person unable to appear at the hearing, and may request that person to respond in writing to questions.

(6) Participants and witnesses will be questioned orally or in writing and only by the presiding officer or the presiding officer's designee (*e.g.*, a Special Assistant appointed under § 2.322). The presiding officer will examine the participants and witnesses using questions prepared by the presiding officer or the presiding officer's designee, questions submitted by the participants at the discretion of the presiding officer, or a combination of both. Questions may be addressed to individuals or to panels of participants or witnesses. No party may submit proposed questions to the presiding officer at the hearing, except upon request by, and in the sole discretion of, the presiding officer.

§ 2.1208 Process and schedule for a hearing consisting of written presentations.

(a) Unless otherwise limited by this subpart or by the presiding officer, participants in a hearing consisting of written presentations may submit:

(1) Initial written statements of position and written testimony with supporting affidavits on the admitted contentions. These materials must be filed on the dates set by the presiding officer;

(2) Written responses, rebuttal testimony with supporting affidavits directed to the initial statements and testimony of witnesses and other participants, and proposed written questions for the presiding officer to consider for submission to the persons sponsoring testimony under paragraph (a)(1) of this section. These materials must be filed within twenty (20) days of the service of the materials submitted under paragraph (a)(1) of this section unless the presiding officer directs otherwise;

(3) Written questions on the written responses and rebuttal testimony submitted under paragraph (a)(2) of this section, which the presiding officer may, in his or her discretion, require the persons offering the written responses and rebuttal testimony to provide responses. These questions must be filed within seven (7) days of service of the materials submitted under paragraph (a)(2) of this section unless the presiding officer directs otherwise; and

(4) Written concluding statements of position on the contentions. These statements shall be filed within twenty (20) days of the service of written responses to the presiding officer's questions to the participants or, in the absence of questions from the presiding officer, within twenty (20) days of the service of the materials submitted under paragraph (a)(2) of this section unless the presiding officer directs otherwise.

(b) The presiding officer may formulate and submit written questions to the participants that he or she considers appropriate to develop an adequate record.

§ 2.1209 Findings of fact and conclusions of law.

Each party shall file written post-hearing proposed findings of fact and conclusions of law on the contentions addressed in an oral hearing under § 2.1207 or a written hearing under § 2.1208 within thirty (30) days of the close of the hearing or at such other time as the presiding officer directs.

§ 2.1210 Initial decision and its effect.

(a) Unless the Commission directs that the record be certified to it in accordance with paragraph (b) of this section, the presiding officer shall render an initial decision after completion of an informal hearing under this subpart. That initial decision constitutes the final action of the Commission on the contested matter forty (40) days after the date of issuance, unless:

(1) Any party files a petition for Commission review in accordance with § 2.1212;

(2) The Commission, in its discretion, determines that the presiding officer's initial decision is inconsistent with the staff's action as described in the notice required by § 2.1202(a) and that the inconsistency warrants Commission review, in which case the Commission will review the initial decision; or

(3) The Commission takes review of the decision sua sponte.

(b) The Commission may direct that the presiding officer certify the record to it without an initial decision and prepare a final decision if the Commission finds that due and timely execution of its functions warrants certification.

(c) An initial decision must be in writing and must be based only upon information in the record or facts officially noticed. The record must include all information submitted in the proceeding with respect to which all parties have been given reasonable prior notice and an opportunity to comment as provided in §§ 2.1207 or 2.1208. The initial decision must include:

(1) Findings, conclusions, and rulings, with the reasons or basis for them, on all material issues of fact or law admitted as part of the contentions in the proceeding;

(2) The appropriate ruling, order, or grant or denial of relief with its effective date;

(3) The action the NRC staff shall take upon transmittal of the decision to the NRC staff under paragraph (e) of this section, if the initial decision is inconsistent with the NRC staff action as described in the notice required by § 2.1202(a); and

(4) The time within which a petition for Commission review may be filed, the time within which any answers to a petition for review may be filed, and the date when the decision becomes final in the absence of a petition for Commission review or Commission sua sponte review.

(d) Pending review and final decision by the Commission, an initial decision resolving all issues before the presiding officer is immediately effective upon issuance except:

(1) As provided in any order issued in accordance with § 2.1211 that stays the effectiveness of an initial decision; or

(2) As otherwise provided by this part (*e.g.,* § 2.340) or by the Commission in special circumstances.

(e) Once an initial decision becomes final, the Secretary shall transmit the decision to the NRC staff for action in accordance with the decision.

§ 2.1211 Immediate effectiveness of initial decision directing issuance or amendment of licenses under part 61 of this chapter.

An initial decision directing the issuance of a license under part 61 of this chapter (relating to land disposal of radioactive waste or any amendments to such a license authorizing actions which may significantly affect the health and safety of the public) will become effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards may not issue a license under part 61 of this chapter, or any amendment to such a license that may significantly affect the health and safety of the public until expressly authorized to do so by the Commission.

§ 2.1212 Petitions for Commission review of initial decisions.

Parties may file petitions for review of an initial decision under this subpart in accordance with the procedures set out in § 2.341. Unless otherwise authorized by law, a party to an NRC proceeding must file a petition for Commission review before seeking judicial review of an agency action.

§ 2.1213 Application for a stay.

(a) Any application for a stay of the effectiveness of the NRC staff's action on a matter involved in a hearing under this subpart must be filed with the presiding officer within five (5) days of the issuance of the notice of the NRC staff's action under § 2.1202(a) and must be filed and considered in accordance with paragraphs (b), (c) and (d) of this section.

(b) An application for a stay of the NRC staff's action may not be longer than ten (10) pages, exclusive of affidavits, and must contain:

(1) A concise summary of the action which is requested to be stayed; and

(2) A concise statement of the grounds for a stay, with reference to the factors specified in paragraph (d) of this section.

(c) Within ten (10) days after service of an application for a stay of the NRC staff's action under this section, any party and/or the NRC staff may file an answer supporting or opposing the granting of a stay. Answers may not be longer than ten (10) pages, exclusive of affidavits, and must concisely address the matters in paragraph (b) of this section as appropriate. Further replies to answers will not be entertained.

(d) In determining whether to grant or deny an application for a stay of the NRC staff's action, the following will be considered:

(1) Whether the requestor will be irreparably injured unless a stay is granted;

(2) Whether the requestor has made a strong showing that it is likely to prevail on the merits;

(3) Whether the granting of a stay would harm other participants; and

(4) Where the public interest lies.

(e) Any application for a stay of the effectiveness of the presiding officer's initial decision or action under this subpart shall be filed with the Commission in accordance with § 2.342.

■ 50. The heading for subpart M is revised to read as follows:

Subpart M—Procedures for Hearings on License Transfer Applications

■ 51. Section 2.1300 is revised to read as follows:

§ 2.1300 Scope of subpart M.

The provisions of this subpart, together with subpart C of this part, govern all adjudicatory proceedings on an application for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition. This subpart provides the only mechanism for requesting hearings on license transfer requests, unless contrary case specific orders are issued by the Commission.

§ 2.1306 [Removed]

■ 52. Section 2.1306 is removed.

§ 2.1307 [Removed]

■ 53. Section 2.1307 is removed.

■ 54. Section 2.1308 is revised to read as follows:

§ 2.1308 Oral hearings.

Hearings under this subpart will be oral hearings, unless, within 15 days of the service of the notice or order granting the hearing, the parties unanimously agree and file a joint motion requesting a hearing consisting of written comments. No motion to hold a hearing consisting of written comments will be entertained absent consent of all the parties.

§ 2.1312 [Removed]

■ 55. Section 2.1312 is removed.

§ 2.1313 [Removed]

■ 56. Section 2.1313 is removed.

§ 2.1314 [Removed]

■ 57. Section 2.1314 is removed.

■ 58. In § 2.1315, paragraph (a) is revised to read as follows:

§ 2.1315 Generic determination regarding license amendments to reflect transfers.

(a) Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or the license of an Independent Spent Fuel Storage Installation which does no more than conform the license to reflect the transfer action, involves respectively, ''no significant hazards consideration,'' or ''no genuine issue as to whether the health and safety of the public will be significantly affected.''

* * * * *

§ 2.1317 [Removed]

■ 59. Section 2.1317 is removed.

§ 2.1318 [Removed]

■ 60. Section 2.1318 is removed.

■ 61. In § 2.1321, the introductory paragraph is republished and paragraph (a) is revised to read as follows:

§ 2.1321 Participation and schedule for submission in a hearing consisting of written comments.

Unless otherwise limited by this subpart or by the Commission, participants in a hearing consisting of written comments may submit:

(a) Initial written statements of position and written testimony with supporting affidavits on the issues. These materials must be filed on the date set by the Commission or the presiding officer.

* * * * *

■ 62. In § 2.1322, the introductory text of paragraph (a) is republished, and paragraph (a)(1) is revised to read as follows:

§ 2.1322 Participation and schedule for submissions in an oral hearing.

(a) Unless otherwise limited by this subpart or by the Commission, participants in an oral hearing may submit and sponsor in the hearings:

(1) Initial written statements of position and written testimony with supporting affidavits on the issues. These materials must be filed on the date set by the Commission or the presiding officer.

* * * * *

■ 63. In § 2.1323, paragraph (d) is revised to read as follows:

§ 2.1323 Presentation of testimony in an oral hearing.

* * * * *

(d) Testimony for the NRC staff will be presented only by persons designated for that purpose by either the Executive Director for Operations or a delegee of the Executive Director for Operations.

* * * * *

§ 2.1326 [Removed]

■ 64. Section 2.1326 is removed.

§ 2.1328 [Removed]

■ 65. Section 2.1328 is removed.

§ 2.1329 [Removed]

■ 66. Section 2.1329 is removed.

§ 2.1330 [Removed]

■ 67. Section 2.1330 is removed.

■ 68. In § 2.1331, paragraph (b) is revised to read as follows:

§ 2.1331 Commission action.

* * * * *

(b) The decision on issues designated for hearing under § 2.309 will be based on the record developed at hearing.

■ 69. A new Subpart N is added to read as follows:

Subpart N—Expedited Proceedings with Oral Hearings

Sec.

2.1400 Purpose and scope of subpart N.
2.1401 Definitions.
2.1402 General procedures and limitations; requests for other procedures.
2.1403 Authority and role of the NRC staff.
2.1404 Prehearing conference.
2.1405 Hearing.
2.1406 Initial decision—issuance and effectiveness.
2.1407 Appeal and Commission review of initial decision.

Subpart N—Expedited Proceedings with Oral Hearings

§ 2.1400 Purpose and scope of subpart N.

The purpose of this subpart is to provide simplified procedures for the expeditious resolution of disputes among parties in an informal hearing process. The provisions of this subpart, together with subpart C of this part, govern all adjudicatory proceedings conducted under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and 10 CFR part 2 except for proceedings on the licensing of the construction and operation of a uranium enrichment facility, proceedings on an initial application for authorization to construct a high-level radioactive waste repository at a geologic repository operations area noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings on an initial application for authorization to receive and possess high-level radioactive waste at a geologic repository operations area, proceedings on an initial application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, proceedings on enforcement matters unless all parties otherwise agree and request the application of subpart N procedures, and proceedings for the direct or indirect control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition.

§ 2.1401 Definitions.

The definitions of terms in § 2.4 apply to this subpart unless a different definition is provided in this subpart.

§ 2.1402 General procedures and limitations; requests for other procedures.

(a) Generally-applicable procedures. For proceedings conducted under this subpart:

(1) Except where provided otherwise in this subpart or specifically requested by the presiding officer or the Commission, written pleadings and briefs (regardless of whether they are in the form of a letter, a formal legal submission, or otherwise) are not permitted;

(2) Requests to schedule a conference to consider oral motions may be in writing and served on the Presiding officer and the parties;

(3) Motions for summary disposition before the hearing has concluded and motions for reconsideration to the presiding officer or the Commission are not permitted;

(4) All motions must be presented and argued orally;

(5) The presiding officer will reflect all rulings on motions and other requests from the parties in a written decision. A verbatim transcript of oral rulings satisfies this requirement;

(6) Except for the information disclosure requirements set forth in subpart C of this part, requests for discovery will not be entertained; and

(7) The presiding officer may issue written orders and rulings necessary for the orderly and effective conduct of the proceeding;

(b) Other procedures. If it becomes apparent at any time before a hearing is held that a proceeding selected for adjudication under this subpart is not appropriate for application of this subpart, the presiding officer or the Commission may, on its own motion or at the request of a party, order the proceeding to continue under another appropriate subpart. If a proceeding under this subpart is discontinued because the proceeding is not appropriate for application of this subpart, the presiding officer may issue written orders necessary for the orderly continuation of the hearing process under another subpart.

(c) Request for cross-examination. A party may present an oral motion to the presiding officer to permit cross-examination by the parties on particular admitted contentions or issues. The presiding officer may allow cross-examination by the parties if he or she determines that cross-examination by the parties is necessary for the development of an adequate record for decision.

§ 2.1403 Authority and role of the NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its own review of the application or matter which is the subject of the hearing and as authorized by law, the NRC staff is expected to issue its approval or denial of the application promptly, or take

other appropriate action on the matter which is the subject of the hearing. When the NRC staff takes its action, it shall notify the presiding officer and the parties to the proceeding of its action. The NRC staff's action on the matter is effective upon issuance, except in matters involving:

(1) An application to construct and/or operate a production or utilization facility;

(2) An application for the construction and operation of an independent spent fuel storage installation located at a site other than a reactor site or a monitored retrievable storage facility under 10 CFR part 72; or

(3) Production or utilization facility licensing actions that involve significant hazards considerations as defined in 10 CFR 50.92.

(b)(1) The NRC staff is not required to be a party to proceedings under this subpart, except where:

(i) The proceeding involves an application denied by the NRC staff or an enforcement action proposed by the staff; or

(ii) The presiding officer determines that the resolution of any issue in the proceeding would be aided materially by the NRC staff's participation in the proceeding as a party and orders the staff to participate as a party for the identified issue. In the event that the presiding officer determines that the NRC staff's participation is necessary, the presiding officer shall issue an order identifying the issue(s) on which the staff is to participate as well as setting forth the basis for the determination that staff participation will materially aid in resolution of the issue(s).

(2) Within fifteen (15) days of the issuance of the order granting requests for hearing/petitions to intervene and admitting contentions, the NRC staff shall notify the presiding officer and the parties whether it desires to participate as a party, and identify the contentions on which it wishes to participate as a party. If the NRC staff desires to be a party thereafter, the NRC staff shall notify the presiding officer and the parties, identify the contentions on which it wishes to participate as a party, and make the disclosures required by § 2.336(b)(3) through (5) unless accompanied by an affidavit explaining why the disclosures cannot be provided to the parties with the notice.

(3) Once the NRC staff chooses to participate as a party, it shall have all the rights and responsibilities of a party with respect to the admitted contention/matter in controversy on which the staff chooses to participate.

§ 2.1404 Prehearing conference.

(a) No later than forty (40) days after the order granting requests for hearing/petitions to intervene, the presiding officer shall conduct a prehearing conference. At the discretion of the presiding officer, the prehearing conference may be held in person or by telephone or through the use of video conference technology.

(b) At the prehearing conference, each party shall provide the presiding officer and the parties participating in the conference with a statement identifying each witness the party plans to present at the hearing and a written summary of the oral and written testimony of each proposed witness. If the prehearing conference is not held in person, each party shall forward the summaries of the party's witnesses' testimony to the presiding officer and the other parties by such means that will ensure the receipt of the summaries by the commencement of the prehearing conference.

(c) At the prehearing conference, the parties shall describe the results of their efforts to settle their disputes or narrow the contentions that remain for hearing, provide an agreed statement of facts, if any, identify witnesses that they propose to present at hearing, provide questions or question areas that they would propose to have the presiding officer cover with the witnesses at the hearing, and discuss other pertinent matters. At the conclusion of the conference, the presiding officer will issue an order specifying the issues to be addressed at the hearing and setting forth any agreements reached by the parties. The order must include the scheduled date for any hearing that remains to be held, and address any other matters as appropriate.

§ 2.1405 Hearing.

(a) No later than twenty (20) days after the conclusion of the prehearing conference, the presiding officer shall hold a hearing on any contention that remains in dispute. At the beginning of the hearing, the presiding officer shall enter into the record all agreements reached by the parties before the hearing.

(b) A hearing will be recorded stenographically or by other means, under the supervision of the presiding officer. A transcript will be prepared from the recording that will be the sole official transcript of the hearing. The transcript will be prepared by an official reporter who may be designated by the Commission or may be a regular employee of the Commission. Except as limited by section 181 of the Act or order of the Commission, the transcript will be available for inspection in the agency's public records system. Copies of transcripts are available to the parties and to the public from the official reporter on payment of the charges fixed therefor. If a hearing is recorded on videotape or other video medium, copies of the recording of each daily session of the hearing may be made available to the parties and to the public from the presiding officer upon payment of a charge fixed by the Chief Administrative Judge. Parties may purchase copies of the transcript from the reporter.

(c) Hearings will be open to the public, unless portions of the hearings involving proprietary or other protectable information are closed in accordance with the Commission's regulations.

(d) At the hearing, the presiding officer will not receive oral evidence that is irrelevant, immaterial, unreliable or unduly repetitious. Testimony will be under oath or affirmation.

(e) The presiding officer may question witnesses who testify at the hearing, but the parties may not do so.

(f) Each party may present oral argument and a final statement of position at the close of the hearing. Written post-hearing briefs and proposed findings are not permitted unless ordered by the presiding officer.

§ 2.1406 Initial decision—issuance and effectiveness.

(a) Where practicable, the presiding officer will render a decision from the bench. In rendering a decision from the bench, the presiding officer shall state the issues in the proceeding and make clear its findings of fact and conclusions of law on each issue. The presiding officer's decision and order must be reduced to writing and transmitted to the parties as soon as practicable, but not later than twenty (20) days, after the hearing ends. If a decision is not rendered from the bench, a written decision and order will be issued not later than thirty (30) days after the hearing ends. Approval of the Chief Administrative Judge must be obtained for an extension of these time periods, and in no event may a written decision and order be issued later than sixty (60) days after the hearing ends without the express approval of the Commission.

(b) The presiding officer's written decision must be served on the parties and filed with the Commission when issued.

(c) The presiding officer's initial decision is effective and constitutes the final action of the Commission twenty (20) days after the date of issuance of the written decision unless any party

appeals to the Commission in accordance with § 2.1407 or the Commission takes review of the decision sua sponte or the regulations in this part specify other requirements with regard to the effectiveness of decisions on certain applications.

§ 2.1407 Appeal and Commission review of initial decision.

(a)(1) Within fifteen (15) days after service of a written initial decision, a party may file a written appeal seeking the Commission's review on the grounds specified in paragraph (b) of this section. Unless otherwise authorized by law, a party must file an appeal with the Commission before seeking judicial review.

(2) An appeal under this section may not be longer than twenty (20) pages and must contain the following:

(i) A concise statement of the specific rulings and decisions that are being appealed;

(ii) A concise statement (including record citations) where the matters of fact or law raised in the appeal were previously raised before the presiding officer and, if they were not, why they could not have been raised;

(iii) A concise statement why, in the appellant's view, the decision or action is erroneous; and

(iv) A concise statement why the Commission should review the decision or action, with particular reference to the grounds specified in paragraph (b) of this section.

(3) Any other party to the proceeding may, within fifteen (15) days after service of the appeal, file an answer supporting or opposing the appeal. The answer may not be longer than twenty (20) pages and should concisely address the matters specified in paragraph (a)(2) of this section. The appellant does not have a right to reply. Unless it directs additional filings or oral arguments, the Commission will decide the appeal on the basis of the filings permitted by this paragraph.

(b) In considering the appeal, the Commission will give due weight to the existence of a substantial question with respect to the following considerations:

(1) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;

(2) A necessary legal conclusion is without governing precedent or is a departure from, or contrary to, established law;

(3) A substantial and important question of law, policy or discretion has been raised by the appeal;

(4) The conduct of the proceeding involved a prejudicial procedural error; or

(5) Any other consideration which the Commission may deem to be in the public interest.

(c) Once a decision becomes final agency action, the Secretary shall transmit the decision to the NRC staff for action in accordance with the decision.

■ 70. A new Subpart O is added to read as follows:

Subpart O—Legislative Hearings

Sec.
2.1500 Purpose and scope.
2.1501 Definitions.
2.1502 Commission decision to hold legislative hearing.
2.1503 Authority of presiding officer.
2.1504 Request to participate in legislative hearing.
2.1505 Role of the NRC staff.
2.1506 Written statements and submission of information.
2.1507 Oral hearing.
2.1508 Recommendation of presiding officer.
2.1509 Ex parte communications and separation of functions.

Subpart O—Legislative Hearings

§ 2.1500 Purpose and scope.

The purpose of this subpart is to provide for simplified, legislative hearing procedures to be used, at the Commission's sole discretion, in:

(a) Any design certification rulemaking hearings under subpart B of part 52 of this chapter that the Commission may choose to conduct; and

(b) Developing a record to assist the Commission in resolving, under § 2.335(d), a petition filed under § 2.335(b).

§ 2.1501 Definitions.

Demonstrative information means physical things, not constituting documentary information.

Documentary information means information, ordinarily contained in documents or electronic files, but may also include photographs and digital audio files.

§ 2.1502 Commission decision to hold legislative hearing.

(a) The Commission may, in its discretion, hold a legislative hearing in either a design certification rulemaking under § 52.51(b) of this chapter, or a proceeding where a question has been certified to it under § 2.335(d).

(b) Notice of Commission decision—(1) Hearing in design certification rulemakings. If, at the time a proposed design certification rule is published in the **Federal Register** under § 52.51(a) of this chapter, the Commission decides that a legislative hearing should be held, the information required by paragraph (c) of this section must be included in the **Federal Register** notice for the proposed design certification rule. If, following the submission of written public comments submitted on the proposed design certification rule which are submitted in accordance with § 52.51(a) of this chapter, the Commission decides to conduct a legislative hearing, the Commission shall publish a notice in the **Federal Register** and on the NRC Web site indicating its determination to conduct a legislative hearing. The notice shall contain the information specified in paragraph (c) of this section, and specify whether the Commission or a presiding officer will conduct the legislative hearing.

(2) Hearings under § 2.335(d). If, following a certification of a question to the Commission by a Licensing Board under § 2.335(d), the Commission decides to hold a legislative hearing to assist it in resolving the certified question, the Commission shall issue an order containing the information required by paragraph (c) of this section. The Commission shall serve the order on all parties in the proceeding. In addition, if the Commission decides that persons and entities other than those identified in paragraph (c)(2) may request to participate in the legislative hearing, the Commission shall publish a notice of its determination to hold a legislative hearing in the **Federal Register** and on the NRC Web site. The notice shall contain the information specified in paragraph (c) of this section, and refer to the criteria in § 2.1504 which will be used in determining requests to participate in the legislative hearing.

(c) If the Commission decides to hold a legislative hearing, it shall, in accordance with paragraph (b) of this section:

(1) Identify with specificity the issues on which it wishes to compile a record;

(2) Identify, in a hearing associated with a question certified to the Commission under § 2.335(d), the parties and interested State(s), governmental bodies, and Federally-recognized Indian Tribe under § 2.315(c), who may participate in the legislative hearing;

(3) Identify persons and entities that may, in the discretion of the Commission, be invited to participate in the legislative hearing;

(4) Indicate whether other persons and entities may request, in accordance with § 2.1504, to participate in the legislative hearing, and the criteria that the Commission or presiding officer will

use in determining whether to permit such participation;

(5) Indicate whether the Commission or a presiding officer will conduct the legislative hearing;

(6) Specify any special procedures to be used in the legislative hearing;

(7) Set the dates for submission of requests to participate in the legislative hearing, submission of written statements and demonstrative and documentary information, and commencement of the oral hearing; and

(8) Specify the location where the oral hearing is to be held. Ordinarily, oral hearings will be held in the Washington, DC metropolitan area.

§ 2.1503 Authority of presiding officer.

If the Commission appoints a presiding officer to conduct the legislative hearing, the presiding officer shall be responsible for expeditious development of a sufficient record on the Commission-identified issues, consistent with the direction provided by the Commission under § 2.1502(c). The presiding officer has the authority otherwise accorded to it under §§ 2.319(a), (c), (e), (g), (h), and (i), 2.324, and 2.333 to control the course of the proceeding, and may exercise any other authority granted to it by the Commission in accordance with § 2.1502(c)(6).

§ 2.1504 Request to participate in legislative hearing.

(a) Any person or entity who wishes to participate in a legislative hearing noticed under either § 2.1502(b)(1) or (b)(2) shall submit a request to participate by the date specified in the notice. The request must address:

(1) A summary of the person's position on the subject matter of the legislative hearing; and

(2) The specific information, expertise or experience that the person possesses with respect to the subject matter of the legislative hearing.

(b) The Commission or presiding officer shall, within ten (10) days of the date specified for submission of requests to participate, determine whether the person or entity has met the criteria specified by the Commission under § 2.1502(c)(4) for determining requests to participate in the legislative hearing, and issue an order to that person or entity informing them of the presiding officer's decision. A presiding officer's determinations in this regard are final and not subject to any motion for reconsideration or appeal to the Commission; and the Commission's determination in this regard are final and are not subject to a motion for reconsideration.

§ 2.1505 Role of the NRC staff.

The NRC staff shall be available to answer any Commission or presiding officer's questions on staff-prepared documents, provide additional information or documentation that may be available to the staff, and provide other assistance that the Commission or presiding officer may request without requiring the NRC staff to assume the role of an advocate. The NRC staff may request to participate in the legislative hearing by providing notice to the Commission or presiding officer, as applicable, within the time period established for submitting a request to participate; or if no notice is provided under § 2.1502(b)(2), within ten (10) days of the Commission's order announcing its determination to conduct a legislative hearing.

§ 2.1506 Written statements and submission of information.

All participants shall file written statements on the Commission-identified issues, and may submit documentary and demonstrative information. Written statements, copies of documentary information, and a list and short description of any demonstrative information to be submitted must be received by the NRC (and in a hearing on issues stemming from a § 2.335(b) petition, by the parties in the proceeding in which the petition was filed) no later than ten (10) days before the commencement of the oral hearing.

§ 2.1507 Oral hearing.

(a) Not less than five (5) days before the commencement of the oral hearing, the presiding officer shall issue an order setting forth the grouping and order of appearance of the witnesses at the oral hearing. The order shall be filed upon all participants by email or facsimile transmission if possible, otherwise by overnight mail.

(b) The Commission or presiding officer may question witnesses. Neither the Commission nor the presiding officer will ordinarily permit participants to submit recommended questions for the Commission or presiding officer to propound to witnesses. However, if the Commission or presiding officer believe that the conduct of the oral hearing will be expedited and that consideration of such proposed questions will assist in developing a more focused hearing record, the Commission or presiding officer may, in its discretion, permit the participants to submit recommended questions for the Commission or presiding officer's consideration.

(c) The Commission or presiding officer may request, or upon request of a participant may, in the presiding officer's discretion, permit the submission of additional information following the close of the oral hearing. Such information must be submitted no later than five (5) days after the close of the oral hearing and must be served at the same time upon all participants at the oral hearing.

§ 2.1508 Recommendation of presiding officer.

(a) If the Commission is not acting as a presiding officer, the presiding officer shall, within thirty (30) days following the close of the legislative hearing record, certify the record to the Commission on each of the issues identified by the Commission.

(b) The presiding officer's certification for each Commission-identified issue shall contain:

(1) A transcript of the oral phase of the legislative hearing;

(2) A list of all participants;

(3) A list of all witnesses at the oral hearing, and their affiliation with a participant;

(4) A list, and copies of, all documentary information submitted by the participants with ADAMS accession numbers;

(5) All demonstrative information submitted by the participants;

(6) Any written answers submitted by the NRC staff in response to questions posed by the presiding officer with ADAMS accession numbers;

(7) A certification that all documentary information has been entered into ADAMS, and have been placed on the NRC Web site unless otherwise protected from public disclosure;

(8) A certification by the presiding officer that the record contains sufficient information for the Commission to make a reasoned determination on the Commission-identified issue; and

(9) At the option of the presiding officer, a summary of the information in the record and a proposed resolution of the Commission-identified issue with a supporting basis.

§ 2.1509 Ex parte communications and separation of functions.

Section 2.347 applies in a legislative hearing. Section 2.348 applies in a legislative hearing only where the hearing addresses an issue certified to the Commission under § 2.335(d), and then only with respect to the underlying contested matter.

Appendix A to Part 2—[Removed]

■ 71. Appendix A to part 2 is removed.

■ 72. Appendix D to 10 CFR Part 2 is revised to read as follows:

Appendix D to Part 2—Schedule for the Proceeding on Application for Either a Construction Authorization for a High-Level Waste Repository at a Geologic Repository Operations Area, or a License To Receive and Possess High-Level Radioactive Waste at a Geologic Repository Operations Area

Day	Regulation (10 CFR)	Action
0	2.101(f)(8), 2.105(a)(5)	**FEDERAL REGISTER** Notice of Hearing.
30	2.309(b)(2)	Petition to intervene/request for hearing, w/contentions.
30		Petition for status as interested government participant.
55	2.315(c)	Answers to intervention & interested government participant petitions.
62	2.309(h)(1)	Petitioner's response to answers.
70		Prehearing Conference.
100	2.309(h)(2)	Prehearing Conference Order; identifies participants in proceeding, admits contentions, sets discovery and other schedules.
110	2.1021	Appeals from Prehearing Conference Order.
120		Briefs in opposition to appeals.
150	2.1021, 2.329	Commission ruling on appeals from Prehearing Conference Order.
548		Staff issues SER. .2.1015(b) 150.2.1015(b)
578		Prehearing conference.
608	2.1015(b)	Discovery complete; Prehearing Conference order finalizes issues for hearing and sets schedule for prefiled testimony and hearing.
618	2.1015(b)	Appeals from Prehearing Conference Order.
628		Briefs in opposition to appeals; last date for filing motions for summary disposition.
648		Last date for responses to summary disposition motions.
658		Commission ruling on appeals from Prehearing Conference Order; last date for party opposing motion to file response to new facts and arguments in responses supporting motion.
698	2.1015(b)	Decision on summary disposition motions (may be determination to dismiss or hold in abeyance).
720	2.1015(b), 2.710(a)	Evidentiary hearing begins.
810	2.710(a)	Evidentiary hearing ends.
840		Applicant's proposed findings.
850		Other parties' proposed findings.
855		Applicant's reply to other parties' proposed findings.
955		Initial decision.
965	2.710(e)	Stay motion, petition for reconsideration, notice of appeal.
975		Other parties' response to stay motion, petition for reconsideration.
995		Commission ruling on stay motion.
985		Appellant's briefs.
1015	2.712(a)(1)	Appellees' briefs.
1125	2.712(a)(2) 2.712(a)(3) 2.713 342(a), 2.345(a), 2.1015(c)(1) 2.342(d), 2.345(b) 2.1015(c)(2) 2.1015(c)(3)	Commission decision.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Section 50.37 also issued under E.O. 12829, 3 CFR 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR 1995 Comp., p. 391. Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

■ 74. In § 50.57, paragraph (c) is revised to read as follows:

§ 50.57 Issuance of operating license.

* * * * *

(c) An applicant may, in a case where a hearing is held in connection with a pending proceeding under this section make a motion in writing, under this paragraph (c), for an operating license authorizing low-power testing (operation at not more than 1 percent of full power for the purpose of testing the

facility), and further operations short of full power operation. Action on such a motion by the presiding officer shall be taken with due regard to the rights of the parties to the proceedings, including the right of any party to be heard to the extent that his contentions are relevant to the activity to be authorized. Before taking any action on such a motion that any party opposes, the presiding officer shall make findings on the matters specified in paragraph (a) of this section as to which there is a controversy, in the form of an initial decision with respect to the contested activity sought to be authorized. The Director of Nuclear Reactor Regulation will make findings on all other matters specified in paragraph (a) of this section. If no party opposes the motion, the presiding officer will issue an order in accordance with § 2.319(p) authorizing the Director of Nuclear Reactor Regulation to make appropriate findings on the matters specified in paragraph (a) of this section and to issue a license for the requested operation.

■ 75. In § 50.91, the introductory paragraph, and paragraphs (a)(4) and (a)(6)(v) are revised to read as follows:

§ 50.91 Notice for public comment; State consultation.

The Commission will use the following procedures for an application requesting an amendment to an operating license for a facility licensed under §§ 50.21(b) or 50.22 or for a testing facility, except for amendments subject to hearings governed by 10 CFR part 2, subpart L. For amendments subject to 10 CFR part 2, subpart L, the following procedures will apply only to the extent specifically referenced in § 2.309(b) of this chapter, except that notice of opportunity for hearing must be published in the **Federal Register** at least thirty (30) days before the requested amendment is issued by the Commission:

(a) * * *

(4) Where the Commission makes a final determination that no significant hazards consideration is involved and that the amendment should be issued, the amendment will be effective on issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention called for in § 2.309 of this chapter has filed a request for a hearing. The Commission need hold any required hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved, in which case the Commission will provide an opportunity for a prior hearing.

* * * * *

(6) * * *

(v) Will provide a hearing after issuance, if one has been requested by a person who satisfies the provisions for intervention specified in § 2.309 of this chapter;

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 76. The authority citation for part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 77. In § 51.15, paragraph (b) is revised to read as follows:

§ 51.15 Time schedules.

* * * * *

(b) As specified in 10 CFR part 2, the presiding officer, the Atomic Safety and Licensing Board or the Commissioners acting as a collegial body may establish a time schedule for all or any part of an adjudicatory or rulemaking proceeding to the extent that each has jurisdiction.

■ 78. Section 51.16 is revised to read as follows:

§ 51.16 Proprietary information.

(a) Proprietary information, such as trade secrets or privileged or confidential commercial or financial information, will be treated in accordance with the procedures provided in § 2.390 of this chapter.

(b) Any proprietary information which a person seeks to have withheld from public disclosure shall be submitted in accordance with § 2.390 of this chapter. When submitted, the proprietary information should be clearly identified and accompanied by a request, containing detailed reasons and justifications, that the proprietary information be withheld from public disclosure. A non-proprietary summary describing the general content of the proprietary information should also be provided.

■ 79. In § 51.109, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 51.109 Public hearings in proceedings for issuance of materials license, including construction authorization, with respect to a geologic repository.

(a)(1) In a proceeding for issuance of a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 and 63 of this chapter, and in a proceeding for issuance of a license to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area under parts 60 and 63 of this chapter, the NRC staff shall, upon the publication of the notice of hearing in the **Federal Register**, present its position on whether it is practicable to adopt, without further supplementation, the environmental impact statement (including any supplement thereto) prepared by the Secretary of Energy. If the position of the staff is that supplementation of the environmental impact statement by NRC is required, it shall file its final supplemental environmental impact statement with the Environmental Protection Agency, furnish that statement to commenting agencies, and make it available to the public, before presenting its position, or as soon thereafter as may be practicable. In discharging its responsibilities under this paragraph, the staff shall be guided by the principles set forth in paragraphs (c) and (d) of this section.

(2) Any other party to the proceeding who contends that it is not practicable to adopt the DOE environmental impact statement, as it may have been supplemented, shall file a contention to that effect within thirty (30) days after the publication of the notice of hearing in the **Federal Register**. Such contention must be accompanied by one or more affidavits which set forth factual and/or technical bases for the claim that, under the principles set forth in paragraphs (c) and (d) of this section, it is not practicable to adopt the DOE environmental impact statement, as it may have been supplemented. The presiding officer shall resolve disputes concerning adoption of the DOE environmental impact statement by using, to the extent possible, the criteria and procedures that are followed in ruling on motions to reopen under § 2.326 of this chapter.

* * * * *

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

■ 80. The authority citation for part 52 continues to read:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 81. Section 52.21 is revised to read as follows:

§ 52.21 Hearings.

An early site permit is a partial construction permit and is therefore subject to all procedural requirements in 10 CFR part 2 which are applicable to construction permits, including the requirements for docketing in § 2.101(a)(1)-(4), and the requirements for issuance of a notice of hearing in §§ 2.104(a), (b)(1)(iv) and (v), (b)(2) to the extent it runs parallel to (b)(1)(iv) and (v), and (b)(3), provided that the designated sections may not be construed to require that the environmental report or draft or final environmental impact statement include an assessment of the benefits of the proposed action. In the hearing, the presiding officer shall also determine whether, taking into consideration the site criteria contained in 10 CFR part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site can be constructed and operated without undue risk to the health and safety of the public. All hearings conducted on applications for early site permits filed under this part are governed by the procedures contained in subparts C, G and L of part 2 of this chapter.

■ 82. In § 52.29, paragraph (b) is revised to read as follows:

§ 52.29 Application for renewal.

* * * * *

(b) Any person whose interests may be affected by renewal of the permit may request a hearing on the application for renewal. The request for a hearing must comply with 10 CFR 2.309. If a hearing is granted, notice of the hearing will be published in accordance with 10 CFR 2.309.

* * * * *

■ 83. In § 52.39, paragraph (a)(2)(ii) is revised to read as follows:

§ 52.39 Finality of early site permit determinations.

(a) * * *

(2) * * *

(ii) A petition alleging that the site is not in compliance with the terms of the early site permit must include, or clearly reference, official NRC documents, documents prepared by or for the permit holder, or evidence admissible in a proceeding under subpart C of 10 CFR part 2, which show, prima facie, that the acceptance criteria have not been met. The permit holder and NRC staff may file answers to the petition within the time specified in 10 CFR 2.323 for answers to motions by parties and staff. If the Commission, in its judgment, decides, on the basis of the petitions and any answers thereto, that the petition meets the requirements of this paragraph, that the issues are not exempt from adjudication under 5 U.S.C. 554(a)(3), that genuine issues of material fact are raised, and that settlement or other informal resolution of the issues is not possible, then the genuine issues of material fact raised by the petition must be resolved in accordance with the provisions in 5 U.S.C. 554, 556, and 557 which are applicable to determining applications for initial licenses.

* * * * *

■ 84. In § 52.43, paragraph (b) is revised to read as follows:

§ 52.43 Relationship to appendices M, N, and O of this part.

* * * * *

(b) Appendix O governs the NRC staff review and approval of preliminary and final standard designs. A NRC staff approval under appendix O in no way affects the authority of the Commission or the presiding officer in any proceeding under 10 CFR part 2. Subpart B of part 52 governs Commission approval, or certification, of standard designs by rulemaking.

* * * * *

■ 85. Section 52.51 is revised to read as follows:

§ 52.51 Administrative review of applications.

(a) A standard design certification is a rule that will be issued in accordance with the provisions of subpart H of 10 CFR part 2, as supplemented by the provisions of this section. The Commission shall initiate the rulemaking after an application has been filed under § 52.45 and shall specify the procedures to be used for the rulemaking. The notice of proposed rulemaking published in the **Federal Register** must provide an opportunity for the submission of comments on the proposed design certification rule. If, at the time a proposed design certification rule is published in the **Federal Register** under § 52.51(a), the Commission decides that a legislative hearing should be held, the information required by 10 CFR 2.1502(c) must be included in the **Federal Register** notice for the proposed design certification

(b) Following the submission of comments on the proposed design certification rule, the Commission may, at its discretion, hold a legislative hearing under the procedures in Subpart O of part 2 of this chapter. The Commission shall publish a notice in the **Federal Register** of its decision to hold a legislative hearing. The notice shall contain the information specified in paragraph (c) of this section, and specify whether the Commission or a presiding officer will conduct the legislative hearing.

(c) Notwithstanding anything in 10 CFR 2.390 to the contrary, proprietary information will be protected in the same manner and to the same extent as proprietary information submitted in connection with applications for construction permits and operating licenses under 10 CFR part 50, provided that the design certification shall be published in chapter I of this title.

■ 86. In § 52.63, paragraph (a)(1) is revised to read as follows:

§ 52.63 Finality of standard design certifications.

(a)(1) Notwithstanding any provision in 10 CFR 50.109, while a standard design certification is in effect under §§ 52.55 or 52.61, the Commission may not modify, rescind, or impose new requirements on the certification, whether on its own motion, or in response to a petition from any person, unless the Commission determines in a rulemaking that a modification is necessary either to bring the certification or the referencing plants into compliance with the Commission's regulations applicable and in effect at the time the certification was issued, or to assure adequate protection of the public health and safety or the common defense and security. The rulemaking procedures must provide for notice and opportunity for public comment.

* * * * *

■ 87. In Appendix A to Part 52, Section VIII, paragraphs B.5.f., C.3. and C.5. are revised to read as follows:

Appendix A to Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

* * * * *

VIII. Processes for Changes and Departures

* * * * *

B. * * *

5. * * *

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of fact regarding compliance with VIII.B.5 of this appendix.

* * * * *

C. * * *

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

* * * * *

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

* * * * *

■ 88. In Appendix B to part 52, Section VIII, paragraphs B.5.f., C.3. and C.5. are revised to read as follows:

Appendix B to Part 52—Design Certification Rule for the System 80+ Design

* * * * *

VIII. Processes for Changes and Departures

* * * * *

B. * * *

5. * * *

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of fact regarding compliance with VIII.B.5 of this appendix.

* * * * *

C. * * *

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

* * * * *

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

* * * * *

■ 89. In Appendix C to Part 52, Section VIII, paragraphs B.5.f., C.3. and C.5. are revised to read as follows:

Appendix C to Part 52—Design Certification Rule for the AP600 Design

* * * * *

VIII. Processes for Changes and Departures

* * * * *

B. * * *

5. * * *

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of fact regarding compliance with VIII.B.5 of this appendix.

* * * * *

C. * * *

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic technical

specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

* * * * *

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

* * * * *

■ 90. In Appendix N to Part 52, the three introductory paragraphs are revised to read as follows:

Appendix N to Part 52—Standardization of Nuclear Power Plant Designs: Licenses To Construct and Operate Nuclear Power Reactors of Duplicate Design at Multiple Sites

Section 101 of the Atomic Energy Act of 1954, as amended, and § 50.10 of this chapter require a Commission license to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any production or utilization facility. The regulations in part 50 of this chapter require the issuance of a construction permit by the Commission before commencement of construction of a production or utilization facility, except as provided in § 50.10(e) of this chapter, and the issuance of an operating license before the operation of the facility.

The Commission's regulations in Part 2 of this chapter specifically provide for the holding of hearings on particular issues separately from other issues involved in hearings in licensing proceedings, and for the consolidation of adjudicatory proceedings and of the presentations of parties in adjudicatory proceedings such as licensing proceedings (§§ 2.316, 2.317).

This appendix sets out the particular requirements and provisions applicable to situations in which applications are filed by one or more applicants for licenses to construct and operate nuclear power reactors of essentially the same design to be located at different sites.

* * * * *

■ 91. In Appendix O to part 52, paragraph 6 is revised to read as follows:

Appendix O to Part 52—Standardization of Design: Staff Review of Standard Designs

* * * * *

6. The determination and report by the regulatory staff shall not constitute a commitment to issue a permit or license, or in any way affect the authority of the Commission, Atomic Safety and Licensing Board Panel, and other presiding officers in any proceeding under part 2 of this chapter.

* * * * *

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

■ 92. The authority citation for part 54 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs 201, 202, 206, 88 Stat. 1242, 1244, as amended (42 U.S.C. 5841, 5842). Section 54.17 also issued under E.O. 12829, 3 CFR, 1993 Comp., p.570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p.391.

■ 93. In § 54.29, paragraph (c) is revised to read as follows:

§ 54.29 Standards for issuance of a renewed license.

* * * * *

(c) Any matters raised under § 2.335 have been addressed.

PART 60—DISPOSAL OF HIGH LEVEL WASTE IN GEOLOGICAL REPOSITORIES

■ 94. The authority citation for part 60 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–01, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 95. Section 60.1 is revised to read as follows:

§ 60.1 Purpose and scope.

This part prescribes rules governing the licensing (including issuance of a construction authorization) of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated in accordance with the Nuclear Waste Policy Act of 1982, as amended. This part does not apply to any activity licensed under another part of this chapter. This part does not apply to the licensing of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated at Yucca Mountain, Nevada, in accordance with the Nuclear Waste Policy Act of 1992, as amended, and the Energy Policy Act of 1992, subject to part 63 of this chapter. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 60.11.

■ 96. In § 60.22, paragraph (a) is revised to read as follows:

§ 60.22 Filing and distribution of application.

(a) An application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area, and an application for a license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area at a site which has been characterized, and any amendments thereto, and an accompanying environmental impact statement and any supplements, shall be signed by the Secretary of Energy or the Secretary's authorized representative and must be filed with the Director.

* * * * *

■ 97. In § 60.63, paragraph (a) is revised to read as follows:

§ 60.63 Participation in license reviews.

(a) State, local governmental bodies, and affected, Federally-recognized Indian Tribes may participate in license reviews as provided in subpart J of part 2 of this chapter. A State in which a repository for high-level radioactive waste is proposed to be located and any affected, Federally-recognized Indian Tribe shall have an unquestionable legal right to participate as a party in such proceedings.

* * * * *

■ 98. Section 60.130 is revised to read as follows:

§ 60.130 General considerations.

(a) Pursuant to the provisions of § 60.21(c)(2)(i), an application for construction authorization for a high-level radioactive waste repository at a geologic repository operations area, and an application for a license to receive, possess, store, and dispose of high-level radioactive waste in the geologic repository operations area, must include the principal design criteria for a proposed facility. The principal design criteria establish the necessary design, fabrication, construction, testing, maintenance, and performance requirements for structures, systems, and components important to safety and/or important to waste isolation. Sections 60.131 through 60.134 specify minimum requirements for the principal design criteria for the geologic repository operations area.

(b) These design criteria are not intended to be exhaustive. However, omissions in §§ 60.131 through 60.134 do not relieve DOE from any obligation to provide such features in a specific facility needed to achieve the performance objectives.

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

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

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 100. Section 63.1 is revised to read as follows:

§ 63.1 Purpose and scope.

This part prescribes rules governing the licensing (including issuance of a construction authorization) of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated at Yucca Mountain, Nevada, in accordance with the Nuclear Waste Policy Act of 1982, as amended, and the Energy Policy Act of 1992. As provided in 10 CFR 60.1, the regulations in part 60 of this chapter do not apply to any activity licensed under another part of this chapter. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 63.11.

■ 101. In § 63.22, paragraph (a) is revised to read as follows:

§ 63.22 Filing and distribution of application.

(a) An application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area at Yucca Mountain, and an application for a license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area at the Yucca Mountain site that has been characterized, any amendments to the application, and an accompanying environmental impact statement and any supplements, must be signed by the Secretary of Energy or the Secretary's authorized representative and must be filed with the Director in triplicate on paper and optical storage media.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 102. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2704 (44 U.S.C. 3504 note).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

■ 103. Section 70.23a is revised to read as follows:

§ 70.23a Hearing required for uranium enrichment facility.

The Commission will hold a hearing under 10 CFR part 2, subparts A, C, G, and I, on each application for issuance of a license for construction and operation of a uranium enrichment facility. The Commission will publish public notice of the hearing in the **Federal Register** at least thirty (30) days before the hearing.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

■ 104. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2704 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 105. Section 72.202 is revised to read as follows:

§ 72.202 Participation in license reviews.

States, local governmental bodies and affected, Federally-recognized Indian Tribes may participate in license reviews as provided in Subpart C of Part 2 of this chapter.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 106. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C.

2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f). Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 107. In § 73.21, paragraph (c)(1)(vi) is revised to read as follows:

§ 73.21 Requirements for the protection of safeguards information.

* * * * *

(c) * * *

(1) * * *

(vi) An individual to whom disclosure is ordered under § 2.709(f) of this chapter.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

■ 108. The authority citation for part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

■ 109. In § 75.12, paragraph (c) is revised to read as follows:

§ 75.12 Communication of information to IAEA.

* * * * *

(c) A request made under § 2.390(b) of this chapter will not be treated as a request under this section unless the application makes specific reference to this section, nor shall a determination to withhold information from public disclosure necessarily require a determination that this information not be transmitted physically to the IAEA.

* * * * *

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

■ 110. The authority citation for part 76 continues to read as follows:

Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sec. 76.7 also issued under Pub. L. 95–601. sec. 10, 92 Stat 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) STET.

■ 111. In § 76.41, paragraph (b) is revised to read as follows:

§ 76.41 Record underlying decisions.

* * * * *

(b) All public comments and correspondence in any proceeding regarding an application for a certificate must be made a part of the public docket of the proceeding, except as provided under 10 CFR 2.390.

■ 112. In § 76.70, paragraph (c)(2)(v) is revised to read as follows:

§ 76.70 Post-issuance.

* * * * *

(c) * * *

(2) * * *

(v) Provide that the Commission may make a final decision after consideration of the written submissions or may in its discretion adopt by order, upon the Commission's own initiative or at the request of the Corporation or an interested person, further procedures for a hearing of the issues before making a final enforcement decision. These procedures may include requirements for further participation in the proceeding, such as the requirements for intervention under Part 2, subparts C, G or L of this chapter. Submission of written comments by interested persons do not constitute entitlement to further participation in the proceeding. Further procedures will not normally be provided for at the request of an interested person unless the person is adversely affected by the order.

* * * * *

■ 113. In § 76.72, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 76.72 Miscellaneous procedural matters.

(a) The filing of any petitions for review or any responses to these petitions are governed by the procedural requirements set forth in 10 CFR 2.302(a) and (c), 2.304, 2.305, 2.306, and 2.307. Additional guidance regarding the filing and service of petitions for review of the Director's decision and responses to these petitions may be provided in the Director's decision or by order of the Commission.

(b) The Secretary of the Commission has the authority to rule on procedural matters set forth in 10 CFR 2.346.

(c) There are no restrictions on ex parte communications or on the ability of the NRC staff and the Commission to communicate with one another at any stage of the regulatory process, with the exception that the rules on ex parte communications and separation of functions set forth in 10 CFR 2.347 and 2.348 apply to proceedings under 10 CFR Part 2 for imposition of a civil penalty.

(d) The procedures set forth in 10 CFR 2.205, and in 10 CFR part 2, subparts C, G, L and N will be applied in connection with NRC action to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, or Section 206 of the Energy Reorganization Act of 1974 and the implementing regulations in 10 CFR part 21 (Reporting of Defects and Noncompliance), as authorized by section 1312(e) of the Atomic Energy Act of 1954, as amended.

* * * * *

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 114. The authority citation for part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec 5, Pub. L. 101–575, 104 Stat 2835 (42 U.S.C.2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42 (a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 *et seq.*).

■ 115. In § 110.73, paragraph (b) is revised to read as follows:

§ 110.73 Availability of NRC records.

* * * * *

(b) Proprietary information provided under this part may be protected under Part 9 and § 2.390(b), (c), and (d) of this chapter.

Dated at Rockville, Maryland, this 24th day of December 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 04–34 Filed 1–13–04; 8:45 am]

BILLING CODE 7590–01–P

Federal Register

Wednesday,
January 14, 2004

Part III

The President

Proclamation 7749—National Mentoring Month, 2004

Proclamation 7750—To Suspend Entry as Immigrants or Nonimmigrants of Persons Engaged in or Benefiting From Corruption

Federal Register
Vol. 69, No. 9
Wednesday, January 14, 2004

Presidential Documents

Title 3—

The President

Proclamation 7749 of January 9, 2004

National Mentoring Month, 2004

By the President of the United States of America

A Proclamation

Mentoring reflects the great strength of America—the heart and soul of the American people. During National Mentoring Month, we recognize the dedicated individuals who volunteer their time to mentor young people, and we encourage more citizens to give back to their communities as mentors.

Mentors are friends, teachers, and role models. They open doors of opportunity, convey values, and help provide the stability and encouragement that young people need to succeed. By spending time with a child and showing compassion and guidance, a mentor can profoundly affect a young life. Research shows that adolescents who have an adult mentor are far less likely to engage in high-risk behaviors. Mentoring relationships create continuing cycles of hope and promise, as they not only provide positive influences for individual children, but also strengthen families and communities.

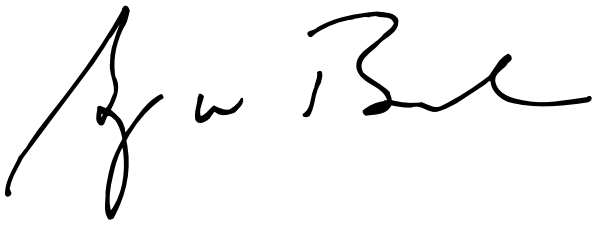
My Administration is working to expand mentoring and other volunteer activities across America. Through the USA Freedom Corps, we are promoting volunteer service and offering our citizens more opportunities to help others. We are also supporting faith-based and community organizations, including many who sponsor mentoring programs. In total, more than 63 million Americans volunteered in their communities over the past year—approximately 4 million more than the previous year.

The Department of Education will use Federal funds to work with national youth-serving organizations, independent community groups, and local education agencies to develop, expand, and strengthen school-based mentoring programs for disadvantaged middle school students. In addition, the Department of Health and Human Services, the Department of Justice, and other agencies will offer grants to help youth- serving organizations recruit and train adult mentors for nearly 100,000 children whose parents are incarcerated.

These efforts are an important part of our ongoing work to ensure that every child can realize the great promise of America. Every life has value and potential, and all deserve the opportunity to have a bright future. By supporting the individuals and organizations involved in mentoring and by encouraging more citizens to participate in their good works, we can transform America, one heart and one soul at a time.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 2004 as National Mentoring Month. I call upon the people of the United States to recognize the importance of mentoring, to look for opportunities to serve as mentors in their communities, and to celebrate this month with appropriate activities and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of January, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–956
Filed 1–13–04; 9:09 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7750 of January 12, 2004

To Suspend Entry as Immigrants or Nonimmigrants of Persons Engaged in or Benefiting from Corruption

By the President of the United States of America

A Proclamation

In light of the importance of legitimate and transparent public institutions to world stability, peace, and development, and the serious negative effects that corruption of public institutions has on the United States efforts to promote security and to strengthen democratic institutions and free market systems, and in light of the importance to the United States and the international community of fighting corruption, as evidenced by the Third Global Forum on Fighting Corruption and Safeguarding Integrity and other intergovernmental efforts, I have determined that it is in the interests of the United States to take action to restrict the international travel and to suspend the entry into the United States, as immigrants or nonimmigrants, of certain persons who have committed, participated in, or are beneficiaries of corruption in the performance of public functions where that corruption has serious adverse effects on international activity of U.S. businesses, U.S. foreign assistance goals, the security of the United States against transnational crime and terrorism, or the stability of democratic institutions and nations.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including section 212(f) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1182(f), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided in sections 2 and 3 of this proclamation, be detrimental to the interests of the United States.

I therefore hereby proclaim that:

Section 1. The entry into the United States, as immigrants or nonimmigrants, of the following persons is hereby suspended:

(a) Public officials or former public officials whose solicitation or acceptance of any article of monetary value, or other benefit, in exchange for any act or omission in the performance of their public functions has or had serious adverse effects on the national interests of the United States.

(b) Persons whose provision of or offer to provide any article of monetary value or other benefit to any public official in exchange for any act or omission in the performance of such official's public functions has or had serious adverse effects on the national interests of the United States.

(c) Public officials or former public officials whose misappropriation of public funds or interference with the judicial, electoral, or other public processes has or had serious adverse effects on the national interests of the United States.

(d) The spouses, children, and dependent household members of persons described in paragraphs (a), (b), and (c) above, who are beneficiaries of any articles of monetary value or other benefits obtained by such persons.

Sec. 2. Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of the person into the United States would not be contrary to the interests of the United States.

Sec. 3. Persons covered by sections 1 and 2 of this proclamation shall be identified by the Secretary of State or the Secretary's designee, in his or her sole discretion, pursuant to such standards and procedures as the Secretary may establish.

Sec. 4. For purposes of this proclamation, ''serious adverse effects on the national interests of the United States'' means serious adverse effects on the international economic activity of U.S. businesses, U.S. foreign assistance goals, the security of the United States against transnational crime and terrorism, or the stability of democratic institutions and nations.

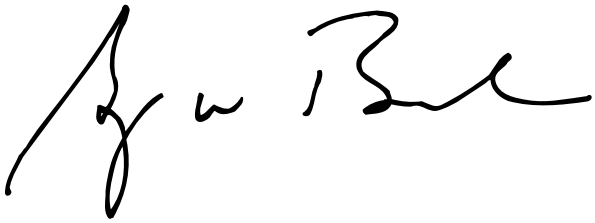
Sec. 5. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

Sec. 6. The Secretary of State shall have responsibility for implementing this proclamation pursuant to such procedures as the Secretary may, in the Secretary's discretion, establish.

Sec. 7. This proclamation is effective immediately.

Sec. 8. This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of January, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–957
Filed 1–13–04; 9:09 am]
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