are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

One motion and a brief supporting the motion were submitted requesting that the Secretary expedite the formal rulemaking process by omitting this recommended decision and the period allowed for the filing of exceptions to AMS' findings herein. The motion was filed on October 3, 2007, and the brief supporting the motion was filed on October 12, 2007. The Rules of Practice allow omission of a recommended decision only when the Secretary finds, on the basis of the record, due and timely execution of his functions imperatively and unavoidably require such omission. No such finding may be made in this instance. Absent from the hearing record is testimony or other evidence that would form a basis to make such a determination. Further, interested persons would have no opportunity to comment on this request to omit the recommended decision. Therefore, this motion is denied.

A second motion, also filed on October 3, 2007, requested that four corrections be made to one of the exhibits presented at the hearing, although the hearing transcript and all exhibits were certified by the Administrative Law Judge on October 1, 2007. Nevertheless, AMS is granting the first three of those corrections as such corrections would make references in exhibits and testimony uniform. However, the fourth correction is denied. The requested change would make the result of the calculation in the exhibit incorrect, and it would be in conflict with testimony in the hearing transcript, which is correct.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of almonds grown in the production area (California) in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of almonds grown in the production area; and

(5) All handling of almonds grown in the production area as defined in the marketing order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate because these proposed changes have been widely publicized and implementation of the changes, if adopted, would be desirable to benefit the industry as soon as possible. All written exceptions timely received will be considered and a grower referendum will be conducted before any of these proposals are implemented.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Amend paragraph (b) of § 981.42 by adding the following sentence before the last sentence to read as follows:

§ 981.42 Quality Control.

* * * * *

(b) * * * The Board may, with the approval of the Secretary, establish different outgoing quality requirements for different markets. * * *

3. Add a new § 981.43 to read as follows:

§ 981.43 Marking or Labeling of Containers.

The Board may, with the approval of the Secretary, establish regulations to require handlers to mark or label their containers that are used in packaging or handling of bulk almonds. For purposes of this section, *container* means a box, bin, bag, carton, or any other type of receptacle used in the packaging or handling of bulk almonds.

Dated: December 21, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–25162 Filed 12–27–07; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[Docket No. PRM–2–13]

Lincoln County, Nevada; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of Petition for rulemaking.

SUMMARY: The NRC is denying a petition for rulemaking submitted March 23, 2007, by Lincoln County, Nevada, related to its potential participation as an affected unit of local government (AULG) in the NRC proceeding concerning the Department of Energy's proposed repository for high-level radioactive waste at Yucca Mountain, Nevada. Lincoln County desires an amendment to 10 CFR 2.314(b) to allow it and other AULGs to be represented in the proceeding by any duly authorized individual, including a non-attorney consultant. The Commission is denying the petition as unnecessary because the current regulations allow Lincoln County the representation it seeks.

ADDRESSES: Publicly available documents related to this petition, including the petition for rulemaking and the NRC's letter of denial to the petitioner, are available for public inspection or copying in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These documents are also available on the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the

rulemaking petition and the letter of denial sent to the petitioner are ML070930363 and ML073390550, respectively. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR reference staff at (800) 387–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael A. Spencer, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, Telephone: (301) 415–4073.

SUPPLEMENTARY INFORMATION:

The Petitioner

Lincoln County states that, according to the 2000 census, approximately 4,165 people, 1,540 families, and 1,010 households reside in the County. The average annual per capita income is approximately $17,000, and the primary occupations of the people of Lincoln County are cattle ranching, agriculture, government services, and small-scale mining.

Background

I. The Yucca Mountain Repository and Its Relationship to Lincoln County

The Nuclear Waste Policy Act of 1982, as amended (NWPA)[1] established a national program for the management and permanent disposal of high-level radioactive waste (HLW). In 1987, the NWPA was amended to direct the Department of Energy (DOE) to focus its site characterization activities only on Yucca Mountain. The NWPA provides that if the President recommends the site to Congress and this recommendation is disapproved according to sections 116 or 118 of the NWPA (42 U.S.C. 10136 and 10138), the site will be disapproved unless Congress passes a resolution of repository siting approval.[2] After the President's recommendation of Yucca Mountain as the site for the repository and the State of Nevada's disapproval of this recommendation, Congress passed a resolution approving Yucca Mountain as the repository site.[3] Because of Congress's approval, DOE will submit an application to the NRC for a repository at Yucca Mountain, which application will be reviewed according to the NRC's regulations in 10 CFR Part 63. In addition, a public hearing regarding the HLW repository application (HLW proceeding) will be conducted under Subparts C and J of Part 2 of the NRC's regulations. DOE expects to submit this application in 2008.

The NWPA also provides, in 42 U.S.C. 10136(c) and 10222(d), that DOE will provide grants to States and affected units of local government (AULGs) from the Nuclear Waste Fund to assist them in undertaking certain specified activities related to the Yucca Mountain repository. DOE has designated several counties as AULGs,[4] and Lincoln County, which is adjacent to the county where the proposed repository would be located, states that it is an AULG that receives DOE grants from the Nuclear Waste Fund. According to Lincoln County, these grants are subject to Congressional appropriations. AULGs also have status under Commission regulations, being recognized as potential parties to the HLW proceeding.[5] Although an application has yet to be submitted, NRC adjudicatory activities such as document disclosures are already underway. Prior to the docketing of DOE's application, adjudicatory activities in the HLW proceeding related to document access, discovery, and the Licensing Support Network (LSN) are under the jurisdiction of the Pre-License Application Presiding Officer (PAPO).

II. The Basis for the Petition

On October 27, 2005, the PAPO issued a notice informing potential parties and interested government participants of an upcoming tour of the Yucca Mountain repository. Space for this tour was limited, however, so only representatives of potential parties or interested government participants who had filed a notice of appearance under 10 CFR 2.314(b) were permitted to join the tour.

A non-attorney consultant contacted the Atomic Safety and Licensing Board Panel (ASLBP) requesting permission to join the tour as the representative of both Lincoln County and White Pine County, Nevada, but he was informed that neither county had filed a notice of appearance in the proceeding.[6] White Pine County, then timely filed a notice of appearance, designating the non-attorney consultant as its representative. A majority of the PAPO did not deem this representation proper, however, because the majority believed that government entities are limited by 10 CFR 2.314(b) to attorney representation only.[7] The members of the PAPO did not provide any analysis or otherwise state the bases for their conclusions. Because of the lack of briefing and lack of unanimity on the issue, the PAPO allowed the consultant to participate in that particular trip as a matter of the PAPO's discretion, leaving resolution of the representation issue for ''another day.''[8]

This representation issue is at the heart of the petition. Lincoln County desires the option of being represented through non-attorney ''consultants or other duly authorized representatives.'' Lincoln County states that it is a small county with few resources that is entirely dependent on DOE grants from the Nuclear Waste Fund to participate in NRC proceedings. Lincoln County further states that the grants may only be used for participation in licensing proceedings if expressly appropriated by Congress and that such appropriations have been made only since FY 2006. According to Lincoln County, the amount of funding (if any) is variable and unpredictable because it depends on an annual decision of Congress, which may change from year to year. Further, Lincoln County claims that the DOE grants, which have totaled $5.3 million for Lincoln County over the last eight years, are used for diverse purposes, such as operating its Nuclear Waste Oversight Office, conducting public information activities, and retaining expert consultants. Lincoln County, therefore, believes that it cannot afford to retain experienced counsel for the purpose of representing it on a daily basis in the HLW proceeding, which Lincoln County expects to ''entail literally hundreds of days of hearings.'' Lincoln County also claims that its District Attorney's office will not be able to regularly participate in the HLW proceeding because the office has only one attorney, the District Attorney, who is responsible for both criminal and civil matters.

At the time the petition was filed in March of this year, the representation issue had yet to be resolved by the PAPO, and still has yet to be resolved. At a case management conference only a couple of weeks prior to the filing of the rulemaking petition, the PAPO recognized that the issue remained to be decided, but thought resolution might

[1] 42 U.S.C. 10101 et. seq.

[2] 42 U.S.C. 10135(c).

[3] Pub. L. No. 107–200 (2002).

[4] U.S. Dep't of Energy, Office of Civilian Radioactive Waste Management, *Annual Report to Congress for Fiscal Year 2002,* at 23 (Sept. 2003), available at *http://www.ocrwm.doe.gov/info_library/program_docs/annualreports/02ar/fy_2002.pdf.*

[5] *See* 10 CFR 2.1001 (definition of ''potential party''). An AULG may become a party upon submission of an admissible contention related to the application. *Id.*

[6] *United States Dep't of Energy* (High Level Waste Repository: Pre-Application Matters), No. PAPO–00, 2005 WL 4799369, at *1 (LBP Dec. 2, 2005) (unpublished order).

[7] *Id.*

[8] *Id.*

await a ''concrete set of facts.'' [9] Lincoln County believes that this issue must be resolved quickly because DOE's license application is expected in 2008, and it can come as early as six months after DOE certifies that its document collection is available on the Licensing Support Network.[10] DOE certified its document collection on October 19, 2007.[11] Also, the application is expected ''not later than June 30, 2008.'' [12] Lincoln County believes that it is unclear when the PAPO may deem the representation issue ripe enough to rule on it, and that the disposition of any appeal of such a ruling might not come well enough in advance of the hearings to allow Lincoln County and other AULGs to effectively plan for them. In its petition for rulemaking, Lincoln County ''is requesting that the Commission directly and authoritatively clarify this issue * * * to allow AULGs sufficient time to plan their participation'' in the HLW proceeding.

III. Lincoln County's Requested Relief

Lincoln County states that it has not discovered a judicial or NRC decision squarely on point and that it is unclear whether an AULG may be represented by a non-attorney in the HLW proceeding under the current regulations. Lincoln County does believe that it is unreasonable to allow partnerships, corporations, and unincorporated associations to be represented by non-attorney members or officers, as provided by § 2.314(b), but to disallow such representation for AULGs. Lincoln County, however, wishes to have greater representation options than these private entities because County Commissioners serve voluntarily and have other jobs, while ''full-time government officials and officers cannot reasonably be expected to vacate their daily public duties to the taxpayers in order to participate in NRC licensing proceedings.'' Lincoln County requests that the following language be added to § 2.314(b):

In any adjudicatory proceeding concerning an application for a license to construct a geological repository for high-level radioactive waste pursuant to the Nuclear Waste Policy Act, as amended, an affected unit of local government (as designated by the Secretary of Energy pursuant to 42 U.S.C. § 10136(c)) may be represented by any duly authorized representative and/or an attorney-at-law.

Analysis of the Petition

Lincoln County wishes to have the option of being represented in the HLW proceeding through non-attorney ''consultants or other duly authorized representatives'' and has submitted the instant petition to achieve that result through rulemaking. If the current regulations do not proscribe such representation, however, then no relief through rulemaking is necessary. Before considering Lincoln County's proposed modification, therefore, it must first be ascertained whether the current regulations do, in fact, pose such a bar. Resolution of this issue depends on answers to the following questions:

(1) May a county be represented in an adjudication by a non-attorney?

(2) If representation by a non-attorney is allowed, may any duly authorized individual, including a non-attorney consultant, represent a county?

Section 2.314(b), which contains the representation provision for NRC proceedings, is the primary source for answering these questions. Also relevant, however, are the provisions in §§ 2.309(d)(2) and 2.315(c) relating to participation by a State or local government body (defined in these sections as a ''county, municipality, or other subdivision'') and other expressions of Commission policy and practice.

As explained below, a local government body may be represented under the current regulations by any individual, including a non-attorney consultant, if the individual is duly authorized. For this reason, the Commission is denying the petition as unnecessary.

I. A State or Local Government Body May Appear on Its Own Behalf, as Well as Be Represented by an Attorney

A. States and local government bodies are ''persons'' under § 2.314(b).

Representation in NRC proceedings is governed by 10 CFR 2.314(b), which provides the following:

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.

(emphasis added).

In addition to representation by an attorney, § 2.314(b) expressly provides the option of self-representation for a ''person,'' and the word ''person'' is defined in § 2.4 very broadly to cover many entities, including ''any State or any political subdivision of, or any political entity within a State.'' A State or local government body, therefore, is a ''person'' under Part 2 and has the option under § 2.314(b) either to be represented by an attorney or to appear on its own behalf and be represented by one other than an attorney. The rule text, however, does not specify who may represent a government body appearing on its own behalf. This issue will be the subject of Section II of this document.

B. The regulatory history of the representation provision and Commission practice favor a broad reading of ''person.''

The language in § 2.314(b) derives from two rulemakings, the first in 1962 and the second in 1980. The 1962 rulemaking was a major revision to Part 2 that substantially revised and simplified the representation provision. After the 1962 revisions, former § 2.713(a) read as follows:

A person may appear in an adjudication on his own behalf or by an attorney-at-law in good standing 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.[13]

Although the word ''person'' was not explicitly defined in the regulations at that point, § 2.4 in the same rulemaking provided that ''[w]ords or phrases which are defined in the Atomic Energy Act of 1954, as amended, and in this chapter have the same meaning when used in this part.'' [14] Section 11 of the Atomic Energy Act of 1954 (AEA) had already defined ''person'' broadly to include ''any State or any political subdivision of, or any political entity within a State,'' among other entities.[15]

The 1980 amendments, which moved the representation provision from § 2.713(a) to § 2.713(b), added the provision for partnerships, corporations, and unincorporated associations that is still found in current § 2.314(b). This addition was characterized in the proposed rule as ''clarify[ing] who may

[9] Transcript at 954–55 (March 5, 2007).

[10] *See* 10 CFR 2.1003(a).

[11] DOE's certification came in a filing in the PAPO proceeding styled ''The Department of Energy's Certification of Compliance.'' This certification has been challenged in the PAPO proceeding by the State of Nevada in a ''Motion to Strike DOE's October 19, 2007 LSN Recertification and to Suspend Certification Obligations of Others until DOE Validly Recertifies,'' (Oct. 29, 2007).

[12] ''The Department of Energy's Thirtieth Monthly Status Report Regarding LSN Certification and License Application Submittal,'' (November 1, 2007).

[13] ''Revision of Rules,'' (27 FR 377, 383; Jan. 13, 1962). The representation provision was moved to its current home in § 2.314(b) during the major Part 2 revisions of 2004. See ''Changes to Adjudicatory Process,'' (69 FR 2182; Jan. 14, 2004). The original ''representation'' provision was found in § 2.704, as issued in 1956. (21 FR 804, 806; Feb. 4, 1956).

[14] 27 FR 377, 378.

[15] 42 U.S.C. 2014, Pub. L. No. 83–703, 68 Stat. 919, 922 (1954).

appear before NRC in a representative capacity.'' [16] Although the proposed rule change spoke to representation of partnerships, corporations, and unincorporated associations only by members, the final rule added representation by officers. This addition was described in the final rule as ''mak[ing] clear that a partnership, corporation or unincorporated association may be represented by a duly authorized officer, as well as by a member or attorney, and reflects both actual practice and the intent of the rule.'' [17]

The Commission, therefore, in issuing the 1980 amendment to the representation provision, viewed the amendment as a clarification of the older representation provision for ''persons'' and not as a substantive change or addition. The Commission also recognized that representation of certain entities by non-attorneys was occurring in Commission proceedings, but gave no indication that this practice was in any way contrary to the regulations.[18] The representation rights specified in the 1980 amendment, therefore, should be seen as inherent in the concept of self-representation in former § 2.713(a), even if the former provision did not express these rights in their precise contours. ''Person'' in § 2.314(b), therefore, should be read broadly to include States and local government bodies, which would allow government bodies to appear on their own behalf through a non-attorney.

II. Any Duly Authorized Individual May Represent a State or Local Government Body

As explained above, § 2.314(b) does not specify who may represent a State or local government body appearing on its own behalf. To resolve this petition, the question whether a non-attorney consultant may serve as such a representative must also be answered. In deciding the question, the Commission has considered its policy and practice, the interests of comity, and the distinct interests that government bodies represent.[19] As explained below, Commission policy and practice favor deference to State law and government choice on the question of representation. The Commission, therefore, concludes that States and local government bodies may be represented by anyone duly authorized to represent the government body in question.[20]

''[T]he Commission has long recognized the benefits of participation in [its] proceedings by representatives of interested states, counties, municipalities, etc.'' [21] The Commission put this policy into practice, in part, through § 2.315(c), which allows interested States and local government bodies a special opportunity to participate in NRC hearings that is unavailable to private individuals or entities.[22] A narrow reading of § 2.314(b) with respect to government bodies, however, could hinder the participation of smaller government bodies, such as Lincoln County, who lack the resources and flexibility to fully participate solely through attorneys, elected officials, or full-time government officials or officers. A narrow reading, moreover, would not produce any countervailing benefit because the Commission has no interest in telling governments which types of non-attorneys may represent them. Because Commission policy clearly favors government participation, a rule interpretation limiting such participation should be disfavored if it produces no benefit and is not required by the text of the rule.

The Commission is also persuaded that it would be misguided to impose on government bodies representation choices analogous to the § 2.314(b) representation choices for partnerships, corporations, and unincorporated associations. First, such an attempt ignores that government bodies and private entities are different creatures with different powers serving different interests, which is why they are treated differently regarding nonparty participation. Second, choosing an analogous government version of a private entity member or officer might prove difficult and result in unfairness. If government lay representation were limited to elected officials, for example, government bodies would have much less flexibility in their representation than unincorporated associations, who may be represented by anyone who joins the association.

Instead of imposing representation limits on government bodies, therefore, the Commission broadly reads § 2.314(b) to allow government bodies to choose their representatives, as long as these choices comport with State law and any applicable local government charter. The Commission adopts this broad reading because it recognizes that government bodies serve the public interest and because it respects their choices regarding their own representation. This broad reading, in its deference to State law and government choice, also accords with Commission practice. For instance, in the major 2004 revisions to part 2, the new §§ 2.309(d) and 2.315(c) limited State and local government body participation to a single representative.[23] According to the statement of considerations for the rule, however, ''[w]here 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 other official/body could participate as distinct parties, each with a single representative.[24]

Similar concern for State law and government choice was also expressed by the former Atomic Safety and Licensing Appeal Board (Appeal Board), which faced the issue whether a Congressman from New Hampshire, in addition to the Attorney General, could serve as a representative of New Hampshire participating as an interested government under former § 2.715(c).[25] In deciding that only the Attorney General could represent the State, the Appeal Board rested its decision on State law because it was ''persuaded

[16] ''Changes in Rules of Practice Governing Discipline in Adjudicatory Proceedings,'' (45 FR 3594, 3594; Jan. 18, 1980).

[17] Final Rule, ''Changes in Rules of Practice Governing Discipline in Adjudicatory Proceedings,'' 45 FR 69877, 69878.

[18] For examples of Commission practice prior to the 1980 amendment, see *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP–73–28, 6 AEC 666, 678–80 (1973), (specifically noting the broad AEA definition of ''person'' in concluding that representation of an organization by a non-attorney member was consonant with Commission regulations, the APA, and the AEA), *aff'd,* ALAB–150, 6 AEC 811, *clarification denied,* ALAB–155, 6 AEC 829; and *General Electric Co.* (GE Test Reactor, Vallecitos Nuclear Center), LBP–79–28, 10 NRC 578, 583–84 (1979) (distinguishing representation of organizations by non-attorney members from representation of a U.S. congressman by a non-attorney by pointing out that the non-attorney organization members were ''appear[ing] as the 'person * * * on his own behalf,' and not as a representative of that person'').

[19] The practice of the federal courts is not dispositive of the outcome of this question because, as opposed to Commission practice, federal courts generally forbid non-attorney representation of entities. *See Rowland* v. *California Men's Colony, Unit II Men's Advisory Council,* 506 U.S. 194, 201–02 (1993) (stating that in federal practice, corporations and other artificial entities ''may appear in the federal courts only through licensed counsel'').

[20] To be clear, this response to the petition addresses only the representation of State and local government bodies, as defined in § 2.309(d)(2), and does not address the representation of any other type of entity.

[21] *Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Units 1 and 2), CLI–99–30, 50 NRC 333, 344 (1999).

[22] Affected, Federally-recognized Indian Tribes also enjoy § 2.315(c) non-party participant rights.

[23] ''Changes to Adjudicatory Process,'' (69 FR 2182; Jan. 14, 2004).

[24] *Id.* at 2222.

[25] *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB–862, 25 NRC 144 (1987).

that considerations of comity dictate that [it] defer to New Hampshire law on the matter of what person or persons should be deemed to speak for the state in [NRC] licensing proceedings.'' [26] The Appeal Board went on to point out that since § 2.715(c) was issued in response to § 274l. of the AEA, which section had the stated purpose of furthering cooperation between the Commission and the states, ''[i]t is reasonable to assume that the legislative contemplation was that the concerned state, and not this agency, would make the decision respecting who is to serve as its spokesman.'' [27] Although the original version of § 2.715(c) was directed only to States, its reach was expanded in 1978 to political subdivisions of a State to ''improve coordination with States, counties, and municipalities.'' [28] The Appeal Board's reasoning, with which the Commission agrees, also applies to local government bodies because restricting the representation choices of local government bodies does little to ''improve coordination'' with them.

This Appeal Board decision is especially persuasive because, under both current § 2.315(c) and the former § 2.715(c), interested government participants have rights similar in many important respects to the rights of those participating as parties. These rights include the opportunity to introduce evidence, interrogate witnesses, file proposed findings, and petition for review. Given this level of participation, it would seem that interested government participants are, in fact, ''appearing'' in NRC adjudications, which arguably puts decisions respecting their representation under the umbrella of § 2.314(b).[29] In any event, it would make little sense to impose representation choices on government bodies participating as parties that are different from the choices available to interested government participants.

In light of the above, the Commission sees no need to put conditions on the representation of a government body that neither State law nor the governing charter of the body see fit to impose. To do so could only serve to limit government participation and would be contrary to the interests of comity. So long as a person is duly authorized to represent the government body in question, in conformity with State law and any applicable local government charter, that person, whether an attorney or not, may represent that government body in NRC proceedings.

Conclusion

Lincoln County petitioned for a rule amendment that would allow AULGs to participate in NRC proceedings through any duly-authorized representative, which could include a non-attorney consultant. As explained above, however, Lincoln County's desired outcome is already provided for in the current regulations, making Lincoln County's desired rulemaking unnecessary. For this reason, Lincoln County's petition for rulemaking is denied.

Dated at Rockville, Maryland this 20th day of December 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E7–25299 Filed 12–27–07; 8:45 am]

BILLING CODE 7590–01–P

[26] *Id.* at 148.

[27] 25 NRC 144, 148–49.

[28] ''Miscellaneous Amendments,'' (43 FR 17798, 17798; Apr. 26, 1978).

[29] Section 2.314(b) governs who ''may appear in an adjudication.''

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104946–07]

RIN 1545–BG36

Hybrid Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations providing guidance relating to sections 411(a)(13) and 411(b)(5) of the Internal Revenue Code (Code) concerning certain hybrid defined benefit plans. These regulations provide guidance on changes made by the Pension Protection Act of 2006. These regulations affect sponsors, administrators, participants, and beneficiaries of hybrid defined benefit plans.

DATES: Written or electronic comments and requests for a public hearing must be received by March 27, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–104946–07), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–104946–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–104946–07).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lauson C. Green or Linda S. F. Marshall at (202) 622–6090; concerning submissions of comments or to request a public hearing, Funmi Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 411(a)(13) and 411(b)(5) of the Code. Generally, a defined benefit pension plan must satisfy the minimum vesting standards of section 411(a) and the accrual requirements of section 411(b) in order to be qualified under section 401(a) of the Code. Sections 411(a)(13) and 411(b)(5), which were added to the Code by section 701(b) of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (PPA '06), modify the minimum vesting standards of section 411(a) and the accrual requirements of section 411(b).

Section 411(a)(13)(A) provides that an applicable defined benefit plan (which is defined in section 411(a)(13)(C)) is not treated as failing to meet either (i) The requirements of section 411(a)(2) (subject to a special vesting rule in section 411(a)(13)(B) with respect to benefits derived from employer contributions) or (ii) The requirements of section 411(c) or 417(e) with respect to contributions other than employee contributions, merely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in a hypothetical account or as an accumulated percentage of the participant's final average compensation. Section 411(a)(13)(B) requires an applicable defined benefit plan to provide that an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

Under section 411(a)(13)(C)(i), a plan is an applicable defined benefit plan if the plan is a defined benefit plan under which the accrued benefit (or any portion thereof) of a participant is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation. Under section