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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: Tuesday, April 17, 2001 at 9:00 a.m.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the nonmanufacturer rule

AGENCY: Small Business Administration.

ACTION: Final decision to waive the nonmanufacturer rule.

SUMMARY: This document advises the public that the Small Business Administration (SBA) is establishing a waiver of the Nonmanufacturer Rule for aerospace ball and roller bearings, consisting of, but not limited to, annular ball bearings, cylindrical ball bearings, linear ball bearings, linear roller bearings, needle roller bearings, ball or roller bearing races, roller bearings, tapered roller bearings and thrust roller bearings. The basis for waivers is that no small business manufacturers are available to participate in the Federal market for these products. The effect of a waiver will allow otherwise qualified nonmanufacturers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program.

EFFECTIVE DATE: April 13, 2001

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 Tel: (202) 619–0422.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months.

The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget *Standard Industrial Classification Manual.* The second is the Product and Service Code established by the Federal Procurement Data System.

This document waives the Nonmanufacturer Rule for aerospace ball and roller bearings, consisting of, but not limited to, annular ball bearings, cylindrical ball bearings, linear ball bearings, linear roller bearings, needle roller bearings, ball or roller bearing races, roller bearings, tapered roller bearings and thrust roller bearings, SIC code 3562 and North American Industry Classification System (NAICS) 332991.

Documents proposing to waive the nonmanufacturer rule for the aerospace ball and roller bearings, consisting of, but not limited to, annular ball bearings, cylindrical ball bearings, linear ball bearings, linear roller bearings, needle roller bearings, ball or roller bearing races, roller bearings, tapered roller bearings and thrust roller bearings specified were published on February 20, 2001 (66 FR 10842), and on March 14, 2001 (66 FR 14865). No comments were received.

Luz A. Hopewell,

Associate Administrator for Government Contracting.

[FR Doc. 01–9068 Filed 4–13–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–66–AD; Amendment 39–12174; AD 2000–23–04 R1]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR42–500 series airplanes. This amendment continues to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This amendment also adds information pertaining to certain material incorporated by reference. This amendment is prompted by issuance of a new revision of the "Time Limits" section of the ATR42–400/500 Maintenance Planning Document, which specifies new inspections and compliance times for inspection and replacement actions. This amendment is intended to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: Effective December 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 1, 2001.

Comments for inclusion in the Rules Docket must be received on or before May 16, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted

via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–66–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On November 3, 2000, the FAA issued AD 2000–23–04, amendment 39–11974 (65 FR 68076, November 14, 2000), applicable to all Aerospatiale Model ATR42–500 series airplanes, to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. That action was prompted by issuance of a new revision of the "Time Limits" section of the ATR42–400/500 Maintenance Planning Document, which specifies new inspections and compliance times for inspection and replacement actions. The actions required by that AD are intended to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA notes that we inadvertently did not provide information pertaining to the incorporation by reference of certain materials. The incorporation by reference of certain materials allows Federal agencies to comply with the requirement to publish rules in the **Federal Register** by referring to materials already published elsewhere. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued rule, has the force and effect of law. Congress authorized incorporation by reference in the Freedom of Information Act to reduce the volume of material published in the **Federal Register** and Code of Federal Regulations (CFR).

FAA's Findings

The FAA has revised AD 2000–23–04 to incorporate by reference the "Time Limits" section of the ATR42–400/500 Maintenance Planning Document, Revision 3, dated February 1999, which was referenced in that AD as the appropriate source document necessary to accomplish the requirements of that AD. We have revised that AD to include that information by adding a new paragraph (e) to this revised AD.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD revises AD 2000–23–04 to continue to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This AD also adds information, as discussed above, pertaining to certain material incorporated by reference.

Determination of Rule's Effective Date

The FAA has determined that this AD action has no adverse economic impact on any person, does not impose any new requirements or provide any additional burden on any person, in order to accomplish the requirements of this AD. Therefore, prior notice and public procedures hereon are unnecessary and this amendment will be made effective as of December 19, 2000, the effective date of AD 2000–23–04.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–66–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy

of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to 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. Section 39.13 is amended by removing amendment 39–11974 (65 FR 68076, November 14, 2000), and by adding a new airworthiness directive (AD), amendment 39–12174, to read as follows:

2000–23–04 R1 Aerospatiale: Amendment 39–12174. Docket 2001–NM–66–AD. Revises AD 2000–23–04, Amendment 39–11974.

Applicability: All Model ATR42–500 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

Airworthiness Limitations Revision

(a) Within 30 days after December 19, 2000 (the effective date of AD 2000–23–04), revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness by incorporating the "Time Limits" section of the ATR42–400/500 Maintenance Planning Document, Revision 3, dated February 1999, into the Airworthiness Limitations Section.

(b) Except as provided in paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with the "Time Limits" section of the ATR42–400/500 Maintenance Planning Document, Revision 3, dated February 1999, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
Title	3	Feb. 1999.
List of Effective Pages, Page 1–LEP.	3	Feb. 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) The effective date of this amendment remains December 19, 2000, (the effective date of AD 2000–23–04).

Issued in Renton, Washington, on April 3, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–8724 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–15–AD; Amendment 39–12175; AD 2001–07–09]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters Inc. Model MD–900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing emergency airworthiness directive (AD) that applies to MD Helicopters Inc. (MDHI) Model MD–900 helicopters. That emergency AD requires, within 6 hours time-in-service (TIS), or before further flight after January 31, 2000, whichever occurs first, inspecting the main rotor upper hub assembly drive plate attachment flange (flange) and determining the torque of each flange nut (nut). If a crack is found, the hub assembly must be replaced before further flight. The emergency AD also requires, within 25 hours TIS or before further flight after January 31, 2000, whichever occurs first, inspecting the hub assembly and verifying that the torque on the nuts is correct. Replacing a cracked hub assembly with an airworthy hub assembly is required before further flight. This amendment requires the same actions as the existing emergency AD but removes the January compliance dates and corrects errors in the existing emergency AD. This amendment is prompted by the discovery that there are several errors in the emergency AD. The actions specified by this AD are intended to prevent failure of the hub assembly, loss of drive to the main rotor, and subsequent loss of control of the helicopter.

DATES: Effective May 1, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 1, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 15, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–15–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to

the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, fax 480–891–6782. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg DiLibero, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5231, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On December 17, 1999, the FAA issued Emergency AD 99–26–20 that applies to MDHI Model MD–900 helicopters and requires, within 6 hours TIS or before further flight after January 31, 2000, whichever occurs first, inspecting the hub assembly for a crack and verifying the nut torque. If a crack is found, replacing the hub assembly with an airworthy hub assembly is required before further flight. That action was prompted by the discovery of three cracked hub assemblies. Inspections of one hub assembly revealed cracks from all 10 holes in the flange and, in another hub assembly, from one of the 10 holes. That condition, if not corrected, could result in failure of the hub assembly, loss of drive to the main rotor, and subsequent loss of control of the helicopter.

Since the issuance of that emergency AD, the FAA has discovered several errors. Paragraph (b)(2) of the emergency AD incorrectly refers to paragraph (b)(4) rather than (b)(3). There is no paragraph (b)(4) in the emergency AD. That error is corrected in this superseding AD. Paragraphs (b)(2), (b)(3), (b)(3)(vii) and (b)(3)(x) are revised to more clearly state the compliance procedures and the torque stability requirements necessary for accomplishing the AD actions. We have also removed the January compliance dates from this superseding AD as those dates have already passed.

Since an unsafe condition has been identified that is likely to exist or develop on other MDHI Model MD–900 helicopters of the same type design, this AD supersedes emergency AD 99–26–20 to require, within 6 hours TIS, inspecting the hub assembly, part number 900R2101006–105 or 900R2101006–107, for a cracked flange and determining the torque of each nut. If a crack is found, the hub assembly must be replaced before further flight. This AD also requires, within 25 hours TIS, inspecting the hub assembly and verifying the nut torque. Replacing a cracked hub assembly with an airworthy hub assembly is required before further flight. The actions must be accomplished in accordance with the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, since the initial actions are required within 6 hours TIS, this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 28 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to verify the torque, 3 work hours per helicopter to perform the inspection, and 10 work hours per helicopter to replace the hub assembly, if necessary. The average labor rate is $60 per work hour. Required parts to replace the hub assembly, if necessary, will cost approximately $21,610 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $151,370, assuming 6 torque verifications per helicopter, per year; 6 inspections per helicopter, per year; and 5 hub assembly replacements.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–15–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to 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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2001–07–09 MD Helicopters Inc: Amendment 39–12175. Docket No. 2000–SW–15–AD. Supersedes Emergency AD 99–26–20, Docket No. 99–SW–89–AD.

Applicability: Model MD–900 helicopters, with main rotor upper hub (hub) assembly, part number (P/N) 900R2101006–105 or 900R2101006–107, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the hub assembly, loss of drive to the main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) For the hub assembly, P/N900R2101006–107,

(1) Within 6 hours time-in-service (TIS), visually inspect the main rotor upper hub assembly drive plate attach flange (flange) for a crack and determine the torque of each flange attach nut (nut) in accordance with the Accomplishment Instructions, Part I, paragraph 2.A., steps (1) through (7) of MD Helicopter Inc. Service Bulletin SB900–072, dated December 10, 1999 (SB). If a crack is found, before further flight, remove and replace the hub assembly with an airworthy hub assembly.

(2) Within 25 hours TIS, conduct the Accomplishment Instructions, Part II, paragraph 2.B., steps (1) through (6), (8), and (9) of the SB. If a crack is found, before further flight, remove and replace the hub assembly with an airworthy hub assembly.

(b) For the hub assembly, P/N 900R2101006–105,

(1) Within 6 hours TIS, visually inspect the flange for a crack and determine the torque of each nut in accordance with the Accomplishment Instructions, Part I, paragraph 2.A., steps (1) through (7) of the SB.

Note 2: The SB effectivity does not include hub assembly, P/N 900R2101006–105; however, for the requirements of this AD, certain provisions of the SB do apply to this P/N.

(2) If any nut has less than 180 inch pounds (20.34 Nm) of torque, before further flight, remove the drive plate and fretting buffer and inspect the flange in accordance with the procedures in paragraph (b)(3) of this AD. If a crack is detected, before further flight, remove and replace the hub assembly with an airworthy hub assembly. Reassemble in accordance with the procedures in paragraph (b)(3) of this AD.

(3) Within 25 hours TIS, remove the main rotor drive plate assembly and anti-fretting ring and visually inspect the main rotor hub assembly as follows:

(i) If present, remove sealant from the drive plate attachment to the hub assembly.

(ii) Mark the main rotor hub holes, bolts, and nuts to correspond with the drive plate hole numbers (see Figure 1).

(iii) Remove the main rotor drive plate (drive plate) assembly and anti-fretting ring (fretting buffer).

(iv) Inspect drive plate to rotor hub assembly mating surfaces and the fretting buffer for fretting.

(v) Using paint stripper (Consumable Item List C313 or equivalent) and cleaning solvent (C420 or equivalent), remove the paint from the upper mating surface of the hub assembly to enable an accurate visual inspection of the drive plate attachment bolt hole (bolt hole) area for cracking (Figure 1). Ensure the paint stripper and solvent DO NOT contaminate the upper bearing and upper grease seal areas.

(vi) Using a 10-power or higher magnifying glass and bright light, inspect the mating surface area and the area around and inside the 10 bolt holes of the hub assembly for a crack. If a crack is found, prior to further flight, replace the hub assembly with an airworthy hub assembly.

(vii) If no crack is found, remove fretting debris from the mating surfaces of the hub assembly and the drive plate assembly, reassemble, fillet seal (C211 or equivalent) the surface of the drive plate to fretting buffer to hub assembly mating lines, and seal all exposed unpainted upper surfaces of the hub assembly.

(viii) Reinstall the main rotor drive plate using 10 new sets of replacement attachment hardware. Torque the nuts to 160 inch pounds above locknut locking/run-on torque in the sequence shown (Figure 1). Record in the rotorcraft logbook, or equivalent record, the locknut locking/run-on torque for each nut.

(ix) After the next flight, verify that the torque on each of the 10 nuts is at least 160 inch pounds above the locknut locking/run-on torque (minimum torque). Retorque as required without loosening nuts.

(x) Thereafter, at intervals of at least 4 hours TIS, not to exceed 6 hours TIS, verify that the torque of each of the 10 nuts is at least the minimum torque. Retorque as required without loosening nuts. This torque verification is no longer required after the torque on each of the 10 nuts has stabilized at a torque value of 160 or more inch pounds for each nut during two successive torque verifications.

BILLING CODE 4910–13–U

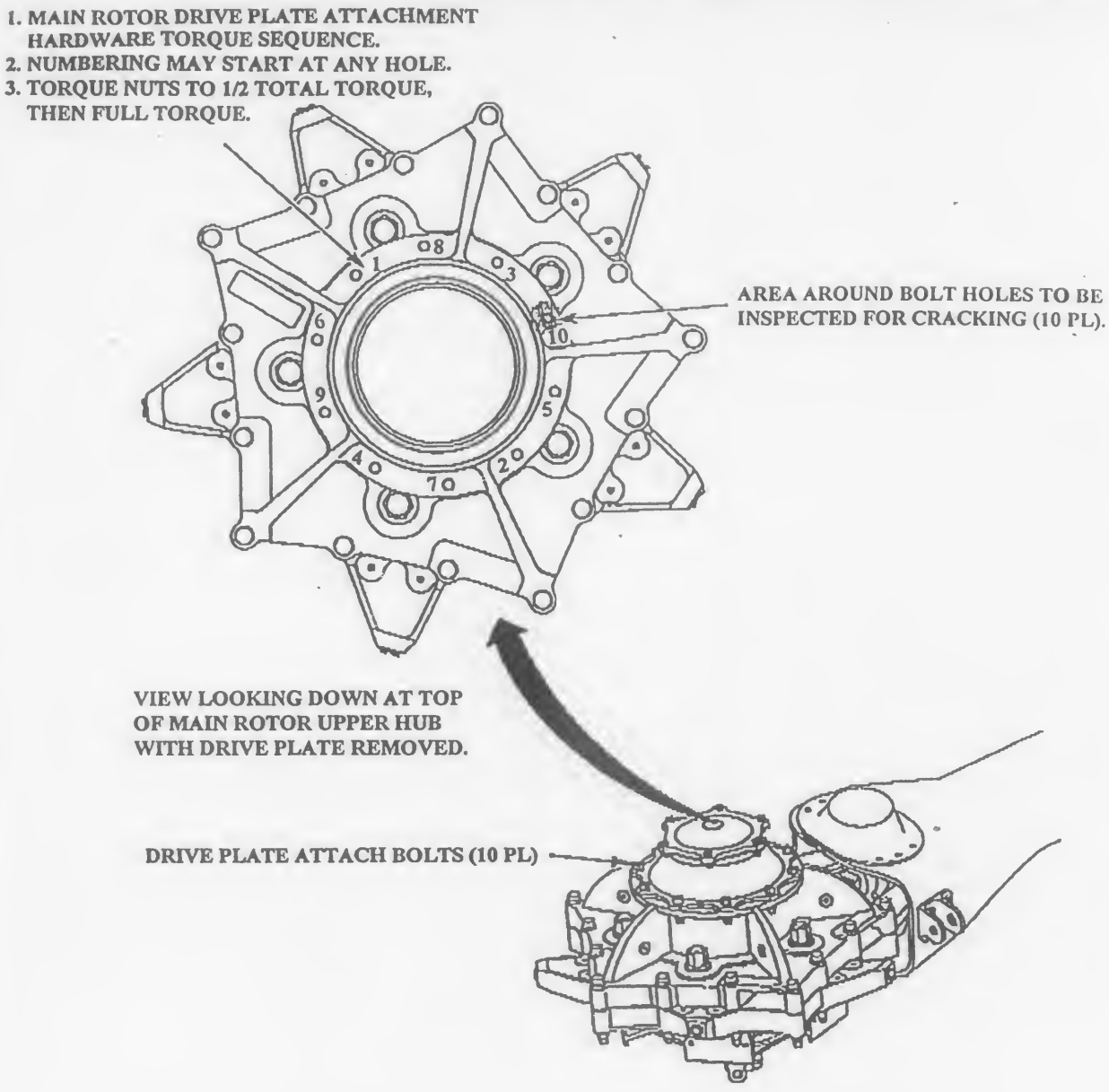

Figure 1. Main Rotor Upper Hub Assembly Inspection.

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(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LA ACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LA ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LA ACO.

(d) If any nut torque is below minimum torque and no hub assembly crack is found before disassembly inspection, after retorque in accordance with the applicable Maintenance Manual, a special flight permit for one flight below 100 knots indicated airspeed may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The flange and torque inspections shall be done in accordance with the Accomplishment Instructions, Part I, paragraph 2.A., steps (1) through (7) and Part II, paragraph 2.B., steps (1) through (6), (8), and (9) of MD Helicopters Inc. Service Bulletin SB900–072, dated December 10, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, fax 480–891–6782. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 1, 2001.

Issued in Fort Worth, Texas, on April 2, 2001.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–8619 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–76–AD; Amendment 39–12177; AD 2001–07–11]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 23, 24, 25, 28, 29, 31, 35, 36, and 55 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Learjet Model 23, 24, 25, 28, 29, 31, 35, 36, and 55 series airplanes. This action requires an inspection to determine if tires on the main landing gear have a certain part number and certain serial numbers, and replacement with a tire having a part number that does not contain those certain serial numbers, if necessary. This action is necessary to prevent separation of the tread of main landing gear tires, which could cause damage to the structure and major systems of the airplane, and consequent reduced controllability of the airplane on the ground during takeoff and landing. This action is intended to address the identified unsafe condition.

DATES: Effective May 1, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 1, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 15, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM–76-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: The FAA has received reports that certain main landing gear tires have lost the entire tread during takeoff or landing of Learjet Model 23, 24, 25, 28, 29, 31, 35, 36, and 55 series airplanes. Investigation by the tire manufacturer indicates that during manufacturing, a block of tires were processed that contained certain faults. The tire manufacturer has determined that tires having part number (P/N) 178K23–5 within the serial number range of 0148xxxx through 0152xxxx were affected. Separation of tire tread from the main landing gear tires could cause damage to the structure and major systems of the airplane, and consequent reduced controllability of the airplane on the ground during takeoff and landing.

Explanation of Relevant Service Information

Bombardier (Learjet) has issued Advisory Wire (AW), 32–021, dated February 5, 2001, which describes procedures for inspecting Goodyear Flight Eagle main landing gear tires to determine if a certain part number and certain serial numbers are installed. The AW also describes procedures to replace any of the specified tires with new or serviceable tires having a part number containing a serial number other than those specified in the AW. Accomplishment of the actions specified in the AW is intended to adequately address the identified unsafe condition.

The AW also references Goodyear Service Bulletin GY SB 2001–32–001, dated February 2, 2001, as an additional source of service information for accomplishment of the inspection, and

replacement of main landing gear tires, if necessary.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent damage to major systems of the airplane, and consequent reduced controllability of the airplane on the ground during takeoff and landing. This AD requires accomplishment of the actions specified in the AW described previously, except as discussed below.

Differences Between the Service Information and This AD

Operator's should note that, although the AW specifies that the inspection of the main landing gear tires, and replacement if necessary, should be accomplished "prior to next flight," this AD requires that those actions be accomplished within 5 days after the effective date of this AD. We find that a 5-day compliance time will provide the operator with a reasonable time to perform the inspection, but will not adversely affect the safety of the fleet.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–76–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to 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. Section 39.13 is amended by adding the following new airworthiness directive:

2001–07–11 Learjet Inc.: Amendment 39–12177. Docket 2001–NM–76–AD.

Applicability: All Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, 25F, 28, 29, 31, 31A, 35, 35A (C–21A military), 36, 36A, 55, 55B, and 55C airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the tread of main landing gear tires, which could cause damage to the structure and major systems of the airplane, and consequent reduced controllability of the airplane on the ground during takeoff and landing; accomplish the following:

Inspection, and Replacement if Necessary

(a) Within 5 days after the effective date of this AD: Perform a general visual inspection of the main landing gear tires to determine if any tire has Goodyear part number (P/N) 178K23–5 within the serial number range of 0148xxxx through 0152xxxx inclusive, per Bombardier (Learjet) Advisory Wire 32–021, dated February 5, 2001.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or

platforms may be required to gain proximity to the area being checked."

Note 3: Bombardier (Learjet) AW 32–021 references Goodyear Service Bulletin GY SB 2001–32–001, dated February 2, 2001, as an additional source of service information.

(1) If no tires have P/N 178K23–5, no further actions is required by this paragraph.

(2) If any tire has P/N 178K23–5 but does not contain any serial number 0148xxxx through 0152 inclusive, no further action is required by this paragraph.

(3) If any tire has P/N 178K23–5 and does contain any serial number 0148xxxx through 0152xxxx inclusive: Before further flight, replace the tire with a new or serviceable tire that does not have P/N 178K23–5 with a serial number 0148xxxx through 0152xxxx inclusive.

(b) As of the effective date of this AD, no person shall install a main landing gear tire having P/N 178K23–5 that contains any serial number 0148xxxx through 0152xxxx inclusive, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The inspection, and replacement if necessary, shall be done in accordance with Bombardier (Learjet) Advisory Wire 32–021, dated February 5, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on May 1, 2001.

Issued in Renton, Washington, on April 5, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–9018 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–0069

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") announces that the current ranges of comparability for clothes washers will remain in effect until further notice. Under the Appliance Labeling Rule ("Rule"), each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will apply until new ranges are published. The Commission is today announcing that the ranges published on May 11, 2000 will remain in effect until new ranges are published.

EFFECTIVE DATE: April 16, 2001.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–2889); hnewsome@ftc.gov.

SUPPLEMENTARY INFORMATION: The Rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.[1] The rule covers eight categories of major household appliances, including clothes washers. The Rule also covers pool heaters, 59 FR 49556 (Sept. 28, 1994), and contains requirements that pertain to fluorescent lamp ballasts, 54 FR 28031 (July 5, 1989), certain plumbing products, 58 FR 54955 (Oct. 25, 1993), and certain lighting products, 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliances uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under Section 305.10 of the rule, the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

The annual reports of clothes washers have been received and analyzed by the

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for clothes washers are due March 1.

Commission. The ranges of comparability for clothes washers have not changed by more than 15% from the current ranges for this product category. Therefore, the current ranges for clothes washers, published on May 11, 2000 (65 FR 30351), will remain in effect. Manufacturers must continue to base the disclosure of estimated annual operating cost required at the bottom of the EnergyGuide for clothes washers on the 2000 Representative Average Unit Costs of Energy for electricity (8.03 cents per kilo Watt-hour) and natural gas (68.8 cents per therm) that were published by DOE on February 7, 2000 (65 FR 5860), and by the Commission on April 17, 2000 (65 FR 20352).

For up-to-date tables showing current range and cost information for all covered appliances, see the Commission's Appliance Labeling Rule web page at http://www.ftc.gov/appliances.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 01–9351 Filed 4–13–01; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 3644]

Visas: Nonimmigrant Classes; Legal Immigration Family Equity Act Nonimmigrants, V and K Classification

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements five new nonimmigrant visa categories (V1, V2 and V3 and K3, K4) established pursuant to the Legal Immigration Family Equity (LIFE) Act that was enacted on December 21, 2000. The new categories permit United States consular officers to issue nonimmigrant visas to the spouse, child and, in some instances, the child of the child of a lawful permanent resident alien (LPR) and to the spouse of a United States citizen and the child(ren) of the spouse. Issuance of nonimmigrant visas will permit these aliens to apply for admission into the United States as nonimmigrants where they may await the completion of the immigration process with their U.S. citizen or LPR family member.

DATES: This interim rule is effective April 1, 2001. Written comments must be received no later than June 1, 2001.

ADDRESSES: Written comments may be submitted, in duplicate, to H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Department of State, Washington, DC 20520–0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Department of State, Washington, D.C. 20520–0106, (202) 663–1204; or e-mail: odomhe@state.gov.

SUPPLEMENTARY INFORMATION:

Background

What is the Purpose of the New Visa Categories and Who Benefits From Them?

On December 21, 2000 the President signed into law the Legal Immigration Family Equity (LIFE) Act, Title XI of H.R. 4942, Pub. L. 106–553. Sections 1102 and 1103 of the LIFE Act add to the existing nonimmigrant categories of section 101(a)(15) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15), two new categories, one subdivided into three subcategories (V1, V2, V3) and the other into two subcategories, (K3, K4). The underlying purpose of this legislation is to reunite families that have been or could be subject to a long period of separation during the process of immigrating to the United States. Therefore, once admitted as a V or K nonimmigrant, the alien generally will be permitted to remain in the United States with his or her family until the visa petition is approved or denied. Then, if the petition is approved, the alien may continue to remain until the application for adjustment of status is approved or denied, or may depart to seek the issuance of an immigrant visa at the appropriate consular office abroad. In both the new V and K categories the spouses and children affected are those for whom an immigrant visa or adjustment of status are not available despite the petition having been filed. The lack of availability of a visa or opportunity to adjust status in many cases may be due to lengthy processing delays. In the cases of many spouses and children of lawful permanent residents (LPRs) it may be due to the fact that no visa number has yet become available to the alien because of the annual numerical limitation placed on immigrant visas in the second preference category.

The new category "V" is intended for use by certain spouses and unmarried children of LPRs who have filed second preference petitions in their behalf pursuant to INA 203(a)(2)(A), and by the unmarried children of those principal beneficiaries. A spouse who qualifies for V status will be classified as V1. A petitioned-for child will be classified as V2. A derivative child of either will be classified as V3. Under the LIFE Act, no benefits accrue in the new categories until three or more years after the date on which a second preference petition was filed on behalf of the principal beneficiary.

The LIFE Act also adds new subcategory K(ii) to the existing K (fianc(e)) nonimmigrant category. The original K category has been renumbered K(i) and modified to remove derivative children and place them in a new K(iii) subcategory along with the children of an alien classified under the new K(ii) subcategory. Nevertheless, a fiancé(e) of a U.S. citizen will continue to be designated K1 for visa purposes. A derivative child of a K1 alien will still be designated K2. The new K3 visa is intended for use by a spouse of a United States citizen for whom a spousal immediate relative petition has been filed in the United States. The spouse's child(ren) will be designated K4. Unlike the new V3 category, neither existing legislation nor the LIFE Act provides for visa issuance to the child of a child of the spouse or the petitioner.

V Visas

What are the Requirements to Obtain Classification as a V1, V2, or V3 Nonimmigrant?

In order to obtain classification as a nonimmigrant under V1 or V2 the alien applicant must first establish that a second preference (F2A) petition (I–130) as the spouse or child of an LPR had been filed in his or her name on or before the date the LIFE Act was enacted, i.e., December 21, 2000. Further, the applicant must establish that either: (1) The petition in the applicant's name has not been acted upon after three years or more, or (2) if the petition has been approved, three years or more have passed since the petition was filed and either no visa number has become available because of the worldwide or per country numerical limitation, or even though a number is available the alien's application for

adjustment of status or visa application remains pending.

In order to obtain nonimmigrant classification under V3, the applicant must establish that he or she is the child of a principal alien entitled to classification under V1 or V2. All applicants must demonstrate that they are otherwise eligible for visa issuance under all other applicable immigration laws, including those pertaining to the exclusion of aliens other than INA 212(a)(6)(A), 212(a)(7) and 212(a)(9)(B) from which they are specifically exempted by the LIFE Act.

When is an Immigrant Visa Application Considered to Remain Pending for the Purpose of Obtaining a V Visa?

As stated, if a visa number is available to the alien, in order for the alien to obtain a V visa the alien's immigrant visa application must "remain(s) pending". However, the LIFE Act does not give any indication as to what is meant by the phrase "application for a visa remains pending". It could refer to the time period between the date on which the alien's visa number becomes available and the date the alien is given an appointment at an embassy or consulate in order to apply for an immigrant visa. Or, it could refer to the time period between the alien's actual application for a visa and the date on which a decision is made on the application. Considerable delay at either stage can cause hardship. In view of the specific wording of the LIFE Act, however, Congress appears to have contemplated that the alien must first actually apply for an immigrant visa before he or she may be considered eligible for a V visa. The application must then remain pending. The Department will thus interpret the phrase "application for a visa remains pending" to mean that the alien has applied for an immigrant visa pursuant to current regulations, i.e., has personally appeared before a consular officer and verified by oath or affirmation the statements contained on the Form OF–230 and in all supporting documents, has previously submitted all forms and documents required in advance of the appearance and paid the visa application processing fee, but no decision has been made to issue a visa or refuse the application. In most cases a visa will either be issued or refused at the time of the alien's personal appearance at the visa interview. The specific requirements for making an application are found at 22 CFR 40.1(l)(2). Refusal criteria are found at 22 CFR 42.81(a).

Must an Applicant for a V Visa Apply at a Particular Consular Post?

Yes. Unless they obtain permission under existing Department procedures to permit them to apply at some other post, applicants for V visas must apply at the consular post designated as the processing post in the underlying immigrant visa petition. Because in many ways the V visa is a substitute for an immigrant visa, much of the information relevant to an immigrant visa is also relevant to this nonimmigrant visa. For example, such information may include local documents establishing family relationships and in some cases testimony of neighbors or other relatives that help to establish such relationships and other bona fides of the applicants.

Does the Department Intend to Authorize Issuance of V Visas to Persons Who as Children Were Qualified for V Visas, but Who Either "Age-out" by Reaching the Age of Twenty-one Years or Marry Prior to Receiving a V Visa?

No. The V visa classification clearly limits the class of qualifying aliens to beneficiaries of the F2A immigrant visa preference. The INA 101(b) definition of "child" includes only those persons who are under the age of twenty-one years and unmarried. Thus, while in the LIFE Act Congress clearly seeks to unify families waiting for F2A visas, the law only authorizes the issuance of visas to children who meet the INA definition of child. This rule reflects that limitation.

What Will be the Validity Period of a V Visa?

The Department is instructing consular officers to issue visas to qualified applicants for the usual maximum full validity period of ten years, subject to issuance for a shorter period due to the possibility of age-out, or based upon security concerns or ineligibility waiver limitations. In addition, the separate V visa supplemental application form which every V visa applicant or his or her parent will be required to sign will contain a notice apprising them that if a V2 or V3 child enters into a marriage prior to obtaining adjustment of status the marriage will render a "child" ineligible for adjustment of status as a preference immigrant. It will further inform the applicant that such marriage may cause termination of their legal status in the United States.

Will Any Attempt be Made to Notify Potential V Visa Applicants of Their Possible Eligibility for the V Visa?

Yes. In view of the fact that the V visa provision is new and somewhat unusual in terms of prevailing law and practice, the Department has decided that it will send a special notice about the V visa to all persons with F2A priority dates three years or older for whom it has a record in its files at the National Visa Center (NVC). INS routinely notifies NVC of the approval of immigrant visa petitions for which the beneficiary has requested visa processing at a consular post abroad. The Department maintains a database of all such petitions in which it records information regarding the beneficiary's immigration classification and priority date. Using that information NVC will attempt to contact potential V visa applicants in order to provide them with important information about the V visa and how it may be obtained. In fact, as of March 15, 2001 the Department had already begun making such notifications.

Will the Processing of V Visas Differ From Routine NIV Processing, e.g., Processing for a Tourist or a Student Visa?

Yes. In view of the fact that the aliens in the V categories are essentially intending immigrants who will remain in the United States indefinitely, the Department of State has determined that it is prudent to impose on them requirements generally not routinely applied to other nonimmigrants, other than fiancé(e)s. Such requirements relate to the presentation of evidence to establish that the intending immigrant meets health and criminal background standards sufficient to protect the American public.

Under INA 212(a), in order to receive a visa all aliens must establish their eligibility in these areas to the satisfaction of the consular officer. Generally, however, among nonimmigrants, only the fiancé(e) visa applicants, who likewise are intending immigrants, have been held to a high evidentiary standard in these areas. Thus, for the purpose of meeting certain INA 212(a) requirements the applicants for the new V visa categories will be held to the same standard applied to fiancé(e) visa applicants.

What Specific Documentation Will be Required in Order for V Visa Applicants to Establish Their Eligibility in the Areas of Health and Criminal Background?

With regard to health, all applicants will be required to submit to the medical examination applicable to

immigrant visa applicants, with the exception that applicants will not be required to meet the vaccination requirements of INA 212(a)(1)(A)(ii). With regard to criminal background, all applicants will be required to present at the time of visa application a criminal record statement (police certificate) pursuant to the requirements of 22 CFR 42.65(c) and to have their name submitted to the Federal Bureau of Investigation for an NCIC records check.

May an Alien Who Already has Been Granted V Status in the United States by the INS Apply for a V Visa? If so, Will the Procedure to Obtain the Visa be the Same as if the Alien had not Previously Been Granted V Status?

An alien who previously has been granted V status by INS in the United States will need a V visa in order to return to the United States in that status. Therefore, the alien will be eligible to apply for a V visa when traveling abroad. Although the procedures for obtaining the visa will remain the same as it is for aliens who have not previously been granted V status, in most cases the alien will not have to undergo a new medical check or police records check since INS requires both as a part of the procedure for an alien to change status to V and therefore the Department will accept the alien's V status granted by INS as evidence that the alien has met both requirements.

K Visas

What are the Requirements to Obtain Classification as a K3 or K4 Nonimmigrant?

In order to obtain classification under K3 the applicant must demonstrate that his or her marriage to a U.S. citizen is valid, he or she is the beneficiary of an immigrant visa petition (I–130) filed to accord status to the applicant as the spouse of a citizen pursuant to INA 201(b)(2)(A)(i), he or she is the beneficiary of an approved nonimmigrant visa petition (currently form I–129F) in such form as the INS determines is appropriate for the purpose of the issuance of a K3 visa, and that he or she wishes to enter the United States to await the approval of the I–130 petition or the availability of an immigrant visa. The nonimmigrant visa petition must have been filed in the United States by the U.S. citizen spouse of the applicant. In order to obtain classification under K4 the alien must establish that he or she is the child of an alien entitled to K3 classification.

When is an Immigrant Visa Considered not to be Available for the Purpose of Obtaining a K3 Visa?

For the purposes of LIFE Act only, and in the absence of a definition of the term "availability of an immigrant visa" in that Act, the Department has given the phrase a narrow interpretation in order to maximize the number of aliens who may benefit from the Act's provisions. Therefore, an immigrant visa will be considered to be available only when the actual approved I–130 petition has been received at the consular post at which the visa application must be filed. If the petition has been received at post, any K3 nonimmigrant visa application filed by the alien spouse will be denied and he or she will have to apply for an immigrant visa.

What Happens if the I–130 has Been Approved but not yet Received at the Processing Post?

Despite the fact that an approved immigrant visa petition may not have been received at post, it may have been forwarded to NVC where many approved immediate relative visa petitions are sent for pre-processing. The Department recognizes that if the petition has actually been approved many alien spouses may prefer to process their immigrant visas rather than the K3 visa. Therefore, when the alien applies for the nonimmigrant K3 visa he or she will be asked by the consular officer whether they wish the consular officer to determine from the NVC whether the approved immigrant visa petition has been received from INS. Subject to the special circumstance noted in the next section, if the applicant wishes, the petition will be forwarded to the processing consular post so the applicant may file an immigrant visa application.

What Happens if an Intending K3 Applicant Opts to have the Immigrant Visa Petition Forwarded Abroad From NVC in Order to Apply for an Immigrant Visa, but the K3 Processing Post is not Authorized to Issue Immigrant Visas?

In that case immigrant visa petition will have to be forwarded to and the applicant will have to file the immigrant visa application at the consular post designated by the Deputy Assistant Secretary of State for Visa Services to process immigrant visa applications for nationals of the country in which the K3 processing post is located.

Must an Applicant for a K3 or K4 Visa Apply at a Particular Consular Post?

Yes. If the marriage of the alien to the U.S. citizen occurred abroad, the LIFE Act requires that the visa be issued in the country in which the marriage took place. In those countries in which there is no consular post, the Department has determined that the alien must apply at the consular post designated by the Deputy Assistant Secretary of State for Visa Services to accept immigrant visa applications from nationals of that country. For spouses married in the United States, since the K3 and K4 visas are a subcategory of the K (fiancé(e)) visa, the rules regarding the place of application applicable to other K visas will apply, i.e., in general, applications must be filed in the country of residence of the alien spouse.

Will the Department Use the Same Standards for Issuing Full Validity K3 and K4 Visas and for the Notice to Children of Marriageable Age as Established for the V Visa?

Yes. The Department is authorizing the issuance of ten-year multiple entry visas to K3 and K4 visa recipients, except in those instances in which the limitations of age (aging-out), security concerns or ineligibility waiver limitations indicate a shorter period of validity is necessary. A special visa application supplement for K3 and K4 applicants will also contain a notice informing them of the potential consequences of marriage by a child recipient of a K4 visa prior to admission to the United States or adjustment of status.

Will the Documentation Required To Obtain K3 and K4 Visas Also Differ From Routine NIV Processing, e.g., Processing for a Tourist or a Student?

Yes. For the reasons stated above with regard to V visa applicants, K3 and K4 visa applicants will be processed via the modified immigrant visa procedure applicable to fiancé(e)s. In general, this procedure requires a medical examination and law enforcement background check of the alien.

May an Alien Who Already Has Had Filed in his or her Name an Application for Adjustment of Status, but Who Has Not Previously Applied for a K Visa Obtain a K Visa?

Yes. However, they will be subject to all of the procedures applicable to other K3 applicants, including medical examination and a police record check.

Interim Rule

How Is the Department of State Amending Its Regulations?

The Department is adding new § 41.86 to part 41 of Title 22. This new section will permit consular officers to issue a new category of nonimmigrant visa, the V visa, to certain spouses and children

of lawful permanent resident aliens. It is also amending § 41.81 of part 41 of Title 22 by designating the language of the existing section as subsection (a) and adding two new subsections, (b) and (c), that will permit consular officers to issue nonimmigrant visas in new categories K3 and K4 for the spouse of a U.S. citizen and the spouse's child(ren), respectively.

Administrative Procedure Act

The Department's implementation of this regulation as an interim rule, with a provision for public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b) and (d)(3). The Department decided that, since the LIFE Act as it pertains to the new nonimmigrant visa categories became effective upon enactment, and since it provides a substantial benefit to many citizens and lawful permanent residents by permitting their speedy reunification with their spouses and children, there is not enough time nor sufficient reason to delay its implementation by issuing a proposed rule with request for comments. Publication of this regulation as an interim rule will expedite implementation of Title XI of Public Law 106–553 that is already in effect and allow eligible aliens to apply for and participate in this program as soon as possible in light of its humanitarian intent.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The act involves entirely individual citizens and permanent residents and their family members and will have no significant economic impact on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

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 Act of 1996. This rule will not result in an annual effect on the economy of $100 million 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.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record keeping requirements. The information collection requirement (Form OF–156) contained by reference in this rule was previously approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 41

Aliens, Applications, Nonimmigrants, Passports and visas.

Accordingly, amend 22 CFR part 41 as follows:

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681 *et seq.*

2. Add a new § 41.86 to read as follows:

§ 41.86 Certain spouses and children of lawful permanent resident aliens.

(a) Definition of "remains pending". For the purposes of this section, a visa application "remains pending" if the applicant has applied for an immigrant visa in accordance with the definition in part 40, § 40.1(l)(2) and the visa has neither been issued, nor refused for any reason under applicable law and regulation.

(b) Entitlement to classification. A consular officer may classify an alien as a nonimmigrant under INA 101(a)(15)(V) if:

(1) The consular officer has received notification from the Department of State or the Department of Justice that a petition to accord status to the alien as a spouse or child pursuant to INA 203(a)(2)(A) was filed on or before December 21, 2000; or

(2) The alien is eligible to derive benefits pursuant to INA 203(d) as a child of an alien described in paragraph (b)(1) of this section and such alien has qualified for V classification; and

(3) It has been three years or more since the filing date of the petition described in paragraph (b)(1) of this section and applicable to paragraph (b)(2) of this section and either:

(i) The petition has not been approved; or

(ii) If it has been approved, either no immigrant visa number is immediately available or the alien's application for adjustment of status or the alien's application for a visa remains pending.

(c) Eligibility as an immigrant required. The consular officer, insofar as practicable, must determine the eligibility of an alien described in paragraph (b) of this section to receive a nonimmigrant visa under INA 101(a)(15)(V), other than an alien who previously has been granted V status in the United States by INS, as if the alien were an applicant for an immigrant visa, except that the alien is exempt from the vaccination requirement of INA 212(a)(1), the labor certification requirement of INA 212(a)(5) and the unlawful presence ineligibility of INA 212(a)(9)(B).

(d) Place of application. Notwithstanding the requirements of § 41.101, in determining the place of application for an alien seeking a visa pursuant to INA 101(a)(15)(V) the requirements of part 42, §§ 42.61(a) and (b)(1) of this chapter will apply.

3. Revise § 41.81 to read as follows:

§ 41.81 Fiancé(e) or spouse of a U.S. citizen and derivative children.

(a) Fiancé(e). An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) if:

(1) The consular officer is satisfied that the alien is qualified under that provision and the consular officer has received a petition filed by a U.S. citizen to confer nonimmigrant status as a fiancé(e) on the alien, which has been approved by the INS under INA 214(d),

or a notification of such approval from that Service;

(2) The consular officer has received from the alien the alien's sworn statement of ability and intent to conclude a valid marriage with the petitioner within 90 days of arrival in the United States; and

(3) The alien has met all other qualifications in order to receive a nonimmigrant visa, including the requirements of paragraph (d) of this section.

(b) Spouse. An alien is classifiable as a nonimmigrant spouse under INA 101(a)(15)(K)(ii) when all of the following requirements are met:

(1) The consular officer is satisfied that the alien is qualified under that provision and the consular officer has received a petition approved by the INS pursuant to INA 214(p)(1), that was filed by the U.S. citizen spouse of the alien in the United States.

(2) If the alien's marriage to the U.S. citizen was contracted outside of the United States, the alien is applying in the country in which the marriage took place, or if there is no consular post in that country, then at a consular post designated by the Deputy Assistant Secretary of State for Visa Services to accept immigrant visa applications for nationals of that country.

(3) If the marriage was contracted in the United States, the alien is applying in a country as provided in part 42, § 42.61 of this chapter.

(4) The alien otherwise has met all applicable requirements in order to receive a nonimmigrant visa, including the requirements of paragraph (d) of this section.

(c) Child. An alien is classifiable under INA 101(a)(15)(K)(iii) if:

(1) The consular officer is satisfied that the alien is the child of an alien classified under INA 101(a)(15)(K)(i) or (ii) and is accompanying or following to join the principal alien; and

(2) The alien otherwise has met all other applicable requirements in order to receive a nonimmigrant visa, including the requirements of paragraph (d) of this section.

(d) Eligibility as an immigrant required. The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under paragraphs (a), (b) or (c) of this section as if the alien were an applicant for an immigrant visa, except that the alien must be exempt from the vaccination requirement of INA 212(a)(1) and the labor certification requirement of INA 212(a)(5).

Dated: March 28, 2001.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 01–9367 Filed 4–13–01; 8:45 am]

BILLING CODE 4710–06–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 01–120]

Federal-State Joint Board on Universal Service: Children's Internet Protection Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules proposed in the Further Notice of Proposed Rulemaking, to implement the Children's Internet Protection Act (CIPA). On December 21, 2000, the President signed into law the Children's Internet Protection Act, included as part of the Consolidated Appropriations Act, 2001.

DATES: Effective April 20, 2001.

FOR FURTHER INFORMATION CONTACT: Jonathan Secrest or Narda Jones, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket No. 96–45 released on April 5, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Report and Order, we adopt rules proposed in the Further Notice of Proposed Rulemaking (*FNPRM*), 66 FR 8374, January 31, 2001, to implement the Children's Internet Protection Act (CIPA). Congress included CIPA as part of the Consolidated Appropriations Act, 2001. Sections 1721 *et seq.* of CIPA provide that schools and libraries that have computers with Internet access must certify that they have in place certain Internet safety policies and technology protection measures in order to be eligible under section 254(h) of the Communications Act of 1934, as amended (the Act), to receive discounted Internet access, Internet services, and internal connection services. CIPA also requires that our rules implementing the statute be in effect by April 20, 2001.

2. We adopt these rules with the goal of faithfully implementing CIPA in a manner consistent with Congress's intent. We have attempted to craft our rules in the most practical and efficacious way possible, while providing schools and libraries with maximum flexibility in determining the best approach. Moreover, to reduce burdens in the application process, we have designed rules to use existing processes where applicable. We conclude that local authorities are best situated to choose which technology measures and Internet safety policies will be most appropriate for their relevant communities.

II. Executive Summary

3. In this Order, we adopt rules that do the following:

- In order to receive discounts for Internet access and internal connections services under the universal service support mechanism, school and library authorities must certify that they are enforcing a policy of Internet safety that includes measures to block or filter Internet access for both minors and adults to certain visual depictions. These include visual depictions that are obscene, or child pornography, or, with respect to use of computers with Internet access by minors, or harmful to minors. An authorized person may disable the blocking or filtering measure during any use by an adult to enable access for bona fide research or other lawful purpose.
- A school administrative authority must certify that its policy of Internet safety includes monitoring the online activities of minors.
- In order to receive discounts, school and library authorities must also certify that they have adopted and implemented an Internet safety policy addressing access by minors to inappropriate matter on the Internet and World Wide Web; the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications; unauthorized access, including so-called "hacking," and other unlawful activities by minors online; unauthorized disclosure, use, and dissemination of personal information regarding minors; and measures designed to restrict minors' access to materials harmful to minors.
- For this funding year, schools and libraries must certify by October 28, 2001 that they have the policies and technology measures in place, or that they are undertaking such actions, including any necessary procurement

procedures, to put them in place for the following funding year. Because no school or library may receive services at discount rates during any time period in which it is out of compliance with its certification, as of the time that a school or library begins receiving services in Funding Year 4, it must either have the policies and technology measure in place, or be undertaking necessary actions to put them in place for the next year.

• Schools and libraries shall make the necessary certifications in FCC Form 486, which is submitted after a decision is made on requests for discounts under the universal service support mechanism.

III. Procedural Matters

A. Effective Date

4. We conclude that the effective date of the rules promulgated in this Order shall be April 20, 2001, which will be less than thirty days after publication in the **Federal Register**. Although the Administrative Procedures Act normally requires 30 days notice before rules become effective, the Commission, for good cause, may make rules effective with less than 30 days notice. We find such good cause based on the shortened time frame imposed by Congress for implementation of CIPA.

B. Paperwork Reduction Act

5. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA. FCC will announce receipt of OMB approval in the **Federal Register.**

C. Final Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the FNPRM. The Commission sought written public comments on the proposals in the FNPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.

1. Need for, and Objectives of, the Proposed Rules

7. The Children's Internet Protection Act (CIPA), included as part of the Consolidated Appropriations Act, 2001, Public Law 106–554, requires the Commission to prescribe regulations in order to implement the legislation. This Order adopts rules that implement CIPA. Eligible school and library authorities must certify that they are enforcing a policy of Internet safety that includes measures to block or filter Internet access for both minors and adults to certain visual depictions, that schools' policies of Internet safety includes monitoring the online activities of minors, and that schools and libraries have adopted and implemented an Internet safety policy under section 254(l).

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

8. The Commission received no comments directly addressing the IRFA. However some comments dispute our estimate that executing the certifications on FCC Form 486 would take approximately one minute. These comments assert that the time requirement was longer due to the preparation and information gathering necessary to make the CIPA certifications. This information gathering is not a requirement imposed upon schools and libraries by the Commission, rather CIPA requires the collection of this data. After considering these comments, we conclude that requiring the certifications as part of the existing FCC Form 486 process is the least burdensome procedure for program participants.

3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: is independently owned and operated; is not dominant in its field of operation; and satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 governmental entities in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities.

10. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law." A secondary school is generally as "a non-profit institutional day or residential school that provides secondary education, as determined under state law," and not offering education beyond grade 12. For-profit schools and libraries, and schools and libraries with endowments in excess of $50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined as small entities elementary and secondary schools and libraries having $5 million or less in annual receipts. In funding year 2 (July 1, 1999 to June 20, 2000) approximately 83,700 schools and 9,000 libraries received discounts under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's definition, we estimate that fewer than 83,700 schools and 9,000 libraries would be affected annually by the rules promulgated in this Order, under current operation of the program.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

11. This Order adopts measures that will result in minimal additional reporting. Specifically, the Order requires eligible schools and libraries receiving federal universal service support for Internet access or internal connections to make one certification on FCC Form 486.

12. A Billed Entity who filed a Form 471 as a "consortium application" and who is also a recipient of services as a

member of that consortium must select a certification from FCC Form 486.

13. Furthermore, every Billed Entity who filed a Form 471 as a "consortium application" on behalf of consortium members shall make one certifications.

14. The Form 486 certification section shall also include a disclaimer stating that the certification language is not intended to fully set forth or explain all the requirements of the statute.

15. The Commission adopts rules, which modify FCC Form 486 to include the certification language listed. This form is already completed on a regular basis, and the modification would merely require the checking of one additional box prior to signing the form. We continue to estimate that it would take no more than one minute to review and check the appropriate certification box. The Commission concludes that this approach would be the most effective procedure for implementation of CIPA's requirements, and the least burdensome to recipients.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; the use of performance, rather than design, standards; and an exemption from coverage of the rule, or part thereof, for small entities.

17. This certification requirement is legislatively mandated by CIPA. The Commission is attempting to implement this requirement in the most effective and least burdensome manner possible for all entities, including small schools and libraries. Given that a certification is required by the legislation, we considered the alternative of having each school and library submit separate documentation, including the appropriate certification, to the Commission; however, such an approach seemed unnecessarily burdensome, particularly on small entities. In addition, even in light of comments that we underestimated the time required to complete the certification, we still believe that it is less burdensome to certify as part of an ongoing process. The parties' concerns about the time taken to comply with CIPA in order to be able to certify are not at issue here. The Commission's responsibility is to assure the certification of compliance. As discussed, the Commission concludes that adding the certification requirement to the existing FCC Form 486 process is the least burdensome alternative for implementing the requirements of the CIPA.

18. In reaching this conclusion the Commission also considered, as an alternative, adding the certification language to the existing FCC Form 471. However, the Form 471 is submitted by applicants for universal service discounts, whereas CIPA requires certifications by recipients. Furthermore, entities completing Form 471 are not assured of receiving discounted funds, and consequently might not become subject to CIPA requirements. Therefore we have concluded that Form 486, which is completed only by recipients of services, is more appropriate for CIPA certifications by recipients. Recipients will know by the time they submit the modified Form 486 that they will receive discounts, which is not the case at the time of Form 471 submission. By certifying on Form 486, recipients will only have to certify as to CIPA compliance once they are certain of receiving discounted services.

19. *Report to Congress*: The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

IV. Ordering Clauses

20. Pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, section 553 of the Administrative Procedure Act, and the Children's Internet Protection Act, Public Law 106–554 1701 *et seq.* as codified at 47 U.S.C. 254(h) and (l), *In the Matter of Federal-State Joint Board on Universal Service*, Children's Internet Protection Act, Report and Order in CC Docket No. 96–45 is adopted. The collection of information contained within this Report and Order is contingent upon approval by the Office of Management and Budget.

21. Pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, section 553 of the Administrative Procedure Act, and the Children's Internet Protection Act, Public Law 106–554 1701 *et seq.* as codified at 47 U.S.C. 254(h) and (l), § 54.520 of the Commission's rules, is adopted, as set forth.

22. Because the Commission has found good cause, this Report and Order and 47 CFR 54.520, as adopted and set forth, are effective April 20, 2001, which is less than thirty days following publication in the **Federal Register.**

23. The authority is delegated to the Chief of the Common Carrier Bureau pursuant to § 0.291 of the Commission's rules, to modify, or require the filing of, any forms that are necessary to implement the decisions and rules adopted in this Report and Order.

24. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

25. FCC Forms 486 and 479 contains information collections that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the approval of these forms.

List of Subjects 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

Subpart H—Administration

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214 and 254 unless otherwise noted.

2. Add § 54.520 to subpart H to read as follows:

§ 54.520 Children's Internet Protection Act certifications required from recipients of discounts under the federal universal service support mechanism for schools and libraries.

(a) *Definitions.*

(1) *School.* For the purposes of the certification requirements of this rule, school means school, school district, local education agency or other authority responsible for administration of a school.

(2) *Library.* For the purposes of the certification requirements of this rule, library means library, library board or authority responsible for administration of a library.

(3) *Billed entity.* Billed entity is defined in § 54.500. In the case of a consortium, the billed entity is the lead member of the consortium.

(4) *Statutory definitions.* The terms "minor," "obscene," "child pornography," "harmful to minors" and "technology protection measure" as used in this section, are defined in the Children's Internet Protection Act section 1721(c).

(b) *Who is required to make certifications?* (1) A school or library that receives discounts for Internet access and internal connections services under the federal universal service support mechanism for schools and libraries, must make such certifications as described in paragraph (c) of this section. The certifications required and described in paragraph (c) of this section must be made in each funding year.

(2) Schools and libraries that only receive discounts for telecommunications services under the federal universal service support mechanism for schools and libraries are not subject to the requirements 47 U.S.C. 254(h) and (l), but must indicate, pursuant to the certification requirements in paragraph (c) of this section, that they only receive discounts for telecommunications services.

(c) *Certifications required under 47 U.S.C. 254(h) and (l).* (1) *Schools.* The billed entity for a school that receives discounts for Internet access or internal connections must certify on FCC Form 486 that an Internet safety policy is being enforced. If the school is an eligible member of a consortium but is not the billed entity for the consortium, the school must certify instead on FCC Form 479 ("Certification to Consortium Leader of Compliance with the Children's Internet Protection Act") that an Internet safety policy is being enforced.

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. This Internet safety policy must also include monitoring the online activities of minors.

(ii) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(l) must address all of the following issues:

(A) Access by minors to inappropriate matter on the Internet and World Wide Web,

(B) The safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications,

(C) Unauthorized access, including so-called "hacking," and other unlawful activities by minors online;

(D) Unauthorized disclosure, use, and dissemination of personal information regarding minors; and

(E) Measures designed to restrict minors' access to materials harmful to minors.

(iii) A school must satisfy its obligations to make certifications by making one of the following certifications required by paragraph (c)(1) of this section on FCC Form 486:

(A) The recipient(s) of service represented in the Funding Request Number(s) on this Form 486 has (have) complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486 is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service represented in the Funding Request Number(s) on this Form 486 is (are) receiving discount services only for telecommunications services.

(2) *Libraries.* The billed entity for a library that receives discounts for Internet access and internal connections must certify, on FCC Form 486, that an Internet safety policy is being enforced. If the library is an eligible member of a consortium but is not the billed entity for the consortium, the library must instead certify on FCC Form 479 ("Certification to Consortium Leader of Compliance with the Children's Internet Protection Act") that an Internet safety policy is being enforced.

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254 (h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors.

(ii) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(l) must address all of the following issues:

(A) Access by minors to inappropriate matter on the Internet and World Wide Web;

(B) The safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;

(C) Unauthorized access, including so-called "hacking," and other unlawful activities by minors online;

(D) Unauthorized disclosure, use, and dissemination of personal information regarding minors; and

(E) Measures designed to restrict minors' access to materials harmful to minors.

(iii) A library must satisfy its obligations to make certifications by making one of the following certifications required by paragraph (c)(2) of this section on FCC Form 486:

(A) The recipient(s) of service represented in the Funding Request Number(s) for which you have requested or received Funding Commitments has (have) complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's Internet Protection Act (CIPA), as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) for which you have requested or received Funding Commitments is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service represented in the Funding Request Number(s) for which you have requested or received Funding Commitments is (are) receiving discount services only for telecommunications services.

(3) *Certifications required from consortia members and billed entities for consortia.* (i) The billed entity of a consortium, as defined in paragraph (a)(3) of this section, must collect from the authority for each of its school and library members, one of the following signed certifications on FCC Form 479

("Certification to Consortium Leader of Compliance with the Children's Internet Protection Act"), which must be submitted to the billed entity consistent with paragraph (c)(1) or paragraph (c)(2) of this section:

(A) The recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments has (have) complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments is (are) receiving discount services only for telecommunications services; and

(ii) The billed entity for a consortium, as defined in paragraph (a)(3) of this section, must make one of the following two certifications on FCC Form 486: "I certify as the Billed Entity for the consortium that I have collected duly completed and signed certifications from all eligible members of the consortium."; or I certify as the Billed Entity for the consortium that the only services received under the universal service support mechanism by eligible members of the consortium are telecommunications services, and therefore the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), do not apply."; and

(iii) The billed entity for a consortium, as defined in paragraph (a)(3) of this section, who filed an FCC Form 471 as a "consortium application" and who is also a recipient of services as a member of that consortium must select one of the certifications under paragraph (c)(3)(i) of this section on FCC Form 486.

(d) *Failure to provide certifications.* (1) *Schools and libraries.* A school or library that knowingly fails to submit certifications as required by this section, shall not be eligible for discount services under the federal universal service support mechanism for schools and libraries until such certifications are submitted.

(2) *Consortia.* A billed entity's knowing failure to collect the required certifications from its eligible school and library members or knowing failure to certify that it collected the required certifications shall render the entire consortium ineligible for discounts under the federal universal service support mechanism for school and libraries.

(3) *Reestablishing eligibility.* At any time, a school or library deemed ineligible for discount services under the federal universal service support mechanism for schools and libraries because of failure to submit certifications required by this section, may reestablish eligibility for discounts by providing the required certifications to the Administrator and the Commission.

(e) *Failure to comply with the certifications.* (1) *Schools and libraries.* A school or library that knowingly fails to ensure the use of computers in accordance with the certifications required by this section, must reimburse any funds and discounts received under the federal universal service support mechanism for schools and libraries for the period in which there was noncompliance.

(2) *Consortia.* In the case of consortium applications, the eligibility for discounts of consortium members who ensure the use of computers in accordance with the certification requirements of this section shall not be affected by the failure of other school or library consortium members to ensure the use of computers in accordance with such requirements.

(3) *Reestablishing compliance.* At any time, a school or library deemed ineligible for discounts under the federal universal service support mechanism for schools and libraries for failure to ensure the use of computers in accordance with the certification requirements of this section and that has been directed to reimburse the program for discounts received during the period of noncompliance, may reestablish compliance by ensuring the use of its computers in accordance with the certification requirements under this section. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school or library shall be eligible for discounts under the universal service mechanism.

(f) *Waivers based on state or local procurement rules and regulations and competitive bidding requirements.* Waivers shall be granted to schools and libraries when the authority responsible for making the certifications required by this section, cannot make the required certifications because its state or local procurement rules or regulations or competitive bidding requirements, prevent the making of the certification otherwise required. The waiver shall be granted upon the provision, by the authority responsible for making the certifications on behalf of schools or libraries, that the schools or libraries will be brought into compliance with the requirements of this section, before the start of the third program year after December 21, 2000 in which the school is applying for funds under this title.

(g) *Funding year certification deadlines.* (1) *Funding Year 4.* For Funding Year 4, billed entities shall provide one of the certifications required under paragraph (c)(1), (c)(2) or (c)(3) of this section to the Administrator on an FCC Form 486 postmarked no later than October 28, 2001.

(2) *Funding Year 5 and subsequent funding years.* For Funding Year 5 and for subsequent funding years, billed entities shall provide one of the certifications required under paragraph (c)(1), (c)(2) or (c)(3) of this section in accordance with the existing program guidelines established by the Administrator.

[FR Doc. 01–9325 Filed 4–13–01; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 96–61 and 98–183; FCC 01–98]

Policy and Rules Concerning the Interstate, Interexchange Marketplace; Review of Customer Premises Equipment and Enhanced Services Unbundling Rules In the Interexchange, Exchange Access and Local Exchange Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document eliminates the bundling restriction, adopted in the Commission's *Computer II* proceeding, that limits the ability of common carriers to offer consumers bundled packages of telecommunications services and customer premises

equipment (CPE) at a discounted price. It also clarifies that all facilities-based carriers may offer bundled packages of enhanced services and basic telecommunications at a single price, subject to existing safeguards. This action should benefit consumers by allowing them to take advantage of packages of innovative services and equipment, and foster increased competition in the markets for CPE, enhanced and telecommunication services.

DATES: Effective May 16, 2001.

FOR FURTHER INFORMATION CONTACT: Jodie Donovan-May, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in CC Docket Nos. 96–61 and 98–183 released March 30, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC. It is also available on the Commission's website at *http://www.fcc.gov/ccb/ppp/2001ord.html*

Synopsis of Report and Order

1. In light of the record developed in response to the *Further Notice* in this docket (63 FR 56892, Oct. 23, 1998), the Commission concludes that it is appropriate to eliminate the CPE bundling restriction in its entirety and clarify, but not eliminate, the enhanced services requirement, both adopted in the Commission's *Computer II* proceeding, Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980), so that all carriers may offer consumers packages of equipment, enhanced services, and telecommunications services at a single price. The Commission finds that consumers can benefit significantly by relying on the competitive markets that exist for the components contained in a bundle, and that as a result of this competition, and existing safeguards that are applicable in certain instances, the Commission no longer needs to rely on the CPE bundling regulation to ensure that carriers do not restrict consumers from taking advantage of competitive suppliers of CPE. It also clarifies that under the existing rules, carriers may offer consumers bundles of enhanced and basic telecommunications services, subject to existing safeguards, thereby encouraging further options for consumers.

2. *CPE Bundling.* The Commission adopts its tentative conclusion to eliminate the bundling restriction codified in § 64.702(e) of its rules, 47 CFR 64.702(e), in order to allow nondominant interexchange carriers, including the nondominant interexchange affiliates of the incumbent local exchange carriers (LECs), to bundle CPE with their interstate, domestic, interexchange services. The Commission concludes that both the CPE market and the interstate, domestic, interexchange market are sufficiently competitive so that it is extremely unlikely that interexchange carriers could engage in anticompetitive behavior if the Commission permits them to provide packages of services and CPE bundled at a single price. The Commission also finds that incumbent LECs should be able to offer packages of service that include CPE and local exchange service at one price. It acknowledges that because the local exchange market is not substantially competitive and because incumbent LECs have market power, it must balance the risk that the incumbents can act anticompetitively with the public interest benefits associated with bundling. After undertaking this analysis, the Commission concludes that the risk of anticompetitive behavior by the incumbent LECs is low, not only because of the economic difficulty that even dominant carriers face in attempting to link forcibly the purchase of one component to another, but also because of the safeguards that currently exist to protect against this behavior. In particular, incumbent LECs will, under state law, offer local exchange service separately on an unbundled tariffed basis if they bundle such service with CPE. The Commission also requires them to offer exchange access service and any other service for which the Commission considers them to be dominant separately on nondiscriminatory terms if they bundle such service with CPE. The Commission also considered that the Telecommunications Act of 1996 (1996 Act) changed the telecommunications landscape from that which existed at the time that CPE bundling restriction was adopted originally, and that such changes, in conjunction with the benefits of bundling as seen in the wireless CPE context, supported a decision to eliminate the CPE bundling restrictions for all carriers, including incumbent LECs.

3. *Enhanced Services:* In the case of enhanced services, the Commission clarifies that there is currently no prohibition on the bundling of basic telecommunications service and enhanced service at a single, discounted price for any carrier. This clarification will allow carriers to offer innovative packages of enhanced services bundled with basic telecommunications service and CPE. In order to ensure that competitive enhanced service providers continue to have nondiscriminatory access to the underlying transmission capacity, the Commission does not eliminate the existing requirement that facilities-based carriers offer such capacity to these providers on the same terms and conditions under which they provide such service to their own enhanced service operations. For nondominant carriers, this safeguard is based on the Commission's existing *Computer II* requirements. For Bell Operating Companies (BOCs), the Commission's *Computer III* requirements (51 FR 24350, July 3, 1986) also require that the BOC offer the basic transmission service separately pursuant to tariff. All incumbent LECs are also subject to requirement to offer basic local exchange service on an unbundled, tariffed, nondiscriminatory basis, thereby enabling customers to purchase enhanced services from competitive suppliers and still obtain local service from the incumbent pursuant to tariff. Incumbent LECs are also subject to specific safeguards in sections 260, 274 and 275 of the 1996 Act, 47 USC 260, 274 and 275. The Commission's cost accounting rules also reduce the BOCs' incentive to misallocate costs between their regulated and unregulated service operations. Finally, the Commission emphasized that section 202 of the Act, 47 U.S.C. 202, applies to dominant and nondominant carriers that provide transmission service to competitive enhanced service providers.

4. *Universal Service Allocation.* Section 254 of the Act, 47 U.S.C. 254, requires every telecommunications carrier that provides interstate telecommunications service to "contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." The Commission's rules require entities with interstate end-user revenues to contribute to the universal service fund. Further, contributions are based solely on end-user

telecommunications revenue, and thus exclude enhanced services and CPE.

5. When carriers generate revenues from stand-alone service or product offerings, the calculation of their universal service contributions is relatively straightforward. Carriers report revenues from telecommunications services and revenues from non-telecommunications offerings (including CPE and enhanced services revenues) in separate sections of the Commission's revenue worksheet, which is submitted semi-annually. Carriers are assessed universal service contributions only on their revenues from telecommunications services. If carriers generate revenues from bundled packages of telecommunications services and CPE/enhanced services, however, the calculation of their universal service contributions becomes more complicated.

6. In this Order, the Commission suggests two methods that contributors may use to allocate revenue when telecommunication services and CPE/enhanced services are offered as a bundled package. Its primary goal is to have a framework that deters carrier gaming while being competitively neutral, easy to administer, and simple to understand. The Commission's existing rules, 47 CFR 54.706, 54.709, require carriers to contribute to the universal service support mechanism based on interstate end-user telecommunications revenue. The Commission recognizes that carriers may bundle goods and services in a multitude of ways that cannot be anticipated, and thus it affords carriers the needed flexibility to determine the appropriate allocation of revenues for universal service support purposes. In reporting revenues, carriers should remain mindful of their contribution obligation under the current rule and are expected to exercise good faith in reporting revenues. Detailed further are two ways carriers could report revenues that would afford them "safe harbor" protection under the rule. The overriding intent is to maintain stability and predictability in funding the universal service support mechanisms.

7. First, contributors may elect to report revenues from bundled telecommunications and CPE/enhanced service offerings based on the unbundled service offering prices, with no discount from the bundled offering being allocated to telecommunications services. For example, assume that a carrier offers voice-mail service, an enhanced service, as a stand-alone offering for $6.00, and also offers basic phone service, a telecommunications service, for $20.00. The carrier offers the two services for the bundled price of $22.00, resulting in a discount of $4.00. Under this approach, the carrier would report telecommunications service revenue of $20.00 per month (the stand-alone price for the phone service) and non-telecommunications revenue of $2.00 per month (the stand-alone price for voice-mail minus the discount from the bundled offering). Carriers will likely continue to offer both bundled and unbundled telecommunications service offerings. Because incumbent local exchange carriers will continue to tariff services separately and nondominant carriers will likely continue to offer unbundled pricing to meet the needs of consumers, this method provides carriers with an easily ascertainable method of allocating revenues for purposes of calculating universal service contributions.

8. Alternatively, contributors may elect to treat all bundled revenues as telecommunications service revenue for purposes of determining their universal service obligations. For example, assume that a carrier offers a bundled package of voice-mail and basic phone service to end-users at $25.00 per month. The carrier decides that it cannot distinguish revenue for the basic service (the telecommunications service) from voice-mail (the non-telecommunications service). This carrier would report telecommunications revenue of $25.00 per month. This option would permit those contributors that are unable or unwilling to separate end-user telecommunications revenues from non-telecommunications revenue to comply with their universal service obligations when they generate revenues from bundled telecommunications services and CPE/enhanced service offerings.

9. These allocation methods are "safe harbors" and will be afforded a presumption of reasonableness in an audit or enforcement context. Both of the previously-described methods enable carriers to allocate revenues for purposes of universal service contributions in an easily ascertainable and reasonable manner. These methods also decrease the investigative burden in an audit or other enforcement proceeding because the necessary information is easily obtained and verified. Thus, these allocation methods provide certainty to both carriers and the Commission, and the Commission encourages their use.

10. Carriers may choose to use allocation methods other than the two described previously. Carriers should realize, however, that any other allocation methods may not be considered reasonable, and will be evaluated on a case-by-case basis in an audit or enforcement context. In evaluating the reasonableness of any alternative methods, the Commission will apply the standards underlying the safe harbors described previously. For example, carriers should not apply discounts to telecommunications services in a manner that attempts to circumvent a carrier's obligation to contribute to the universal service support mechanisms. Should an audit or enforcement proceeding be initiated, carriers will need to provide evidence that the amount of reported telecommunication revenues reflects compliance with the carrier's obligation to contribute to the universal service support mechanism based on interstate end-user telecommunications revenue.

11. The methods outlined are examples of how carriers may report revenues for universal service purposes, and carriers may choose to use a different method altogether. The Commission adopts this approach in recognition of the fact that, at this time, we cannot anticipate the various ways in which carriers may choose to bundle their goods and services. The Commission concludes that this flexible, simple, and easily administered approach will continue to maintain stability and predictability in the universal service fund, while granting carriers considerable freedom in deciding how to bundle their offerings. Finally, the Commission notes that as it gains experience with carrier practices, it may in the future seek comment on whether to adopt additional rules.

12. *Impact of Bundling on Network Disclosure and Part 68 Requirements.* The Commission concludes that its existing network disclosure policy and rules ensure that carriers that bundle CPE and transmission services will continue to provide CPE suppliers with access to information about the carriers' networks that the suppliers require to offer competitive products. The Commission believes that normal market forces pressure interexchange carriers to provide CPE suppliers with necessary network information, and that sections 201 and 202 of the Act safeguard against anticompetitive conduct in this area. It therefore does not find that any additional public disclosure requirements are necessary for interexchange carriers that bundle CPE with interstate, domestic, interexchange services.

13. The Commission's network disclosure rules, 47 CFR 51.325(a)(3), require incumbent LECs to disclose network changes that could affect the manner in which CPE is attached to their networks. The Commission also

concludes that allowing carriers to bundle CPE with transmission services will not affect the Commission's requirement that CPE not cause harm to the network, and does not affect the technical criteria that the telecommunications industry will now establish on its own, as a result of the Commission's action to streamline the CPE technical and registration procedures in 47 CFR part 68 (66 FR 7579, Jan. 24, 2001). The network disclosure rule, 47 CFR 51.327, which requires incumbent LECs to disclose publicly, at a minimum, complete information about network design, technical standards and planned changes to the network, will also continue to act as a safeguard to prevent incumbent LECs that bundle enhanced services with local exchange service from acting in an anticompetitive manner.

Final Regulatory Flexibility Act Analysis

14. The Regulatory Flexibility Act (RFA) [1] requires that regulatory flexibility analyses be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." [2] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." [3] The RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act.[4] Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[5]

15. Consistent with the effort to reduce regulation wherever conditions warrant,[6] this Report and Order reviews the state of competition in the CPE and enhanced services market to determine if such competition warrants amending the bundling restrictions adopted in the *Computer II Order*. It also reviews the state of competition in the interstate, domestic interexchange, and local exchange markets to determine the likelihood that nondominant and incumbent carriers in these markets could engage in anticompetitive behavior if they are permitted to bundle such telecommunications services with CPE or enhanced services. In undertaking this analysis, the Report and Order acknowledges that because the local exchange market is not fully competitive and because incumbent LECs have market power, the Commission must balance the risk that incumbents can act anticompetitively with the public interest benefits of bundling. In light of the significant benefits of bundling outlined in the record developed in response to the *Further Notice* and the state of competition in the various component markets, the Report and Order finds that it is appropriate to eliminate the CPE bundling restriction for all carriers. In the case of enhanced services, it retains the requirement that facilities-based carriers continue to offer the underlying transmission service component of an enhanced service on nondiscriminatory terms, and clarifies that as long as the carriers meet this requirement, they may bundle enhanced services with telecommunications services at a single price.

16. The Commission considered the potential impact of the Report and Order on three categories of entities: "small interexchange carriers;" "small incumbent LECs;" and "small non-incumbent LECs." The Report and Order will not have a significant economic impact on a substantial number of these entities because it relieves them of regulations that have prohibited them from offering consumers packages of telecommunications services and CPE at a single price. Removal of these rules will provide small entities the necessary flexibility to market services and CPE in a less restricted manner. In addition, these small entities will not have to incur certain transactional costs associated with separately offering and billing consumers for the components of a service package. In fact, it is expected that any economic impact will be a positive one. The Report and Order clarifies that small interexchange carriers, small incumbent LECs and small non-incumbent LECs may offer packages of enhanced services and telecommunications services at a single price, provided that they continue to comply with the existing requirements to offer competitive enhanced service providers access to the underlying transmission service component of an enhanced service on nondiscriminatory terms. By clarifying this requirement, the Report and Order provides regulatory certainty. Therefore, there is no significant economic impact on such entities.

17. In addition, the Commission considered the impact of the proposed rule revisions on information service providers (ISPs) and other competitive enhanced service providers. ISPs that described themselves as small businesses indicated in the record that they could suffer an economic impact from the rules proposed in the *Further Notice* if the Commission did not maintain the requirement that they be able to acquire underlying transmission capacity to provide enhanced services from the incumbent LECs on nondiscriminatory terms. We have maintained this requirement for all incumbent LECs. ISPs also indicated that they could not acquire the transmission service on nondiscriminatory terms if incumbent LECs were permitted to bundle CPE with telecommunications services. The Report and Order confirms that the transmission service component of CPE bundles will be separately available from the incumbent LECs on a nondiscriminatory basis. Therefore, there is no significant economic impact on small ISPs and small competitive enhanced service providers.

18. Accordingly, we certify that the Report and Order will not have a significant economic impact on a substantial number of small entities.

19. The Commission will send a copy of this Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[7] In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.[8]

List of Subjects in 47 CFR Part 64

Communications common carriers, Communications equipment, Enhanced services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, 47 CFR part 64 is amended as follows:

[1] The Regulatory Flexibility Act, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632).

[5] 15 U.S.C. 632.

[6] See 47 U.S.C. 161.

[7] 5 U.S.C. 801(a)(1)(A).

[8] 5 U.S.C. 605.

PART 64—MISCELLANEOUS RULES RELATING COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1).151, 154, 201, 202, 205, 218–220, 254, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Section 64.702 is amended by revising paragraph (e) to read as follows:

§ 64.702 Furnishing of enhanced services and customer-premises equipment.

* * * * *

(e) Except as otherwise ordered by the Commission, the carrier provision of customer premises equipment used in conjunction with the interstate telecommunications network may be offered in combination with the provision of common carrier communications services, except that the customer premises equipment shall not be offered on a tariffed basis.

[FR Doc. 01–9327 Filed 4–13–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services

CFR Correction

In Title 47 of the Code of Federal Regulations, Parts 70 to 79, revised as of October 1, 2000, in part 73, § 73.202(b) is corrected in the Table of FM Allotments on page 111 under Texas by removing channel 233A and adding channel 223A at Wake Village; and on page 112, under Vermont by removing Middlebury, Channel 265A, and by adding Berlin, Channel 265C2 and Hardwick, Channel 290A.

[FR Doc. 01–55513 Filed 4–13–01; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 66, No. 73
Monday, April 16, 2001

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 THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

Acquisition of Title to Land In Trust; Delay of Effective Date

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Delay of effective date of final rule; request for comments.

SUMMARY: This action temporarily delays for 120 days the effective date of the rule titled "Acquisition of Title to Land in Trust," that we published in the **Federal Register** on January 16, 2001. We are extending the comment period in order to seek comments on whether the final rule should be amended in whole or in part or withdrawn in whole or in part.

DATES: The effective date of the Acquisition of Title to Land Trust rule, amending 25 CFR Part 151, published in the **Federal Register** of Tuesday, February 20, 2001, at 68 FR 10815, is delayed from April 16, 2001, to August 13, 2001. Comments must be received by June 15, 2001.

ADDRESSES: Submit comments on whether the final rule should be amended in whole or in part or withdrawn in whole or in part to: Terry Virden, Director, Office of Trust Responsibilities, MS 4513–MIB, 1849 C Street NW., Washington, DC 20240. You can also submit comments by electronic mail to: TerryVirden@bia.gov.

FOR FURTHER INFORMATION CONTACT: Terry Virden, Director, Office of Trust Responsibilities, Mail Stop: 4513–MIB, 1849 "C" Street NW., Washington, DC 20240; telephone 202–208–5831; electronic mail: TerryVirden@bia.gov.

SUPPLEMENTARY INFORMATION: This action temporarily delays for 120 days the effective date of the rule entitled "Acquisition of Title to Land in Trust," published in the **Federal Register** on January 16, 2001, at 66 FR 3452. On February 5, 2001, the Department published an extension of the effective date of the amended rule from January 16, 2001, to March 17, 2001. 66 FR 8899. On February 20, 2001, the Department published a correction to the rule published on February 5th and corrected the delay effective date to April 16, 2001. 66 FR 10815. This document now extends the effective date of the final rule from April 16, 2001, an additional 120 days, to a new effective date of August 13, 2001, in order to seek comments on whether the final rule should be amended in whole or in part or withdrawn in whole or in part.

During the extension of the effective date of the final rule to April 16, the Department reviewed the rule and decided it should solicit public comments on whether to amend the rule in whole or in part or to withdraw the final rule in whole or in part. During this 120-day delay of the effective date of the final rule, the Department will seek comments for 60 days on whether the final rule should be withdrawn in whole or in part or amended in whole or in part. At the end of the 120 days, the Department will evaluate the comments received and make a determination on whether to amend the rule in whole or in part or to withdraw the final rule in whole or in part. Given the imminence of the effective date of the final rule, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

To the extend that 5 U.S.C. section 553 applies to this action, this extension of the comment period is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, the Department's extension of the comment period without opportunity for public comment is based upon the good cause exceptions in 5 U.S.C. sections 553(b)(3)(B) and 553(d)(3), in that seeking public comment on the extension of the effective date is impractical, unnecessary and contrary to the public interest.

Dated: April 11, 2001.

James McDivitt,

Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 01–9382 Filed 4–13–01; 8:45 am]

BILLING CODE 4310–02–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FR–6964–9]

Project XL Site-Specific Rulemaking for Buncombe County Landfill, Alexander, Buncombe County, North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing a site-specific rule to implement a project under the Project XL program, an EPA initiative to allow regulated entities to achieve better environmental results at decreased costs. Project XL ("eXcellence and Leadership") was announced on March 16, 1995 as a central part of the National Performance Review and EPA's efforts to reinvent environmental protection. Today's proposal would provide regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, for the Buncombe County Solid Waste Management Facility, Alexander, Buncombe County, North Carolina ("Buncombe County").

Buncombe County, the State of North Carolina, and EPA signed a Final Project Agreement (FPA) for a project under EPA's Project XL to use certain bioreactor techniques at its municipal solid waste landfill (MSWLF), specifically, the recirculation of landfill leachate, with the possible addition of water, to accelerate the biodegradation of landfill waste, to decrease the time it takes for the waste to reach stabilization in the landfill, and to promote recovery of landfill gas. The principal objective of this XL project is to demonstrate that leachate can safely be recirculated over a liner that differs from the liner prescribed in EPA MSWLF regulations. To implement this project, Buncombe County will need relief from certain regulatory requirements in EPA regulations which set forth the design and operating criteria for MSWLFs.

Under existing regulations, leachate recirculation in Cells 1 and 2 is authorized because those cells were constructed using the prescribed composite liner. The proposed rule to allow leachate recirculation over an alternative liner would apply to

Buncombe County landfill Cells 3 through 10. In all, Buncombe County is seeking to recirculate the leachate in Cells 1–10. The proposed rule would be conditional and depends on implementation of the design proposed in the rulemaking. Upon completion of this rulemaking, the landfill liner design would be enforceable in the same way that current RCRA standards for a landfill are enforceable to ensure that management of nonhazardous solid waste is performed in a manner protective of human health and the environment. Today's rulemaking would not in any way affect the provisions or applicability of any existing or future regulations. EPA retains its full range of enforcement options under this rule.

There are several XL pilot projects involving MSWLF bioreactors throughout the country. These landfill projects will enable EPA to evaluate benefits of different alternative liners and leachate recirculation systems under various terrains and operating conditions. The terms of each XL project are contained in a Final Project Agreement (FPA) for that landfill. The Final Project Agreement for each landfill project is available for public review at the EPA Docket in Washington, D.C., in each EPA regional library in which the landfill is located, and on the worldwide web at http://www.epa.gov/projectxl/.

DATES: Public Comments: Comments on the proposed rule must be received on or before May 16, 2001.

Public Hearing: Commentors may request a public hearing by April 30, 2001 during the public comment period. Commentors must state the basis for requesting the public hearing. If EPA determines there is sufficient reason to hold a public hearing, it will do so no later than May 7, 2001, during the last week of the public comment period. Requests for a public hearing should be submitted to the address listed below. If a public hearing is scheduled, the date, time, and location will be made available through a **Federal Register** notice or by contacting Sherri Walker at the EPA Headquarters office. If a public hearing is held, it will take place in Asheville, North Carolina.

ADDRESSES: *Comments:* Written comments should be mailed to the RCRA Information Center Docket Clerk (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please submit an original and 3 copies of written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments and refer to Docket Number F–2000–BCLP–FFFFF. A copy should also be sent to Ms. Sherri Walker at the U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (1802) Washington DC 20460.

Request to Speak at Hearing: Requests to speak at a hearing should be mailed to the RCRA Information Center Docket Clerk (5303G), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please send an original and two copies of all comments and refer to Docket Number F–2000–BCLP–FFFFF. A copy should also be sent to Ms. Sherri Walker at the U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (1802) Washington DC 20460.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: *walker.sherri@epa.gov*. Electronic comments must be submitted as an ASCII, WordPerfect 5.1/6.1/8 format file and avoid the use of special characters or any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission.

Viewing Project Materials: A docket containing the proposed rule, supporting materials and public comments is available for public inspection and copying at the RCRA Information Center (RIC) located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA Docket Number F–2000–BCLP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15 per page. Project materials are also available for review on the worldwide web at *http://www.epa.gov.projectxl/* and in the regional office where the project is located.

FOR FURTHER INFORMATION CONTACT: Ms. Sherri Walker at the U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (1802), Washington DC 20460, (202) 260–4295, walker.sherri@epa.gov. Further information on today's action may also be obtained on the worldwide web at http://www.epa.gov/projectxl/.

SUPPLEMENTARY INFORMATION:

Outline of Today's Document

The information presented in this preamble is arranged as follows:

I. Authority

This rule is published under the authority of sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6907, 6912, 6945, and 6949).

II. Background

A. What Is Project XL?

Project XL is an EPA initiative to allow regulated entities to achieve better environmental results at less costs. Project XL—"eXcellence and Leadership"—was announced on March 16, 1995 as a central part of the National Performance Review and EPA's efforts to reinvent environmental protection. See 60 FR 27282 (May 23, 1995).

Specifically, Project XL gives a limited number of regulated entities the opportunity to develop their own pilot projects and alternative strategies to achieve environmental performance that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other XL projects to determine which specific elements of the projects, if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Project XL is intended to allow EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site specific or state specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project is not an indication that EPA plans to adopt that interpretation as a general matter or even in the context of other XL projects. It would be inconsistent with the forward looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether they are viable in practice and successful for the particular project that embody them. These pilot projects are not intended to be a means for piecemeal revision of entire programs.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited site specific or state specific basis and in connection with a carefully selected pilot project is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions (e.g., section 8001 of RCRA, 42 U.S.C. 6981).

Under Project XL, participants in four categories (facilities, industry sectors, governmental agencies, and communities) are offered the opportunity to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: (1) Superior environmental performance; (2) cost savings and paperwork reduction; (3) stakeholder involvement and support; (4) test of an innovative strategy; (5) transferability; (6) feasibility; (7) identification of monitoring, reporting, and evaluation methods; and (8) avoidance of shifting risk burden. The project must have full support of affected federal, state, and tribal agencies to be selected. For more information about the XL criteria, readers should refer to two descriptive documents published in the **Federal Register** (60 FR 27282, published May 23, 1995 and 62 FR 19872, published April 23, 1997) and the document entitled "Principles for Development of Project XL Final Project Agreements," dated December 1, 1995.

Development of a Project has four basic phases: the initial pre-proposal phase where the project sponsor comes up with an innovative concept that it would like EPA to consider as an XL pilot; the second phase where the project sponsor works with EPA and interested stakeholders in developing its XL proposal; the third phase where EPA, local regulatory agencies, and other interested stakeholders review the XL proposal; and the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing the FPA and legal mechanism. The XL pilot proceeds into the implementation phase and evaluation phase after promulgation of the required federal, state and local legal mechanisms and after the designated participants sign the FPA.

The Final Project Agreement (FPA) is a written agreement between the project sponsor and regulatory agencies. The FPA contains a detailed description of the proposed pilot project. It addresses the eight Project XL criteria and discusses how EPA expects the project to meet that criteria. The FPA identifies performance goals and indicators which will enable the project sponsor to demonstrate superior environmental benefits. The FPA also discusses administration of the agreement, including dispute resolution and conditions for termination of the agreement. On July 28, 2000, EPA published a notice in the **Federal Register** requesting comments on the draft FPA for Buncombe County bioreactor landfill XL project (65 FR 46456). The FPA was signed on September 18, 2000. A copy of the FPA is available in the docket and on the world wide web at http://www.epa.gov/projectxl/.

B. What Are Bioreactor Landfills?

A bioreactor landfill is generally defined as a landfill operated to transform and stabilize the readily and moderately decomposable organic constituents of the waste stream by purposeful control to enhance the microbiological process. Bioreactor landfills often employ liquid addition to supplement leachate for recirculation. A byproduct of the decomposition process is landfill gas, which includes methane, carbon dioxide, and volatile organic compounds (VOCs). Landfill gases are produced sooner in a bioreactor landfill than in a conventional landfill. Therefore, bioreactors often incorporate state of the art landfill gas collection.

On April 6, 2000, EPA published a document in the **Federal Register** (65 FR 18015) requesting information on bioreactor landfills because the Agency is considering whether and to what extent the Criteria for Municipal Solid Waste Landfills, 40 CFR part 258, should be revised to allow for leachate recirculation over alternative liners in MSWLF. EPA requested information about liquid additions and leachate recirculation in MSWLFs to the extent currently allowed, i.e., in MSWLFs designed and constructed with a composite liner as specified in 40 CFR 258.40(a)(2).

Proponents of bioreactor technology note that operation of MSWLFs as bioreactors provide a number of environmental benefits including: (1) Increasing the rate of waste decomposition which in turn extends the operating life of the landfill and lessens the need for additional landfill space or other disposal options; (2) decreasing or even eliminating the quantity, and increasing the quality of leachate requiring treatment and offsite disposal, leading to decreased risks and costs associated with leachate management, treatment and disposal; (3) reduced post-closure care costs and risks, due to the accelerated, controlled settlement of the solid waste during

landfill operation; (4) lower long term potential for leachate migration into the subsurface environment; and (5) opportunity for recovery of methane gas for energy production.

There are several XL projects involving operation of landfills as bioreactors throughout the country. These landfill projects will enable EPA to evaluate benefits of different alternative liners and leachate recirculation systems under various terrains and operating conditions. As expressed in the above referenced April 2000 **Federal Register** document, EPA is interested in assessing the performance of landfills operated as bioreactors and these XL projects could contribute valuable data.

The Buncombe County project and other XL projects would provide additional information on the performance of MSWLFs when liquids are added to a landfill constructed with an alternative liner system. The Agency is also interested in assessing the performance of various types of alternative liners and how they meet the design performance standard under bioreactor conditions.

The terms of the Buncombe County bioreactor project are contained in a Final Project Agreement. EPA sought public comment on the draft FPA through August 29, 2000. The Final Project Agreement is available to the public at the EPA Docket in Washington, DC, from the Region 4 XL Coordinator, and on the worldwide web at http://www.epa.gov/projectxl/.

III. Overview of the Buncombe County Landfill XL Project

The Buncombe County Solid Waste Management Facility operates a RCRA Subtitle D municipal solid waste landfill in an area north of Asheville in Buncombe County, western North Carolina. The landfill began operation in 1997. The landfill facility encompasses approximately 600 acres although only a portion of that acreage is used for landfilling operations at this time. The French Broad River traces the south and west border of the landfill facility acreage. To date three cells of the planned 10 cells for the facility have been constructed and are in operation.

Cells 1 and 2 of the landfill facility were constructed in 1997 with the standard composite liner system prescribed in EPA regulations implementing RCRA Subtitle D for MSWLFs. The standard liner consists of 24 inches of compacted clay with a hydraulic conductivity of no more than 1×10^{-7} cm/sec overlain by a 60 millimeter High Density Polyethylene (HDPE) membrane. Cell 3 was constructed with an alternative liner system consisting of 18 inches of compacted clay with a hydraulic conductivity of no greater than 1×10^{-5} cm/sec overlain by a geosynthetic clay liner (GCL) with a hydraulic conductivity of no greater than 5×10^{-9} cm/sec and a 60-mil HDPE liner.

Cells 1, 2, and 3 were constructed with a leachate collection/drainage system consisting of two feet of crushed stone. A 28 oz. fabric cushion protects the underlying synthetic liner from penetration or abrasion from the stone. Interior walls of each cell (lift) slope to a collection sump where leachate is pumped out over the cell wall (i.e., no liner penetration). A central leachate collection line was also installed in Cell 3 to improve leachate collection due to the lesser interior slopes. Leachate is pumped from each of the cells to a 1.5 million gallon composite lined leachate holding pond. A tanker truck pumps leachate from the holding pond and hauls it to a wastewater treatment plant located seven miles from the landfill facility.

A. Description of the Project

Buncombe County intends to construct and operate a combined leachate recirculation and gas recovery system in prototype Cells 4 and 5 for which construction began in August, 2000. Cells 4 and 5 would be constructed with the same alternative liner system as was installed in Cell 3. If operation of these prototype cells is successful, Buncombe County will construct the remaining Cells 6–10 with the same alternative liner system and combined leachate recirculation and gas recovery system. Buncombe also intends to begin recirculation of leachate in Cell 3 if the proposed rule is finalized. Recirculation of leachate would not be permitted under the current federal regulations using the alternative liner proposed by Buncombe County.

Prior to adding any supplemental liquids to the facility, Buncombe County will prepare a comprehensive landfill stability analysis under recirculation conditions with supplemental liquids. Buncombe County will submit this analysis to three university professors who are recognized as experienced in the field of geotechnical engineering in general and landfill slope stability. The County will incorporate comments from these professors into a final stability analysis for their review. The County will forward the analysis along with letters from the reviewing professors stating that the landfill should remain stable under the operating plan developed by the County, to the USEPA and the State of North Carolina for concurrence prior to adding any supplemental liquids.

As is the case with Cells 1, 2, and 3, Buncombe County will install an automatic submersible pump at the collection point at the bottom of each landfill cell with appurtenant piping to pump the leachate collected to the leachate holding pond. The pump engages automatically when the leachate reaches a certain depth above the pump. A new pump system and dedicated force main will be constructed at the leachate holding pond to direct leachate back to the landfill cells for recirculation.

During operation, solid waste will be added and compacted in layers above the landfill liner and leachate collection system. Additional piping will be installed in a horizontal configuration as the solid waste layers build. The piping will be used to redistribute leachate pumped from the leachate holding pond and to collect landfill gas.

As further protection against liner leakage, performance of the liner system will be monitored by an adjunct leak detection system underlying the compacted soil layer of the sump portion of each landfill cell. The leak detection system will consist of 60-mil HDPE liner placed on a prepared subgrade. Any leakage through the primary composite liner system would be captured on the 60 mil HDPE liner and fed to a sump. A 4-inch capped pipe will drain leachate collected in the sump out beyond the footprint of the landfill cell. The capped pipe will be sampled semi-annually to determine whether any leachate escaped the composite liner.

As required by 40 CFR 258.51, Buncombe County installed groundwater monitoring wells to monitor whether landfill operations impact groundwater. Two upgradient groundwater monitoring wells were installed and sampled prior to construction of the first cell to determine true background groundwater quality in the absence of any landfill construction or operation. Additional downgradient monitoring wells will continue to be installed with the construction of each landfill unit. These wells will continue to be sampled semi-annually for constituents listed in Appendix I of the North Carolina Solid Waste Management Rules.

Moisture content of the landfill waste will be monitored throughout the life of the project through a network of moisture sensors installed as waste is placed. Final design of the moisture detection system will occur with preparation of the permitting application.

Surface water quality is currently monitored at three stations around the facility. All surface water runoff from the site flows north through erosion control structures to Blevin Branch. Blevin Branch will continue to be monitored at the eastern end of the site where it originates and at the western end where it exits the landfill facility.

Leachate would be applied to landfill waste during operations to provide enhanced conditions for rapid waste decomposition. If additional water is needed to achieve optimal moisture level, this water would be drawn from the French Broad River.

Leachate would be injected below the landfill surface to prevent contact with employees or users of the landfill. In addition, the County may apply leachate to the working face after the landfill has stopped receiving customers and just before the day's waste is covered. At that time, the only people nearby would be the driver of the leachate spray truck and the heavy equipment operators placing the soil cover. These persons should not come in contact with the leachate. If supplemental river water is used, it will first be discharged to the leachate collection pond before application to the landfill or the river water will be applied directly to the working face of the landfill by tanker truck. The recirculation system will be designed and operated to allow application of leachate in small, discreet areas as needed to maintain an optimum moisture level.

The volume of leachate and supplemental water added back to the landfill will be monitored throughout the life of the project. Recirculation quantities will be quantified using flow sensors installed on the leachate discharge line at the leachate holding pond and on the delivery lines to each cell. The objective is to determine the amount of leachate returned to each cell individually and determine an optimum moisture content and application rate.

Proponents of leachate recirculation claim that there is an improvement in leachate quality due to the aerobic and anaerobic decomposition of constituents which serve as a food source to the bacteria. Improved leachate quality is an indicator of a stabilized waste mass that poses a decreased threat to groundwater supplies should the containment system breach at some future date. Buncombe County will sample leachate from each cell semi-annually to determine whether leachate quality is improving.

Since effective degradation of the waste mass and gas production depend on optimizing the temperature within the landfill cell, temperature gauges will be installed along with the moisture sensors as waste is added to the landfill. As each cell reaches design grade, monuments will be installed to monitor settlement of the waste. Monument settlement will be evaluated semi-annually. Additionally, annual aerial topographic surveys will be conducted to evaluate settlement and the effectiveness of the leachate recirculation system.

B. What Are the Environmental Benefits Anticipated Through Project XL?

Under the FPA for the Buncombe County bioreactor project, the expected superior environmental benefits include: (1) maximizing landfill gas control and minimizing fugitive methane and VOC emissions; (2) greater recovery of landfill gas; (3) landfill life extension and/or reduced landfill use; and (4) minimizing leachate associated groundwater concerns.

1. Maximizing Landfill Gas Control and Minimizing Fugitive Methane and VOC Emissions

Landfill gas contains roughly 50% methane, a potent greenhouse gas. In terms of climate effects, methane is second in importance only to carbon dioxide. Landfill gas also contains volatile organic compounds (VOC's) that are air pollutants of local concern. Buncombe County will immediately begin collecting landfill gas by installing a gas collection system consisting of a surface permeable gas collection layer overlain by a cover of soil with an embedded membrane. Gas will be withdrawn such that this permeable layer beneath surface containment will be at a slight vacuum. This system will minimize the amount of landfill gas emitted to the environment. Buncombe County will immediately begin collecting landfill gas once recirculation operations begin.

2. Expedited Methane Generation/ Recovery

If the landfill were operated as a conventional landfill, the County would likely not have to install a gas collection system at this facility under New Source Performance Standards (NSPS) for several years. However, in the Buncombe bioreactor, the majority of the methane will be generated over a much earlier and shorter time period than a conventional landfill. The County has committed to installing the system and collecting gas as soon as recirculation begins which should make the total amount of gas collected at this site greater than if it operated conventionally and only complied with NSPS. This is expected to minimize the long-term low-rate methane generation often lost in conventional landfill practices.

3. Landfill Life Extension And/or Reduced Landfill Use

The more rapid conversion of greater quantities of solid waste to gas reduces the volume of the waste. Volume reduction translates into either landfill life extension and/or less landfill use. Thus, this bioreactor landfill will be able to accept more waste over its working lifetime, subject to applicable State regulatory requirements. Additionally, fewer landfills may be needed to accommodate the same inflows of waste from a given population.

4. Minimizing Leachate–Associated Concerns

Research has shown that bioreactor processes can reduce the concentration of many pollutants in leachate. These include organic acids and other soluble organic pollutants. Since a bioreactor operation brings pH to near-neutral conditions, metals of concern are largely precipitated and immobilized in the waste.

C. How Have Various Stakeholders Been Involved in this Project?

Buncombe County encouraged stakeholder involvement during the project development stage in several ways. The methods included communicating through the media (newspaper, e-mails, and XL website); directly contacting interested parties; and offering an educational program regarding the regulatory requirements impacted by the XL project. Buncombe County has continued to keep stakeholders informed on the project status via mailing lists, newspaper articles, and public meetings; and EPA has posted information on the website at URL: *http://www.epa.gov/projectxl/buncombe/index.htm*. In addition, Buncombe County has initiated stakeholder involvement by televising a presentation of the issues associated with the landfill originally presented to the Buncombe County Commissioners' Annual Retreat. The State of North Carolina and EPA are kept informed of issues as they arise.

Representatives from the local community and the Blue Ridge Environmental Defense League participated in conference calls and meetings with the Project XL team and provided comments during the development of the Final Project Agreement.

Few local stakeholders other than immediate residents have expressed interest in actively participating in the

development of the project. Copies of all comment letters, as well as EPA's response to comment letters, are available on the website.

As this XL project is implemented, the stakeholder involvement program will shift its focus to ensure that: (1) Stakeholders are apprized of the status of project implementation; and, (2) stakeholders have access to information sufficient to judge the success of this Project XL initiative. Anticipated stakeholder involvement during the term of the project will likely include other general public meetings to present periodic status reports, availability of data and other information generated. Buncombe County will convene periodic meetings for interested stakeholders to brief them on progress during the duration of the XL Agreement. In addition to the reporting requirements of today's proposed rule, the FPA includes provisions whereby the County will make copies of project reports available to all interested parties. A public file on this XL project has been maintained at the website throughout project development, and the EPA will continue to update it as the project is implemented. Additional information is available at EPA's website at http://www.epa.gov/projectxl.

A detailed description of this program and the stakeholder support for this project is included in the Final Project Agreement, which is available through the docket or through EPA's Project XL site on the Internet (see **ADDRESSES** section of this preamble).

Buncombe County has preliminarily identified the following stakeholders, and additional stakeholders may be added over time:

—Buncombe County General Services Department

—Buncombe County Citizens, as represented by the Buncombe County Board of Commissioners

—Buncombe County Environmental Affairs Board, representing citizens of Buncombe County

—The North Carolina Chapter of the Solid Waste Association of North America (NCSWANA)

—The Western North Carolina Regional Air Pollution Control Agency (which has authority to issue a Title V Permit under the Clean Air Act)

—Blue Ridge Environmental Defense League

—Counsel of Independent Business Owners

—Nearby residents

D. How Will This Project Result in Cost Savings and Paperwork Reduction?

With respect to Cell 3, the alternative liner system saved Buncombe County nearly $400,000 as compared with the standard composite system. It is estimated that the County will save a total of $5 million through build-out of the facility if the alternative liner system is used. Other potential cost savings from the project include:

1. $5–$10 million in reduced construction costs for additional landfill capacity if an increase of 20%–30% in additional waste volume can be achieved due to rapid waste decomposition during operations; and,

2. $9 million if leachate hauling and off-site treatment can be eliminated. No appreciable reduction in paperwork is anticipated.

IV. What Regulatory Changes Will Be Necessary To Implement This Project?

A. Existing Liquids Restriction for MSWLFs (40 CFR 258.28)

EPA is proposing a site-specific rule to grant regulatory flexibility from 40 CFR 258.28 Liquid Restrictions, which restricts placement of liquid wastes in a MSWLF. Under the existing rule, bulk or noncontainerized liquid waste is not allowed to be placed in a MSWLF unit unless (1) the waste is household waste other than septic waste, or (2) the waste is leachate or gas condensate derived from the MSWLF unit and the MSWLF unit is designed with a composite liner and leachate collection system as described in § 258.40(a)(2). As stated above, Buncombe County seeks to recirculate leachate derived from the landfill, possibly supplemented with river water, to Cell 3 and future cells, all of which have or are expected to have a liner system that differs from the liner prescribed in 40 CFR 258.41(a)(2). Cells 1 and 2 were constructed with the prescribed liner, and therefore would be allowed to receive leachate and gas condensate under 40 CFR 258.28(a)(2).

EPA has entered into Final Project Agreements for several bioreactor pilot projects. Each of these projects will require a site-specific rulemaking in order to be implemented. EPA is proposing to amend 40 CFR 258.28(a) by adding a new subsection (3) to allow liquids to be added to municipal solid waste landfills that are subject to site-specific provisions set forth in a new 40 CFR 258.41. This amendment to § 258.28(a) would apply to all Project XL MSWLF bioreactor projects. Until such an amendment is promulgated, EPA is including this amendment in each site specific rule proposal, to ensure that this provision can be promulgated with the first site specific rule. Therefore, the amendment to § 258.28(a) is included in today's proposal.

B. Proposed Site-Specific Rule

Today's proposal would amend 40 CFR 258.28(a) by adding a new paragraph § 258.28(a)(3) to refer to a new section of the rules, § 258.41. The new § 258.41(a) would specifically apply to the Buncombe County Solid Waste Management Facility in Buncombe County, North Carolina and would allow Cells 1–10 of the landfill to utilize recirculation of leachate supplemented with river water, as long as each cells meets the design criteria and other requirements set forth in § 258.41(a).

1. Design Specifications

Currently, federal regulations outline two methods for complying with liner requirements for municipal solid waste landfills. The first method is a performance standard under 40 CFR 258.40(a)(1). This standard allows installation of any liner configuration provided the liner design is approved by an EPA approved state and the design ensures that certain constituent concentrations are not exceeded in the uppermost aquifer underlying the landfill facility at the point of compliance.

The second method is set out in 40 CFR 258.40(a)(2) and (b). Section 258.40(b) sets forth a specific liner design which consists of two components: (1) An upper component comprising a minimum of 30 mil flexible membrane liner (60 mil if High Density Polyethylene (HDPE) is used); and (2) a lower component comprising at least two feet of compacted soil with a hydraulic conductivity no greater than 1×10^{-7} cm/sec.

As stated earlier, leachate recirculation in municipal landfills is allowed under 40 CFR 258.28(a)(2) but only if the liner system complies with the design standard set out under 40 CFR 258.40(b) and a leachate collection system as described in § 258.40(a)(2). The reason that the existing regulation requires a leachate collection system and a composite liner design as specified § 258.40(a)(2) is to ensure that contaminant migration to the aquifer is controlled. (56 FR 50978, 51056 (Oct. 9, 1991)).

Under today's proposal, 40 CFR 258.41(a) would specifically address Buncombe County Landfill in Alexander, North Carolina and would allow Cells 3 –10 of that landfill to recirculate leachate over an alternative liner as long as those cells met the

requirements set forth in that subsection. Section 258.41(a)(4) would provide an alternative to the landfill liner design requirements set forth at 40 CFR 258.40(a)(2) and (b). These design criteria would be identical to the liner design described in 40 CFR 258.40(b), except that the upper component would include a 60 mil HDPE liner overlying a GCL with a hydraulic conductivity of no greater than 1×10^{-9} cm/sec. The lower component of the composite liner would consist of 18 inches of compacted soil with a hydraulic conductivity of not more than 1×10^{-5} cm/sec. The GCL will overlay and be in direct contact with the compacted soil layer.

The State of North Carolina reviewed the alternative liner system proposed for Cell 3 prior to approval and authorization for construction. The state's alternative liner design showed a leakage rate through the standard Subtitle D liner system and compared that figure against rates calculated for the alternative liner system proposed for Cell 3. The standard liner calculations produced a leakage rate of 1.12 gallons/acre/day while the alternative liner calculations produced a leakage rate of only 0.53 gallons/acre/day (North Carolina Permitting Guidance for Alternative Composite Liner Systems, June 1, 1998). The alternative liner's leakage rate is expected to be less than half that of the standard prescribed liner. The modeling performed to complete the demonstration of the acceptability (and superiority) of the alternative liner involves inputting the leakage rates into EPA's MULTIMED model, which simulates the movement of contaminants leaching from a landfill. The output of the MULTIMED model reflects the fact that the alternative liner is more protective than the standard regulatory liner. Based on this information, EPA is satisfied that the liner design will afford as much, if not more, protection to groundwater as the standard composite liner specified in 40 CFR 258.41(a).

As further protection against liner leakage, the proposed rule would require cells 3 –10 to be constructed with an adjunct leak detection system underlying the compacted soil layer of the sump portion of each landfill cell. The leak detection system would be required to consist of 60-mil HDPE liner placed on a prepared subgrade. Any leakage through the primary composite liner system would be captured on the 60 mil HDPE liner and fed to a sump. The design specifications would also require a 4-inch capped pipe to drain leachate collected in the sump out beyond the footprint of the landfill cell.

Based on the modeling for the alternative liner, in conjunction with the leak detection system, EPA believes that the addition of landfill leachate into cells 3–10 will not result in any increased leakage to groundwater from the bioreactor cells. EPA seeks comment on allowing the addition of liquids to cells 3–10 if constructed with the proposed alternative liner.

The proposed rule would not change the requirement in 40 CFR 258.28(a)(2) that a leachate collection system as described in 40 CFR 258.40(a)(2) be in place in order for leachate to be recirculated in the landfill unit. Buncombe County's proposed design for Cells 3–10 would still be required to have leachate collection systems designed to maintain leachate over the liner to a depth of no more than 30 cm.

2. Operational Requirements

The proposed rule would only allow certain liquid waste to be added to the Buncombe County facility. Section 258.41(a)(2) would authorize only leachate or gas condensate derived from the MSWLF, which may be supplemented with water from the French Broad River. Buncombe County would also be required to control liquids addition in order to assure that the average moisture content of the landfill does not exceed 50% by weight. EPA is proposing a moisture content of 50% by weight because this is in the middle of the 40%–70% range commonly accepted as needed for biological reaction to go forward in a bioreactor landfill.[1] The proposal allows the State Director to establish a different maximum limit on landfill unit moisture content if the State Director determines that a different limit is either necessary to maintain the integrity of the landfill and its liner system or to increase the reaction rate, provided landfill and liner system integrity are maintained. As previously stated, prior to adding any supplemental liquids to the facility, Buncombe County will prepare a comprehensive landfill stability analysis under recirculation conditions with supplemental liquids and will submit this analysis to three university professors who are recognized as experienced in the field of geotechnical engineering in general, and landfill slope stability. The proposed rule also includes, as a prerequisite to adding liquids, the requirement that Buncombe County receive an air quality permit from the Western North Carolina Regional Air Quality Agency incorporating requirements for Buncombe County Landfill XL project. The air quality permit is also referred to as the Federally-Enforceable State-Operating Permit (FESOP). The air permit addressing the potential for earlier gas generation was issued on November 13, 2000 and would be required to be in effect during the entire period of leachate recirculation and post closure period. As described above in section III.B., Expected Superior Environmental Performance, one result of adding liquids to a landfill is that landfill gases will be generated earlier and over a shorter period than in a conventional landfill.

3. Monitoring and Reporting

As discussed above in section III.A., Description of the Project, an important element of the project is the information about bioreactor operation, alternative liner performance, waste decomposition efficiency, and potential environmental impacts. The proposed rule would require Buncombe County to monitor certain parameters which are not required for conventional MSWLFs under 40 CFR part 258. Some of this data, for example, moisture content, would be required in order to assess the physical stability of the landfill unit. The proposed rule would also require Buncombe County to report data obtained from the required monitoring to the State and EPA on an annual basis.

4. Duration of Authority

The FPA calls for the project to continue for 25 years in order to take into account the bioreactor process in all 10 cells of the facility. Therefore, today's proposal would provide that 40 CFR 258.41(a) be in effect for 25 years from the effective date of the rule.

The proposal also includes an early termination provision in the event of noncompliance with the requirements of 40 CFR 258.41(a). The EPA Regional Administrator for Region 4 would be authorized to issue a notice of termination, stating the reason for the decision to terminate the authority under 40 CFR 258.41(a). The Regional Administrator could terminate the rule with respect to all or part of the landfill cells for which the site-specific authority to add liquids would be required (Cells 3–10). Termination would take effect 60 days from the date of the notice, unless the Regional Administrator determined, in writing, to rescind the termination. In the event of termination, all the applicable regulatory requirements of 40 CFR part 258 that would have applied to the Buncombe County facility in the absence of 40 CFR 258.41(a) would be

[1] Reinhart, Debra R. and Townsend, Timothy G., *Landfill Design and Operation* (Lewis Pub. 1998), p. 140.

applicable. However, the Regional Administrator could establish an interim compliance period if deemed necessary to complete the transition from bioreactor operation to conventional "dry tomb" operation.

This provision for early termination of the rule is not exclusive. In addition to termination for noncompliance, the FPA allows any party to the agreement to terminate the project before the end of 25 years, for any reason. In the event that EPA determines that this project and site-specific rule should be terminated for reasons other than noncompliance before the end of the 25 year period and that the site-specific rule should be rescinded, the Agency would withdraw this rule through a subsequent rulemaking. This will afford all interested persons and entities the opportunity to comment on the proposed early termination and withdrawal of regulatory authority, and the proposed termination would also include any proposal for an interim compliance period while Buncombe County returned to full compliance with the existing requirements of 40 CFR part 258.

In addition, new laws or regulations may become applicable during the project term which might render the project impractical, or might contain regulatory requirements that supersede this XL Project. Or, during the project duration, EPA may decide to change the federal rule allowing recirculation over alternative liners and the addition of outside bulk liquids for all Subtitle D landfills. In that event, the FPA and site-specific rule for this project would no longer be needed.

V. Additional Information

A. How To Request a Public Hearing

If requested, a public hearing will be held to provide opportunity for interested persons to make oral presentations regarding this proposed rulemaking, in accordance with 40 CFR part 25. Persons wishing to make an oral presentation on the proposed site specific rule to implement a leachate recirculation system with an alternative liner at the Buncombe County Landfill should contact Sherri Walker at the address given in the **ADDRESSES** section of this document. Any member of the public may file a written statement before the hearing or after the hearing to be received by EPA no later than fourteen days after publication of this proposed rulemaking. Written statements should be sent to EPA at the addresses given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the **ADDRESSES** section of this preamble.

B. How Does This Rule Comply With Executive Order 12866: Regulatory Planning and Review?

Because this rule affects only one facility, it is not a rule of general applicability and therefore not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site specific rules under Project XL is not necessary.

C. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and public comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Only the definition of "small governmental jurisdiction" is relevant here. 5 U.S.C. 601(5) defines "small governmental jurisdiction" to mean governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. According to Buncombe County officials, the county population in 1990 exceeded 150,000; thus, Buncombe County does not qualify as "small governmental jurisdiction" within the meaning of 5 U.S.C. 601(5). Consequently, EPA can certify that this proposed rulemaking will not have an significant impact on a small governmental jurisdiction and is not required to conduct a regulatory flexibility analysis.

D. Is an Information Collection Request Required for This Project Under the Paperwork Reduction Act?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA), 4 U.S.C. 3501 *et seq.* The requirements of this proposed rule would not apply to 10 or more entities, therefore the PRA does not apply.

E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?

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

As discussed above, this proposed rulemaking has limited application. It applies only to the Buncombe County Solid Waste Management Facility. If adopted, this proposed rule would result in a cost savings for Buncombe County when compared with the costs it would have had to incur if required to adhere to the requirements contained in the current rule. As such, this proposed rule would not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, or tribal governments, in the aggregate, or the private sector in any one year. While this proposed rule would have a unique affect for Buncombe County, the population of Buncombe County exceeds that which would qualify it as a "small government," therefore, EPA is not required under section 203 of UMRA to develop a small government plan.

However, EPA has worked with and continues to work with Buncombe County, affected citizens, and other stakeholders in seeking meaningful and timely input into the development of the Final Project Agreement and this proposed rule. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant," as defined in Executive Order 12886; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to potentially effective and feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The proposed rule does not involve decisions based on environmental health or safety risks because it is limited to modifying a regulatory construction standard for a municipal solid waste liner that is expected to result in a liner which performs at least as well as the liner design specified in the current regulations and for a lesser construction cost.

G. How Does This Rule Comply With Executive Order 13132: Federalism

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

The proposed rule does not have federalism implications. It will not have substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of powers and responsibilities among various levels of government, as specified in Executive Order 13132. The proposed rulemaking will only affect one local governmental entity and state and would provide regulatory flexibility for each entity concerned. Thus, Executive Order 13132 does not apply to this proposed rule.

H. How Does This Rule Comply With Executive Order 13175: Consultation and Coordination With Indian Tribal Governments?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "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 proposed rule does not have tribal implications. It 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. EPA is currently unaware of any Indian tribes located in the vicinity of the landfill or Buncombe County. Thus, Executive Order 13175 does not apply to this rule.

I. Does This Rule Comply With the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, requires that EPA use voluntary consensus standards in its regulatory activities unless such practice is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, material specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standard bodies. If EPA elects not to use available and applicable voluntary consensus standards, EPA must provide an explanation to Congress, through OMB, as to why EPA is not using the standard.

This proposed rulemaking involves technical standards. This rule complies with the requirements of the NTTAA because it utilizes existing voluntary consensus standards developed by the American Society of Testing and Materials (ASTM). The ASTM is a voluntary consensus standards-setting body under the NTTAA. EPA proposes to use ASTM D5261 and ASTM D2216 as standards for the geosynthetic liner specified in proposed 40 CFR 258.41(a)(4)(iii). These standards assure the proper standards of production for geotextiles and geosynthetic clay liners addressed in today's proposed rule. Both standards were approved on June 15, 1992. They are available from ASTM through their website, http://www.astm.org/, or by contacting them at ASTM, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania, 19428–2959. In addition, EPA asks the public to identify potentially applicable voluntary consensus standards not addressed by EPA and explain why this standard is applicable and how it should be applied in this regulation.

List of Subjects in 40 CFR Part 258

Environmental protection, Solid waste, Landfill.

Dated: April 3, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 258 of title 40 chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS—[AMENDED]

1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c), and 6949a(c).

Subpart C—Operating Criteria

2. Amend § 258.28 by:

a. Removing "or" at the end of paragraph (a)(1).

b. Removing the period at the end of paragraph (a)(2) and adding in it's place "; or'.

c. Adding paragraph (a)(3).

The addition reads as follows:

§ 258.28 Liquids restrictions.

(a) * * *

(3) The MSWLF unit is a Project XL MSWLF and meets the applicable requirements in § 258.41. The owner or operator must place documentation of the landfill design in the operating record and notify the State Director that it has been placed in the operating record.

* * * * *

Subpart D—Design Criteria

3. Section 258.41 is added to read as follows:

§ 258.41 Project XL bioreactor landfill projects.

(a) *Buncombe County, North Carolina Project XL Bioreactor Landfill Requirements.* Paragraph (a) of this section applies to Cells 1, 2, 3, 4, and 5 of the Buncombe County Solid Waste Management Facility located in the County of Buncombe, North Carolina, owned and operated by the Buncombe County Solid Waste Authority, or its successors. This subsection will also apply to Cells 6, 7, 8, 9, and 10, provided that the EPA Regional Administrator for Region 4 and the State Director determine that the pilot project in Cells 3, 4, and 5 is performing as expected and that the pilot project has not exhibited detrimental environmental results.

(1) The Buncombe County Solid Waste Authority is allowed to place liquid waste in the Buncombe County Solid Waste Management Facility, provided that the provisions of paragraphs (a)(2) through (9) of this section are met.

(2) The only liquid waste allowed under this section is leachate or gas condensate derived from the MSWLF, which may be supplemented with water from the French Broad River. The owner or operator shall control any liquids to the landfill to assure that the average moisture content of the landfill does not exceed 50% by weight. Liquid addition and recirculation is allowed only to the extent that the integrity of the landfill including its liner system is maintained, as determined by the State Director.

(3) The MSWLF unit shall be designed and constructed with a liner and leachate collection system as described in § 258.40(a)(2) or paragraphs (a)(4) and (5) of this section. The owner or operator must place documentation of the landfill design in the operating record and notify the State Director that it has been placed in operating record;

(4) Cells 3–10 shall be constructed with a liner system consisting of the components described in paragraphs (a)(4)(i) through (v) of this section, or an equivalent or superior liner system as determined by the State Director:

(i) A lower component consisting of at least 18 inches of compacted soil with a hydraulic conductivity of no more than 1×10^{-5} cm/sec., and

(ii) An upper component consisting of a minimum 30-millimeter ("mil") flexible membrane liner (FML) or 60-mil if High Density Polyethylene ("HDPE") is used, and

(iii) A geosynthetic clay liner (GCL) overlaying and in direct contact with the 18 inches of compacted soil in paragraph (a)(4)(i) of this section and having the following properties:

(A) The GCL shall be formulated and manufactured from polypropylene geotextiles and high swelling containment resistant sodium bentonite. The bentonite-geotextile liner shall be manufactured using a minimum of one pound per square foot as determined using ASTM D5261 test method, of a high swelling sodium montmorillonite clay at 12% moisture content as determined by the ASTM D2216 test method.

(B) The encapsulating geotextile shall be polypropylene and shall have a minimum weight of 6 oz./square yard.

(iv) The upper component shall be installed in direct and uniform contact with an overlaying soil cushioning component.

(v) Underlying the above liner system, there shall also be installed a leak detection system consisting of a 60-mil HDPE liner placed on a prepared subgrade.

(A) A 4 inch capped pipe will drain liquid collected in the sump out beyond the footprint of the landfill cell.

(B) Water collected on the leak detection liner shall be monitored at least semi-annually as directed by the State Director to determine whether any leachate escaped the liner system.

(5) Cells 3–10 shall be designed and constructed with a leachate collection system to maintain less than 30 centimeters depth of leachate is present at the sump location. The leachate collection system shall include a continuous monitoring system to monitor depth of leachate.

(6) The owner/operator shall keep the Federally Enforceable State Operating Permit (FESOP) issued the by the Western North Carolina Air Quality Agency for the Buncombe County Solid Waste Management Facility in effect, and shall comply with the provisions of the FESOP, during the entire period of leachate recirculation and the post closure period. The FESOP was issued on November 13, 2000 and contains the air quality requirements for the Buncombe County Landfill XL project.

(7) Monitoring and Reporting Requirements. The owner or operator of the Buncombe County Solid Waste Management Facility shall monitor for the parameters listed in paragraphs (a)(7)(i) through (xiii) of this section and submit an annual report on the XL project to the EPA Regional Administrator for Region 4 and the State Director. The first report is due coincident with the October 2001 report to the state. The report should state what progress has been made toward the superior environmental performance and other commitments as stated in the Final Project Agreement. The report shall include, at a minimum, the following data:

(i) Amount of landfill gas generated;

(ii) Percent capture of landfill gas, if known;

(iii) Quality of the landfill gas, amount and type of liquids applied to the landfill;

(iv) Method of liquids application to the landfill;

(v) Quantity of waste placed in the landfill;

(vi) Quantity and quality of leachate collected;

(vii) Quantity of leachate recirculated back into the landfill;

(viii) Information on the pretreatment of waste applied to the landfill;

(ix) Data collected on landfill temperature and moisture content;

(x) Data on the leachate pressure (head) on the liner;

(xi) Observations, information, and studies made on the physical stability of the MSWLF units that are developed during the project term, if any.

(xii) The above data may be summarized, and, at a minimum shall contain, the minimum, maximum, median, and average data points as well as the frequency of monitoring as applicable.

(xiii) The method and frequency of monitoring shall be specified by the State Director.

(8) Termination and Withdrawal.

(i) Paragraph (a) of this section will terminate 25 years from its effective date, unless a subsequent rulemaking is issued or terminated earlier pursuant to paragraph (a)(8)(ii) of this section.

(ii) In the event of noncompliance with paragraph (a) of this section, EPA may terminate the authority under paragraph (a) of this section and the authority to add liquid wastes to all or part of cells 3–10 under § 258.28(a)(3). The EPA Regional Administrator will provide written notice of intent to terminate to the Buncombe County Solid Waste Authority with a copy to

the State Director. The notice will state EPA's intent to terminate under the rules and will include a brief statement of EPA's reasons for its action. The termination will take effect 60 days from the date of the notice, unless the EPA Regional Administrator for Region 4 issues a written notice rescinding the termination.

(9) Compliance Requirements in the Event of Termination or Withdrawal. The Buncombe County Solid Waste Management Facility will be subject to all regulatory provisions applicable to MSWLFs upon termination of authority under this section. In the event of early termination of this section, the EPA Regional Administrator for Region 4 may provide an interim period of compliance to allow Buncombe County a reasonable period of time for transition following cessation of liquids addition.

(b) [Reserved]

[FR Doc. 01–9359 Filed 4–13–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3100, 3200, 3400, 3500, 3600, and 3800

[WO–610–4111–02–24–1A]

RIN 1004–AC64

Oil and Gas Leasing; Geothermal Resources Leasing; Coal Management; Management of Solid Minerals Other Than Coal; Mineral Materials Disposal; and Mining Claims Under the General Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Bureau of Land Management (BLM) is extending the public comment period on a Notice of Proposed Rule, published in the **Federal Register** on December 15, 2000 (65 FR 78440). The proposed rule would amend BLM mineral resources regulations to increase fees and to impose new fees to cover BLM's costs of processing certain documents relating to its minerals programs. The primary purpose of this rule is to charge those who benefit from these minerals programs, rather than the general public, the costs of BLM minerals documents processing. In response to public requests for additional time, BLM had extended the comment period 60 days from the original comment period closing date of February 13, 2001, to the extended comment period's closing date of April 16, 2001. BLM is now extending the comment period by an additional 75 days to a closing date of July 2, 2001, so all segments of the affected public have enough time to respond to the proposed rule. BLM is especially interested in receiving comments related to the impact of recovering these processing costs, particularly those assessed on a case-by-case basis, on small, independent oil, gas, and minerals operations. We encourage comments and suggestions on possible mechanisms to control administrative costs and reduce the uncertainty of processing costs.

DATES: Send your comments to BLM on or before July 2, 2001, to assure BLM will consider them in preparing the final rule.

ADDRESSES: Send your comments to the Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW., Washington, DC 20240, or hand deliver comments to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington, DC. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under "Electronic access and filing address."

FOR FURTHER INFORMATION CONTACT: For questions about fluid minerals (oil, gas, geothermal resources) call Kermit Witherbee at (202) 452–0335. For questions about solid minerals, including coal, Durga Rimal at (202) 452–0372. If you require a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing Address

You can view an electronic version of this proposed rule at BLM's Internet home page: www.blm.gov. You can also comment via the Internet to: WOComment@blm.gov. Please include "Attention: AC64" and your name and return address in your Internet message. If you do not receive a confirmation from our system that we have received your Internet message, contact us directly at (202) 452–5030.

Written Comments

Written comments on the proposed rule should:

A. Be specific;

B. Be confined to issues pertinent to the proposed rule;

C. Explain the reason for any recommended change; and

D. Reference the specific section or paragraph of the proposal you are addressing.

The BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

You can review comments, including names, street addresses, and other contact information of respondents at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. If you are an individual respondent you may request confidentiality. If you request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Dated: April 10, 2001.

Piet deWitt,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 01–9401 Filed 4–13–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990927266–0240–02; I.D. 072699A]

RIN 0648–AM62

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

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

ACTION: Notice of public hearings and extension of comment deadline.

SUMMARY: By this document, NMFS announces the times, dates, and locations for public hearings in order to receive comments from the general public on the U.S. Navy's application for a Letter of Authorization for the take of small numbers of marine mammals by harassment incidental to Navy operations of the Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar. NMFS also announces an extension of the comment deadline in order to allow the public sufficient time following the close of the public hearings to submit written comments.

DATES: Public hearings on the proposed rule are scheduled as follows:

1. April 26, 2001, 6 p.m. - 9 p.m., Los Angeles, CA.

2. April 28, 2001, 1 p.m. - 5 p.m., Honolulu, HI.

3. May 3, 2001 9 a.m. - 12 noon, Silver Spring, MD.

Comments must be postmarked no later than May 18, 2001. Comments will not be accepted if submitted via e-mail or the Internet.

ADDRESSES: The public meetings will be held at the following locations:

1. Los Angeles: Renaissance Hotel,9620 Airport Boulevard, Los Angeles, CA.

2. Honolulu: Marriott Waikiki Beach Hotel, 2552 Kalakaua Avenue, Honolulu, HI.

3. Silver Spring: Silver Spring Metro Center Building 4, Auditorium, 1301 East-West Highway, Silver Spring, MD.

Comments should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

A copy of the Navy's application is available and may be obtained by writing to this address or by telephoning one of the contact listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS (301) 713–2055, ext 128 or Christina Fahy, (562) 980–4023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will be small, have a negligible impact on the species or stock(s) of affected marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Under section 101(a)(5)(A) of the MMPA, on March 19, 2001, NMFS published a proposed rule (66 FR 15375) to authorize the taking of marine mammals incidental to the world-wide deployment of the U.S. Navy's SURTASS LFA sonar. That document noted that public hearings would be held, if requested. On March 26, 2001, NMFS received the first of numerous requests for a hearing and has determined that public hearings are warranted. In addition, to allow the public sufficient time after the public hearing to submit written comments, NMFS has extended the deadline for public comment from May 3, 2001, to May 18, 2001.

At the public hearings, a brief presentation will precede a request for public information and comments. Those who intend to speak will be asked to submit a speaker card (available at the door). Although oral comments will be heard, all statements, including graphics, should be submitted in writing to assure an accurate public record. All statements and documents submitted will become part of the public record on this rulemaking. Questions limited to NMFS' responsibilities under the MMPA regarding the subject action must be made during the speaker's comment time.

Speakers will have the option to submit additional, supplemental, or replacement comments prior to the deadline for the public comment. If 20 or more speaker cards are received at either hearing, NMFS may request all speakers to limit their presentations to 3 to 5 minutes, in order to allow all potential speakers the opportunity to present their statements.

These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to one of the contacts listed (see **FOR FURTHER INFORMATION CONTACT**) at least 10 days prior to the hearing date.

Dated: April 4, 2001.

Donald R. Knowles,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–9265 Filed 4–12–01; 10:53 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 000303059–1019–02; I.D. No. 021700B]

RIN 0648–XA49

Endangered and Threatened Species; Proposed Endangered Status for a Distinct Population Segment of Smalltooth Sawfish (*Pristis pectinata*) in the United States

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

ACTION: Proposed rule, notice of availability; request for comments.

SUMMARY: NMFS has completed a comprehensive status review of smalltooth sawfish and has determined that a petitioned action to list North American populations of smalltooth sawfish as endangered is warranted. A distinct population segment (DPS) of smalltooth sawfish in the United States is in danger of extinction. NMFS has reviewed the status of the species and efforts being made to protect the species and is proposing to place the U.S. DPS of smalltooth sawfish on the list of endangered species under the Endangered Species Act of 1973, as amended (ESA). NMFS has determined that this DPS is in danger of extinction throughout all or a significant portion of its range from a combination of the following four listing factors: The present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; inadequacy of existing regulatory mechanisms; and other natural or manmade factors affecting its continued existence. If this proposed listing is finalized, the protective measures of the ESA will be extended to the U.S. DPS of smalltooth sawfish, a recovery plan will be prepared and implemented, and critical habitat may be designated.

DATES: Comments on this proposal and on the December 2000 Smalltooth Sawfish Status Review must be received

by July 16, 2001. A public hearing will be held promptly if any person so requests within 45 days of the date of this publication. Notice of the location and time of any such hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

ADDRESSES: Send all comments and materials concerning this proposed rule and the December 2000 Smalltooth Sawfish Status Review (Status Review) to the Chief, Protected Resources Division, Southeast Regional Office, NMFS, 9721 Executive Center Drive North, Saint Petersburg, FL 33702. The Status Review may be obtained by contacting the above individual. Please note that electronic mail or internet site comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Jennifer Lee, NMFS, at the address above (727–570–5312), or Marta Nammack, NMFS, 301–713–1401, ext. 116.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1999, NMFS received a petition from the Center for Marine Conservation requesting NMFS to list North American populations of smalltooth sawfish and largetooth sawfish as endangered under the ESA. The petitioner's request was based on four criteria: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) the inadequacy of existing regulatory mechanisms; and (4) other natural or manmade factors affecting its continued existence. On March 10, 2000, NMFS published its determination that the petition presented substantial information indicating that listing may be warranted for smalltooth sawfish, but not for largetooth sawfish. Concurrently, NMFS announced the initiation of a smalltooth sawfish formal status review (65 FR 12959, March 10, 2000).

The ESA defines an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range". A "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range". Section 4(a)(1) of the ESA states that a species is threatened or endangered if any one or more of the following factors causes it to be, or likely to become, in danger of extinction throughout all or a significant portion of its range: (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; and (E) other natural or manmade factors affecting its continued existence. Section 4(b)(1)(A) of the ESA requires that NMFS make listing determinations based solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

In order to conduct a comprehensive review of smalltooth sawfish, a status review team was created to investigate the status of the species with regard to the listing criteria provided by the ESA. In addition to its own resources and data, the status review team gathered all known records and data of smalltooth sawfish by contacting fishery managers, museums and other research collectors. The status review contains the best scientific and commercial information available on smalltooth sawfish. The document addresses the status of the species, the five listing determination criteria, and the effect of efforts underway to protect the species.

The December 2000 Smalltooth Sawfish Status Review is now available. The findings of the Status Review have been accepted by NMFS and are summarized here. The Status Review contains a more complete discussion and complete literature citations for the information summarized in this proposed rule.

Consideration as a "species" under the Endangered Species Act

The ESA defines species as "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature". 16 U.S.C. 1532(15). This definition allows for the recognition of distinct population segments at levels below taxonomically recognized species or subspecies. On February 7, 1996, the U.S. Fish and Wildlife Service (FWS) and NMFS published a joint policy to clarify the phrase "distinct population segment (DPS)" for the purposes of listing, delisting and reclassifying species under the ESA (61 FR 4722). This policy identifies two criteria that must be met for a population segment to be considered a DPS under the ESA: (1) The *discreteness* of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the *significance* of the population segment to the species or subspecies to which it belongs.

Discreteness of the U.S. Population of Smalltooth Sawfish

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

The status review team was unable to find any indication that the current U.S. population of smalltooth sawfish interact with smalltooth sawfish elsewhere, suggesting that the U.S. population may be effectively isolated from other populations. However, there are few scientific data on the biology of smalltooth sawfish; and it is not possible to conclusively subdivide this species into discrete populations on the basis of genetics, morphology, behavior, or other biological characteristics. However, the DPS policy allows for the delineation of a DPS based on international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist. The smalltooth sawfish status review team was unable to identify any mechanisms regulating the exploitation of this species anywhere outside of the U.S. In contrast, several southeastern U.S. states have regulations in place prohibiting fishing for this species. Based on these differences in control of exploitation and regulatory mechanisms, the U.S. population of smalltooth sawfish meets the requirements of discreteness on an international boundary basis.

Significance of the U.S. Population of Smalltooth Sawfish

The DPS policy identifies several factors that may be considered in making a determination of a population's significance to the taxon to which it belongs. Among these considerations is evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon. The smalltooth sawfish has already been wholly or nearly extirpated

from large areas of its former range in the North Atlantic (Mediterranean, U.S. Atlantic and Gulf of Mexico) and the Southwest Atlantic by fishing and habitat modification; and its status elsewhere is uncertain but likely to be similarly reduced. In fact, the status review team was unable to find any recent verifiable records of smalltooth sawfish populations outside of the U.S. Reports of this species from outside the Atlantic may be misidentifications of other pristids. Therefore smalltooth sawfish populations in U.S. waters, while extremely depleted, may be the largest population of smalltooth sawfish in the Western Atlantic. As sawfish in general are suffering worldwide declines, the U.S. population of smalltooth sawfish comprises an important component of the sawfishes' remaining global biological diversity. The U.S. population of smalltooth sawfish is the northernmost population in the Western Hemisphere (see habits and habitat section). Because other populations of smalltooth sawfish are apparently relatively scarce compared to the U.S. population, and because the U.S. population is the northernmost population in the western Atlantic, the loss of the U.S. population would result in a significant gap in the range of this species. For these reasons, the U.S. population of smalltooth sawfish is significant as defined under the DPS policy.

Based on the above analysis of the discreteness and significance of smalltooth sawfish,, smalltooth sawfish that occur in waters of the eastern United States are both discrete and significant and constitute a DPS. As such, consideration of the conservation status of the U.S. DPS of smalltooth sawfish in relationship to the ESA's listing standards is appropriate.

Distribution and Abundance

Smalltooth sawfish are tropical marine and estuarine fish that have the northwestern terminus of their Atlantic range in the waters of the eastern United States. In the United States, smalltooth sawfish are generally a shallow water fish of inshore bars, mangrove edges, and seagrass beds, but are occasionally found in deeper coastal waters.

In order to assess both the historic and the current distribution and abundance of the smalltooth sawfish, the status review team collected and compiled literature accounts, museum collection specimens, and other records of the species. This information indicates that prior to around 1960, smalltooth sawfish occurred commonly in shallow waters of the Gulf of Mexico and eastern seaboard up to North Carolina, and more rarely as far north as New York. Subsequently their distribution has contracted to peninsular Florida and, within that area, can only be found with any regularity off the extreme southern portion of the state. The current distribution is centered in the Everglades National Park (including Florida Bay).

Although time-series abundance data are lacking, publication and museum records, negative scientific survey results, anecdotal fisher observations, and limited landings per unit effort (from Louisiana) indicate that smalltooth sawfish have declined dramatically in U.S. waters over the last century. The decline is likely greater than indicated by numbers or frequencies of catches because during the past century, both fishing and scientific sampling effort have increased by orders of magnitude. The fact that documented smalltooth catch records have declined during this period despite these tremendous increases in fishing effort underscores the population reduction in smalltooth sawfish. NMFS concludes that the abundance of the U.S. DPS of smalltooth sawfish is at an extremely low level relative to historic levels.

Summary of Factors Affecting the Species

Section 4 of the ESA (16 U.S.C. 1533) and regulations promulgated to implement the listing provisions of the ESA (50 CFR part 424) set forth the procedures for adding species to the Federal list. Section 4 requires that listing determinations be based solely on the best scientific and commercial data available, without consideration of possible economic or other impacts of such determinations. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the ESA. These factors and their application to the U.S. DPS of smalltooth sawfish are described below.

(a) The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Loss and/or degradation of habitat has contributed to the decline of many marine species, and is unknown, but fully expected, to have impacted the distribution and abundance of smalltooth sawfish. The continued urbanization of the southeastern coastal states has resulted in substantial loss of coastal habitat through such activities as agricultural and urban development, commercial activities, dredge and fill operations, boating, erosion, and diversions of freshwater run-off. Animal wastes and fertilizers from agricultural runoff contribute large amounts of non-point source nutrient loading and introduce a wide range of toxic chemicals into habitats important to smalltooth sawfish. Urban development in the southeast coastal zone is more than four times the national average, destroying or degrading significant amounts of coastal and estuarine habitat. Commercial activities in the southeast eliminate or degrade substantial amounts of marine and estuarine fish habitat although the exact amount is unknown. An analysis of 18 major southeastern estuaries recorded over 703 miles (1,131 km) of navigation channels and 9,844 miles (15,842 km) of shoreline modifications. Profound impacts to hydrological regimes have been produced in South Florida through the construction of a 1,400–mile (2,260–km) network of canals, levees, locks, and other water control structures which modulate freshwater flow from Lake Okeechobee, the Everglades, and other coastal areas.

Potential detrimental impacts from the activities listed above on smalltooth sawfish habitat within the U.S. DPS include: (1) loss of wetlands, (2) eutrophication, (3) point and non point sources of pollution, (4) increased sedimentation and turbidity, and (5) hydrologic modifications. Smalltooth sawfish may be especially vulnerable to coastal habitat degradation due to their affinity to shallow, estuarine systems. The cumulative impacts from habitat degradation discussed above may reduce habitat quality and limit habitat quantity available to the U.S. DPS of smalltooth sawfish. Given current low levels of abundance, and its current retracted range, it is critical that efforts be undertaken to better understand, avoid, minimize and mitigate these factors.

(b) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Smalltooth sawfish were historically often caught as bycatch in various fishing gears, including gillnet, otter trawl, trammel net, seine, and, to a lesser degree, hand line. There are frequent accounts in early literature of smalltooth sawfish being entangled in fishing nets from areas where smalltooth sawfish were once common, but are now rare or extirpated. Their long, toothed rostrum makes it difficult to avoid entanglement in virtually all kinds of large mesh gillnet gear. The saw penetrates easily though nets and causes the animal to become entangled when it attempts to escape. Shrimp trawling is another source of incidental

mortality on smalltooth sawfish. Entangled specimens frequently had to be cut free, causing extensive damage to nets and presenting a substantial hazard if brought on board. For these reasons, most smalltooth sawfish caught by fishermen were either killed outright or released only after removal of their saws.

Quantitative data are limited, but indicate that smalltooth sawfish historically were commonly taken by commercial fishermen and that this species has experienced severe declines in its abundance over the past several decades. Large-scale directed fisheries for smalltooth sawfish have not existed; however, smalltooth sawfish bycatch has been commercially landed in various regions, primarily in Louisiana. Total Gulf of Mexico landings dropped continually from 1950 to 1978 from around 5 metric tons to less than 0.2 metric tons during this time period. NMFS does not have any records of landings since 1978.

A data set from "Fisheries Statistics of the United States" (1945-1978) of smalltooth sawfish landings in Louisiana by shrimp trawlers, containing both landings data and crude information on effort (number of vessels, vessel tonnage, number of gear units) underscores that landings have dramatically declined, even as fishing effort increased. Annual smalltooth landings in Louisiana declined from a high of 34,900 lb (15,830 kg) in 1949 to less than 1,500 lbs (680 kg) in most years after 1967. During this period of time, the number of fishing vessels, the size of the fishing vessels and the amount of gear that they deployed increased substantially. Landings per unit effort (LPUE) data were calculated using three different units of effort (number of vessels, tonnage of vessels and number of gear units). All three data series showed dramatic declines in LPUE, from high levels in the 1950s to very low levels in the 1970s. The magnitude of these declines is such that the LPUE values in the 1970s are less than 1 percent of those in the 1950s, demonstrating a severe decline in the population. The lack of landings since 1978 shows that smalltooth sawfish have been commercially extinct for over 20 years.

Anecdotal information collected by NMFS port agents indicates that smalltooth sawfish are now taken very rarely in the shrimp trawl fishery. The most recent records from Texas are from the 1980s. Through 1999, smalltooth sawfish were still occasionally documented in shrimp trawls in Florida (4 from 1990 to 1999).

Historically, smalltooth sawfish have also occasionally occurred as bycatch in recreational fisheries. Occasional takes with harpoon or hook-and-line by recreational fishers in Florida were recorded during the first half of the 20th century. In Texas, many sawfish were reportedly taken incidentally by sport fishermen in the bays and surf prior to the 1960s. Most of these fish were released; however, prior to their live release, the saws of many individuals were removed. This practice may have contributed to the decline of smalltooth in Texas.

Today, recreational catches of sawfish are very rare, and poorly documented for the most part, except within the Everglades National Park. Long-term abundance data are not available, but there are recent (1989-1999) recreational catch per unit effort (CPUE) data for the Everglades. These CPUE data indicate that a sustaining population still exists there, with consistent annual catches by private recreational anglers and guide boats.

Direct take of smalltooth sawfish has been of little importance or remains obscure. Although there is a market for smalltooth sawfish saws, the species is not commonly taken and any captures are apparently incidental.

Smalltooth sawfish have also been taken by collectors and sold live to aquaria. The recent high value aquaria are willing to pay for this species ($1,000 per ft; $3,200 per m) may be providing increased incentive for their collection. The smalltooth sawfish has rarely been used for scientific purposes.

(c) Disease or Predation

There is no information regarding competition, predation, and disease affecting smalltooth sawfish. The decline of the species, however, appears to have been one of slow attrition over the course of the twentieth century (primarily from bycatch in fisheries and secondarily by coastal habitat destruction) rather than some acute epizootic event. The few living specimens examined appear to be in good health.

(d) Inadequacy of Existing Regulatory Mechanisms

Numerous Federal, state, and inter-jurisdictional laws, regulations and policies govern activities in U.S. waters and have the potential ability to affect the abundance and survival of smalltooth sawfish and their habitat. While these laws, regulations, and policies lead to overall environmental enhancements indirectly aiding smalltooth sawfish, very few have been applied specifically for the protection of smalltooth sawfish. For example, NMFS and FWS consult with other agencies on projects that may impact fish and wildlife and provide recommendations to avoid any adverse impacts, but there has never been a recommendation directed at the protection of sawfish. Any general recommendations that are implemented and reduce habitat loss in shallow coastal areas may provide some benefit to smalltooth sawfish by curbing increased habitat degradation.

There are no Federal regulations for the protection of sawfish. With the exception of Florida, Louisiana, and possibly Alabama in the near future, smalltooth sawfish can also still be legally harvested in state waters.

As noted in the preceding section, a century of net fisheries combined with the low reproductive potential of the sawfish (typical of most elasmobranchs) resulted in a very severe decline in sawfish populations. Smalltooth sawfish bycatch in gillnets has likely been reduced due to recent regulations prohibiting or limiting the use of gillnets in some state waters and the depressed abundance of this species, but bycatch in other gears such as trawls may still present a threat to this species. Recent reports of smalltooth sawfish caught with their saws already removed indicate that smalltooth sawfish are still being harmed by commercial or recreational fishing activities. Based on this information, existing Federal and state laws, regulations, and policies appear inadequate to protect smalltooth sawfish.

(e) Other Natural or Manmade Factors Affecting its Continued Existence

Current and future abundance of smalltooth sawfish is limited by its life history characteristics. While little is known directly about smalltooth sawfish life history, inferences can be drawn from closely related species for which more information is available, such as the largetooth sawfish and other elasmobranchs. These species have slow growth, late maturity, a long life span, and low fecundity; and it is highly likely that smalltooth sawfish share these characteristics. These combined characteristics result in a very low intrinsic rate of population increase and are associated with the life history strategy known as "k-selection". K-selected animals are usually successful at maintaining relatively small, persistent population sizes in relatively constant environments. Conversely, they are not able to respond effectively (rapidly) to additional sources of mortality resulting from changes in their environment. Such changes include overexploitation and habitat

degradation. Smalltooth sawfish have been (and are currently) subjected to both overexploitation and habitat degradation.

The intrinsic rate of population growth can be a useful parameter to estimate the capacity of species to withstand exploitation. Animals with low intrinsic rates of increase are particularly vulnerable to excessive mortalities and rapid stock collapse, after which recovery may take decades. The estimated intrinsic rate of natural increase for smalltooth sawfish ranges from 0.08/year to 0.13/year, and population doubling times range from 5.4 years to 8.5 years. These values are considered to be low and to place the species at risk.

Basis for Determination

The U.S. DPS of smalltooth sawfish is at a critically low level of abundance. The U.S. DPS of smalltooth sawfish continues to face threats from: (1) loss of wetlands, (2) eutrophication, (3) point and non point sources of pollution, (4) increased sedimentation and turbidity, and (5) hydrologic modifications. Commercial bycatch has played the primary role in the decline of this DPS. Quantitative data are limited, but indicate that smalltooth sawfish have been taken by commercial fishermen and that this species has experienced severe declines in their abundance. While Federal, state, and interjurisdictional laws, regulations, and policies lead to overall environmental enhancements indirectly aiding smalltooth sawfish, very few have been applied specifically for the protection of smalltooth sawfish. Based on the species' low intrinsic rate of increase resulting from their slow growth, late maturation, and low fecundity, population recovery potential for the species is limited and the species is at risk of extinction. Therefore, under current circumstances, the U.S. DPS of smalltooth sawfish is in danger of extinction.

Protective measures for the U.S. DPS of smalltooth sawfish were examined in combination with the species' status information to determine if listing as threatened or endangered was warranted and if there was a need for an emergency listing. Current protective measures and conservation efforts underway to protect the U.S. DPS of smalltooth sawfish are confined to: actions directed at increasing general awareness of this species and the risks it faces; possession prohibitions in the state waters of Florida and Louisiana; and research being pursued by the Mote Marine Laboratory's Center for Shark Research. There are no Federal or state conservation plans for the smalltooth sawfish.

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Section 4(b)(1)(A) of the ESA requires that determinations regarding whether any species is threatened or endangered be based solely on the best scientific and commercial information available after conducting a review of the status of the species and after taking into account those efforts, if any, being made by a state or foreign nation to protect such species (16 U.S.C. 1533(b)(1)(A)).

Based on results of its status review, NMFS has concluded that the U.S. population segment of smalltooth sawfish constitutes a DPS, or "species," under the ESA. After evaluating the status of this DPS, NMFS has determined that it is in danger of extinction throughout all or a significant portion of its range. NMFS proposes to list the U.S. DPS of smalltooth sawfish as endangered under the ESA at this time. At present, the DPS consists of a single population, with its current distribution centered in the Everglades Park (including Florida Bay).

Conservation Measures

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)), Federal agency consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538). Recognition of the species' plight through listing promotes conservation actions by Federal and state agencies and private groups and individuals.

Should the proposed listing be made final, protective regulations under the ESA would take effect, a recovery program would be implemented, and critical habitat may be designated. NMFS recognizes that to be successful, protective regulations and recovery programs for smalltooth sawfish will need to be developed in the context of conserving aquatic ecosystem health. Federal, state and the private sectors would need to cooperate to conserve the listed U.S. DPS of smalltooth sawfish and the ecosystems upon which it depends.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(A) and (a)(1)(B)) provide NMFS with authority to grant exceptions to the ESA's "taking" prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species. A directed take refers to the intentional take of listed species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for other listed species for a number of activities.

Under section 10(a)(1)(B) of the ESA, incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, operation of a privately owned power plant in the vicinity of the listed species, and the implementation of state fishing regulations.

Service Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, the NMFS and FWS published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

(a) Role of peer review

The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, NMFS will solicit the expert opinions of three qualified specialists, concurrent with the public comment period. Independent peer reviewers will be selected from the academic and scientific community, Federal and State agencies, and the private sector.

(b) Identification of those activities that would constitute a violation of Section 9 of the ESA

The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. NMFS will identify, to the extent known at the time of the final rule, specific activities that will not be considered likely to result in violation of section 9, as well as activities that will be considered likely to result in violation. Activities that NMFS believes could result in violation of section 9 prohibitions against "take" of the U.S.

DPS of smalltooth sawfish include, but are not limited to, the following:

(1) Bycatch associated with commercial and recreational fisheries;

(2) Poaching of individuals caught as bycatch in the state of Florida for trade;

(3) Destruction of coastal habitat through such activities as agricultural and urban development, commercial activities, dredge and fill operations, boating, erosion, and diversions of freshwater run-off; and

(4) Unauthorized collecting or handling of the species (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the DPS).

NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Possession of smalltooth sawfish acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement in a biological opinion pursuant to section 7 of the ESA; or

(2) Federally approved projects that involve activities such as agriculture, managed fisheries, road construction, discharge of fill material, stream channelization or diversion for which consultation under section 7 of the ESA has been completed, and when such activity is conducted in accordance with any terms and conditions given by NMFS in an incidental take statement in a biological opinion pursuant to section 7 of the ESA.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(3)) as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, in which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at that time it is listed upon a determination that such areas are essential for the conservation of the species. 'Conservation' means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary.

Section 4(a)(3)(a) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat. NMFS is evaluating the prudency of determining critical habitat. If NMFS determines that critical habitat is determinable and that it is prudent to designate critical habitat, it will publish a proposed designation of critical habitat for the U.S. DPS of smalltooth in a separate rule.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, NMFS is soliciting comments and information from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties. Comments are encouraged on this proposal as well as on the Status Review. Specifically, NMFS is soliciting information regarding: (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this DPS; (2) additional information concerning the range, distribution, and population size of this DPS; (3) current or planned activities in the subject area and their possible impacts on this DPS; and (4) additional efforts being made to protect smalltooth sawfish in the U.S.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by NMFS, and such communications may lead to a final regulation that differs from this proposal.

Classification

The Conference Report on the 1982 amendments to the ESA notes that economic considerations have no relevance to determinations regarding the status of species, and that the Regulatory Flexibility Act is not applicable to the listing process. Similarly, listing actions are not subject to the requirements of Executive Order 12612 and are exempt from review under Executive Order 12866.

National Environmental Policy Act

NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the NEPA. See NOAA Administrative Order 216-6.

Federalism

Smalltooth sawfish records and data were collected by the status review team from appropriate state fishery managers and incorporated into the Status Review. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state/Federal interest, this proposed rule will be given to the relevant state agencies in each state in which the species is believed to occur, who will be invited to comment.

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Dated: April 9, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 224 is proposed to be amended as follows:

PART 224—MARINE AND ANADROMOUS SPECIES

1. The authority for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531-1543 and 16 U.S.C. 1361 *et seq.*

2. In § 224.101, paragraph (a) is amended by adding the following entry, "Smalltooth sawfish (*Pristis pectinata*)" before "Shortnose sturgeon (*Acipenser brevirostrum*)", to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

(a) Marine and anadromous fish.

* * * * *

Species		Where Listed	When Listed	Critical Habitat
Common Name	Scientific Name			
Smalltooth sawfish	*Pristis pectinata*	U.S.A, Atlantic: NC through FL; Gulf of Mexico: TX through FL	4/16/01	NA
*	*	*	*	*

3. In § 224.101, paragraph (a), revise the entry under "Common Name" from "Salmon, Atlantic" to read "Atlantic salmon", and insert "65 FR 69459, Nov. 17, 2000" in the "When Listed" column for this entry.

[FR Doc. 01–9387 Filed 4–13–01; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 73
Monday, April 16, 2001

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

Food and Nutrition Service

Agency Information Collection: Proposed Collection; Comment Request; FNS–260, Requisition for Food Coupon Books

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed information collection contained in form FNS–260, Requisition for Food Coupon Books.

DATES: Written comments must be submitted on or before June 15, 2001.

ADDRESSES: Send comments and requests for copies of this information collection to: Jeffrey N. Cohen, Branch Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. 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 practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) 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 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.

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.

FOR FURTHER INFORMATION CONTACT: Jeffrey N. Cohen, (703) 305–2523.

SUPPLEMENTARY INFORMATION:

Title: Requisition for Food Coupon Books.

OMB Number: 0584–0022.

Form Number: FNS–260.

Expiration Date: 09/30/2001.

Type of Request: Revision of a currently approved collection.

Abstract: Section 7(e) of the Food Stamp Act of 1977, as amended, (the Act) (7 U.S.C. 2016(e)) requires the U.S. Department of Agriculture (USDA) to prescribe appropriate procedures for the delivery of food coupon books to coupon issuers. States and local agencies used Form FNS–260, Requisition for Food Coupon Books, to order supplies of coupon books. The forms are completed and submitted in hard copy or electronic format to the appropriate Food and Nutrition Service (FNS) regional office. The hard-copy format is normally used only when the electronic format is unavailable. The regional offices enter the order for coupon books into a database where it is automatically reviewed for conformance with policy for ordering. After the order passes the edit checks, FNS then transmits them electronically to the contractor who ships the coupon books. No coupon books are shipped until a completed order has been received and approved by FNS.

The need to print and order food coupons as the sole benefit delivery instrument for the Food Stamp Program has changed. Many areas of the country have switched to Electronic Benefit Transfer (EBT) Systems and no longer issue food coupons to participating households. This has resulted in a direct reduction in the number of States and local agencies completing and submitting food coupon book orders. However, some areas are still using coupons and we must continue to require these areas to order food coupon books. The Office of Management and Budget's (OMB) approval of this information collection expires on September 30, 2001. We intend to seek an extension of OMB's approval for an additional 3 years.

The number of respondents that must complete and submit food coupon orders is estimated to be 221 annually; a reduction of 779 respondents. It is estimated that respondents will order coupons at least six times annually. It is further estimated that it takes about 30 minutes to complete and transmit the coupon book order. Thus, total annual burden associated with this information collection is estimated to be 663 hours annually (221 x 6 x 30 minutes).

Affected Public: State and local governments.

Estimated Number of Respondents: 221.

Estimated Number of Responses per respondent: 6.

Estimated Time per Response: one half hour.

Estimated Total Annual Burden: 663 hours; a reduction of 2337 hours annually.

Dated: April 5, 2001.

George A. Braley,

Acting Administrator.

[FR Doc. 01–9377 Filed 4–13–01; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of the Old Growth Settlement Agreement Environmental Assessment for an Amendment to the Huron-Manistee National Forests' Land and Resource Management Plan; Alcona, Crawford, Iosco, Lake, Manistee, Mason, Mecosta, Montcalm, Muskegon, Newaygo, Oceana, Ogemaw, Oscoda, and Wexford Counties, Michigan

AGENCY: Forest Service, USDA.

ACTION: Notice of Availability of the Huron-Manistee National Forests' Old Growth Settlement Agreement Environmental Assessment.

SUMMARY: On February 28, 2001, the Huron-Manistee National Forests completed the Old Growth Settlement Agreement Environmental Assessment Amendment to the 1986 Huron-Manistee National Forests' Land and Resource Management Plan (Forest Plan). Copies of the Environmental Assessment are available upon request. This amendment proposes to: designate approximately 173,000 acres of old growth; manage old growth primarily by natural processes and where necessary perform old growth restoration activities; establish forest-wide aquatic and riparian standards and guidelines;

and designate approximately 10,500 acres of semiprimitive areas in Loda Lake, Condon Lakes East, and Condon Lakes West. This notice is provided pursuant to National Forest System Land and Resource Management Planning regulations (36 CFR 219.35, 65 FR 67579, November 9, 2000).

DATES: On February 28, 2001, the Huron-Manistee National Forests completed the Old Growth Settlement Agreement Environmental Assessment Amendment to the 1986 Huron-Manistee National Forests' Land and Resource Management Plan (Forest Plan). A legal notice will be published in the Cadillac News, Michigan newspaper, in accordance with 36 CFR 215.9.

ADDRESSES: Send requests for documents to: Old Growth Initiative, Huron-Manistee National Forests, 1755 S. Mitchell St., Cadillac, Michigan 49601, Alternatively, direct electronic mail to: r9huronmanistee@fs.fed.us ATTN: Old Growth or visit the Huron-Manistee National Forests' web site (www.fs.fed.us/r9/hmnf).

FOR FURTHER INFORMATION CONTACT: James DiMaio, Forest Planner, at 231–775–5023 (8759); TDD 231–745–7701; or direct electronic mail to: r9huronmanistee@fs.fed.us.

RESPONSIBLE OFFICIAL: James L. Schuler, Forest Supervisor, 1755 S. Mitchell St., Cadillac, Michigan 49601

SUPPLEMENTARY INFORMATION: The Huron-Manistee National Forests' Old Growth Settlement Agreement Environmental Assessment Amendment proposes to: designate approximately 173,000 acres of old growth; manage old growth primarily by natural processes and where necessary perform old growth restoration activities; establish forest-wide aquatic and riparian standards and guidelines; and designate approximately 10,500 acres of semiprimitive areas in Loda Lake, Condon Lakes East, and Condon Lakes West. This proposal is a minor amendment to the Huron-Manistee National Forests' Land and Resource Management Plan. This is a non-significant amendment.

Public involvement was an important part of the decision-making process for this proposal. On June 10, 1999, the Forests started scoping with the mailing of letters to interested parties and a news release to the local newspapers. A public old growth meeting was held on August 17, 1999. An old growth update was mailed to interested publics on November 20, 2000. The Forests are notifying interested publics of the availability of the environmental assessment. The Forest Service is an equal opportunity organization.

Dated: February 28, 2001.

James L. Schuler,

Forest Supervisor.

[FR Doc. 01–9285 Filed 4–13–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1161]

Expansion of Foreign-Trade Zone 219, Yuma County, AZ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones (FTZ) Board (the Board) adopts the following Order:

Whereas, the Yuma County Airport Authority, Inc., grantee of Foreign-Trade Zone 219, submitted an application to the Board for authority to expand FTZ 219 to include an additional parcel (46 acres) at the Yuma International Airport in Yuma County, Arizona, adjacent to the San Luis Customs port of entry (FTZ Docket 40–2000; filed 7/20/00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 47375, 8/2/00) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 219 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 5th day of April 2001.

Timothy J. Hauser,

Acting Under Secretary for International Trade, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–9375 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1150]

Grant of Authority; Establishment of a Foreign-Trade Zone, Eureka, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ". . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the City of Eureka, California (the Grantee), has made application to the Board (FTZ Docket 30–2000, filed 6/16/00), requesting the establishment of a foreign-trade zone at sites in Eureka, California, within the Eureka Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (65 FR 39123, 6/23/00); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirement of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 248, at the sites described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 3rd day of April 2001.

Foreign-Trade Zones Board.

Donald L. Evans,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 01–9369 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1159]

Expansion of Foreign-Trade Zone 154, Baton Rouge, LA, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u),

the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Baton Rouge Port Commission, grantee of Foreign-Trade Zone 154, submitted an application to the Board for authority to reorganize FTZ 154 by expanding existing Site 1 to include the port's entire deep-water complex; removing all of the existing Site 2; adding a new Site 2 in its place (Baton Rouge Metropolitan Airport); and, reducing the size of Site 3, Inland Rivers Marine Terminal (formerly Sun Plus Industrial Park), within the Baton Rouge Customs port of entry area (FTZ Docket 43–2000; filed 7/26/00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 47375, 8/2/00) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 154 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 5th day of April 2001.

Timothy J. Hauser,

Acting Under Secretary for International Trade, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–9373 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1157]

Expansion of Foreign-Trade Zone 74, Baltimore, MD Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Baltimore Development Corporation, on behalf of the City of Baltimore, Maryland, grantee of Foreign-Trade Zone 74, submitted an application to the Board requesting authority in a major revision to its zone plan, to expand and reorganize FTZ 74 by increasing FTZ space at existing sites (Sites 1, 2 and 4) and by adding new sites (Sites 3, 5, 6, 7, 8, 9, 10 and 11) to the zone project in and adjacent to the Port of Baltimore, within the Baltimore Customs port of entry (FTZ Docket 35–2000; filed 7/7/00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 43289, 7/13/00) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 74 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 5th day of April 2001.

Timothy J. Hauser,

Acting Under Secretary for International Trade, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–9371 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1162]

Expansion of Foreign-Trade Zone 70, Detroit, MI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones (FTZ) Board (the Board) adopts the following Order:

Whereas, the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70, submitted an application to the Board for authority to expand FTZ 70 to include an additional site in Brownstown Township (Wayne County), Michigan, within the Detroit Customs port of entry (FTZ Docket 42–2000; filed 7/24/00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 47376, 8/2/00) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 70 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 5th day of April 2001.

Timothy J. Hauser,

Acting Under Secretary for International Trade, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–9376 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1160]

Expansion of Foreign-Trade Zone 34, Niagara County, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones (FTZ) Board (the Board) adopts the following Order:

Whereas, the County of Niagara, New York, grantee of Foreign-Trade Zone 34, submitted an application to the Board for authority to expand FTZ 34 to include an additional parcel (158 acres) at Vantage International Pointe Industrial Park in Wheatfield, New York, within the Buffalo Customs port of entry (FTZ Docket 37–2000; filed 7/17/00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 45752, 7/25/00) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 34 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 5th day of April 2001.

Timothy J. Hauser,

Acting Under Secretary for International Trade, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–9374 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1144]

Grant of Authority; Establishment of a Foreign-Trade Zone, Erie, PA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for " . . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Erie-Western Pennsylvania Port Authority (the Grantee), has made application to the Board (FTZ Docket 6–2000, filed 3/1/00 and amended on 7/10/00 and 8/22/00), requesting the establishment of a foreign-trade zone at sites in Erie, Pennsylvania, within the Erie Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (65 FR 12970, 3/10/00; 65 FR 43736, 7/14/00; and 65 FR 54196, 9/7/00); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 247, at the sites described in the application, as amended, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 3rd day of April 2001.

Foreign-Trade Zones Board.

Donald L. Evans,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 01–9368 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1158]

Grant of Authority for Subzone Status Matsushita Electronic Components Corporation of America (Electrolytic Capacitors, Automotive Audio Speakers), Knoxville, TN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Industrial Development Board of Blount County, grantee of Foreign-Trade Zone 148 (Knoxville, Tennessee), has made application for authority to establish special-purpose subzone status at the electrolytic capacitor and automotive audio speaker manufacturing plant of Matsushita Electronic Components Corporation of America (Inc.), located in Knoxville, Tennessee (FTZ Docket 3–2000, filed 2–10–00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 8118, 2–17–2000); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the electrolytic capacitor and automotive audio speaker manufacturing plant of Matsushita Electronic Components Corporation of America (Inc.), located in Knoxville, Tennessee (Subzone 148B), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 5th day of April 2001.

Timothy J. Hauser,

Acting Under Secretary for International Trade, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–9372 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1152]

Expansion of Foreign-Trade Zone 137, Loudoun County, VA, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Washington Dulles Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 137, submitted an application to the Board for authority to expand FTZ 137 to include three sites (402 acres) in the Winchester-Frederick County, Virginia, area (Sites 4–6), adjacent to the Washington DC Customs port of entry (FTZ Docket 46–99; filed 9/10/99; amended 12/29/00);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 51291, 9/22/99) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 137 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 5th day of April 2001.

Timothy J. Hauser,

Acting Under Secretary for International Trade, Alternate Chairman.

[FR Doc. 01–9370 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Notice of Solicitation for Sea Grant Review Panelists

AGENCY: National Oceanic and Atmospheric Administration Office of Oceanic and Atmospheric Research (OAR) National Sea Grant Review Panel.

ACTION: Notice of Solicitation for Sea Grant Review Panelists.

SUMMARY: This notice responds to the National Sea Grant College Program Act, at 33 U.S.C. 1128, which requires the Secretary of Commerce to solicit nominations at least once a year for membership on the Sea Grant Review Panel. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

DATES: Resumes should be sent to the address specified and must be received by 30 days from publication.

ADDRESSES: Dr. Ronald C. Baird, Director, National Sea Grant College Program, 1315 East-West Highway, Room 11716, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald Baird of the National Sea Grant College Program at the address given above, telephone (301) 713–2448 or fax number (301) 713–1031.

SUPPLEMENTARY INFORMATION: Section 209 of the Act establishes a Sea Grant Review Panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice on such matters as:

(a) the Sea Grant Fellowship Program;

(b) applications or proposals for, and performance under, grants and contracts awarded under the Sea Grant Program Improvement Act of 1976, as amended at 33 U.S.C. 1124;

(c) the designation and operation of sea grant colleges and sea grant institutes; and the operation of the sea grant program;

(d) the formulation and application of the planning guidelines and priorities under 33 U.S.C. 1123 (a) and (c)(1); and

(e) such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of 15 voting members composed as follows: Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension service, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (a) the director of a sea grant college, sea grant regional consortium, or sea grant program, (b) an applicant for or beneficiary (as determined by the Secretary) of any grant or contract under 33 U.S.C. 1124 or (c) a full-time officer or employee of the United States. The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Panel members are appointed for a 3-year term.

Dated: April 11, 2001.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 01–9388 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040601G]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comment.

SUMMARY: NMFS received an application for modification 1 of incidental take permit 1233 (Permit) from the Idaho Department of Fish and Game(IDFG) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, IDFG's modification application includes a conservation plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit modification application is for the incidental take of ESA-listed adult and juvenile salmonids associated with otherwise lawful recreational fisheries on non-listed species in the Snake River and its tributaries in the State of Idaho. The duration of the existing Permit and Plan is 5 years, expiring on December 31, 2004. NMFS also announces the availability of a draft Environmental Assessment (EA) for the Permit modification application. This document serves to notify the public of the availability for comment of the permit modification application and the associate draft EA. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments on the Permit modification application, Plan, and draft EA must be received no later than 5 p.m. Pacific standard time on May 16, 2001.

ADDRESSES: Written comments and requests for copies of the application, Plan, or draft EA should be addressed to Herbert Pollard, Sustainable Fisheries Division, 10215 West Emerald Street, Suite 180, Boise, ID 83704. Comments may also be sent via fax to (208) 378–5699. Comments will not be accepted if submitted via e-mail or the internet. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (208) 378–5614.

FOR FURTHER INFORMATION CONTACT: Herbert Pollard, Boise, ID, at phone number: (208) 378–5614, fax: (208) 378–5699, or e-mail: Herbert.Pollard@noaa.gov

SUPPLEMENTARY INFORMATION: This notice is relevant to the Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), Snake River fall chinook salmon (*O. tshawytscha*), Snake River sockeye salmon (*O. nerka*), and Snake River steelhead (*O. mykiss*) ESUs.

Background

On May 26, 2000, NMFS issued permit 1233 to Idaho for conduct of recreational fisheries managed by IDFG during 2001 through 2004 on non-listed species in the Snake River and its tributaries in the State of Idaho. Permit 1233 authorizes IDFG an incidental take of adult and juvenile, threatened, naturally produced Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), adult and juvenile, threatened, naturally produced Snake River fall chinook salmon (*Oncorhynchus tshawytscha*), and adult and juvenile, threatened, naturally produced Snake River sockeye salmon (*Oncorhynchus nerka*) in recreational fisheries managed by the State of Idaho.

IDFG requests a modification to permit 1233 to modify timing of currently authorized fisheries, to expand currently authorized fishing areas, and to include authorization of take of listed steelhead. The fishery area

in the Clearwater River would be expanded to include the South Fork Clearwater River. The fishery area in the Little Salmon River would be expanded from the current 4 mi (6.4 km) upstream to approximately 25 mi (40.2 km). Two additional areas would be opened for chinook fishing: The Salmon River from its mouth 30 mi (48.3 km) upstream to the mouth of the Little Salmon River, and approximately 60 mi (96.6 km) of the Snake River from the mouth of the Imnaha River upstream to Hells Canyon Dam. For modification 1, IDFG also requests an additional incidental take of adult, threatened, Snake River spring/summer chinook salmon associated with the requested expanded and additional fishery areas.

IDFG also requests authorization for take of adult, threatened, naturally produced Snake River steelhead incidental to the currently authorized fisheries and the requested modification.At the time permit 1233 was originally issued, protective regulations for threatened Snake River steelhead under section 4(d) of the ESA had not been promulgated by NMFS. Protective regulations were subsequently issued (July 10, 2000, 65 FR 42422). When NMFS issued the current permit, impacts of the proposed fisheries to listed Snake River steelhead were assessed in a biological opinion, and NMFS determined that the fisheries would not jeopardize the continued existence of threatened Snake River steelhead. The proposed modification would authorize levels of take consistent with that analysis and opinion.

In its Plan, IDFG is proposing to limit state recreational fisheries such that the incidental impacts on ESA-listed salmonids will be minimized. Three alternatives for the IDFG fisheries are provided in the Plan: (1) The no action alternative; (2) the proposed conservation plan alternative (based on continuing fisheries at levels similar to those permitted since 1995); and (3) historic fishing levels.

Environmental Assessment/finding of No Significant Impact

The EA package includes a draft EA and a draft Finding of No Significant Impact which concludes that issuing the modification to the incidental take permit is not a major Federal action significantly affecting the quality of the human environment, within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended. Three Federal action alternatives have been analyzed in the draft EA: (1) The no action alternative; (2) issue a permit without conditions; and (3) issue a permit with conditions.

This notice is provided pursuant to section 10(c) of the ESA and the NEPA regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a modified permit will be issued for incidental takes of ESA-listed anadromous salmonids under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30–day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: April 10, 2001.

Karen Salvini,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–9266 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041001B]

Re-opening of Comment Period for the Draft Environmental Impact Statement (DEIS) for the Habitat Conservation Plans (HCP's) proposed for Public Utility District No. 1 of Douglas County, WA, and the Public Utility District No. 1 of Chelan County, WA

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

ACTION: Re-opening of comment period.

SUMMARY: NMFS is re-opening the comment period for the DEIS for the HCP's proposed for Public Utility District No. 1 of Douglas County, WA, and the Public Utility District No. 1 of Chelan County, WA. NMFS has received several requests to extend the comment period. NMFS has determined that these requests are reasonable and has re-opened the comment period to facilitate the receipt of the public's views on the DEIS. The original announcement of the notice of availability of the DEIS for the HCP's was published in the **Federal Register** on December 29, 2000.

DATES: Written comments on the DEIS must be received on or before May 1, 2001.

ADDRESSES: For copies of the DEIS, or to provide written comments, contact: Robert Dach, National Marine Fisheries Service, Northwest Region, Hydro Program, 525 NE Oregon Street, Suite 420, Portland, OR 97232–2737. Comments may also be sent via fax to 503/231–2318. Comments will not be accepted if submitted via e-mail or the Internet.

The DEIS and the proposed HCPs are available for review via the Internet at www.nwr.noaa.gov/1hydrop/hydroweb/ferc.htm (under the "Related Documents" heading).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Dach at phone number: 503/736–4734, or e-mail:Robert.Dach@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The notice of availability of the DEIS for comment was published on December 29, 2000 (65 FR 82976-82977). Since that time, NMFS had received numerous requests to extend the comment period. Requests have been received from the Department of Interior, the Environmental Protection Agency, several non-governmental organizations, and Native American Tribes. NMFS determined that these requests were reasonable, is re-opening the comment period, and is soliciting specific information, comments, data, and/or recommendations on any aspect of the DEIS.

Dated: April 10, 2001.

Karen Salvini,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–9386 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040501A]

Marine Fisheries Advisory Committee; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) from April 24–26, 2001.

DATES: The meetings are scheduled as follows:

1. April 24, 2001, 8:30 a.m.– 4:30 p.m.

2. April 25, 2001, 9 a.m.– 4:30 p.m.

3. April 26, 2001, 8 a.m.–11 a.m.

ADDRESSES: The meetings will be held at The Island House Hotel, 26650 Perdido Beach Boulevard, Orange Beach, AL. Requests for special accommodations may be directed to MAFAC, Office of Operations, Management and Information, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, Designated Federal Official; telephone: (301) 713–2259.

SUPPLEMENTARY INFORMATION: As required by section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC and MAFAC Subcommittees. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1972, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of the Nation are adequate to meet the needs of commercial and recreational fisheries, and of environmental, state, consumer, academic, tribal, and other national interests.

Matters to Be Considered

April 24, 2001

General Overview of Agency initiatives, Budget Reports FY01 status and FY02 request

April 25, 2001

Full Committee discussion of National Environmental Policy Act and coordinate with other legislative mandates of the Steering Committee. Kammer Report and MAFAC Views Paper

April 26, 2001

Wrap-up reports and adjourn

Time will be set aside for public comment on agenda items.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

Dated: April 9, 2001.

William T. Hogarth,

Acting Assistant Administrator, National Marine Fisheries Service

[FR Doc. 01–9267 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040601I]

New England 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 New England Fishery Management Council (Council) is scheduling a public meeting of its Red Crab Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Tuesday, May 1, 2001, at 1 p.m.

ADDRESSES: The meeting will be held at Holiday Inn, One Newbury Street, Route 1, Peabody, MA 01960; telephone: (978) 535–4600.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will hear a report from the Red Crab Plan Development Team. The committee will discuss alternatives for potential management measures to be considered and analyzed in the Draft Environmental Impact Statement, (DSEIS), for the Fishery Management Plan (FMP). They will discuss issues related to an overfishing definition, bycatch, developing a reporting and data collection system, and biological, social and economic objectives for the fishery and the FMP.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 9, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–9264 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040601H]

Western 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 Western Pacific Fishery Management Council's (Council) Recreational Fisheries Data Task Force (RFDTF) will hold a meeting.

DATES: The meeting will be held May 11, 2001, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: This will be the seventh meeting of the RFDTF which will discuss the following topics: progress on the NMFS Marine Recreational Fisheries Statistical Survey and its implementation in Hawaii, University of Hawaii's Pelagic Fisheries Research Program meta-data project update, analysis of the 1996 U.S. Fish & Wildlife Service fishing and hunting survey, protected species and related legislation and recreational fisherman, effect of longline fishery closure on small boat and recreational fisheries, identifying recreational versus commercial catch in fishing club and tournament record data, revenue generation of the recreational fishing industry in Hawaii and other business as required.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management

Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 9, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–9263 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–22–S

PATENT AND TRADEMARK OFFICE

Submission of Official Tribal Insignia of Federally- and State-Recognized Native American Tribes for Inclusion in a United States Patent and Trademark Office Database

ACTION: New information collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the new proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 15, 2001.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, (703) 308–7400, Data Administration Division, Office of Data Management, United States Patent and Trademark Office, Crystal Park 3, 3rd Floor, Suite 310, Washington, D.C. 20231 or via the Internet at susan.brown@uspto.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ari Leifman, by mail, United States Patent and Trademark Office, 2900 Crystal Drive, Room 10B10, Arlington, Va. 22202, by phone at (703) 308–8900, or by e-mail at ari.leifman@uspto.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title III of Public Law 105–330 required the United States Patent and Trademark Office (USPTO) to conduct a study as to how the official insignia of Native American Tribes could be better protected under Trademark law. A study was conducted, and a report was presented to the Chairman of the Committee on the Judiciary of the Senate and to the Chairman of the Committee on the Judiciary of the House of Representatives on November 30, 1999.

One of the recommendations set forth in the report was that the USPTO create and maintain an accurate and comprehensive database of the official insignias of Native American tribes.

Accordingly, the USPTO will create such a database, and will accept requests from any federally- or state-recognized Native American tribe to include that tribe's official insignia in the database.

Requests from federally-recognized tribes will be in writing, and will be accompanied by (1) a depiction of the insignia, including the name of the tribe and an address for correspondence; (2) a copy of the tribal resolution adopting the insignia in question as the official insignia of the tribe; and (3) a statement, signed by an official with authority to bind the tribe, confirming that the insignia included with the request is identical to the official insignia adopted by tribal resolution.

Requests from state-recognized tribes will likewise be in writing, and will likewise be accompanied by each of the three items to be submitted by federally-recognized tribes. Additionally, requests from state-recognized tribes will also be accompanied by either a document issued by a state official that demonstrates that the state has determined that the entity is a Native American tribe, or a citation to a state statute that designates the entity as a Native American tribe.

II. Method of Collection

By mail to a United States Postal Service mailbox or by facsimile to (703) 872–9192.

III. Data

OMB Number: 0651–00XX.

Form Number(s): There are no forms associated with this information collection.

Type of Review: New information collection.

Affected Public: Tribal governments and the Federal Government.

Estimated Number of Respondents: 400 responses per year. The USPTO estimates that 200 responses will be received yearly from federally-recognized Native American tribes and 200 responses received yearly from state-recognized Native American tribes.

Estimated Time Per Response: The USPTO estimates that federally-recognized Native American tribes will require 10 minutes (.17 hours) to supply the information needed to record an official insignia and that state-recognized Native American tribes will require 12 minutes (.20 hours) to supply the information needed to record an official insignia.

Estimated Total Annual Respondent Burden Hours: 74 hours per year.

Estimated Total Annual Respondent Cost Burden: Using the para-professional hourly rate of $30.00 per hour for members of the Native American tribes and tribal governments, the USPTO estimates that salary costs associated with the respondents will be $2,220.00 per year.

Item	Estimated time for response (minutes)	Estimated annual burden hours	Estimated annual responses
Request to Record an Official Native American Tribe Insignia of a Federally-Recognized Tribe	10	34	200
Request to Record an Insignia of a State-Recognized Native American Tribe	12	40	200
Total		74	400

Estimated Total Annual Nonhour Respondent Cost Burden: $0. There are no annual nonhour respondent costs (capital start-up, maintenance, filing fees) associated with this collection.

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, e.g., the use of automated collection techniques or other forms of information

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection. These comments will be made public.

Dated: April 9, 2001.

Susan K. Brown,

Records Officer, Data Administration Division, Office of Data Management.

[FR Doc. 01–9286 Filed 4–13–01; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Technology Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a), that the Commodity Futures Trading Commission's Technology Advisory Committee will conduct a public meeting on May 2, 2001, in the first floor hearing room (Room 1000) of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The meeting will begin at 1:30 p.m. and last until 5:00 p.m. The agenda will consist of the following:

I. Introduction
II. Implementation of the Commodity Futures Modernization Act of 2000: Electronic Trading Facilities
III. Electronic Order Routing
IV. Real Issues in a Virtual World: Technology and Its Challenges
V. Going Forward: Issues, Priorities, and Process

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Thomas J. Erickson, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Technology Advisory Committee, c/o Commissioner Thomas J. Erickson, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Commissioner Erickson in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on April 10, 2001.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–9324 Filed 4–13–01; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Performance Standard for Bicycle Handlebars; Extension of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition (HP 01–1) requesting that the Commission issue a performance standard for bicycle handlebars regarding energy dissipation and distribution during impact. By notice published in the **Federal Register** of February 14, 2001, the Commission solicited written comments concerning the petition. 66 FR 10273. In response to a request to do so, the Commission is now extending the comment period on the petition for an additional 30 days.

DATES: The Office of the Secretary must receive comments on the petition not later than May 16, 2001.

ADDRESSES: Comments on the petition, preferably in five copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov*. Comments should be captioned "Petition HP 01–1, Petition for Bicycle Handlebar Performance Standard."

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission received correspondence from Flaura Koplin Winston, MD., Ph.D., Director, The Interdisciplinary Pediatric Injury Control Research Center, Children's Hospital of Philadelphia, requesting that the Commission issue a rule prescribing performance standards for bicycle handlebars regarding energy dissipation and distribution during impact. The Commission docketed the correspondence as a petition (Petition No. HP 01–1) under provisions of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. §§ 1261–1278.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. The petition can also be obtained from the CPSC world wide web site at: *http://www.cpsc.gov/library/foia/foia01/petition/bicycle.pdf*

A copy of the petition is available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

By notice published in the **Federal Register** of February 14, 2001, the Commission established a 60 day comment period on the petition. 66 FR 10273. By this notice, the Commission is granting a request that the comment period be extended for thirty days, that is, through May 16, 2001.

Dated: April 11, 2001.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 01–9395 Filed 4–13–01; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission Washington, DC 20207.

TIME AND DATE: Wednesday, April 25, 2001, 2:00 p.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public—Pursuant to 5 U.S.C. 552b(f)(1) and 16 CFR 1013.4(b) (3), (7), (9) and (10) and submitted to the **Federal Register** pursuant to 5 U.S.C. 552b(e)(3).

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of

the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: April 12, 2001.

Sadye E. Dunn,

Secretary.

[FR Doc. 01–9512 Filed 4–12–01; 2:46 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 01–C0007]

Federated Department Stores, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1605.13(d). Published below is a provisionally-accepted Settlement Agreement with Federated Department Stores, Inc., a corporation containing a civil penalty of $850,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2001.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 01–C0007, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Howard N. Tarnoff, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1382.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 11, 2001.

Sadye E. Dunn,

Secretary.

Settlement Agreement

1. Federated Department Stores, Inc. ("Federated"), a corporation, enters into this Settlement Agreement ("Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order incorporated herein. This Agreement and Order are for the sole purpose of settling the staff's allegations, as enumerated in the Staff Allegations section below, that Federated knowingly violated section 3(a) the Flammable Fabrics Act (FFA), as amended, 15 U.S.C. 1192(a), and the Federal Trade Commission Act (FTCA), 15 U.S.C. 41 *et seq.*

The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission ("Commission"), an independent regulatory agency of the United States government established pursuant to Section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053.

3. Federated is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 7 West Seventh Street, Cincinnati, OH 45202. Federated is principally engaged in the operation of department stores (including Bloomingdale's. The Bon Marche, Burdines, Goldsmith's, Lazarus, Macy's, Rich's, and Stern's) and catalog businesses (including Fingerhut) that sell men's, women's, and children's apparel and accessories, cosmetics, home furnishings, and other consumer goods.

Staff Allegations

4. Federated is now, and has been engaged in, the sale and the offering for sale, in commerce, as the term "commerce" is defined in Section 2(b) of the FFA, 15 U.S.C. 1191(b), and the importation into the United States, of wearing apparel which is subject to the requirements of the Standards for the Flammability of Children's Sleepwear (FF 3–71 and FF 5–74), 16 CFR parts 1615 and 1616 (the "Children's Sleepwear Standards"), and sections 3, 4, and 5 of the FFA, 15 U.S.C. 1192, 1193, and 1194.

5. On numerous occasions from January 1999 through January 2000, Federated knowingly violated section 3 of the FFA, 15 U.S.C. 1192, and the Children's Sleepwear Standards. During that time period, Federated sold, and offered for sale, in commerce, and/or imported into the United States, 100% untreated cotton garments in sizes 0–14 that were marketed and promoted by its retail stores as children's sleepwear, as the term "children's sleepwear" is defined at 16 CFR 1615.1(a) and 1616.2(a). During that time period, Federated also sold, and offered for sale, in commerce, and/or imported into the United States, 100% untreated cotton garments in sizes 0–14 that were designed and intended to be used as sleepwear. None of these garments complied with the flammability requirements of the Children's Sleepwear Standards. Because these sleepwear garments: (a) Were marketed, promoted, and/or designed as sleepwear; (b) were made of untreated 100% cotton, which does not pass the flammability requirements of the Children's Sleepwear Standards; (c) were sized above "9 months" and up to size 14; and (d) were not otherwise exempt from the requirements of the Children's Sleepwear Standards, the sale of these garments was a prohibited act under section 3(a) of the FFA, 15 U.S.C. 1192(a). The staff informed Federated in writing, orally, and/or in person of each violation. The following is a description of the garments sold, and offered for sale, in commerce, and/or imported into the United States, by Federated from January 1999 through January 2000, that did not comply with the flammability requirements of the Children's Sleepwear Standards:

a. First Impressions Toddlers Garments: CPSC Samples 99–800–1919 (Federated Style #4954120411), 99–800–1922 (Federated Style #4956S01411), 99–800–1924 (Federated Style #470B110411), 99–830–2732 (Federated Style #0491S2411), 99–860–4964 (Federated Style #0495409411), 99–860–4965 (Federated Style #4953110411), and other similarly-styled First Impressions Toddlers Garments. The style, fabric, weight, print pattern, silhouette, and design of these garments are consistent with sleepwear. These garments were sold on retail racks in the children's sleepwear department or the sleepwear section of the children's department with or next to garments that were specifically labeled as children's sleepwear. Federated's retail sales clerks told our investigators that these garments were sleepwear.

b. Charter Club Girls Sleepwear and First Impressions Toddlers Sleepwear: CPSC Samples 00–792–0106 (Federated Style # 4402GO2411), 00–792–0107 (Federated Style # 4962SO4411), 99–800–2409 (Federated Style # 68990BF486), 99–800–2410 (Federated Style # 68990VA486), 99–800–2411 (Federated Style # 68990BS486), 00–792–0221 (Federated Style # 3100210411), 00–792–0222 (Federated Style # 68990LS486), 00–792–0223 (Federated Style # 68990VA486), 00–860–6097 (Federated Style # 68990DS486), 00–860–6098 (Federated Style # 68990TF486), 00–792–0197 (Federated Style # 68990MS486), 00–792–0198 (Federated Style # 68990PK486), 00–792–0199 (Federated Style # 68990VA486), 00–792–0200 (Federated Style # 68990LF486), 00–792–0201 (Federated Style # 68990BS486), 00–792–0202 (Federated Style # 68990LS486), 00–792–0203 (Federated Style # 68990TF486), 00–

792–0204 (Federated Style # 68990FS486), 00–792–0205 (Federated Style # 6899XMS486), 00–792–0206 (Federated Style # 68990FL486), 00–792–0207 (Federated Style # 68990DS486), 00–792–0208 (Federated Style # 68990RB486), 00–792–0209 (Federated Style # 3100310411), 00–792–0210 (Federated Style # 3100110411), 00–792–0211 (Federated Style # 3100210411), 00–792–0216 (Federated Style # P2890–GI21), 00–792–0195 (Federated Style # 68990AS486), 00–792–0196 (Federated Style # 6899PA486), 00–792–0227 (Federated Style # 68990PK486), 00–792–0228 (Federated Style # 68990AS486), 00–792–0229 (Federated Style # 68990DS486), 00–792–0230 (Federated Style # 68990TF486), 99–800–1923 (Federated Style # 6899DYZ486), all other Federated Style Numbers beginning with 2890, 2891, or 6899, and all other similarly-styled Charter Club Girls Sleepwear and First Impressions Toddlers Sleepwear. The style, fabric, weight, print pattern, silhouette, and design of these garments are consistent with sleepwear. These garments were sold on retail racks in the children's/girl's sleepwear department or the sleepwear section of the children's/girl's department with or next to garments that were 100% polyester flame resistant sleepwear. For some of these garments, Federated's retail sales clerks told our investigators that the garments were sleepwear.

c. 100% Cotton Bathrobes: CPSC Samples 00–792–0290 (Federated Style # 101–BLU), 00–792–0291 (Federated Style # 011–W02), 00–792–0292 (Federated Style # 011–WBB), Federated Style 101–WHT, Federated Style # 101–PNK, Federated Style # P2890–GI221, Monarch Terry Cloth Robes (Federated Style Numbers beginning with 011 or 101), Agean Terry Cloth Robes (Federated Style Numbers beginning with 1233, C1248, 1283C, 6028C, 6046, 6060C, 6062, 6360C), Charter Club Terry Cloth Robes (Federated Style Numbers 2890, 2891, 2892, 2893, and 2894), Club Room Terry Cloth Robes (Federated Style Number CR46), Fingerhut NFL Terry Cloth Robes (Fingerhut Catalogue Item Number 1A9H1). The style, fabric, weight, sillouette, and design of these garments are consistent with sleepwear. These garments were sold on retail racks in the girl's sleepwear or layette department with or next to garments that were 100% polyester flame resistant sleepwear, creating a high likelihood that consumers would purchase the garments for use as sleepwear.

d. First Impressions One-Piece, Long-Sleeved, Long-Legged Garments: CPSC Samples 00–792–0263 (Federated Style # 31005) and 00–792–0267 (Federated Style # 31004). These garments contained some of the characteristics of sleepwear. They were sold on retail racks in the children's sleepwear or the sleepwear section of the children's department with or next to garments that were 100% polyester flame resistant sleepwear or cotton tight-fitting sleepwear, creating a high likelihood that consumers would purchase the garments for use as sleepwear.

e. Charter Club Two-Piece 100% Cotton Pajamas: CPSC Sample 00–792–0262 (Federated Style # 68990CA486); Charter Club 100% Cotton Bathrobe: CPSC Sample 00–792–0261 (Federated Style # 2890WHT486); Charter Club Two-Piece 100% Cotton Pajamas: CPSC Samples 00–792–0265 (Federated Style # 68990CA486) and 00–792–0266 (Federated Style # 6899BK486); Charter Club 100% Cotton Bathrobes: CPSC Sample 00–792–0264 (Federated Style Numbers 2891BGP486 and 2890WHT486); and Charter Club Two-Piece 100% Cotton Pajamas: CPSC Sample 00–830–3599 (Federated Style # 68990MS486). The style, fabric, weight, print pattern, sillouette, and design of these garments are consistent with sleepwear. These garments were sold on retail racks in the girl's sleepwear department or the sleepwear section of the girl's department with or next to garmets that were 100% polyester flame resistant sleepwear or cotton tight-fitting sleepwear, creating a high likelihood that consumers would purchase the garments for use as sleepwear.

6. The acts by Federated set forth in Paragraph 5 above are in violation of Section 3(a) of the FFA, 15 U.S.C. 1192(a), for which a civil penalty may be imposed pursuant to Section 5(e)(1) and the FAA, 15 U.S.C. 1194(e)(1).

Federated's Response

7. Federated denies the allegations set forth in Paragraphs 4–6 above. Federated specifically denies that the subject garments were marketed and promoted by its retail stores as children's sleepwear, designed and intended to be used as sleepwear, or subject to the flammability requirements of the Children's Sleepwear Standards. Federated denies that it violated Section 3 of the FFA, the FTCA, or the Children's Sleepwear Standards, knowingly or otherwise. Federated enters into this Agreement for purposes of compromise and settlement only, to avoid incurring additional legal costs and expenses.

8. Federated is not aware of any consumer injury related in any way to the specific garments listed in Paragraph 5 above, and the staff has not alleged that there has been any injury.

Federated and the Staff Agree

9. The Commission has jurisdiction over the subject matter and Federated under the FAA, the FRCA, and the CPSA.

10. This Agreement and Order is entered into for the purposes of compromise and settlement only and does not constitute a determination by the Commission that Federated violated the FAA, the FTCA, or the Children's Sleepwear Standards. It does not constitute an admission by Federated of any liability or wrongdoing by Federated, or that Federated violated any law or regulation.

11. Within five (5) days of receiving service of the Final Order, Federated agrees to pay a civil penalty of $850,000, as set forth in the attached incorporated Order. This civil penalty is in settlement of the staff's allegations that Federated knowingly violated Section 3(a) of the FFA, 15 U.S.C. 1192(a), through the conduct described in Paragraph 5 above.

12. Upon final acceptance of this Agreement and issuance of the Final Order, the staff agrees that it will not initiate or pursue, in its own name, through the Commission, or by referral to any other government agency, a civil penalty action against Federated, its successors and assigns, subsidiaries, affiliates, officers, director, agents, representatives, or employees, based, in whole or in part, upon Federated's conduct as described in Paragraph 5 above.

13. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Final Order upon Federated.

14. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Federated and the staff knowingly, voluntarily, and completely waive and relinquish any past, present, and/or future right or rights they may have in this matter: (a) To an administrative or judicial hearing; (b) to judicial review or other challenge or contest of the validity of this Agreement and the Order as issued and entered; (c) to a determination by the Commission as to whether Federated failed to comply with the Children's Sleepwear Standards, FAA, and/or FTCA; (d) to a statement of findings of fact and conclusions of law by the Commission; (e) to any claims under the Equal Access to Justice Act.

15. Violation of the provisions of the Order may subject Federated to a civil and/or criminal penalty for each such violation, as prescribed by law.

16. The Commission and Federated may disclose the terms of this Agreement and Order to the public.

17. This Agreement may be used in interpreting the Provisional and Final Orders. Agreements, understandings, representations, or interpretations apart from those contained in this Agreement may not be used to vary or to contradict its terms.

18. This Agreement and Order is binding upon, and shall inure to the benefit of Federated, and its successors and assigns, acting directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device, or instrumentality, or through its employees, agents, or representatives.

19. Upon provisional acceptance of this Agreement and Order by the Commission, this Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1605.13(d). If the Commission does not receive any written request not to accept this Agreement and Order within 15 days, this Agreement and Order shall be deemed finally accepted on the 20th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1605.13(e).

20. Upon final acceptance of this Agreement and Order, the Commission shall issue the following Order which is incorporated by reference herein.

Dated: March 29, 2001.
Howard N. Tarnoff,
Trial Attorney, Legal Division.

Eric L. Stone,
Director, Legal Division.

Alan H. Schoem,
Director, Office of Compliance, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, Telephone: (301) 504–0626, Facsimile: (301) 504–0359.

Dated: March 26, 2001.
Dennis Broderick, Sr.,
VP, GC and Secretary, Federated Department Stores, Inc., 7 West Seventh Street, Cincinnati, OH 45202, Telephone: (513) 579–7000, Facsimile: (513) 579–7354.

Kate C. Beardsley,
Buc & Beardsley, 919 Eighteenth Street, NW., Washington, DC 20006, Telephone: (202) 736–3615, Facsimile: (202) 736–3608.

Philip Katz,
Crowell & Moring, LLP, 1001 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone: (202) 624–2660, Facsimile: (202) 628–5116.

Order

Upon consideration of the Settlement Agreement entered into between Federated Departments Stores, Inc. ("Federated") and the staff of the Consumer Product Safety Commission ("the staff" or "the staff of the Commission"); and it appearing that the Commission has jurisdiction over the subject matter and Federated and that the Settlement Agreement and Order is in the public interest,

I

It is ordered that the Settlement Agreement and Order be, and hereby is, accepted,

II

It is further ordered that, within five (5) calendar days of receiving service of the Final Order, Federated shall pay to the United States Treasury a civil penalty of eight hundred and fifty thousand dollars ($850,000).

By direction of the Commission, this Settlement Agreement and Order is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce the provisional acceptance of the Settlement Agreement and Order in the Commission's Public Calendar and in the **Federal Register**.

So ordered by the Commission, this 11th day of April, 2001.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 01–9396 Filed 4–13–01; 8:45 am]
BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Funding Opportunity To Support AmeriCorps Promise Fellows

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: Subject to the availability of appropriations, the Corporation for National and Community Service (the Corporation) will use approximately $6 million to award grants to support AmeriCorps Promise Fellows to state commissions on national and community service (State Commissions); Indian Tribes; nonprofit organizations proposing to sponsor AmeriCorps Promise Fellows in more than one state; and, in North Dakota, South Dakota, or U.S. territories that do not have a State Commission, local government agencies, institutions of higher education, or public or private nonprofit organizations. In total, these grants will support approximately 500 AmeriCorps Promise Fellows. AmeriCorps Promise Fellows will spend up to one year serving with organizations that are committed to initiating, expanding, or improving the delivery of the five promises for children and youth set at the 1997 Presidents' Summit for America's Future:

- Ongoing relationships with caring adults—parents, mentors, tutors or coaches;
- Safe places with structured activities during nonschool hours;
- A healthy start and future;
- Marketable skills through effective education; and
- Opportunities to give back through community service.

DATES: All proposals must be received by the Corporation by 5:00 p.m. Eastern Daylight Time, June 15, 2001.

ADDRESSES: Proposals to sponsor one or more Fellows must be submitted to the Corporation at the following address: Corporation for National Service, 1201 New York Avenue N.W., Box APF, Washington, D.C. 20525.

FOR FURTHER INFORMATION: For further information or to obtain a copy of the AmeriCorps Promise Fellows application guidelines and instructions, contact Austin Holland at (202) 606–5000, extension 274 or aholland@cns.gov. T.D.D. (202) 565–2799. This notice may be requested in an alternative format for the visually impaired. The application guidelines and instructions are also available on the Corporation's web site, http://www.nationalservice.org.

Technical Assistance: The Corporation will host a conference call to provide technical assistance to interested applicants on Thursday, May 3, 2001, at 3 p.m. Eastern Daylight Time. To register for this call and receive dial-in instructions, please contact Austin Holland at (202) 606–5000, extension 274 or *aholland@cns.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service. This service addresses the nation's educational, public safety, environmental and other human needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. For more information about the Corporation and the activities that it supports, go to http://www.nationalservice.org.

To date, the Corporation has funded the AmeriCorps Promise Fellows

program under subtitle H of the National and Community Service Act of 1990, as amended (the Act), which authorizes the Corporation to support "innovative and model programs." 42 U.S.C. 12653b. The President's budget request for fiscal year 2002 includes a request to fund the AmeriCorps Promise Fellows program under subtitle C of the Act, which authorizes the Corporation to establish the AmeriCorps State/National Grants program. If this request is approved by Congress, we will need to make minor modifications to the grant requirements during the grant negotiation process with approved applicants.

The federal regulations governing the Corporation, published at 45 CFR 2520 et seq., are available at our website at http://www.nationalservice.org/resources/cross/index.html.

History of the AmeriCorps Promise Fellows Program

At the Presidents' Summit for America's Future, held in April 1997 in Philadelphia, President Clinton, former Presidents Bush, Carter, and Ford, Mrs. Nancy Reagan, and General Colin Powell, with the endorsement of many governors, mayors, and leaders of the independent sector, declared: "We have a special obligation to America's children to see that all young Americans have:

1. Caring adults in their lives, as parents, mentors, tutors, coaches;
2. Safe places with structured activities in which to learn and grow;
3. A healthy start and healthy future;
4. An effective education that equips them with marketable skills; and
5. An opportunity to give back to their communities through their own service."

These five goals are now the five basic promises advanced by America's Promise—The Alliance for Youth, the national organization leading efforts to follow up on the goals of the Presidents' Summit. The AmeriCorps Promise Fellows program was created by the Corporation in partnership with America's Promise to provide leadership, support, and continued momentum to the campaign initiated at the Presidents' Summit.

As a major partner in the efforts of America's Promise, the Corporation devotes a substantial part of its activities to help address the five promises, including the work of AmeriCorps, Learn and Serve America, and the National Senior Service Corps. For more information about America's Promise, visit http://www.americaspromise.org.

Through this notice, the Corporation invites grant proposals from eligible entities that wish to sponsor an AmeriCorps Promise Fellows program.

Eligible Sponsors

The following entities are eligible to apply to sponsor an AmeriCorps Promise Fellows program:

- Governor-appointed state commissions on national and community service (State Commissions),
- Nonprofit organizations proposing to sponsor AmeriCorps Promise Fellows in more than one state (National Directs),
- Indian Tribes, and
- Local government agencies, institutions of higher education, or public or private nonprofit organizations in North Dakota, South Dakota, or U.S. territories that do not have a State Commission.

With the exception of the eligible organizations in North or South Dakota or a U.S. territory that does not have a State Commission, local organizations that want to host a Fellow should consult their respective state commission or a potential National Direct organization or Indian Tribe to discuss the possibility of applying for funding.

Program Structure and Role of the Sponsor

The AmeriCorps Promise Fellows program is structured so that the eligible sponsors listed above are the legal applicants to the Corporation for AmeriCorps Promise Fellows funding. Legal applicants submit one overall proposal for AmeriCorps Promise Fellows funding to the Corporation that may comprise a plan to place Fellows at multiple host organizations in locations around the state or the country, depending on the type of applicant.

Applicants may propose a variety of organizational structures for their AmeriCorps Promise Fellows program. For example, a National Direct applicant may propose to operate its program directly or provide sub-grants to local chapters or affiliates that will host Fellows. State Commissions may sub-grant responsibility for overall program administration to another entity that in turn manages the Fellows' host sites, or the State Commissions may enter directly into separate agreements with each host organization while retaining responsibility for some training and coordination of the program.

The process for selecting sub-grantees or host organizations varies from applicant to applicant. However, applicants are required to demonstrate how their Fellows will be involved in an effort to deliver all five promises in the communities where they serve. This requirement can be fulfilled by demonstrating that Fellows' host organizations deliver all five promises directly or by placing Fellows in organizations that are part of a larger effort to deliver all five. Fellows may also be deployed to initiate or support efforts to develop an all-five effort in organizations or communities that are not currently delivering all five promises in a coordinated way. Individual Fellows may focus on specific promise areas as their primary service objective, but are expected to be knowledgeable ambassadors for the importance of children and youth receiving all five.

Fellows may serve at a State Commission only under limited circumstances. In proposing such an arrangement, a State Commission must describe in its application how it will comply with (1) the prohibition on State Commissions operating any national service program receiving financial assistance from the Corporation and (2) the prohibition on a State Commission receiving Corporation assistance to carry out activities that are already supported by its administrative grant from the Corporation. A State Commission proposing this arrangement must also submit a detailed position description for the Fellow.

Regardless of the organizational structure, the grant requirements specified in the award for this program flow down to all sub-grantees and host organizations, and the legal applicant to the Corporation is ultimately responsible for ensuring that the program is implemented in accordance with all requirements. These requirements, which will be individually described in the grant agreement between the Corporation and the sponsor, include, but are not limited to, the following:

- providing office space, supplies, and equipment
- providing the minimum required living allowance
- providing health insurance that meets the minimum benefits established by the Corporation
- paying and withholding FICA taxes
- withholding income taxes
- providing unemployment insurance if required by State law
- providing workers' compensation if required by State law or obtaining insurance to cover service-related injuries
- providing liability insurance to cover claims relating to Fellows
- providing adequate training and supervision

- ensuring that Fellows do not engage in prohibited activities (such as lobbying)
- complying with statutory prohibitions on the use of Corporation assistance (such as displacement, discrimination)
- providing a grievance procedure that meets statutory standards
- verifying and submitting timely documentation relating to each Fellow's eligibility for an education award
- providing an adequate financial management system
- complying with reporting requirements.

Role and Qualifications of AmeriCorps Promise Fellows

AmeriCorps Promise Fellows are a leadership cadre of committed, talented individuals who dedicate a year of their lives to building a better future for children and youth by spearheading national, state or local efforts to deliver the five promises to young people. AmeriCorps Promise Fellows serve in nonprofit organizations, faith-based organizations, public agencies, colleges and universities, schools and other community-based organizations selected by the sponsor that are dedicated to promoting the five promises and engaged in the America's Promise campaign. While direct service to children and youth may be a component of a Fellow's service, Fellows are primarily capacity-builders. Their service activities expand, strengthen and improve a community's ability to deliver the five promises in sustainable ways. For example, a Fellow may:

- Coordinate a Community of Promise campaign to provide a targeted number of young people with all five promises (for more information on Communities of Promise, visit http://www.americaspromise.org);
- Generate commitments of in-kind services and volunteers from all sectors of the community including businesses, faith-based organizations, nonprofits, public agencies, and civic groups;
- Develop a youth service program at a Volunteer Center;
- Replicate a successful after-school program across the school district;
- Train volunteers to enlist low-income families in health insurance programs;
- Create a job-shadowing program for high school students; or
- Establish a statewide database of effective practices for mentoring programs.

Over the course of their service, Fellows develop specific knowledge of their community's resources related to the five promises, placing them in a unique position to promote the importance of all children receiving all five promises. Therefore, in addition to their specific service assignments, Fellows are expected to become knowledgeable advocates in their communities for the five-promise approach.

Fellows are viewed as leaders in the efforts to implement the goals of the Presidents' Summit, and as a group have an identity tied to this overall effort. Therefore, confidence in the ability of Fellows to produce outcomes in support of the goals of the Presidents' Summit, such as the implementation of projects like those described above, must be a strong consideration for selection of Fellows. This is evidenced by qualifications such as: strong academic credentials; demonstrated leadership skills; prior experience in a field related to the organization's activities; and experience performing significant service-related activities, particularly through other national service programs. An ability to take initiative and work independently may also be important qualifications for Fellows who often serve as the only AmeriCorps member at their host organization.

AmeriCorps Promise Fellows may not be used to supplement the numbers of AmeriCorps members at existing programs already carrying out activities consistent with the goals of the Presidents' Summit. Fellows may serve at existing AmeriCorps programs, but must have roles that are distinct from other AmeriCorps members and that are consistent with the goals of the AmeriCorps Promise Fellows program.

An AmeriCorps Promise Fellow must: (1) be at least 17 years of age at the commencement of service; (2) be a U.S. citizen, national, or lawful permanent resident alien of the United States; and (3) have a high school diploma or equivalency certificate (or agrees to obtain a high school diploma or its equivalent before using an education award) and who has not dropped out of elementary or secondary school in order to enroll as an AmeriCorps member (unless enrolled in an institution of higher education on an ability to benefit basis and is considered eligible for funds under section 484 of the Higher Education Act of 1965, 20 U.S.C. 1091), or who has been determined through an independent assessment conducted by the Program to be incapable of obtaining a high school diploma or its equivalent (provided that the Corporation's AmeriCorps program office has waived the education attainment requirement for the individual). Individuals who have already served in two approved national service positions (a position for which an education award is provided) are, by statute, not eligible for a third education award.

Required Benefits and Terms of Service

Fellows must serve on a full-time basis for a term of no less than 10 months and no more than 12 months. To qualify for an education award of $4,725, a Fellow must perform at least 1,700 hours of service during his or her term and complete any other requirements for completion that the sponsor established at the start of the term.

Sponsors must provide Fellows a living allowance between $13,000 and $18,600 based on a twelve-month term of service. If the term of service is shorter than twelve months, the sponsor must pro-rate the amount of the living allowance.

Sponsors are required to provide health insurance to Fellows that meets the minimum benefits set by the Corporation as described in detail in the application guidelines and instructions.

Contents of the Sponsor Application

Applicants must submit one unbound, single-sided original and two (2) copies of the application. All applicants are encouraged to voluntarily submit an additional four (4) copies of the application to expedite the review process. Facsimiles will not be accepted. Type and double-space the submission package in not less than 12-point font size, with one-inch margins. Please number the narrative pages. You must follow the page limits specified in the application instructions. If you exceed a page limit, we will remove any excess pages before reviewing your application. We will not accept appendices.

Additional detailed instructions about the format and content of the application appear in the application guidelines and instructions.

Budget and Finances

The Corporation will issue grants on a fixed amount per Fellow basis of up to $13,800 per Fellow for the first five Fellows awarded to a grantee and up to $10,800 per Fellow beyond five, unless the Corporation specifies otherwise. These amounts exclude the education award. Applicants may request up to 30 Fellows to be funded at the fixed amounts described above. If the applicant identifies non-Corporation resources to support the entire cost of a Fellow(s), including the minimum required living allowance, the Corporation may approve additional education awards to allow an applicant to enlarge the size of its program. In

such instances, the Corporation may also provide up to $800 per Fellow beyond the first 30 Fellows to support costs such as health insurance and member training and development.

Because these grants are fixed-amount awards, they do not require Corporation monitoring of actual costs incurred. The cost principles normally applicable to Federal awards do not apply. The sponsor assumes full financial responsibility for the program and must provide the additional financial support necessary to carry out their proposed AmeriCorps Promise Fellows program. The sponsor should indicate the amounts and types of additional financial support required for the program in the budget narrative of the application.

In addition to the approved grant amount, the Corporation will provide an education award to Fellows who successfully complete their term of service.

The project period is negotiable, but generally proposals should indicate a proposed program start date between October 1, 2001 and January 1, 2002.

The Corporation anticipates that these grants will cover up to a three-year period, subject to performance and the availability of appropriations. The funding opportunity announced under this Notice is to cover the first year.

Process for Selecting Sponsors

In selecting sponsors, the Corporation will use the following evaluation criteria:

Program Design 60%

- Getting Things Done
- Participant Development
- Strengthening Communities

Organizational Capacity 25%

Budget/Cost Effectiveness 15%

The Corporation will make all final decisions concerning approval of these grants. Upon initial approval of an application, the Corporation will enter into negotiations with the sponsor that may require revisions to the original grant proposal. Final approval of the application is contingent on completion of negotiations to the Corporation's satisfaction.

The Corporation anticipates announcing selected applicants under this announcement by August 15, 2001.

Dated: April 10, 2001.

Robert Torvestad,

Acting Director, AmeriCorps.

[FR Doc. 01–9313 Filed 4–13–01; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0126]

Submission for OMB Review; Comment Request Entitled Electric Service Territory Compliance Representation

AGENCIES: Department of Defense (DOD); General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0126).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (CMB) a request to review and approve an extension of a currently approved information collection requirement concerning Electric Service Territory Compliance Representation. A request for public comments was published at 66 FR 2891, January 12, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before May 16, 2001.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Federal Acquisition Policy Division, GSA (202) 208–1168.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The representation at 52.241–1, Electric Service Territory Compliance Representation, is required when proposed alternatives of electric utility suppliers are being solicited. The representation and legal and factual rationale, if requested by the contracting officer, is necessary to ensure Government compliance with Public Law 100–202.

B. Annual Reporting Burden

Respondents: 200.
Responses Per respondent: 2.5.
Total annual responses: 500.
Hours Per Response: .45.
Total Burden Hours: 225.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0126, Electric Service Territory Compliance Representation, in all correspondence.

Dated: April 10, 2001.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 01–9284 Filed 4–13–01; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0124]

Submission for OMB Review; Comment Request Entitled Capital Credits

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0124).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Capital Credits. A request for public comments was published at

66 FR 2890, January 12, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before May 16, 2001.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Federal Acquisition Policy Division, GSA (202) 208–1168.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause 52.241–13, Capital Credits, is designed to obtain an accounting of Capital Credits due the Government when the Government is a member of a cooperative.

B. Annual Reporting Burden

Respondents: 450.

Responses Per Respondent: 1.

Total Responses: 450.

Hours Per Response: 1.

Total Burden Hours: 450.

C. Annual Recordkeeping Burden

Recordkeepers: 450.

Hours Per Recordkeeper: 1.

Total Recordkeeping Burden Hours: 450.

Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0124, Capital Credits, in all correspondence.

Dated: April 11, 2001.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 01–9378 Filed 4–13–01; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATE: Interested persons are invited to submit comments on or before June 15, 2001.

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

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

Dated: April 10, 2001.

Joseph Schubart,

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

Office of the Undersecretary

Type of Review: New.

Title: Evaluating the Institutional Change in Preparing Tomorrow's Teachers To Use Technology.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 585. Burden Hours: 345.

Abstract: The Preparing Tomorrow's Teachers To Use Technology program was created in 1999 to meet the critical need for developing technology-proficient educators. That year, 64 Implementation grants were awarded to support consortia that were ready to put into practice innovations that had the potential to "transform their teacher preparation programs into 21st century learning environments." This evaluation will investigate how teacher preparation programs that received PT3 Implementation grants in 1999 conducted reforms in the ways they prepare future teachers to use technology.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie.Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–9311 Filed 4–13–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.290U]

Bilingual Education: Comprehensive School Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program, and the application requirements that apply to this competition, are contained in sections 7114 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7424 and 7426)).

Purpose of Program: This program provides grants to implement schoolwide bilingual education programs or schoolwide special alternative instruction programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve all or virtually all limited English proficient (LEP) children and youth in one or more schools with significant concentrations of these children and youth.

Eligible Applicants: (a) One or more local educational agencies (LEAs); or (b) one or more LEAs in collaboration with an institution of higher education, community-based organizations, other LEAs, or a State educational agency.

Deadline for Transmittal of Applications: June 15, 2001.

Deadline for Intergovernmental Review: August 14, 2001.

Available Funds: $8 million.

Estimated Range of Awards: $200,000–$300,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 32.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 50 pages, using the following standards:

- A page is 8½″ by 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, references, 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 budget justification and the cost itemization; Part IV, the assurances and certifications; or the table of contents or the one-page abstract. However, you must include all of the application narrative in Part III.

If, to meet the page limit, you use more than one side of the page, you use a larger page, or you use a print size, spacing, or margins smaller than the standards in this notice, we will reject your application.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 99. (b) The regulations in 34 CFR part 299.

Description of Program: Funds under this program are to be used to reform, restructure, and upgrade all relevant operations and programs, within a school, that serve LEP children and youth. Before carrying out a project assisted under this program, a grantee will plan, train personnel, develop curriculum, and acquire or develop materials. In addition, grantees are authorized, under this program, to improve the education of LEP children and youth and their families by implementing family education programs, improving the instructional program for LEP children, compensating personnel who have been trained—or are being trained—to serve LEP children and youth, providing tutorials and academic or career counseling for LEP children and youth, and providing intensified instruction.

Priorities

Absolute Priority: The priority in the notice of final priority for this program, as published in the **Federal Register** on October 30, 1995 (60 FR 55245) and repeated immediately below, applies to this competition.

Under 34 CFR 75.105(c)(3) and section 7114(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment.

Competitive Priority: Within the absolute priority specified in this notice, the Secretary under 34 CFR 75.105(c)(2)(ii) and 34 CFR 299.3(b) gives preference to applications that meet the following competitive priority. An application that meets this competitive priority is selected by the Secretary over applications of comparable merit that do not meet the priority:

Projects that will contribute to systemic educational reform in an Empowerment Zone or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice and is also available on the Internet at the following site: http://www.ezec.gov.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Invitational Priority 1—Reading

Projects that focus on reforming, restructuring, and upgrading reading instruction to assist limited English proficient students to read independently and well by the end of third grade.

Invitational Priority 2—Mathematics

Projects that focus on reforming, restructuring, and upgrading mathematics instruction to assist limited English proficient students to master challenging mathematics, including the foundations of algebra and geometry, by the end of eighth grade.

Invitational Priority 3—Preparation for Postsecondary Education

Projects that focus on motivating and academically preparing limited English proficient students for successful participation in college and other postsecondary education.

Invitational Priority 4—Professional Development

Applicants that consider the U.S. Department of Education Professional

Development Principles in planning and designing a Comprehensive School Grant project.

Those principles call for educator professional development that focuses on teachers as central to student learning, yet includes all other members of the school community; focuses on individual, collegial, and organizational improvement; respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 and sections 7114, 7116, and 7123 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (15 points) The Secretary reviews each application to determine how well the proposed project will implement schoolwide bilingual education programs or schoolwide special alternative instruction programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve all (or virtually all) children and youth of limited English proficiency in schools with significant concentrations of those children and youth.

(Authority: 20 U.S.C. 7424(a))

(2) *Need for the project.* (10 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The number of children and youth of limited English proficiency in the school or school district to be served, and

(ii) The characteristics of those children and youth, such as—

(A) Language spoken;

(B) Dropout rates;

(C) Proficiency in English and the native language;

(D) Academic standing in relation to the English proficient peers of those children and youth; and

(E) If applicable, the recency of immigration.

(Authority: 20 U.S.C. 7426(g)(1)(A))

(3) *Quality of the project design.* (15 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students. (Authority: 34 CFR 75.210(c)(2)(i), (ii), and (xviii))

(4) *Project activities.* (15 points) The Secretary reviews each application to determine—

(i) How well the proposed project will improve the education of limited English proficient students and their families by carrying out some or all of the following authorized activities:

(A) Implementing family education programs and parent outreach and training activities designed to assist parents to become active participants in the education of their children.

(B) Improving the instructional program for limited English proficient students by identifying, acquiring, and upgrading curriculum, instructional materials, educational software, and assessment procedures, and, if appropriate, applying educational technology.

(C) Compensating personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to children and youth of limited English proficiency.

(D) Providing training for personnel participating in or preparing to participate in the program that will assist that personnel in meeting State and local certification requirements and, to the extent possible, obtaining college or university credit.

(E) Providing tutorials and academic or career counseling for children and youth of limited English proficiency.

(F) Providing intensified instruction.

(ii) The degree to which the program for which assistance is sought involves the collaborative efforts of institutions of higher education, community-based organizations, and the appropriate local and State educational agency or businesses; and

(iii) How well the proposed project provides for utilization of the State and national dissemination sources for program design and in dissemination of results and products. (Authority: 20 U.S.C. 7424(b)(3); 7426(h)(6) and (i)(4)–(5))

(5) *Quality of the management plan.* (10 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project. (Authority: 34 CFR 75.210(g)(1) and (2)(i) and (iv))

(6) *Quality of project personnel.* (5 points) (i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director.

(B) The qualifications, including relevant training and experience, of key project personnel. (Authority: 34 CFR 75.210(e)(1)–(3)(i) and (ii))

(7) *Language skills of personnel.* (3 points) The Secretary reviews each application to determine how well the proposed project meets the following requirements:

(i) The program will use qualified personnel, including personnel who are

proficient in the language or languages used for instruction.

(ii) The applicant will employ teachers in the proposed program who, individually or in combination, are proficient in English, including written, as well as oral, communication skills.

(Authority: 20 U.S.C. 7426(g)(1)(E) and (h)(1))

(8) *Adequacy of resources.* (4 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(Authority: 34 CFR 75.210(f)(1) and (2)(iii)–(iv))

(9) *Integration of project funds.* (3 points) The Secretary reviews each application to determine how well funds received under this program will be integrated with all other Federal, State, local, and private resources that may be used to serve children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(g)(2)(A)(iii))

(10) *Evaluation plan.* (15 points) The Secretary reviews each application to determine how well the proposed project's evaluation will meet the following requirements:

(i) Student evaluation and assessment procedures must be valid, reliable, and fair for limited English proficient students.

(ii) The evaluation must include—

(A) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, if applicable, native language) proficiency;

(B) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction; and

(C) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(h)(3) and 7433(c)(1)–(3))

(11) *Commitment and capacity building.* (5 points) The Secretary reviews each application to determine how well the proposed project meets the following requirements:

(i) The proposed project must contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, that will be of sufficient size, scope, and quality to promise significant improvement in the education of students of limited English proficiency.

(ii) The applicant will have the resources and commitment to continue the program when assistance under this program is reduced or no longer available.

(Authority: 20 U.S.C. 7426(h)(5))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any SPOC, see the list in the appendix to this application notice; or you may view the latest official SPOC list on the Web site of the Office of Management and Budget at the following address: http://www.whitehouse.gov/omb/grants.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this application notice to the following address: The Secretary, E.O. 12372—CFDA# 84.290U, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E200, Washington, DC 20202–0125.

We will determine proof of mailing under 34 CFR 75.102 (Deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which an applicant submits its completed application. do not send applications to the above address.

Instructions for Transmittal of Applications

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

The U.S. Department of Education is expanding its pilot project of electronic submission of applications to include certain formula grant programs, as well as additional discretionary grant competitions. The Bilingual Education Comprehensive School Grants Program (CFDA No. 84.290U) is one of the programs included in the pilot project. If you are an applicant under the Bilingual Education Comprehensive School 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, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.

• You can 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.

• Fax a signed copy of the Application for Federal Education Assistance (ED 424) after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center within three working days of submitting your electronic application. We will indicate a fax number in e-APPLICATION at the time of your submission.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Bilingual Education Comprehensive School Grants Program at: http://e-grants.ed.gov.

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) elsewhere in this notice.

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements.

(A) If You Send Your Application by Mail

You must mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.290U, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

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

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(B) If You Deliver Your Application by Hand

You or your courier must hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.290U, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(C) If You Submit Your Application Electronically

You must submit your grant application through the Internet using the software provided on the e-Grants Web site (http://e-grants.ed.gov) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6:00 a.m. until 12:00 midnight (Washington, DC time) Monday—Friday and 6:00 a.m. until 7:00 p.m. Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7:00 p.m. (Washington, DC time).

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424; revised November 12, 1999) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(4) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

Application Instructions and Forms

The appendix to this application notice contains the following forms and instructions, including a statement regarding estimated public reporting burden, a checklist for applicants, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), and various assurances, certifications, and required documentation:

a. Estimated Burden Statement.
b. Application Instructions.
c. Checklist for Applicants.
d. Application for Federal Education Assistance (ED 424) and Instructions.
e. Group Application Certification.
f. Budget Information—Non-Construction Programs (ED 524) and Instructions.
g. Student Data.
h. Project Documentation.
i. Program Assurances.
j. Assurances—Non-Construction Programs (Standard Form 424B) and Instructions.
k. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.
l. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014) and Instructions.
m. Disclosure of Lobbying Activities (Standard Form LLL) and Instructions.
n. Notice to All Applicants (GEPA Requirement) (OMB No. 1801–0004).
o. List of Empowerment Zones and Enterprise Communities.
p. List of State Single Points of Contact.

An applicant may submit information on a photostatic copy of the application forms, assurances, and certifications. However, if an application is submitted in conventional paper form, one copy of the application forms, assurances, and certifications must have an original signature.

All applicants submitting their applications in conventional paper form must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as *original* or *copy*. No grant may be awarded unless a complete application has been received.

FOR FURTHER INFORMATION CONTACT: Margarita Ackley, Lorena Dickerson, or Jessica Knight, U.S. Department of Education, 400 Maryland Avenue, SW.,

Room 5086, Switzer Building, Washington, DC 20202–6510. Telephone: Margarita Ackley (202) 205–0506, Lorena Dickerson (202) 205–9044, Jessica Knight (202) 205–0706. E-mail: Margarita_Ackley@ed.gov; Lorena_Dickerson@ed.gov; Jessica_Knight@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. (Washington, DC time), Monday through Friday.

Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed above. Please note, however, that the Department is not able to reproduce in an alternative format the standard forms included in the notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: http://www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at the preceding site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498 or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 7424.

Dated: April 10, 2001.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

Appendix—Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0535 (Exp. 12/31/2001). The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Switzer Building, Washington, DC 20202–6510.

Application Instructions

Parity Guidelines Between Paper and Electronic Applications

The Department of Education is expanding the pilot project, which began in FY 2000, that allows applicants to use an Internet-based electronic system for submitting applications. This competition is among those that have an electronic submission option available to all applicants. The system, called e-APPLICATION, formerly e-GAPS (Electronic Grant Application Package System), allows an applicant to submit a grant application to us electronically, using a current version of the applicant's Internet browser. To see e-APPLICATION visit the following address: http://e-grants.ed.gov.

In an effort to ensure parity and a similar look between applications transmitted electronically and applications submitted in conventional paper form, e-APPLICATION has an impact on all applicants under this competition.

Users of e-APPLICATION, a data driven system, will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project is another step in the Department's transition to an electronic grant award process. In addition to e-APPLICATION, the Department is conducting a limited pilot of electronic peer review (e-READER) and electronic annual performance reporting (e-REPORTS).

To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

- Submit your application on 8½″ by 11″ paper.
- Leave a 1-inch margin on all sides.
- Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.
- Please use black and white, also, for illustrations, including charts, tables, graphs, and pictures.
- For the narrative component, your application should consist of the number and the heading of each selection criterion followed by the narrative. The heading of the selection criterion, if included, does not count against any page limitation.
- Place a page number at the bottom right of each page of the narrative component, beginning with 1; and number your pages consecutively throughout the narrative component.

Abstract

The narrative component should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

GPRA Program Performance Indicators

The Government Performance and Results Act (GPRA) of 1993 directs Federal agencies to improve the effectiveness of their programs by setting outcome-related goals for programs and measuring program results against those goals. One of the steps taken by the U.S. Department of Education to implement this Act is to ask its grantees to report annually their progress toward meeting the objectives of their projects in relation to the GPRA program performance indicators. Therefore applicants for new grants should ensure that the project goals and objectives they propose in the narrative component of their applications include outcome-oriented performance goals and objectives that are measurable and reportable in relation to the GPRA performance indicators for the particular program under which they are seeking Federal assistance.

Applicants under the Bilingual Education Comprehensive School

Grants Program should, in devising project goals and objectives, take into account the following GPRA performance indicators:

• *English proficiency:* Students in the project will annually demonstrate continuous and educationally significant progress on oral and written English proficiency measures. *Target:* 75 percent of project students will make gains in oral and written English proficiency.

• *Other academic achievement:* Students in the project will annually demonstrate continuous and educationally significant progress on appropriate academic achievement measures of language arts, reading, and mathematics. *Target:* 75 percent of project students will make gains in academic achievement in language arts, reading, and mathematics.

• *Students exiting programs:* Students in Title VII projects who have received bilingual education/ESL services continuously since first grade will exit those projects in three years. This GPRA program performance indicator applies to students in transitional bilingual education projects or special alternative instruction projects. The indicator also applies to students in dual language education projects to the extent that those projects must assist the participating students to become proficient in English, but the participating students do not need to exit the projects in three years.

• *Teacher training:* The number of teachers in Title VII Comprehensive School projects who receive quality professional development in the instruction of limited English proficient students will increase each year by 20 percent.

Empowerment Zone/Enterprise Community Priority

Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the applicable Empowerment Zone or Enterprise Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Empowerment Zone or Enterprise Community and be an integral part of the Zone's or Community's comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice and is also available on the Internet at the following site: http://www.ezec.gov.

Table of Contents

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. The table should include the page numbers where the parts of the narrative are found.

Budget

A separate budget summary and cost itemization must be provided on the Budget Information Form (ED 524) and in the itemized budget for each project year. Budget line items should be directly related to the activities that are proposed to achieve the goals and objectives of the project.

Submission of Application to State Educational Agency

Section 7116(a)(2) of the authorizing statute (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7426(a)(2)). This requirement applies both to applicants that submit their application to the U.S. Department of Education electronically and to applicants that submit their application in conventional paper form. Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires applicants to submit their application to the SEA on or before the deadline date for submitting the application to the U.S. Department of Education. This section of EDGAR also requires applicants to attach to the application they submit to the U.S. Department of Education a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). This letter should be attached to the Project Documentation Form contained in this application package. APPLICANTS THAT DO NOT SUBMIT A COPY OF THEIR APPLICATION TO THEIR STATE EDUCATIONAL AGENCY IN ACCORDANCE WITH THESE STATUTORY AND REGULATORY REQUIREMENTS WILL NOT BE CONSIDERED FOR FUNDING.

Continued Eligibility of Current or Prior Grantees for New Grants

Please note that the authorizing statute for the Comprehensive School Program provides that entities that have received Title VII grants are eligible for funding under this competition only if their new applications propose activities that do not duplicate activities currently or previously funded by a Title VII grant.

Final Application Preparation

Use the Checklist for Applicants provided below to verify that your application is complete. If you submit your application in conventional paper form, provide three copies of the application, including one copy with an original signature on each form that requires the signature of the authorized representative. Do not use elaborate bindings, notebooks, or covers. If you mail your application, the application must be postmarked by the deadline date.

Checklist for Applicants

Application Forms and Other Items

1. Application for Federal Education Assistance Form (ED 424).
2. Group Application Certification Form (if applicable).
3. Budget Information Form (ED 524).
4. Itemized budget for each project year.
5. Student Data Form.
6. Project Documentation Form, including:

Section A—Copy of transmittal letter to SEA (if applicable);
Section B—Documentation of consultation with nonprofit private school officials (if applicable);
Section C—Appropriate box checked;
Section D—Empowerment Zone or Enterprise Community identified (if applicable).

7. Program Assurances Form.
8. Assurances—Non-Construction Programs Form (SF 424B).
9. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
11. Disclosure of Lobbying Activities Form (SF LLL).
12. Notice to All Applicants (GEPA Requirement) (OMB No. 1801–0004).
13. One-page abstract.
14. Table of contents.
15. Application narrative (subject to page limit specifications).

Application Transmittal

1. By mail or hand delivery: one original and two copies of the application to the U.S. Department of Education Application Control Center;

or by electronic transmission: software provided on the e-Grants Web site.

2. One copy to the appropriate State Educational Agency (if applicable).

3. One copy to the appropriate State Single Point of Contact (if applicable).

BILLING CODE 4000–01–P

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
_____ _____ _____ _____ - _____
City State County ZIP Code + 4

Organizational Unit
_____

2. Applicant's D-U-N-S Number: |__|__|__|__|__|__|__|__|__|

3. Applicant's T-I-N |__|__| - |__|__|__|__|__|__|__|

4. Catalog of Federal Domestic Assistance #: 84._2_|_9_|_0_|_U_| → _____
Title: Bilingual Education: Comprehensive School Grants

5. Project Director: _____
Address: _____
_____ _____ _____
City State Zip code + 4
Tel. #: ( ) _____-_____ Fax #: ( )_____-_____
E-Mail Address: _____

6. Is the applicant delinquent on any Federal debt? ___Yes ___No
(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)* |_____|

A - State	H - Independent School District
B - County	I - Public College or University
C - Municipal	J - Private, Non-Profit College or University
D - Township	K - Indian Tribe
E - Interstate	L - Individual
F - Intermunicipal	M - Private, Profit-Making Organization
G - Special District	N - Other *(Specify)*: _____

8. Novice Applicant ___Yes ___ No

Application Information

9. Type of Submission:

-PreApplication	*-Application*
____Construction	____Construction
____Non-Construction	_X_Non-Construction

10. Is application subject to review by Executive Order 12372 process?
____ Yes *(Date made available to the Executive Order 12372 process for review)*: ____/____/_____
____ No *(If "No," check appropriate box below.)*
____ Program is not covered by E.O. 12372.
____ Program has not been selected by State for review.

11. Proposed Project Dates: ____/____/_____ ____/____/_____
Start Date: **End Date:**

12. Are any research activities involving human subjects planned at any time during the proposed project period? ____Yes _____No
a. If "Yes," Exemption(s) #: b. Assurance of Compliance #:
_____ *OR* _____
c. IRB approval date: ____ Full IRB or
_____ ____ Expedited Review

13. Descriptive Title of Applicant's Project:
_____

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative
_____
b. Title: _____
c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
d. E-Mail Address: _____
e. Signature of Authorized Representative
_____ Date: ___/___/_____

ED 424 (rev 11/12/99)

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No" If research activities involving human subjects are not planned at any time during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If all the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor.

Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

Protection of Human Subjects in Research (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned.

If you marked item 12 on the application "Yes" and designated exemptions in 12a , **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an

individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of *exemptions* are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	Name of Institution/ Organization

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

STUDENT DATA	
Name of Local Educational Agency	

SECTION A

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Total number of limited English proficient (LEP) students in the school district	
2. Total number of students in the school district	
3. Percentage of LEP students (line 1 divided by line 2)	%

SECTION B

NOTE: This section must be completed by applicants under the following program:

- **Comprehensive School Grants**

Name of project school	(1) Total number of LEP students in the school	(2) Total number of students in the school	(3) % of LEP students (Column (1) divided by column (2))
			%
			%
			%
			%
			%
			%

Name of Local Educational Agency _____

STUDENT DATA
(continued)

SECTION C

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Circle the grade level(s) that will participate in the project: PreK K 1 2 3 4 5 6 7 8 9 10 11 12

2. Total number of language groups that will participate in the project. _____

3. List the five largest participating language groups and the approximate number of students in each group.

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

PROJECT DOCUMENTATION

NOTE: **Submit the appropriate documents and information as specified below for the following programs:**

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

SECTION A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application should be attached to this form. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

Sec. 75.155 Review procedure if State may comment on applications: Purpose of Secs. 75.156-75.158. If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in Secs. 75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372. (In addition to the requirement in Sec. 75.155 for review by the State educational agency, the application is subject to State review by Executive Order 12372 process. Applicants must complete item 10 of the application face sheet (ED 424, Application for Federal Education Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

Sec. 75.156 When an applicant under Sec. 75.155 must submit its application to the State: proof of submission. (a) Each applicant under a program covered by Sec. 75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department. (b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

SECTION B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools should be attached to this form. (See Sec. 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

Sec. 7116 Applications. "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

Sec. 75.119 Information needed if private schools participate. If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1221e-3(a)(1))

Sec. 76.652 Consultation with representatives of private school students.

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.
(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

Sec. 76.656 Information in an application for a subgrant. An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with Sec. 76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

SECTION C

Check the appropriate box below:

- **There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project.**

- **One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data Form.**

- **There are no eligible nonprofit private schools in the proposed service delivery area.**

SECTION D

If applicable, identify on the line below the Empowerment Zone or Enterprise Community that the proposed project will serve. (See the competitive priority and the list of designated Empowerment Zones and Enterprise Communities in other sections of this application package.)

_____

PROGRAM ASSURANCES

NOTE: **The authorizing statute requires applicants under certain programs to provide assurances. This form must be completed for applications under the following programs:**

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

As the duly authorized representative of the applicant, I certify that the applicant:

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under the program.
- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.
- Will integrate the proposed project with the applicant's overall educational program.
- Has developed this application in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in the proposed project.

(Authority: 20 U.S.C. 7426(g))

Authorized Representative		Applicant Organization
Signature	Title	
Typed Name	Date Signed	

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3 Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. ээ276a to 276a-7), the Copeland Act (40 U.S.C. э276c and 18 U.S.C. ээ874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. ээ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. ээ1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. ээ7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. ээ1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. э470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. ээ469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. ээ2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. ээ4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, AAudits of States, Local Governments, and Non-Profit Organizations.≅

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled ACertification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions,≅ without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. **Type of Federal Action:** a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	3. **Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____

4. **Name and Address of Reporting Entity:** ____ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**	5. **If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* **$**
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES
(as of January 13, 1999)

EMPOWERMENT ZONES

California: Los Angeles, Oakland, Santa Ana, Riverside County*
Connecticut: New Haven+
Florida: Miami+
Georgia: Atlanta, Cordele*+
Illinois: Chicago, East St. Louis+, Ullin*
Indiana: Gary, East Chicago
Kentucky: Kentucky Highlands* (Clinton, Jackson, and Wayne Counties)
Maryland: Baltimore
Massachusetts: Boston+
Michigan: Detroit
Minnesota: Minneapolis+
Mississippi: Mid-Delta* (Bolivar, Holmes, Humphreys, LeFlore, Sunflower, Washington Counties)
Missouri/Kansas: Kansas City, Kansas City
Missouri: St. Louis+
New Jersey: Cumberland County
New York: Harlem, Bronx
North Dakota: Lake Agassiz*
Ohio: Cleveland, Cincinnati, Columbus+
Ohio/West Virginia: Ironton/Huntington+
Pennsylvania/New Jersey: Philadephia/ Camden
South Carolina: Columbia/Sumter
South Dakota: Oglala Sioux Reservation in Pine Ridge*
Tennessee: Knoxville
Texas: Houston, El Paso+, Rio GrandeValley* (Cameron, Hidalgo, Starr, and Willacy Counties)
Virginia: Norfolk+/Portsmouth

ENTERPRISE COMMUNITIES

Alabama: Birmingham
Alabama: Chambers County* Greene County*, Sumter County*
Alaska: Juneau*
Arizona: Arizona Border* (Cochise, Santa Cruz and Yuma Counties), Phoenix, Window Rock*
Arkansas: East Central* (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County*, Pulaski County
California: Imperial County*, Los Angeles, Huntington Park, San Diego, San Francisco, Bayview, Hunter's Point, Watsonville*, Orange Cove*
Colorado: Denver
Connecticut: Bridgeport, New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*, Miami, Dade County, Tampa, Immokalee*
Georgia: Albany, Central Savannah River*(Burke, Hancock, Jefferson, McDuffie, Tallafero, and Warren Counties), Crisp County*, Dooley County*
Hawaii: Kaunakakai*
Illinois: East St. Louis, Springfield
Indiana: Indianapolis, Austin*
Iowa: Des Moines
Kansas: Leoti*
Kentucky: Louisville, Bowling Green*
Louisiana: Macon Ridge* (Catahoula, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Louisiana Delta* (Madison Parish), Ouachita Parish
Maine: Lewiston*
Massachusetts: Lowell, Springfield
Michigan: Five Cap*, Flint, Muskegon, Harrison*
Minnesota: Minneapolis, St. Paul
Mississippi: Jackson, North Delta Area* (Panola, Quitman, and Tallahatchie Counties)
Missouri: East Prairie*, St. Louis
Montana: Poplar*
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque, La Jicarita* (Mora, Rio Arriba, Taos Counties), Deming*
New York: Albany, Schenectady, Troy
New York: Buffalo, Rochester
New York: Newburgh, Kingston
North Carolina: Charlotte
North Carolina: Edgecombe, Halifax, Robeson, Wilson Counties*
Ohio: Akron, Columbus, Greater Portsmouth* (Scioto County)
Oklahoma: Choctaw, McCurtain Counties*, Oklahoma City, Ada*
Oregon: Josephine County*, Portland
Pennsylvania: Harrisburg, Lock Haven*, Pittsburgh, Uniontown*
Rhode Island: Providence
South Carolina: Charleston, Williamsburg, Florence County*, Hallandale*
South Dakota: Beadle, Spink Counties*
Tennessee: Fayette, Haywood Counties*, Memphis, Nashville, Rutledge*
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas, El Paso, San Antonio, Waco, Uvalde*
Utah: Ogden
Vermont: Burlington
Virginia: Accomack (Northampton County)*, Norfolk
Washington: Lower Yakima County*, Seattle, Tacoma, Collie*
West Virginia: Charleston*, Huntington, McDowell County*, West Central Appalachia* (Braxton, Clay, Fayette, Nicholas, and Roane)
Wisconsin: Milwaukee, Keshena*

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* Denotes rural designee
+Also an Enterprise Community, Round One

This publication by the U.S. Department of Education is an unofficial version of the State Single Point of Contact (SPOC) List published by the Office of Management and Budget (OMB). This publication incorporates the most recent revisions made by OMB. The Department has made every effort to ensure the accuracy of the information contained in this unofficial version. However, the only official version of the State Single Point of Contact (SPOC) List is posted on the Grants Management section of the OMB web site **http://www.whitehouse.gov/omb/grants/spoc.html**. You may save a text version of this document at the aforementioned site. Please note it will be necessary to put a row of space between each state listing.

STATE SINGLE POINTS OF CONTACT (SPOCs)

It is estimated that in 2001, the Federal Government will outlay $305.6 billion in grants to State and local governments. Executive Order 12372, "Intergovernmental Review of Federal Programs," was issued with the desire to foster the intergovernmental review of proposed Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform this function. Below is the official list of those entities. For those States that have a home page for their designated entity, a direct link has been provided on the official version http://www.whitehouse.gov/omb/grants/spoc.html. **States that are not listed on this page have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of these States, you may still send application material directly to a Federal awarding agency.**

ARKANSAS Tracy L. Copeland Manager, State Clearinghouse Office of Intergovernmental Services Department of Finance and Administration 1515 7th Street, Room 412 Little Rock, Arkansas 72203 Telephone: (501) 682-1074 FAX: (501) 682-5206 Tlcopeland@dfa.state.ar.us	**CALIFORNIA** Grants Coordination State Clearinghouse Office of Planning and Research P.O. Box 3044, Room 222 Sacramento, California 95812-3044 Telephone: (916) 445-0613 FAX: (916) 323-3018 State.clearinghouse@opr.ca.gov
DELAWARE Charles H. Hopkins Executive Department Office of the Budget 540 S. Dupont Highway , 3rd Floor Dover, Delaware 19901 Telephone: (302) 739-3323 FAX: (302) 739-5661 Chopkins@state.de.us	**DISTRICT OF COLUMBIA** Ron Seldon Office of Grants Management and Development 717 14th Street, NW, Suite 1200 Washington, DC 20005 Telephone: (202) 727-1705 FAX: (202) 727-1617 Ogmd-ogmd@dcgov.org
FLORIDA Cherie L. Trainor Florida State Clearinghouse Department of Community Affairs 2555 Shumard Oak Blvd. Tallahassee, Florida 32399-2100 Telephone: (850) 922-5438 Telephone: (850) 414-5495 (direct) FAX: (850) 414-0479 Cherie.trainor@dca.state.fi.us	**GEORGIA** Georgia State Clearinghouse 270 Washington Street, SW Atlanta, Georgia 30334 Telephone: (404) 656-3855 FAX: (404) 656-7901 Gach@mail.opb.state.ga.us
ILLINOIS	**IOWA**

Virginia Bova Department of Commerce and Community Affairs James R. Thompson Center 100 West Randolph, Suite 3-400 Chicago, Illinois 60601 Telephone: (312) 814-6028 FAX: (312) 814-8485 vbova@commerce.state.il.us	Steven R. McCann Division of Community and Rural Development Iowa Department of Economic Development 200 East Grand Avenue Des Moines, Iowa 50309 Telephone: (515) 242-4719 FAX: (515) 242-4809 Steve.mccann@ided.state.ia.us
KENTUCKY Ron Cook Department for Local Government Kentucky State Clearinghouse 1024 Capital Center Drive, Suite 340 Frankfort, Kentucky 40601 Telephone: (502) 573-2382 FAX: (502) 573-0175 Ron.cook@mail.state.ky.us	**MAINE** Joyce Benson State Planning Office 184 State Street 38 State House Station Augusta, Maine 04333 Telephone: (207) 287-3261 Telephone: (207) 1461 (direct) FAX: (207) 287-6489 Joyce.benson@state.me.us
MARYLAND Linda Janey Manager, Clearinghouse and Plan Review Unit Maryland Office of Planning 301 W. Preston Street – Room 1104 Baltimore, Maryland 21201-2305 Telephone: (410) 767-4490 FAX: (410) 767-4480 linda@mail.op.state.md.us	**MICHIGAN** Mr. Richard Pfaff Southeast Michigan Council of Governments 660 Plaza Drive – Suite 1900 Detroit, Michigan 48226 Telephone: (313) 961-4266 FAX: (313) 961-4869 pfaff@semcog.org
MISSISSIPPI Cathy Mallette Clearinghouse Officer Department of Finance and Administration 550 High Street 303 Walters Sillers Building Jackson, Mississippi 39201-3087 Telephone: (601) 359-6762 FAX: (601) 359-6758	**MISSOURI** Lois Pohl Federal Assistance Clearinghouse Office of Administration P.O. Box 809 Jefferson Building, Room 915 Jefferson City, Missouri 65102 Telephone: (573) 751-4834 FAX: (573) 522-4395 pohll_@mail.oa.state.mo.us

NEVADA Heather Elliott Department of Administration State Clearinghouse 209 East Musser Street, Room 200 Carson City, Nevada 89701-4298 Telephone: (775) 684-0209 FAX: (775) 684-0260 Helliot@govmail.state.nv.us	**NEW HAMPSHIRE** Jeffrey H. Taylor Director, New Hampshire Office of State Planning Attn: Intergovernmental Review Process Mike Blake 2½ Beacon Street Concord, New Hampshire 03301 Telephone: (603) 271-2155 FAX: (603) 271-1728 Jtaylor@osp.state.nh.us
NEW MEXICO Ken Hughes Local Government Division Room 201, Bataan Memorial Building Santa Fe, New Mexico 87503 Telephone: (505) 827-4370 FAX: (505) 827-4948 Khughes@dfa.state.nm.us	**NORTH CAROLINA** Jeanette Furney Department of Administration 1302 Mail Service Center Raleigh, North Carolina 27699-1302 Telephone: (919) 807-2323 FAX: (919) 733-9571 Jeanette.furney@ncmail.net
NORTH DAKOTA Jim Boyd Division of Community Services 600 East Boulevard Ave, Dept 105 Bismark, North Dakota 58505-0170 Telephone: (701) 328-2094 FAX: (701) 328-2308 Jboyd@state.nd.us	**RHODE ISLAND** Kevin Nelson Department of Administration Statewide Planning Program One Capitol Hill Providence Rhode Island 02908-5870 Telephone: (401) 222-2093 FAX: (401) 222-2083 knelson@doa.state.ri.us
SOUTH CAROLINA Omeagia Burgess Budget and Control Board Office of State Budget 1122 Ladies Street – 12th Floor Columbia, South Carolina 29201 Telephone: (803) 734-0494 FAX: (803) 734-0645 Aburgess@budget.state.sc.us	**TEXAS** Denise S. Francis Director, State Grants Team Governor's Office of Budget and Planning P.O. Box 12428 Austin, Texas 78711 Telephone: (512) 305-9415 FAX: (512) 936-2681 dfrancis@governor.state.tx.us
UTAH Carolyn Wright Utah State Clearinghouse Governor's Office of Planning and Budget State Capitol, Room 114 Salt Lake City, Utah 84114 Telephone: (801) 538-1535 FAX: (801) 538-1547 cwright@gov.state.ut.us	**WEST VIRGINIA** Fred Cutlip, Director Community Development Division West Virginia Development Office Building #6, Room 553 Charleston, West Virginia 25305 Telephone: (304) 558-4010 FAX: (304) 558-3248 fcutlip@wvdo.org
WISCONSIN Jeff Smith Section Chief, Federal/State Relations Wisconsin Department of Administration 101 East Wilson Street – 6th Floor	**AMERICAN SAMOA** Pat M. Galea'i Federal Grants/Programs Coordinator Office of Federal Programs Office of the Governor/Department

P.O. Box 7868 Madison, Wisconsin 53707 Telephone: (608) 266-0267 FAX: (608) 267-6931 jeffrey.smith@doa.state.wi.us	of Commerce American Samoa Government Pago Pago, American Samoa 96799 Telephone: (684) 633-5155 Fax: (684) 633-4195 pmgaleai@samoatelco.com
GUAM Director Bureau of Budget and Management Research Office of the Governor P.O. Box 2950 Agana, Guam 96932 Telephone: 011-671-472-2285 FAX: 011-671-472-2825 jer@ns.gov.gu	**PUERTO RICO** Jose Caballero / Mayra Silva Puerto Rico Planning Board Federal Proposals Review Office Minillas Government Center P.O. Box 41119 San Juan, Puerto Rico 00940 Telephone: (787) 723-6190 FAX: (787) 722-6783
NORTHERN MARIANA ISLANDS Ms. Jacoba T. Seman Federal Programs Coordinator Office of Management and Budget Office of the Governor Saipan, MP 96950 Telephone: (670) 664-2256 FAX: (670) 664-2272 omb.jseman@saipan.com	**VIRGIN ISLANDS** Ira Mills Director, Office of Management & Budget # 41 Norregade Emancipation Garden Station, Second Floor Saint Thomas, Virgin Islands 00802 Telephone: (340) 774-0750 FAX: (787) 776-0069 Irmills@usvi.org

Changes to this list can be made only after OMB is notified by a State's officially designated representative. E-mail messages can be sent to grants@omb.eop.gov. If you prefer, you may send correspondence to the following postal address:

Attn: Grants Management
Office of Management and Budget
New Executive Office Building, Suite 6025
725 17th Street, NW
Washington, DC 20503

[FR Doc. 01–9293 Filed 4–13–01; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF EDUCATION

Bilingual Education Graduate Fellowship Program

AGENCY: Department of Education.

ACTION: Notice of proposed waiver.

SUMMARY: The Secretary proposes to waive the requirements in Education Department General Administrative Regulations at 34 CFR 75.261 as they apply to the currently funded Bilingual Education Graduate Fellowship Programs. Section 75.261 sets forth the conditions for extending a project period, including the general prohibition against extending projects that involve the obligation of additional Federal funds. The Secretary proposes to issue continuation awards to the Bilingual Education Graduate Fellowship Program grantees in order to ensure the most efficient use of Federal funds. The Department is therefore soliciting public comment on the proposed waiver.

DATES: Comments must be received on May 16, 2001.

ADDRESSES: All comments concerning this proposal should be addressed to Joyce Brown, U.S. Department of Education, 400 Maryland Avenue, SW., room 5618, Switzer Building, Washington, DC 20202–6642.

FOR FURTHER INFORMATION CONTACT: Joyce Brown, Telephone: (202) 205–9727, or Cynthia Ryan, Telephone: (202) 205–8842. Individuals who use a telecommunications device for the deaf 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) by requesting it from the contact person listed under **ADDRESSES.**

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1997, the Department issued a notice inviting applications for new awards under the Bilingual Education Graduate Fellowship Program for Fiscal Year 1998. In this notice the Department announced that it would make approximately 35 awards of up to 36 months under section 7145 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Public Law 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7475). This section authorizes the Secretary to award fellowships for masters, doctoral, and post-doctoral study related to instruction of children and youth of limited English proficiency in such areas as teacher training, program administration, research and evaluation, and curriculum development, and for the support of dissertation research related to such study. The award period for the 34 participating institutions of higher education ends August 31, 2001. An extension would permit only the continued funding of currently enrolled fellows who have not received the maximum allowable years of assistance. However, to do so, the Department must waive the requirements in EDGAR at 34 CFR 75.261.

Basis for Extension

Due to the impending reauthorization of the Elementary and Secondary Education Act of 1965, which authorizes the Bilingual Education Graduate Fellowship Program, the Secretary believes that extending the performance period of current grantees represents a wiser course of action than holding a competition for new projects under expiring legislation. This action would allow support to continue for approximately 175 fellows who have received fewer than the maximum allowable years of assistance under this program. An additional year of assistance would enable most of these students to complete their programs of study and begin to repay the assistance as required under the current statute. Therefore, the Department proposes to issue continuation awards to the current grantees for one year.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed waiver would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by this proposal are the 34 institutions of higher education currently receiving Federal funds. However, the proposal would not have a significant economic impact on the institutions because the waiver would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposal would impose minimal requirements to ensure the proper expenditure of program funds, including requirements that are standard to continuation awards.

Paperwork Reduction Act of 1980

This proposal has been examined under the Paperwork Reduction Act of 1980 and has been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed waiver. All comments submitted in response to this proposal will be available for public inspection, during and after the comment period, in room 3521, 300 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF, you must have Adobe Acrobat Reader, which is available free at the preceding site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.195C, Bilingual Education Graduate Fellowship Program)

Dated: April 11, 2001.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 01–9385 Filed 4–13–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Bonneville Power Administration

Blackfeet Wind Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: BPA intends to prepare an EIS on the proposed Blackfeet Wind Project (Project), located in Glacier County, Montana, on the Blackfeet Indian Reservation. Blackfeet I, LLC (Blackfeet I) proposes to construct and operate the 36- to 66-megawatt (MW) wind generation facility. BPA proposes to purchase the electrical output from the Project. The EIS will address potential environmental impacts of the construction and operation of the wind project itself, as well as all related transmission facilities in accordance with the National Environmental Policy Act. The Department of Interior, Bureau of Indian Affairs, will be a cooperating agency because of their need to approve the contract and associated permits between Blackfeet I and the Blackfeet Indian Nation.

DATES: EIS scoping meetings will be held at the locations below on May 10, 2001. Written comments are due to the address below no later than May 25, 2001.

ADDRESSES: Send comment letters and requests to be placed on the Project mailing list to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212. The phone number of the Communications office is 503–230–3478 in Portland; toll-free 1–800–622–4519 outside of Portland. Comments may also be sent to the BPA Internet address: *comment@bpa.gov.*

The May 10, 2001, EIS scoping meetings will be held at the Bureau of Indian Affairs, Main Conference Room, 531 S.E. Boundary Street, in Browning, Montana, from 2 p.m. to 4 p.m.; and at the Cattle Baron Restaurant on U.S. 89 near milepost 40.5 in Babb, Montana, from 6 p.m. to 8 p.m. At these informal meetings, Blackfeet I will provide information, including maps, about the Project. Written information will be available, and BPA staff will answer questions and accept oral and written comments on the proposed scope of the Draft EIS.

FOR FURTHER INFORMATION CONTACT: Sarah T. Branum, KEC–4, Bonneville Power Administration, PO Box 3621, Portland, Oregon 97208–3621, phone number 503–230–5115, fax number 503–230–5699, email stbranum@bpa.gov.

SUPPLEMENTARY INFORMATION:

Background. There is an increased demand in the electric utility industry to diversify energy portfolios and include energy produced by new renewable resources. The Northwest Power Planning Council's Fourth Conservation and Electric Power Plan recommends that Northwest utilities offer green power purchase opportunities as a way to help the region integrate renewable resources into the power system in the future. In addition, BPA has committed to increasing its supply of conservation and renewable resources to help meet load.

Purpose and Need. In the face of regional growth in electrical loads and increasing constraints on the existing energy resource base, BPA needs to acquire resources that will contribute to diversification of the long-term power supply in the region. The purposes of acquiring a diverse resource portfolio include:

- Protecting BPA and its utility customers against risk;
- Assuring consistency with BPA's responsibility under the Pacific Northwest Electric Power Planning and Conservation Act to encourage the development of renewable energy resources;
- Meeting customer demand for energy from renewable energy resources, thereby assuring consistency with BPA's Business Plan EIS (DOE/EIS–0183, June 1995) and Business Plan Record of Decision (ROD);
- Assuring consistency with the resource acquisition strategy of BPA's Resource Programs EIS (DOE/EIS–0162, February 1993) and ROD; and
- Meeting the objective in the January 2000 Strategic Plan of BPA's Power Business Line to acquire at least 150 average MW of new renewable resources by the end of fiscal year 2006 in order to meet customer demand for new renewable resources.

Proposed Action. In September 2000, Blackfeet I proposed to construct and operate this 36- to 66-MW wind generation facility, located in mid Glacier County, Montana, east of the town of Babb, on the Blackfeet Indian Reservation. BPA proposes to execute one or more power purchase and transmission services agreements to acquire the full electrical output of Blackfeet I's proposed Blackfeet Wind Project. The proposed site is tentatively called Duck Lake Ridge, which includes portions of Sections 28, 29, 31, 32, T36N R13W, and portions of Sections 5 and 6, T35N R13W, on approximately 3800 acres of tribal, allotted, and privately owned lands. Land uses within the Project site consist of non-irrigated agriculture—primarily cattle grazing and some timber. No Project facilities would be constructed upon lands owned by the State of Montana or by the United States.

Approximately 36 to 88 wind turbines would be arranged in several "strings," with generally between 250 to 425 feet between turbines in each string. Blackfeet I is considering using either 600-kilowatt (kW) turbines, or 1,000-kW turbines. The proposed turbine type would be an upwind, fixed-speed turbine (i.e., the rotor always faces upwind and turns at a constant speed), mounted on tubular steel towers installed on a reinforced concrete foundation. The wind turbine rotors would turn at approximately 18 to 28 revolutions per minute. The typical operating range of wind speeds for these turbine types is 10 to 65 miles per hour (mph). At speeds greater than 60 or 65 mph, the wind turbines automatically cease operating and remain stationary until the wind speeds become slower. Foundations would be either tubular or pad, ranging from approximately 15 to 20 feet in width and extending up to 25 to 30 feet underground or anchored into bedrock. Agricultural activities generally can continue to take place directly adjacent to the turbine pads.

Power from all turbines in the Project would be collected by an underground and overhead cable loop and then fed underground to a proposed substation to be located at the Project site. The fenced substation site would occupy approximately one to two acres. From the substation site, power from the Project would be transmitted by existing above-ground transmission lines owned by Glacier Electric Cooperative. These facilities are currently operated at 34.5 kilovolts (kV) and would be energized at their design and constructed voltage rating of 115 kV, which would then interconnect with the existing Montana Power Company's 115-kV transmission facilities at Browning, Montana, or Western Area Power Administration's 115-kV transmission facilities at Shelby, Montana. The power would either be used locally or be transmitted to other parts of the Northwest transmission grid to meet Northwest loads. Other facilities required as part of the Project are down-tower pad-mounted transformers, access roads, an operation and maintenance building, and communications system. The Project is scheduled to begin commercial operation late in 2002, and would operate year-round for at least 20 years.

Process to Date. Wind assessments began in October 2000. Surveys for sensitive plant and wildlife species are being initiated in the spring of 2001. Scoping will help identify what additional studies will be required.

Alternatives Proposed for Consideration. The alternatives include the proposed action (executing a power purchase agreement with Blackfeet I for up to 36 to 66 MW of electrical energy from the proposed Blackfeet Wind Project and contracting for transmission), and the No Action alternative.

Public Participation and Identification of Environmental Issues. For other wind projects, noise, visual impacts, impacts on cultural resources, and effects on sensitive plant and animal species have been identified as potential environmental issues. BPA has established a 30-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the EIS. Scoping will help BPA identify the range of environmental issues that should be addressed in the EIS. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold at least one public comment meeting for the Draft EIS. BPA will consider and respond in the Final EIS to comments received on the Draft EIS. The Final EIS is expected to be published in early summer 2002. BPA's subsequent decision will be documented in a Record of Decision. The EIS will satisfy the requirements of the National Environmental Policy Act.

Issued in Portland, Oregon, on April 6, 2001.

Steven G. Hickok,

Acting Administrator and Chief Executive Officer.

[FR Doc. 01–9379 Filed 4–13–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–42–020]

ANR Pipeline Co.; Notice of Settlement Agreement

April 10, 2001.

Take notice that on April 5, 2001, ANR Pipeline Company (ANR), Chevron U.S.A. Inc., Pioneer Natural Resources USA, Inc. (successor-in-interest to Mesa Petroleum Company), ONEOK Resources Company (successor to ONEOK Exploration Company), BP Exploration and Oil, Inc., Kennedy & Mitchell (wholly-owned subsidiary of Harken Energy Corporation), John F. Mitchell, Beren Corporation, Pickrell Drilling Company and Mid-Continent Energy Corporation (collectively referred to as Signatory Parties) filed a Stipulation and Agreement (Settlement) under Rule 602 of the Commission's Rules of Practice and Procedure in the captioned docket. A copy of the Settlement is available for public inspection in the Commission's Public Reference Room and may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Signatory Parties state that the Settlement eliminates 49 of ANR's 56 refund claims and significantly reduces the refund burden of the remaining producers or working interest owners. Specifically, the Settlement will result in the full and complete discharge of each signatory producer or working interest owner from all liability for refunds to ARN attributable to reimbursements of Kansas ad valorem taxes, the release of each signatory producer or working interest owner's claims against its royalty owners with respect to refunds on ANR's system, and the termination of all related proceedings pending before the Commission as they relate to ANR's refund claims. Finally, the Settlement will result in total net refunds to ANR of $339,588, which represents ANR's forgiveness of 70% of the total refunds it calculated to be due.

Initial comments are due April 17, 2001; reply comments are due April 24, 2001. 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.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–9299 Filed 4–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–372–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 10, 2001.

Take notice that on April 6, 2001, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Tenth Revised Sheet No. 44, with a proposed effective date of May 6, 2001.

Columbia states that the purpose of this filing is to reflect implementation of a non-discriminatory waiver of its transportation Retainage for transportation transactions using as a primary or secondary receipt point Columbia's interconnection with Algonquin Gas Transmission Company at Ramapo in Rockland County, New York, and using primary or secondary delivery points located on Columbia's lines east of its Huguenot Regulator Station, including to a new proposed point of delivery to Hudson Valley Gas Corporation.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's web

site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–9304 Filed 4–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–371–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

April 10, 2001.

Take notice that on April 5, 2001 Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective May 6, 2001:

Fifth Revised Sheet No. 135
Fourth Revised Sheet No. 139

Northern is filing these tariff sheets to amend the current language in Northern's FERC Gas Tariff to allow Northern to provide additional Firm Deferred Delivery (FDD) Service by acquisition of third party storage and to replace reference to Northern's Electronic Bulletin Board with its Internet Website.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). 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/fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–9301 Filed 4–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–63–000]

PJM Interconnection, L.L.C.; Notice of Complaint

April 9, 2001.

Take notice that on April 5, 2001, PJM Interconnection L.L.C. (PJM), filed a complaint requesting that the Reliability Assurance Agreement Among Load Serving Entities In The PJM Control Area (RAA) be amended to: (a) Adjust the time period over which a load serving entity must commit generation resources to PJM to meet its capacity obligations under the RAA from a daily commitment to a seasonal commitment (ranging from three to five months), (b) adjust the deficiency charge provisions to provide for a seasonal penalty, rather than a daily penalty, when load serving entities have insufficient capacity to meet their capacity obligations under the RAA, and (c) require generation owners to commit excess capacity to PJM (capacity not already committed to a load serving entity) seasonally, rather than daily, in order to participate in any distribution of revenues from capacity deficiency charges to load serving entities.

PJM requests an effective date of July 1, 2001 for the amendments. It also requests fast track processing of the complaint under Rule 206(h) (18 CFR 385.206(h)) and for the Commission to act no later than June 5, 2001.

Copies of this filing were served upon all parties to the RAA and each state electric utility regulatory commission in the PJM control area.

Any person desiring to be heard or to protest this filing 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). All such motions or protests must be filed on or before April 16, 2001. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before April 16, 2001.

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.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–9305 Filed 4–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–79–000]

Strategic Energy, L.L.C.; Notice of Filing

April 10, 2001.

Take notice that on April 6, 2001, Strategic Energy, L.L.C. (Strategic Energy), filed with the Federal Energy Regulatory Commission (the Commission) a Supplement to it's Application filed on March 8, 2001 pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's Regulations for authorization of the transfer of indirect ownership interests in the Applicant. The Applicant states that the proposed transaction is between two current indirect owners of the Applicant that raises no issues under the Commission's Merger Guidelines. The Supplement clarifies certain terminology and states that the application would not adversely affect rates or impair state or federal regulation.

Any person desiring to be heard or to protest such filing 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). All such motions and protests should be filed on or before April 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). 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.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–9297 Filed 4–13–01; 8:45 am]

BILLING CODE 6717–07–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–477–001]

Tennessee Gas Pipeline Co.; Notice of Compliance Filing

April 20, 2001.

Take notice that on April 6, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing revise *pro forma* tariff sheets identified in Appendix A to the filing, in Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1.

Tennessee states that this filing is in further compliance with the Federal Energy Regulatory Commission's Orders No. 637, 637–A and 637–B. Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 FR 10,156 (Feb. 25, 2000); III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 (Feb. 9, 2000); Order No. 637–A, 65 FR 35706 (June 5, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31, 099 (May 19, 2000), order denying reh'g., Order No. 637–B, 92 FERC ¶ 61, 062 (2000).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). 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.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–9300 Filed 4–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–370–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

April 10, 2001.

Take notice that on April 4, 2001 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which sheets are enumerated in Appendix A to the filing.

Transco states that the purpose of the instant filing is track rate changes attributable to storage service purchased from North Penn Gas Company (North Penn) under its Rate Schedule S the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS–1. The filing is being made pursuant to tracking provisions under section 5 of Transco's Rate Schedule SS–1.

Transco states that included in Appendix B attached to the filing are the explanations and details regarding the computation of the Rate Schedule SS–1 rate changes.

Transco states that copies of the filing are being mailed to each of its SS–1 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–9302 Filed 4–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–281–001]

Young Gas Storage Company, LTD; Notice of Compliance Filing

April 10, 2001.

Take notice that on April 5, 2001, Young Gas Storage Company, Ltd. tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of May 1, 2001:

Substitute Eighth Revised Sheet No. 49
Substitute Seventh Revised Sheet No. 49A

Young states that the tariff sheets are being filed to revise the tariff are being filed to revise the tariff sheets originally filed in this proceeding to delete certain standards that should not have been listed in the GISB standards reference table.

Young states that copies of the filing have been served upon all interested parties and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://

www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

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.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–9303 Filed 4–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF01–4011–000, et al.]

Southwestern Power Administration, et al.; Electric Rate and Corporate Regulation Filings

April 9, 2001.

Take notice that the following filings have been made with the Commission:

1. Southwestern Power Administration

[Docket No. EF01–4011–000]

Take notice that on April 4, 2001, the Secretary, U.S. Department of Energy, tendered for filing with the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis, pursuant to the authority vested in the FERC by Delegation Order No. 0204–172, November 11, 1999, the following Southwestern Power Administration (Southwestern) Integrated System rate schedules:

Rate Schedule P–98D, Wholesale Rates for Hydro Peaking Power

Rate Schedule NFTS–98D, Wholesale Non-Federal Transmission/Interconnection Service

The Integrated System rate schedules were confirmed and approved on an interim basis by the Deputy Secretary in Rate Order No. SWPA–44 for the period April 1, 2001, through September 30, 2001, and have been submitted to the FERC for confirmation and approval on a final basis for the same period.

Southwestern has clarified the Energy Imbalance Service provision to specify the hours and circumstances in which energy within the authorized bandwidth is to be returned to the providing party, and has revised the Power Factor Penalty to charge on an hourly basis to more accurately reflect the actual taking of reactive kilovolt amperes (VARS) from the system of Southwestern. This penalty serves as an incentive to utilities to provide their own voltage support. In addition, Southwestern is adding a new provision for an Interconnection Facilities Service Charge. This charge will be applicable to interconnection requests for which Southwestern does not otherwise receive benefits or compensation for the use of Federal facilities. At this time, Southwestern does not anticipate any substantive change in revenues as a result of these changes which would impact revenue requirements. Southwestern does not forecast for penalties and currently has no contractual arrangements to which the Interconnection Facilities Service Charge would be applied.

Comment date: April 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Kentucky Pioneer Energy L.L.C.

[Docket No. EG01–132–000]

Take notice that on April 6, 2001, Kentucky Pioneer Energy L.L.C. (KPE) tendered for filing with the Federal Energy Regulatory Commission, (Commission) an amendment to its Application for Determination of Exempt Wholesale Generator Status that was filed with the Commission on February 1, 2001, pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment date: April 30, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Frederickson Power L.P.

[Docket No. EG01–181–000]

Take notice that on April 4, 2001, Frederickson Power L.P. filed a Notification of Change in Facts and Application for Determination of Status as an Exempt Wholesale Generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z–5a, and Part 365 of the regulations of the Federal Energy Regulatory Commission.

Frederickson Power L.P. is a limited partnership organized under the laws of the State of Washington. The general partner of Frederickson Power L.P. is Frederickson Power Management Inc. The two limited partners of Frederickson Power L.P. are Westcoast Energy Enterprises (U.S.) Inc. and EPDC, Inc. Frederickson Power L.P. owns a partially constructed natural gas-fired combined cycle combustion turbine electric generation facility located in the Frederickson Industrial Area in Pierce County near Tacoma, Washington (the "Frederickson Project"). When complete, major plant equipment for the Frederickson Project will consist of one combustion turbine-generator, one heat recovery steam generator with supplemental firing capability, and one steam turbine-generator, with a nominal net plant capacity of 249.5 MW.

Comment date: April 30, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Tanir Bavi Power Company Private Ltd.

[Docket No. EG01–182–000]

Take notice that on April 4, 2001, Tanir Bavi Power Company Private Ltd. (Tanir Bavi) with its principal office at Skip House, 25/1, Museum Road, Bangalore, 56 0025 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Tanir Bavi is a company organized under the laws of India. Tanir Bavi will be engaged, directly or indirectly through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating an electric generating facility consisting of a 220 MW Power Plant in Mangalore, State of Karnataka in India; selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment date: April 30, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that address the adequacy or accuracy of the application.

5. Southern California Edison Company

[Docket Nos. EL00–95–025 and EL00–98–024]

Take notice that on April 4, 2001, Southern California Edison Company (SCE) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed revisions to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, First Revised Original Volume No. 6. This filing was made in compliance with the Commission's December 15, 2000 Order in this proceeding, San Diego Gas & Electric Co., *et al.*, 93 FERC ¶ 61,294 (2000).

These revisions are intended to facilitate implementation by the California Independent System Operator Corporation (ISO) of its revised New Generation Facility Interconnection Procedures.

SCE requests that these TO Tariff revisions become effective on June 1, 2001.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator, the California Electricity Oversight Board, Pacific Gas and Electric Company, and San Diego Gas & Electric Company.

Comment date: April 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. San Diego Gas & Electric Company

[Docket Nos. EL00–95–022 and EL00–98–021]

Take notice that on April 2, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission), proposed revisions to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, First Revised Original Volume 6. These revisions are intended to facilitate implementation by the California Independent System Operator Corporation (ISO) of its revised New Generation Facility Interconnection Procedures. This filing was made in compliance with the Commission's December 15, 2000 Order in this proceeding, San Diego Gas & Electric Co., *et al.*, 93 FERC ¶ 61,294 (2000).

SDG&E requests that these TO Tariff revisions become effective June 1, 2001.

Copies of this filing were served upon the California Public Utilities Commission, the California Independent System Operator Corporation, California Energy Commission, California Electric Oversight Board, Southern California Edison, pacific Gas and Electric Company, and the City of Vernon, California.

Comment date: April 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket Nos. EL00–95–024 and EL00–98–023]

Take notice that on April 2, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed revisions to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Sixth Revised Volume No. 5. This filing was made in compliance with the Commission's December 15, 2000 Order in this proceeding, San Diego Gas & Electric Co., *et al.*, 93 FERC ¶ 61,294 (2000).

These revisions are intended to facilitate implementation by the California Independent System Operator Corporation (ISO) of its revised New Facility Interconnection Procedures.

PG&E requests that these TO Tariff revisions become effective on June 1, 2001.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator Corporation, and all interested parties.

Comment date: April 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket Nos. EL00–95–023 and EL00–98–022]

Take notice that on April 2, 2001, the California Independent System Operator Corporation (ISO) tendered for filing Amendment No. 39 to the ISO Tariff. The ISO states that Amendment No. 39 is intended to modify the ISO Tariff's provisions with respect to new generator interconnections. This filing was made in compliance with the Commission's December 15, 2000 Order in this proceeding, San Diego Gas & Electric Co., *et al.*, 93 FERC ¶ 61,294 (2000).

The ISO requests that the filing be made effective on June 1, 2001.

The ISO states that this filing has been served on the California Public Utilities Commission and all California ISO Scheduling Coordinators.

Comment date: April 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Power Inc., Entergy Arkansas, Inc., Entergy New Orleans, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy Gulf States, Inc., Entergy Power Marketing Corp., Entergy Nuclear Generation Co., Entergy Nuclear Fitzpatrick, LLC., and Entergy Nuclear Indian Point 3, LLC.

[Docket Nos. ER91–569–012, ER91–569–013, ER91–569–014, ER91–569–015, ER91–569–016, ER91–569–017, ER95–1615–023, ER99–1004–004, ER00–2783–003, and ER00–2740–003]

Take notice that on April 3, 2001, Entergy Corp. on behalf of the above noted subsidiaries, filed a notice with the Federal Energy Regulatory Commission that they will no longer treat the Florida Power & Light Company as an affiliate for purposes of their market rate tariffs. This action reflects the April 2, 2001, announcement by Entergy Corp. and FPL Group that they were terminating their merger agreement.

Comment date: April 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company, FPL Energy Power Marketing, Inc., FPL Energy Services, Inc., ESI Vansycle Partners, L.P., FPL Energy AVEC LLC, FPL Energy Maine Hydro LLC, FPL Energy Mason LLC, FPL Energy MH50, L.P., FPL Energy Wisconsin Wind, LLC, FPL Energy Wyman LLC, FPL Energy Wyman IV LLC, Doswell Limited Partnership and Hawkeye Power Partners, LLC

[Docket Nos. ER97–3359–004, ER98–3566–007, ER99–2337–005, ER98–2494–003, ER98–3565–004, ER98–3511–004, ER98–3562–004, ER99–2917–002, ER00–56–002, ER98–3563–004, ER98–3564–004, ER00–2391–002, and ER98–2067–002]

Take notice that on April 3, 2001, FPL Group on behalf of the above noted subsidiaries, filed a notice with the Federal Energy Regulatory Commission that they will no longer treat the Entergy Operating Companies as affiliates for purposes of their market rate tariffs. This action reflects the April 2, 2001, announcement by FPL Group and Entergy Corp. that they were terminating their merger agreement.

Comment date: April 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Mississippi Power Company

[Docket No. ER01–1284–001]

Take notice that on April 2, 2001, Mississippi Power Company and Southern Company Services, Inc., its agent, supplemented its February 20, 2001, filing of a Service Agreement with South Mississippi Electric Power Association for twelve (12) Delivery Points, pursuant to the Southern Companies' Electric Tariff, FERC Electric Tariff, First Revised Volume No. 4. The agreement will permit Mississippi Power to provide wholesale electric service to South Mississippi Electric Power Association at the new service delivery points. The supplemental filing includes a Redacted Transaction Schedule to the Service Agreement.

Copies of the filing were served upon South Mississippi Electric Power Association, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment date: April 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Mississippi Power Company

[ER01–1405–001]

Take notice that on April 2, 2001, Mississippi Power Company and Southern Company Services, Inc., its agent, supplemented its March 6, 2001, filing of a Service Agreement with

South Mississippi Electric Power Association for the Wellman Delivery Point, pursuant to the Southern Companies' Electric Tariff, FERC Electric Tariff, First Revised Volume No. 4. The agreement will permit Mississippi Power to continue to provide wholesale electric service to South Mississippi Electric Power Association at the Wellman Delivery Point. The supplemental filing includes a Redacted Transaction Schedule to the Service Agreement.

Copies of the filing were served upon South Mississippi Electric Power Association, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment date: April 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–9296 Filed 4–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

April 10, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Exemption for a small existing hydroelectric power project that has an installed capacity of 5 megawatts or less, from licensing under the Federal Power Act.

b. *Project No.:* P–11870–000.

c. *Date filed:* January 8, 2001.

d. *Applicant:* Goodrich Falls Hydro Electric Company.

e. *Name of Project:* Goodrich Falls Project.

f. *Location:* On the Ellis River, in the Town of Bartlett, Carroll County, New Hampshire. The project would not use federal lands.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 USC §§ 2705 and 2708.

h. *Applicant Contact:* Ms. Maureen Winters, Project Manager, Kleinschmidt Associates, Energy & Water Resources Consultants 75 Main Street, Pittsfield Maine 04967, (207) 487–3328.

i. *FERC Contact:* John Ramer, (202) 219–2833, John. Ramer@ferc.fed.us.

j. *Deadline for filing motions to intervene and protests, comments, and terms and conditions, recommendations, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The Goodrich Falls Project consists of: (1) An existing 157-foot-long and 25-foot-high dam with an integrated 18 foot by 23 foot concrete intake; (20) a 4.5-foot-diameter, 150-foot-long steel penstock; (3) an existing 2.1-acre, 920-foot-long by 100-foot-wide reservoir with an average 5 foot and a maximum gross storage capacity of 2.1-acre-feet; (4) a 25 foot by 30 foot concrete powerhouse containing one generating unit with a total installed capacity of 550 kilowatts; (5) an existing 250-foot-long transmission line; and (6) appurtenant facilities. The project is estimated to generate an average of 2 million kilowatthours annually. The dam and existing project facilities are owned by the applicant.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 fo assistance). A copy is also available for inspection and reproduction at the address in item "h" above.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a exemption application. A notice of intent must be served on the applicant(s) named in this public notice.

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.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 01–9298 Filed 4–13–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6966–2]

Notice of Approval of Prevention of Significant Deterioration (PSD) Permits to Elk Hills Power, LLC. (Permit No. SJ–99–02), Pastoria Energy Facility (Permit No. SJ–99–03), and Blythe Energy Project, LLC (Permit No. SE–00–01)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region 9 is hereby providing notice that it issued PSD permits to Elk Hills Power, LLC., Pastoria Energy Facility, and Blythe Energy Project, LLC.

The permit (Authority to Construct) for Elk Hills Power, LLC. was issued on February 5, 2001. Since no comments were received during the public comment period and the proposed draft permit conditions were not changed in the final permit, the final permit became effective immediately. This proposed power plant, located about 25 miles west of Bakersfield, California, will have a nominal electrical output of 500 MW and will be fired on locally-produced natural gas from the Elk Hills Oil and Gas Field. The proposed facility is subject to PSD for Nitrogen Oxides (NO_X) and Carbon Monoxide (CO). The permit includes the following Best Available Control Technology (BACT) emission limits: NO_X at 2.5 ppmvd (based on 1-hour averaging at 15% O_2), and 4 ppmvd CO (based on 3-hour averaging at 15% O_2). The BACT requirements include use of Selective Catalytic Reduction (SCR) or SCONOX for the control of NO_X emissions, and use of catalytic oxidation combined with good combustion design and operation for the control of CO emissions. Continuous emission monitoring is required for NO_X, CO and O_2. The facility is also subject to New Source Performance Standards, Subparts A and GG, and the Acid Rain program under title IV of the Clean Air Act.

The permit (Authority to Construct) for Pastoria Energy Facility was issued on February 12, 2001. Since no comments were received during the public comment period and the proposed draft permit conditions were not changed in the final permit, the final permit became effective immediately. This proposed power plant is located in the southern part of Kern County, has a rated output of 750 MW, and will be fired on natural gas. The proposed facility is subject to PSD for Nitrogen Oxides (NO_X), Sulfur Oxides (SO_X), and CO. The Best Available Control Technology (BACT) requirements include use of XONON Catalytic combustion to meet NO_X and CO emission limits. The permit includes the following emission limits: NO_X at 2.5 ppmvd (based on 1-hour averaging at 15% O_2), and 6 ppmvd CO (based on 3-hour averaging at 15% O2). If XONON is not available, the facility may use Selective Catalytic Reduction (SCR) and also catalytic oxidation combined with good combustion design and operation for the control of CO emissions. The facility is limited to the use of pipeline-quality natural gas to limit SO_x emissions. Continuous emission monitoring is required for NO_X, CO and opacity and the facility is also subject to New Source Performance Standards, Subparts A and GG, and the Acid Rain program under title IV of the Clean Air Act.

The permit (Authority to Construct) for Blythe Energy Project, LLC was issued on March 5, 2001. Since no comments were received during the public comment period, and the proposed draft permit conditions were not changed in the final permit, the final permit became effective immediately. This proposed power plant, located near the city of Blythe, California, will have a nominal electrical output of 520 MW and will be fired on natural gas. The proposed facility will be subject to PSD for Nitrogen Oxides, Carbon Monoxide, and Particulate Matter (PM_{10}). The permit includes the following Best Available Control Technology (BACT) emission limits: NO_X at 2.5 ppmvd (based on 1-hour averaging at 15% O_2), 5 ppmvd CO (8.4 ppmvd for loads between 70–80% of full load and during duct firing) (based on 3-hour averaging at 15% O_2), and PM_{10} at 11.5 lbs/hr. The BACT requirements include use of Selective Catalytic Reduction (SCR) for the control of NO_X emissions, good combustion control for CO emissions, and a combination of good combustion control and natural gas for the control of PM_{10} emissions. Continuous emission monitoring is required for NO_X, CO and opacity and the facility is also subject to New Source Performance Standards, Subparts A and GG, and the Acid Rain program under title IV of the Clean Air Act.

FOR FURTHER INFORMATION CONTACT: If you have any questions or would like a copy of the permits, please contact Nahid Zoueshtiagh at (415) 744–1261 for Elk Hills; Ed Pike at (415) 744–1211 for Pastoria Energy Facility; or Duong Nguyen at (415) 744–1142 for Blythe. You may also contact us by mail at:

Permits Office (Air–3), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Judicial Review: No comments were received on the permits for Elk Hills, Pastoria, and Blythe and no appeals were filed concerning these permits before the Environmental Appeals Board pursuant to 40 CFR 124.19.

40 CFR 124.19(f)(2) requires notice of any final agency action regarding a PSD permit to be published in the **Federal Register**. Section 307(b)(1) of the Clean Air Act provides for review of final agency action that is locally or regionally applicable in the United States Court of Appeals for the appropriate circuit. Such a petition for review of final agency action must be filed within 60 days from the date of notice of such action in the **Federal Register**. (However, 40 CFR 124.19(f)(1) provides that, for purposes of judicial review under the Clean Air Act, final agency action occurs when a final PSD permit is issued or denied by EPA *and* agency review procedures are exhausted.)

Dated: April 2, 2001.

Amy K. Zimpfer,

Acting Director, Air Division. Region IX.

[FR Doc. 01–9360 Filed 4–13–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6966–4]

Technical Workshop on Research Issues Associated With the Gathering and Use of Micro- and Macro-Activity Data

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a meeting, organized and convened by E.H. Pechan & Associates, Inc., a contractor to EPA's Office of Research and Development, National Exposure Research Laboratory (NERL), for external scientific peer consultation on research issues related to the gathering and use of micro- and macro-level human activity data. The meeting is being held by NERL to discuss the state-of-the-science on human activity data for multi-media, multi-pathway exposure and dose assessments and suggestions on additional research needed to improve the science.

DATES: The meeting will be held from 7:45 a.m. to 5:15 p.m. on May 17, 2001 and from 8:30 a.m. to 1:00 p.m. on May 18, 2001. To register to attend the workshop as an observer, contact Kathy Manwaring of E.H. Pechan & Associates, Inc. at 919–493–3144 x123, email: kathym@pechan.com by May 9, 2001. Space is limited so please register early.

ADDRESSES: The meeting will be held in the main auditorium of the Environmental Research Center of the Environmental Protection Agency in Research Triangle Park, North Carolina, located at the corner of T.W. Alexander Drive and Highway 54.

FOR FURTHER INFORMATION CONTACT: Thomas McCurdy of EPA NERL, tel. 919–541–0782, email: mccurdy.thomas@epa.gov.

SUPPLEMENTARY INFORMATION: In human exposure assessments, macro-activities are general activity descriptors (e.g., "cooking", "playing games") that describe what a person is doing in a particular location at a particular time. Micro-activities are those detailed activities (e.g., hand-to-surface, hand-to-mouth, and object-to-mouth contacts) that a person is engaged in during a macro-activity. Information on both macro- and micro-activities is important for accurately quantifying real-time multimedia, multipathway human exposures that account for dermal contact, inhalation, dietary ingestion, and non-dietary ingestion of pollutants.

Although a fair amount of data on macro-activity information exists from surveys, micro-activity data are very limited and expensive to obtain via current methods and protocols. In addition, micro-activity methods and protocols are not standardized, so it often is difficult to combine the limited data that do exist into a coherent database. Thus, there is a need to discuss how micro-activity data should be gathered and reported for maximum usefulness in exposure assessments. There also is a need to determine if the existing macro-activity database can be used to provide useful estimates of micro-activity levels if a functional relationship can be derived between them for specific population groups of interest, especially children. Finally, there is a need to develop research protocols and strategies that simultaneously will provide integrated micro- and macro-activity data for human exposure and dose assessment purposes. Discussing and addressing these needs can help improve quantification of children's aggregate exposures to agricultural pesticides, as required by the Food Quality Protection Act (FQPA) of 1996.

The purpose of the workshop is to solicit—after a sharing of information on the state-of-the-science regarding the subject issues—individual written expert opinion of scientists and analysts on the research needed to address the collection and integration of micro- and macro-activity data in order to improve aggregate exposure and dose assessments of multimedia, multipathway chemicals. NERL specifically is not interested in obtaining a consensus, or joint, recommendation from the meeting participants and observers regarding a possible NERL research strategy/program to obtain better micro-, macro-, or integrated activity information; developing such a strategy and program is an inherently governmental function. The Laboratory is interested, however, in eliciting expert views on what data are needed, and what approaches and methods should be used to most effectively obtain these data.

Dated: March 21, 2001.

Jewel Morris,

Acting Deputy Director, National Exposure Research Laboratory.

[FR Doc. 01–9362 Filed 4–13–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6966–7]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Research Strategies Advisory Committee (RSAC) of the US EPA Science Advisory Board (SAB), will meet on Tuesday and Wednesday, May 1 and 2, 2001 at EPA headquarters in room 6013 of the Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20005. The meeting will begin by 8:30 a.m. and adjourn no later than 5:00 p.m. Eastern Standard time on both days. The meeting is open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting

The Science Advisory Board (SAB) has been asked to review and comment on the Fiscal Year (FY) 2002 Presidential Budget proposed for EPA's Office of Research and Development (ORD) and the overall Science and Technology (S&T) budget proposed for the EPA. The RSAC will consider how well the budget request: (a) Reflects priorities identified in the EPA and ORD strategic plans; (b) supports a reasonable balance in terms of attention to core

research on multimedia capabilities and issues and to media-specific problem-driven topics; and (c) balances attention to near-term and to long-term research issues. In addition, the Committee will offer its advice on: (a) Whether the objectives of the research and development program in ORD and the broader science and technology programs in EPA can be achieved at the resource levels requested; and (b) how can EPA use or improve upon the Government Performance and Results Act (GPRA) structure to communicate research plans, priorities, research requirements, and planned outcomes. A portion of the meeting will be devoted to development of the Committee's report. The Committee may also discuss the status of its review of the implementation of the peer review program at EPA.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about the meeting should contact Dr. Jack Fowle, Designated Federal Officer, Research Strategies Advisory Committee (RSAC), USEPA Science Advisory Board (1400A), Room 6450, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4547; fax at (202) 501–0582; or via e-mail at <fowle.jack@epa.gov>. For a copy of the draft meeting agenda, please contact Ms. Wanda Fields, Management Assistant at (202) 564–4539 or by FAX at (202) 501–0582 or via e-mail at <fields.wanda@epa.gov>.

Materials that are the subject of this review are available from Mr. Mike Feldman of the Office of the Chief Financial Officer or from Ms. Amy Battaglia Office of Research and Development. Mr. Feldman can be reached on (202) 564–6951 or by e-mail at <feldman.mike@epa.gov> and Ms. Battaglia can be reached on (202) 564–6685 or via e-mail on <battaglia.amy@epa.gov>.

Providing Oral or Written Comments

Members of the public who wish to make a brief oral presentation to the Committee must contact Dr. Fowle *in writing* (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Thursday, April 26, 2001 in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself. Written comments will be accepted until close of business May 4, 2001. See below for more information on providing written or oral comments.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Dr. John "Jack" R. Fowle III, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4547; FAX (202) 501–0323; or via e-mail at *fowle.jack@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Fowle no later than noon Eastern Standard Time on April 26, 2001.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Fowle at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 3, 2001.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 01–9361 Filed 4–13–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6966–8]

Center Star Manufacturing Superfund Site Notice of Prospective Purchaser Agreement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) proposes to enter into a "Prospective Purchaser Agreement" (PPA.) with the purchaser of the Center Star Manufacturing Superfund Site ("Site") located in Oxford, Calhous County, Alabama, at a judicial foreclosure sale. EPA will consider public comments on the proposed Prospective Purchaser Agreement for thirty days. EPA may withdraw from or modify the proposed Prospective Purchaser Agreement should such comments disclose facts or considerations which indicate the proposed Prospective Purchaser Agreement is inappropriate, improper, or inadequate. Copies of the proposed Prospective Purchaser Agreement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency,

Region IV, Waste Management Division, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mrs. Ann Mayweather-Boyd at the above address within 30 days of the date of publication.

Dated: March 29, 2001.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 01–9363 Filed 4–13–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6966–5]

Final Reissuance of the National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permits for Industrial Activities for Alaska and for Indian Country In Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES storm water general permits for Alaska and for Indian country in Montana.

SUMMARY: This action provides notice of the reissuance of the "Final National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities" for the State of Alaska, and for Indian country within the State of Montana.

DATES: Today's action shall be effective on April 16, 2001. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the existing Multi-Sector General Permit for the State of Alaska on February 9, 2001, and for the existing Baseline Industrial General Permit for Indian country lands within the State of Montana on September 9, 1997. The deadline for submission of notices of intent from sources in each of these areas is provided as part of this action.

ADDRESSES: The index to the administrative record for these final Multi-Sector General Permit is available at the appropriate Regional office or from the EPA Water Docket office in Washington, D.C. The administrative record, including documents immediately referenced in this reissuance notice, the reissuance of the permit for other areas of the country on October 30, 2000, and applicable documents used to support the original issuance of the Multi-Sector General Permits in 1995, are stored at the EPA Water Docket Office at the following address: Water Docket, MC–4101, U.S. EPA, 401 M Street SW, Room EB–57, Washington, D.C. 20460. The records are available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. For appointments to examine any portion of the administrative record, please call the Water Docket Office at (202) 260–3027. A reasonable fee may be charged for copying. Specific record information can also be made available at the appropriate Regional Office upon request.

In accordance with 40 CFR 23.2, the permit reissuance for the State of Alaska and for Indian country within the State of Montana shall be considered final for the purposes of judicial review at 1 p.m. (Eastern time) on April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Misha Vakoc, EPA Region 10, (206) 553–6650; vakoc.misha@epa.gov for Alaska; or Vern Berry, EPA Region 8, (303) 312–6234; berry.vern@epa.gov for Montana Indian country.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 30, 2000 (65 FR 64746), EPA published final NPDES Multi-Sector General Permits (MSGP) for storm water discharges associated with industrial activity in the states of Arizona, Idaho, Maine, Massachusetts, New Hampshire, and New Mexico; the Commonwealth of Puerto Rico; the District of Columbia; the Territories of Johnson Atoll, American Samoa, Guam, the Commonwealth of Northern Mariana Islands, Midway and Wake Islands; Indian Country lands in Alaska, Arizona, California, Colorado, Connecticut, Florida, Idaho, Louisiana, Maine, Massachusetts, New Mexico, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Wyoming, and Washington; for certain oil and gas facilities in the States of Oklahoma and Texas not on Indian Country lands; and Federal facilities located in Colorado, Delaware, Vermont and Washington. This final action was previously corrected on January 9, 2001 (66 FR 1675–1678) and March 23, 2001 (66 FR 16233–16237).

Today's notice provides final reissuance of the NPDES storm water MSGP for storm water discharges in the State of Alaska, and in Indian country within the State of Montana.

II. Notice of Final NPDES Storm Water Permit in Alaska

On March 30, 2000 (65 FR 17010), EPA proposed the MSGP for the State of Alaska. EPA was not able to provide notice of the final permit in Alaska on October 30, 2000 when the MSGP was published, because at that time the State of Alaska had not concluded proceedings to certify compliance with Alaska water quality standards (pursuant to Clean Water Act section 401) and to determine consistency with the State's coastal zone management program.

Today's action reissues EPA's NPDES Storm Water Multi-Sector General Permit for the State of Alaska. The permit's terms and conditions are those set forth at 65 FR 64801–64880 published on October 30, 2000 and corrected on January 9, 2001 (66 FR 1675–1678) and March 23, 2001 (66 FR 16233–16237). This action adds the state-specific requirements provided by the State of Alaska under section 401 of the Clean Water Act, and specifically sets the date by which facilities in Alaska must submit their Notice of Intent application.

The effective date of this MSGP permit for the State of Alaska is April 16, 2001. To accommodate a consistent permit schedule which aligns Alaska's MSGP with those of other states and territories, this permit and authorization to discharge from facilities located in Alaska expires at midnight, October 30, 2005.

Notices of Intent (NOIs) to be covered under this permit must be submitted to EPA as indicated in Part 2 of the MSGP published on October 30, 2000. For Alaskan facilities seeking continued coverage of existing discharges under the MSGP, Notices of Intent must be submitted no later than July 16, 2001, which is ninety (90) days after the effective date of this permit.

Section 401 of the Clean Water Act provides that no Federal license or permit, including NPDES permits to conduct any activity that may result in any discharge into navigable waters, shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA, or waives certification. The section 401 certification process has been completed for the State of Alaska. Alaska CWA 401 conditions provide that the storm water pollution prevention plan shall be approved and sealed by a Professional Engineer registered in the State of Alaska and submitted to the Alaska Department of Environmental Conservation for review and approval at the address listed below. Approval must be obtained prior to discharge, and the state's plan review fee must be paid according to provisions of state law. A

copy of the Notice of Intent form, in addition to the NOI already required to be submitted to EPA, must also be sent to the address indicated below. In addition, a copy of any Notice of Termination must be submitted to the Alaska Department of Environmental Conservation, as well. The address of the state office to which copies are to be sent is:

Alaska Department of Environmental Conservation, Water Quality Permitting Section/Storm water, 555 Cordova Street, Anchorage, Alaska 99501.

III. Montana Indian Country

The **Federal Register** publication of October 30, 2000 reserved issuance of the MSGP for Montana Indian country because of a lawsuit for development of total maximum daily loads (TMDLs) for impaired waterbodies in Montana. On June 21, 2000 and September 21, 2000, U.S. District Judge Donald W. Malloy issued orders stating that until all necessary TMDLs under Section 303(d) of the Clean Water Act are established for a particular water quality limited segment, the EPA is not to issue any new permits or increase permitted discharges under the NPDES program. The orders were issued in the lawsuit *Friends of the Wild Swan, Inc., et al.*, v. *U.S. E.P.A., et al.*, CV 97–35–M–DWM, District of Montana, Missoula Division. After further review of the Court's orders, EPA finds that the issuance of the MSGP for Indian country in Montana does not conflict with the Court's orders because: (1) The permit is not new, being a replacement for the previously issued general permit for storm water discharges from industrial activities; (2) the 1996 and subsequent Montana section 303(d) lists of impaired waters, as approved by EPA, did not include waters within Indian country in Montana; (3) the permit prohibits storm water discharges that cause or contribute to water quality standards violations, meaning that discharges of storm water from industrial activities in compliance with the conditions of this permit are not likely to have an adverse effect on any waterbody in Montana that has been listed under section 303(d) of the Clean Water Act.

Today's action issues EPA's NPDES Storm Water Multi-Sector General Permit for Indian country in the State of Montana, which replaces the Baseline Industrial General Permit. The permit's terms and conditions are those set forth at 65 FR 64801–64880 published on October 30, 2000 and corrected on January 9, 2001 (66 FR 1675–1678) and March 23, 2001 (66 FR 16233–16237).

The effective date of this MSGP for Indian country in the State of Montana is April 16, 2001. To accommodate a consistent permit schedule which aligns this MSGP with those of other states and territories, this permit and authorization to discharge from facilities located in Indian country in Montana expires at midnight, October 30, 2005.

Notices of Intent (NOIs) to be covered under this permit must be submitted to EPA as indicated in Part 2 of the MSGP published on October 30, 2000. For facilities located in Indian country in Montana seeking coverage of existing discharges under the MSGP, Notices of Intent must be submitted no later than July 16, 2001, which is ninety (90) days after the effective date of this permit.

Economic Impact (Executive Order 12866)

EPA has determined that the reissuance of these general permits for Alaska and for Montana Indian country is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735 (October 4, 1993)) and is therefore not subject to formal OMB review prior to proposal.

Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities resulting from these final MSGPs under the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.* The information collection requirements of these permits have already been approved by the Office of Management and Budget (OMB Control Numbers 2040–0004, 2040–0086, 2040–0110 and 2040–0211) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

Regulatory Flexibility Act (RFA)

The RFA generally requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permits issued today, however, are not "rules" subject to the requirements of 5 U.S.C. 553(b) and are therefore not subject to the RFA.

Unfunded Mandates Reform Act (UMRA)

Section 201 of UMRA generally requires Federal agencies to assess the effects of their "regulatory actions" (defined to be the same as "rules" subject to the RFA) on tribal, state, and local governments and the private sector. The permits issued today, however, are not "rules" subject to the RFA and are therefore not subject to the requirements of UMRA.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*), operators of point source discharges of storm water associated with industrial activity that are located in the State of Alaska, except Indian country lands, and in Indian country lands within the State of Montana are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth in the "Final Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities" issued on October 30, 2000 (65 FR 64746), and corrected on January 9, 2001 (66 FR 1675) and March 23, 2001 (66 FR 16233), with the five alterations to permit language appearing below.

1. Part 1.1.8, for Montana remove the word "Reserved," and replace with the following:

Permit No.	Areas of coverage/where EPA is permitting authority
MTR05*##I ...	Indian country lands within the State of Montana.

2. Part 1.1.10, remove the sentence, "EPA will reissue this permit for the State of Alaska at a later date." Revise table to include the entry:

Permit No.	Areas of coverage/where EPA is permitting authority
AKR05*### ..	The State of Alaska, except Indian country lands.

3. Table 2–1, Deadlines for NOI Submittal, add the following dates for the State of Alaska and Indian country within the State of Montana:

TABLE 2–1—DEADLINES FOR NOI SUBMITTAL

Category	Deadline
1A. Existing discharges covered under the 1995 MSGP within the State of Alaska, and the Baseline Industrial General Permit for Indian country within the State of Montana (see also Part 2.1.2—Interim Coverage).	July 16, 2001.

4. Part 13.10.1, remove the sentence: "(The terms and conditions of the 1995 Multi-Sector General Permit are effective for facilities in the State of Alaska through February 9, 2001.)" and replace with the following: AKR05*###: The State of Alaska, except Indian country lands.

5. Add the following:

Part 13.10.1.1 Permittees in Alaska must also meet the following conditions:

1. A copy of the Notice of Intent shall be sent to the following Department of Environmental Conservation office: Alaska Department of Environmental Conservation, Water Quality Permitting Section/Storm Water, 555 Cordova Street, Anchorage, Alaska 99501.

2. Pollution Prevention Plans shall be approved and sealed by a Professional Engineer registered in the state of Alaska and submitted to the Alaska Department of Environmental Conservation, at the above address, for review and approval. Approval must be obtained prior to discharge. Either a check for the plan review fee will be paid to the department prior to the departments commencing plan review, or a reimbursement agreement will be in place for NPDES permits associated with the project (18 A.A.C. 72.600 9(a) and 18 A.A.C. 72.610(8)).

3. A copy of the Notice of Termination shall be sent to the above Alaska Department of Environmental Conservation office.

Region 8

Signed and issued this 3rd day of April 2001.

Stephen S. Tuber,

Acting Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

Region 10

Signed and issued this 27th of March 2001.

Randall F. Smith,

Director, Office of Water.

[FR Doc. 01–9364 Filed 4–13–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–903]

Annual Adjustment of Revenue Threshold

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This notice announces that the 2000 revenue threshold used for classifying carriers for various accounting and reporting purposes is increased to $117 million. The 1996 Act mandates that the Commission adjusts the revenue threshold annually to reflect the effect of inflation.

DATES: Carriers exceeding the 2000 revenue threshold must file their initial cost allocation manual by July 16, 2001.

ADDRESSES: Federal Communications Commission, 445–12th Street, SW, Room TW–A325, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Debbie Weber, Accounting Systems Branch, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0812.

SUPPLEMENTARY INFORMATION: This gives notice that the annual revenue threshold used for classifying carriers for various accounting and reporting purposes is increased to $117 million. Section 402(c) of the 1996 Act mandates that we adjust this revenue threshold annually to reflect the effects of inflation since October 19, 1992, at which time the threshold was $100 million. In accordance with the Act, we adjust the threshold based on the ratio of the gross domestic product chain-type price index (GDP–CPI) in the revenue year and the GDP–CPI for October 19,1992. The revenue threshold for 2000 was determined as follows:

(1) October 19, 1992 GDP–CPI—91.62

(2) 2000 GDP–CPI—106.99

(3) Inflation Factor (line 2÷line 1)—1.1678

(4) Original Revenue Threshold—$100 million

(5) 2000 Revenue Threshold (line 3 * line 4)—$117 million

Federal Communications Commission.

Kenneth P. Moran,

Chief, Accounting Safeguards Division.

[FR Doc. 01–9326 Filed 4–13–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2001–N–6]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2000–01 fifth quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the 2000–01 fifth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before May 25, 2001.

ADDRESSES: Bank members selected for the 2000–01 fifth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, or by electronic mail at fitzgeralde@fhfb.gov.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Policy, Research and Analysis, Program Assistance Division, by telephone at 202/408–2874, by electronic mail at fitzgeralde@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The

Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the May 25, 2001 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before April 30, 2001, each Bank will notify the members in its district that have been selected for the 2000–01 fifth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site: www.fhfb.gov. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2000–01 fifth quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

People's Bank	Bridgeport	Connecticut
Farmington Savings Bank	Farmington	Connecticut
Savings Bank of Manchester	Manchester	Connecticut
Liberty Bank	Middletown	Connecticut
Naugatuck Savings Bank	Naugatuck	Connecticut
Citizens National Bank	Putnam	Connecticut
Simsbury Bank and Trust Company	Simsbury	Connecticut
Windsor Federal Savings & Loan Association	Windsor	Connecticut
Windsor Locks Savings & Loan Association	Windsor Locks	Connecticut
Ocean Communities Federal Credit Union	Biddeford	Maine
St. Joseph's Federal Credit Union	Biddeford	Maine
First National Bank of Damariscotta	Damariscotta	Maine
Gardiner Savings Institution, FSB	Gardiner	Maine
United Kingfield Bank	Kingfield	Maine
Machias Savings Bank	Machias	Maine
Katahdin Federal Credit Union	Millinocket	Maine
St. Croix Federal Credit Union	Woodland	Maine
U-Mass Five College Federal Credit Union	Amherst	Massachusetts
Tremont Credit Union	Boston	Massachusetts
University Credit Union	Boston	Massachusetts
Brockton Credit Union	Brockton	Massachusetts
Broadway National Bank	Chelsea	Massachusetts
Dedham Cooperative Bank	Dedham	Massachusetts
Everett Credit Union	Everett	Massachusetts
Worker's Credit Union	Fitchburgh	Massachusetts
Framingham Co-operative Bank	Framingham	Massachusetts
Benjamin Franklin Savings Bank	Franklin	Massachusetts
Dean Cooperative Bank	Franklin	Massachusetts
Greenfield Savings Bank	Greenfield	Massachusetts
Hanscom Federal Credit Union	Hanscom AFB	Massachusetts
Economy Co-operative Bank	Merrimac	Massachusetts
Mayflower Cooperative Bank	Middleborough	Massachusetts
Millbury Federal Credit Union	Millbury	Massachusetts
Compass Bank	New Bedford	Massachusetts
First Citizens' Federal Credit Union	New Bedford	Massachusetts
North Shore Bank	Peabody	Massachusetts
Berkshire Bank	Pittsfield	Massachusetts
Pittsfield Cooperative Bank	Pittsfield	Massachusetts
Sharon Co-operative Bank	Sharon	Massachusetts
Slade's Ferry Trust Company	Somerset	Massachusetts
Central Co-operative Bank	Somerville	Massachusetts
Savers Co-operative Bank	Southbridge	Massachusetts
Stoneham Co-operative Bank	Stoneham	Massachusetts
Martha's Vineyard Co-operative Bank	Vineyard Haven	Massachusetts
Ware Co-operative Bank	Ware	Massachusetts
United Co-operative Bank	West Springfield	Massachusetts
Westfield Bank	Westfield	Massachusetts
Winthrop Federal Credit Union	Winthrop	Massachusetts
Flagship Bank and Trust Company	Worcester	Massachusetts
Connecticut River Bank, N.A.	Charleston	New Hampshire
Claremont Savings Bank	Claremont	New Hampshire
Triangle Credit Union	Nashua	New Hampshire
Lake Sunapee Bank, F.S.B.	Newport	New Hampshire
Sugar River Savings Bank	Newport	New Hampshire
Piscataqua Savings Bank	Portsmouth	New Hampshire
Service Credit Union	Portsmouth	New Hampshire
Washington Trust Company	Westerly	Rhode Island
The Bank of Bennington	Bennington	Vermont
Factory Point National Bank	Manchester Center	Vermont
Heritage Family Credit Union	Rutland	Vermont

Passumpsic Savings Bank	St. Johnsbury	Vermont

Federal Home Loan Bank of New York—District 2

Ocwen Federal Bank FSB	West Palm Beach	Florida
American Savings Bank of New Jersey	Bloomfield	New Jersey
Clifton Savings Bank, S.L.A.	Clifton	New Jersey
Sussex County State Bank	Franklin	New Jersey
First Hope Bank	Hope	New Jersey
Magyar Savings Bank	New Brunswick	New Jersey
Lusitania Savings Bank, fsb	Newark	New Jersey
Franklin Savings Bank, S.L.A.	Pilesgrove	New Jersey
Roebling Savings Bank	Roebling	New Jersey
Pulaski Savings Bank	Springfield	New Jersey
South Jersey Savings and Loan Association	Turnersville	New Jersey
Monroe Savings Bank, SLA	Williamstown	New Jersey
Cayuga Bank	Auburn	New York
BSB Bank & Trust Company	Binghampton	New York
Ponce de Leon Federal Bank	Bronx	New York
Atlantic Liberty Savings, F.A.	Brooklyn	New York
Community Capital Bank	Brooklyn	New York
Bank of Castile	Castile	New York
Cohoes Savings Bank	Cohoes	New York
Fulton Savings Bank	Fulton	New York
Astoria Federal Savings and Loan	Lake Success	New York
First Federal Savings of Middletown	Middletown	New York
Amalgamated Bank of New York	New York	New York
United Orient Bank	New York	New York
Pittsford Federal Credit Union	Pittsford	New York
Northfield Savings Bank	Staten Island	New York
Empire Federal Credit Union	Syracuse	New York
Bank & Trust of Puerto Rico	Hato Rey	Puerto Rico

Federal Home Loan Bank of Pittsburgh—District 3

Travelers Bank	Newark	Delaware
AIG Federal Savings Bank	Wilmington	Delaware
Wilmington Savings Fund Society	Wilmington	Delaware
C&G Savings Bank	Altoona	Pennsylvania
Ambler Savings & Loan Association	Ambler	Pennsylvania
First Star Savings Bank	Bethlehem	Pennsylvania
First FS&LA of Bucks County	Bristol	Pennsylvania
Alliance Bank	Broomall	Pennsylvania
Sharon Savings Bank	Darby	Pennsylvania
ESB Bank, F.S.B.	Ellwood City	Pennsylvania
County Savings Association	Essington	Pennsylvania
Bank of Hanover and Trust Company	Hanover	Pennsylvania
Hatboro Federal Savings	Hatboro	Pennsylvania
First Federal Bank	Hazleton	Pennsylvania
William Penn Savings and Loan Association	Levittown	Pennsylvania
Willow Grove Bank	Maple Glen	Pennsylvania
First Keystone Federal Savings Bank	Media	Pennsylvania
Morton Savings and Loan Association	Morton	Pennsylvania
Nesquehoning Savings Bank	Nesquehoning	Pennsylvania
Third Federal Savings Bank	Newtown	Pennsylvania
Malvern Federal Savings Bank	Paoli	Pennsylvania
First Savings Bank of Perkasie	Perkasie	Pennsylvania
Asian Bank	Philadelphia	Pennsylvania
Crusader Savings Bank, fsb	Philadelphia	Pennsylvania
Fox Chase Federal Savings Bank	Philadelphia	Pennsylvania
Second FS&LA of Philadelphia	Philadelphia	Pennsylvania
Washington Savings Association	Philadelphia	Pennsylvania
Bell FS&LA of Bellevue	Pittsburgh	Pennsylvania
Great American FS&LA	Pittsburgh	Pennsylvania
National City Bank of Pennsylvania	Pittsburgh	Pennsylvania
Progressive Home FS&LA	Pittsburgh	Pennsylvania
Patriot Bank	Pottstown	Pennsylvania
Quakertown National Bank	Quakertown	Pennsylvania
Mercer County State Bank	Sandy Lake	Pennsylvania
North Penn Savings & Loan Association	Scranton	Pennsylvania
Penn Security Bank & Trust Company	Scranton	Pennsylvania
Pennview Savings Bank	Souderton	Pennsylvania
Slovenian S&LA of Canonsburg	Strabane	Pennsylvania
First National Bank of West Chester	West Chester	Pennsylvania
First Heritage Bank	Wilkes-Barre	Pennsylvania
Williamsport National Bank	Williamsport	Pennsylvania

Pioneer Community Bank, Inc.	Laeger	West Virginia
Bank of Mount Hope, Inc.	Mount Hope	West Virginia
Community Bank of Parkersburg	Parkersburg	West Virginia
First National Bank	Spencer	West Virginia
Pleasants County Bank	St. Marys	West Virginia
Poca Valley Bank	Walton	West Virginia

Federal Home Loan Bank of Atlanta—District 4

Covington County Bank	Andalusia	Alabama
United Bank	Atmore	Alabama
AmSouth Bank	Birmingham	Alabama
Community Bank	Blountsville	Alabama
Peoples Community Bank	Columbia	Alabama
Peoples Bank of North Alabama	Cullman	Alabama
First American Bank	Decatur	Alabama
The Citizens Bank	Enterprise	Alabama
Eufala Bank & Trust Company	Eufala	Alabama
EvaBank	Eva	Alabama
First Gulf Bank	Gulf Shores	Alabama
Merchants Bank	Jackson	Alabama
Farmers and Merchants Bank	Lafayette	Alabama
Southwest Bank of Alabama, Inc.	McIntosh	Alabama
South Alabama Bank	Mobile	Alabama
Eagle Bank of Alabama	Opelika	Alabama
Community Spirit Bank	Red Bay	Alabama
Valley State Bank	Russellville	Alabama
The Peoples Bank & Trust Company	Selma	Alabama
Sweet Water State Bank	Sweet Water	Alabama
First Federal of the South	Sylacauga	Alabama
First Citizens Bank, N.A.	Talladega	Alabama
The First National Bank of Talladega	Talladega	Alabama
First United Security Bank	Thomasville	Alabama
Century National Bank	Washington	D. C.
City First Bank of D.C., N.A.	Washington	D. C.
Citrus and Chemical Bank	Bartow	Florida
Mackinac Savings Bank	Boynton Beach	Florida
First Bank of Clewiston	Clewiston	Florida
First National Bank of Crestview	Crestview	Florida
Regent Bank	Davie	Florida
Dunnellon State Bank	Dunnellon	Florida
Gateway American Bank of Florida	Ft. Lauderdale	Florida
Landmark Bank, N.A.	Ft. Lauderdale	Florida
Old Florida Bank	Fort Myers	Florida
Desjardins Federal Savings Bank	Hallandale	Florida
Combined Proforma—Florida Community Bank	Immolakee	Florida
The Bank of Inverness	Inverness	Florida
Educational Community Credit Union	Jacksonville	Florida
First Guaranty Bank & Trust Company	Jacksonville	Florida
Monticello Bank	Jacksonville Beach	Florida
Publix Employees Federal Credit Union	Lakeland	Florida
Sterling Bank	Lantana	Florida
First Federal Savings Bank of Florida	Live Oak	Florida
Commercial Bank of Florida	Miami	Florida
Eastern National Bank	Miami	Florida
Helm Bank	Miami	Florida
Tropical Federal Credit Union	Miami	Florida
Eastern Financial Credit Union	Miramar	Florida
Pelican National Bank	Naples	Florida
Alliance Bank	Orlando	Florida
Bank at Ormond By-the-Sea	Ormond Beach	Florida
First Community Bank of Palm Beach County	Pahokee	Florida
Florida Bank of Commerce	Palm Harbor	Florida
Peoples First Community Bank	Panama City	Florida
Century Bank, F.S.B.	Sarasota	Florida
Highlands Independent Bank	Sebring	Florida
Raymond James Bank, FSB	St. Petersburg Beach	Florida
City First Bank	Tampa	Florida
Columbia Bank	Tampa	Florida
United Southern Bank	Umatilla	Florida
Marine Bank and Trust	Vero Beach	Florida
Federal Employees Credit Union	West Palm Beach	Florida
Wilcox County State Bank	Abbeville	Georgia
Bank of Adairsville	Adairsville	Georgia
Farmers and Merchants Bank	Adel	Georgia
Montgomery County Bank	Ailey	Georgia

AGE Federal Credit Union	Albany	Georgia
Chattahoochee National Bank	Alpharetta	Georgia
First Colony Bank	Alpharetta	Georgia
Citizens Trust Bank	Atlanta	Georgia
First Union National— Georgia	Atlanta	Georgia
First Union Direct Bank, N.A.	Augusta	Georgia
Union County Bank	Blairsville	Georgia
Peoples Bank of Fannin County	Blue Ridge	Georgia
First National Bank of Georgia	Buchanan	Georgia
Bank of Chickamauga	Chickamauga	Georgia
Peoples Community Bank of Colquitt	Colquitt	Georgia
The Peoples Bank	Eatonton	Georgia
Pinnacle Bank, N.A.	Elberton	Georgia
Gainesville Bank and Trust	Gainesville	Georgia
First Citizens Bank	Glennville	Georgia
South Georgia Bank, FSB	Glennville	Georgia
SunMark Community Bank	Hawkinsville	Georgia
Community Trust Bank	Hiram	Georgia
Wayne National Bank	Jesup	Georgia
Peoples Bank	Lithonia	Georgia
The Community Bank	Loganville	Georgia
Rivoli Bank & Trust	Macon	Georgia
The Westside Bank & Trust Company	Marietta	Georgia
First Security National Bank	Norcross	Georgia
Family Bank	Pelham	Georgia
Independent Bank and Trust	Powder Springs	Georgia
The Citizens National Bank of Quitman	Quitman	Georgia
Citizens First Bank	Rome	Georgia
Farmers and Merchants Community Bank	Senoia	Georgia
Quantum National Bank	Suwanee	Georgia
Bank of Thomas County	Thomasville	Georgia
First Bank of Georgia	Thomson	Georgia
Citizens Bank and Trust	Trenton	Georgia
Community Bank of Georgia	Tucker	Georgia
Farmers and Merchants Bank	Washington	Georgia
First Piedmont Bank	Winder	Georgia
Back and Middle River FS&LA	Baltimore	Maryland
Bay-Vanguard Federal Savings Bank	Baltimore	Maryland
Hull Federal Savings Bank	Baltimore	Maryland
Ideal Federal Savings Bank	Baltimore	Maryland
Northfield Federal Savings	Baltimore	Maryland
Vigilant Federal Savings & Loan Association	Baltimore	Maryland
F&M Bank—Allegiance	Bethesda	Maryland
TMB Federal Credit Union	Cabin John	Maryland
Cecil Federal Savings Bank	Elkton	Maryland
County National Bank	Glen Burnie	Maryland
Eastern Savings Bank, FSB	Hunt Valley	Maryland
State Employees' Credit Union	Linthicum	Maryland
Susquehanna Bank	Lititz	Maryland
IR Federal Credit Union	Riverdale	Maryland
GrandBank	Rockville	Maryland
Provident Bank of Maryland	Towson	Maryland
Randolph Bank and Trust Company	Asheboro	North Carolina
First Commerce Bank	Charlotte	North Carolina
Rowan Savings Bank, SSB	China Grove	North Carolina
Cabarrus Bank of North Carolina	Concord	North Carolina
Mechanics & Farmers Bank	Durham	North Carolina
Central Carolina Bank and Trust Company	Durham	North Carolina
Gateway Bank and Trust Company	Elizabeth City	North Carolina
Macon Savings Bank, Inc., SSB	Franklin	North Carolina
First Gaston Bank of North Carolina	Gastonia	North Carolina
Carolina Bank	Greensboro	North Carolina
MountainBank	Hendersonville	North Carolina
Hertford Savings Bank, SSB	Hertford	North Carolina
Independence Bank	Kernersville	North Carolina
The Little Bank	Kinston	North Carolina
Bank of the Carolinas	Landis	North Carolina
Industrial Federal Savings Bank	Lexington	North Carolina
Lexington State Bank	Lexington	North Carolina
Liberty Savings and Loan Association	Liberty	North Carolina
First Savings and Loan Association	Mebane	North Carolina
American Community Bank	Monroe	North Carolina
Mount Gilead Savings and Loan Association	Mount Gilead	North Carolina
State Employees' Credit Union	Raleigh	North Carolina
Citizens Bank, Inc.	Salisbury	North Carolina
Taylorsville Savings Bank, SSB	Taylorsville	North Carolina

Anson Bank & Trust Company	Wadesboro	North Carolina
Waccamaw Bank	Whiteville	North Carolina
Cooperative Bank for Savings, Inc., SSB	Wilmington	North Carolina
Wachovia Bank, N.A.	Winston-Salem	North Carolina
People's Community Bank of South Carolina	Aiken	South Carolina
Home Federal Savings & Loan Association	Bamberg	South Carolina
Florence National Bank	Florence	South Carolina
Bank of Greeleyville	Greeleyville	South Carolina
The County Bank	Greenwood	South Carolina
Greer State Bank	Greer	South Carolina
First National Bank of South Carolina	Holly Hill	South Carolina
Kingstree Federal Savings & Loan Association	Kingstree	South Carolina
The Bank of Clarendon	Manning	South Carolina
Southcoast Community Bank	Mt. Pleasant	South Carolina
Anderson Brothers Bank	Mullins	South Carolina
Pickens Savings & Loan Association	Pickens	South Carolina
GrandSouth Bank	Simpsonville	South Carolina
Bank of Travelers Rest	Travelers Rest	South Carolina
Napus Federal Credit Union	Alexandria	Virginia
The Blue Grass Valley Bank	Blue Grass	Virginia
The Bank of Southside Virginia	Carson	Virginia
Second Bank and Trust Company	Culpeper	Virginia
F&M Bank-Emporia	Emporia	Virginia
Apple Federal Credit Union	Fairfax	Virginia
Farmers and Merchants Bank	Harrisonburg	Virginia
First Colonial Bank, F.S.B.	Hopewell	Virginia
Imperial Savings and Loan Association	Martinsville	Virginia
Navy Federal Credit Union	Merrifield	Virginia
Bank of the Commonwealth	Norfolk	Virginia
Lee Bank and Trust Company	Pennington Gap	Virginia
James River Bank	Waverly	Virginia
The Marathon Bank	Winchester	Virginia

Federal Home Loan Bank of Cincinnati—District 5

Farmers Bank and Trust Company	Bardstown	Kentucky
Wilson and Muir Bank and Trust Company	Bardstown	Kentucky
Bank of Cadiz and Trust Company	Cadiz	Kentucky
Bank of Columbia	Columbia	Kentucky
First Federal Savings Bank	Cynthiana	Kentucky
Harrison Deposit Bank and Trust Company	Cynthiana	Kentucky
Kentucky National Bank	Elizabethtown	Kentucky
Fulton Bank	Fulton	Kentucky
Farmers Bank	Hardinsburg	Kentucky
Hancock Bank and Trust Company	Hawesville	Kentucky
Peoples Bank and Trust Company	Hazard	Kentucky
Hopkinsville Federal Savings Bank	Hopkinsville	Kentucky
Planters Bank, Inc.	Hopkinsville	Kentucky
Bank of Jamestown	Jamestown	Kentucky
THE BANK—Oldham County	LaGrange	Kentucky
Leitchfield Deposit Bank & Trust Company	Leitchfield	Kentucky
L&N Federal Credit Union	Louisville	Kentucky
River City Bank	Louisville	Kentucky
Farmers Bank & Trust Company	Marion	Kentucky
United Community Bank	Marrowbone	Kentucky
Exchange Bank	Mayfield	Kentucky
Monticello Banking Company	Monticello	Kentucky
Pioneer Bank	Munfordville	Kentucky
South Central Bank of Daviess County	Owensboro	Kentucky
Salt Lick Deposit Bank	Owingsville	Kentucky
Blue Grass Federal Savings & Loan Association	Paris	Kentucky
First Commonwealth Bank	Prestonburg	Kentucky
Fort Knox National Bank	Radcliff	Kentucky
Commerce Exchange Bank	Beachwood	Ohio
Belpre Savings Bank	Belpre	Ohio
The First Bremen Bank	Bremen	Ohio
Farmers Citizens Bank	Bucyrus	Ohio
Cambridge Savings Bank	Cambridge	Ohio
Eagle Savings Bank	Cincinnati	Ohio
Findlay Savings Bank	Cincinnati	Ohio
Mercantile Savings Bank	Cincinnati	Ohio
Union Savings Bank	Cincinnati	Ohio
Westwood Homestead Savings Bank	Cincinnati	Ohio
Winton Savings and Loan Company	Cincinnati	Ohio
First Community Bank	Columbus	Ohio
Conneaut Savings & Loan Company	Conneaut	Ohio

Commercial Bank	Delphos	Ohio
Fort Jennings State Bank	Fort Jennings	Ohio
The Hamler State Bank	Hamler	Ohio
Morgan Bank, N.A.	Hudson	Ohio
Lincoln Savings and Loan Association	Ironton	Ohio
Peoples Community Bank	Lebanon	Ohio
Lower Salem Commercial Bank	Lower Salem	Ohio
Marietta Savings Bank	Marietta	Ohio
The Fahey banking Company	Marion	Ohio
Citizens National Bank of McConnelsville	McConnelsville	Ohio
Great Lakes Bank	Mentor	Ohio
American Savings and Loan Association	Middletown	Ohio
First National Bank of New Holland	New Holland	Ohio
Farmers State Bank	New Washington	Ohio
First National Bank	Orrville	Ohio
The Republic Banking Company	Republic	Ohio
Chippewa Valley Bank	Rittman	Ohio
Mutual Federal Savings Bank	Sidney	Ohio
Security National Bank & Trust Company	Springfield	Ohio
Central Federal Savings and Loan Association	Wellsville	Ohio
Peoples Savings and Loan Company	West Liberty	Ohio
The Union Banking Company	West Mansfield	Ohio
Farmers State Bank	West Salem	Ohio
Wilmington Savings Bank	Wilmington	Ohio
Brighton Bank	Brighton	Tennessee
Cumberland Bank	Carthage	Tennessee
Highland Federal Savings and Loan Association	Crossville	Tennessee
Security Federal Savings Bank	Elizabethton	Tennessee
Lauderdale County Bank	Halls	Tennessee
Carroll Bank and Trust	Huntingdon	Tennessee
First National Bank of Manchester	Manchester	Tennessee
The Coffee County Bank	Manchester	Tennessee
The Home Bank of Tennessee	Maryville	Tennessee
Memphis Area Teachers' Credit Union	Memphis	Tennessee
The Bank of Moscow	Moscow	Tennessee
Johnson County Bank	Mountain City	Tennessee
Bank of Murfreesboro	Murfreesboro	Tennessee
Home Banking Company	Selmer	Tennessee

Federal Home Loan Bank of Indianapolis—District 6

FCN Bank, NA	Brookville	Indiana
Assurance Partners Bank	Carmel	Indiana
Montgomery SA, FA	Crawfordsville	Indiana
Decatur Bank and Trust Company	Decatur	Indiana
United Fidelity Bank	Evansville	Indiana
Springs Valley Bank and Trust Company	French Lick	Indiana
First Federal Savings Bank	Huntington	Indiana
Campbell and Fetter Bank	Kendallville	Indiana
United Community Bank	Lawrenceburg	Indiana
River Valley Financial Bank	Madison	Indiana
Fidelity Federal Savings Bank	Marion	Indiana
State Bank of Markle	Markle	Indiana
First State Bank of Middlebury	Middlebury	Indiana
Citizens Financial Services, FSB	Munster	Indiana
Community Bank of Southern Indiana	New Albany	Indiana
Regional Federal Savings Bank	New Albany	Indiana
Ameriana Bank of Indiana, FSB	New Castle	Indiana
AmericanTrust FSB	Peru	Indiana
Spencer County Bank	Santa Claus	Indiana
Jackson County Bank	Seymour	Indiana
Shelby County Bank	Shelbyville	Indiana
Sobieski FS & LA of South Bend	South Bend	Indiana
Security Federal Bank, F.S.B.	St. John	Indiana
Terre Haute Savings Bank	Terre Haute	Indiana
Frances Slocum Bank and Trust Company	Wabash	Indiana
Ann Arbor Commerce Bank	Ann Arbor	Michigan
Charlevoix State Bank	Charlevoix	Michigan
Dearborn Federal Savings Bank	Dearborn	Michigan
Financial Health Credit Union	East Lansing	Michigan
Michigan National Bank	Farmington Hills	Michigan
Bank West, FSB	Grand Rapids	Michigan
Firstbank-Lakeview	Lakeview	Michigan
State Employees Credit Union	Lansing	Michigan
Independent Bank-South Michigan	Leslie	Michigan
State Savings Bank	Manistique	Michigan

Mason State Bank	Mason	Michigan
Community Federal Credit Union	Plymouth	Michigan
Team One Credit Union	Saginaw	Michigan
Sidney State Bank	Sidney	Michigan
Flagstar Bank	Troy	Michigan
Research Federal Credit Union	Warren	Michigan
First Bank	West Branch	Michigan

Federal Home Loan Bank of Chicago—District 7

Oxford Bank and Trust	Addison	Illinois
Heartland Bank and Trust Company	Bloomington	Illinois
Peoples Bank of Kankakee County	Bourbonnais	Illinois
Bridgeview Bank and Trust Company	Bridgeview	Illinois
Southe Pointe Bank	Carbondale	Illinois
First American Bank	Carpentersville	Illinois
United Community Bank	Chatham	Illinois
Amalgamated Bank of Chicago	Chicago	Illinois
Austin Bank of Chicago	Chicago	Illinois
Builders Bank	Chicago	Illinois
Burling Bank	Chicago	Illinois
Community Bank of Lawndale	Chicago	Illinois
First Savings Bank of Hegewisch	Chicago	Illinois
The Foster Bank	Chicago	Illinois
State Bank of Countryside	Countryside	Illinois
First Savings Bank	Danville	Illinois
Clover Leaf Bank, SB	Edwardsville	Illinois
Effingham State Bank	Effingham	Illinois
Illinois Community Bank	Effingham	Illinois
Washington Savings Bank	Effingham	Illinois
Elgin Financial Savings Bank	Elgin	Illinois
Forest Park National Bank & Trust Company	Forest Park	Illinois
Harris Bank Frankfort	Frankfort	Illinois
Union Savings Bank	Freeport	Illinois
Central Trust & Savings Bank	Geneseo	Illinois
Bank of Gibson City	Gibson City	Illinois
Northside Community Bank	Gurnee	Illinois
UnionBank/Northwest	Hanover	Illinois
Parkway Bank and Trust Co.	Harwood Heights	Illinois
North Central Bank	Hennepin	Illinois
State Bank Herscher	Herscher	Illinois
First State Bank of Heyworth	Heyworth	Illinois
Bank of Homewood, National Association	Homewood	Illinois
The Farmers State Bank and Trust Company	Jacksonville	Illinois
First FS&LA of Kewanee	Kewanee	Illinois
State Bank of Latham	Latham	Illinois
Logan County Bank	Lincoln	Illinois
Twin Oaks Savings Bank	Marseilles	Illinois
Citizens Community Bank	Mascoutah	Illinois
Okaw Building and Loan, s.b.	Mattoon	Illinois
Middletown State Bank	Middleton	Illinois
Blackhawk State Bank	Milan	Illinois
Parish Bank and Trust Company	Momence	Illinois
First State Bank of Monticello	Monticello	Illinois
Bankplus, FSB	Morton	Illinois
First National Bank of Morton Grove	Morton Grove	Illinois
George Washington Savings Bank	Oak Lawn	Illinois
The First National Bank of Ogden	Ogden	Illinois
The First National Bank of Okawville	Okawville	Illinois
First National Bank in Olney	Olney	Illinois
Bank of Palmyra	Palmyra	Illinois
The Edgar County Bank & Trust Company	Paris	Illinois
First FS&LA of Pekin	Pekin	Illinois
First National Bank in Pickneyville	Pinckneyville	Illinois
Mercantile Trust and Savings Bank	Quincy	Illinois
State Street Bank and Trust Company	Quincy	Illinois
North County Savings Bank	Red Bud	Illinois
First Crawford State Bank	Robinson	Illinois
American Bank and Trust Company	Rock Island	Illinois
First Savanna Savings Bank	Savanna	Illinois
First State Bank of Shannon-Polo	Shannon	Illinois
First S&LA of South Holland	South Holland	Illinois
Security Bank, s.b.	Springfield	Illinois
Stillman BancCorp, NA	Stillman Valley	Illinois
Argo Federal Savings Bank, F.S.B.	Summit	Illinois
The National B&T Company of Sycamore	Sycamore	Illinois

Villa Park Trust and Savings Bank	Villa Park	Illinois
Citizens First State Bank of Walnut	Walnut	Illinois
Hill-Dodge Banking Company	Warsaw	Illinois
Alpha Community Bank	Washburn	Illinois
State Bank of Waterloo	Waterloo	Illinois
Cardunal Savings Bank, FSB	West Dundee	Illinois
Metrobank, N.A.	Davenport	Iowa
First American Credit Union	Beloit	Wisconsin
Jackson County Bank	Black River Falls	Wisconsin
State Bank of Cross Plains	Cross Plains	Wisconsin
State Financial Bank	Hales Corner	Wisconsin
AM Community Credit Union	Kenosha	Wisconsin
Time Federal Savings Bank	Medford	Wisconsin
M&I Marshall & Isley Bank	Milwaukee	Wisconsin
Community Bank Spring Green and Plain	Spring Green	Wisconsin
Tomahawk Community Bank, S.S.B.	Tomahawk	Wisconsin
Marine Bank	Wauwatosa	Wisconsin
Ledger Bank, S.S.B.	West Allis	Wisconsin

Federal Home Loan Bank of Des Moines—District 8

Security State Bank	Anamosa	Iowa
State Savings Bank	Baxter	Iowa
Farmers Trust & Savings Bank	Buffalo Center	Iowa
Linn Area Credit Union	Cedar Rapids	Iowa
United Security Savings Bank, F.S.B.	Cedar Rapids	Iowa
Citizens State Bank	Clarinda	Iowa
Clear Lake Bank & Trust Company	Clear Lake	Iowa
Gateway State Bank	Clinton	Iowa
Cresco Union Savings Bank	Cresco	Iowa
Denver Savings Bank	Denver	Iowa
DeWitt Bank and Trust Company	DeWitt	Iowa
Premier Bank	Dubuque	Iowa
Liberty Trust & Savings Bank	Durant	Iowa
Farmers Trust & Savings Bank	Earling	Iowa
Hardin County Savings Bank	Eldora	Iowa
Peoples State Bank	Elkader	Iowa
NorthStar Bank	Estherville	Iowa
Fort Madison Bank & Trust Company	Fort Madison	Iowa
Security Savings Bank	Gowrie	Iowa
Peoples Trust and Savings Bank	Grand Junction	Iowa
Midstates Bank, N.A.	Harlan	Iowa
Hills Bank and Trust Company	Hills	Iowa
First State Bank	Huxley	Iowa
First State Bank	Ida Grove	Iowa
Peoples Savings Bank	Indianola	Iowa
Iowa Falls State Bank	Iowa Falls	Iowa
Kerndt Brothers Savings Bank	Lansing	Iowa
Citizens Bank	Leon	Iowa
Libertyville Savings Bank	Libertyville	Iowa
First State Bank	Lynnville	Iowa
First National Bank of Manning	Manning	Iowa
Valley Bank & Trust	Mapleton	Iowa
Maquoketa State Bank	Maquoketa	Iowa
Maynard Savings Bank	Maynard	Iowa
Southeast Security Bank	Mediapolis	Iowa
Union State Bank	Monona	Iowa
Citizens State Bank	Monticello	Iowa
Mount Vernon Bank and Trust Company	Mount Vernon	Iowa
Wayland State Bank	Mt. Pleasant	Iowa
Community Bank of Muscatine	Muscatine	Iowa
Iowa State Bank	Oelwein	Iowa
Iowa State Bank	Orange City	Iowa
Iowa Trust and Savings Bank	Oskaloosa	Iowa
Horizon Federal Savings Bank	Oskaloosa	Iowa
Pella State Bank	Pella	Iowa
Citizens State Bank	Postville	Iowa
First State Bank	Riceville	Iowa
Peoples Bank	Rock Valley	Iowa
Union State Bank	Rockwell City	Iowa
Rolfe State Bank	Rolfe	Iowa
Security State Bank	Sheldon	Iowa
Fremont County Savings Bank	Sidney	Iowa
St. Ansgar State Bank	St. Ansgar	Iowa
Bank Plus	Swea City	Iowa
Victor State Bank	Victor	Iowa

Washington State Bank	Washington	Iowa
Iowa State Bank	West Bend	Iowa
GuideOne Life Insurance Company	West Des Moines	Iowa
GuideOne Mutual Insurance Company	West Des Moines	Iowa
GuideOne Specialty Mutual Insurance Company	West Des Moines	Iowa
Wilton Savings Bank	Wilton	Iowa
Sterling State Bank	Austin	Minnesota
White Rock Bank	Cannon Falls	Minnesota
Currie State Bank	Currie	Minnesota
State Bank of Delano	Delano	Minnesota
Inter Savings Bank, fsb	Edina	Minnesota
Stearns Bank of Evansville	Evansville	Minnesota
1st United Bank	Faribault	Minnesota
Border State Bank of Greenbush	Greenbush	Minnesota
Citizens State Bank of Hayfield	Hayfield	Minnesota
Farmers State Bank of Hoffman	Hoffman	Minnesota
Fortress Bank, N.A.	Houston	Minnesota
Security State Bank of Howard Lake	Howard Lake	Minnesota
Key Community Bank	Inver Grove Heights	Minnesota
Lake City Federal Savings & Loan Association	Lake City	Minnesota
Lake Area Bank	Lindstrom	Minnesota
Voyager Bank	Mankato	Minnesota
Wells Fargo Bank Minnesota, N.A.	Minneapolis	Minnesota
Bayside Bank	Minnetonka	Minnesota
First National Bank of Moose Lake	Moose Lake	Minnesota
United Prairie Bank	Mountain Lake	Minnesota
The American Bank of Nashwauk	Nashwauk	Minnesota
State Bank of New Prague	New Prague	Minnesota
ProGrowth Bank	Nicollet	Minnesota
Midwest Bank, N.A.	Parkers Prairie	Minnesota
The First National Bank of Pine City	Pine City	Minnesota
Premier Bank Rochester	Rochester	Minnesota
Citizens Bank of Roseau	Roseau	Minnesota
St. James Federal Savings & Loan Association	St. James	Minnesota
Liberty State Bank	St. Paul	Minnesota
The Nicollet County Bank of St. Peter	St. Peter	Minnesota
Farmers State Bank of Trimont	Trimont	Minnesota
Roundbank	Waseca	Minnesota
Community Bank Winsted	Winsted	Minnesota
First Independent Bank of Wood Lake	Wood Lake	Minnesota
Citizens Bank	Amsterdam	Missouri
Bank of Jacomo	Blue Springs	Missouri
Boonslick Bank	Boonville	Missouri
Community State Bank of Bowling Green	Bowling Green	Missouri
Pony Express Bank	Braymer	Missouri
Mississippi County Savings & Loan Association	Charleston	Missouri
Clayco State Bank	Claycomo	Missouri
Citizens Union State Bank and Trust	Clinton	Missouri
First National Bank and Trust Company	Columbia	Missouri
Meramec Valley Bank	Ellisville	Missouri
New Era Bank	Fredericktown	Missouri
Bank Star One	Fulton	Missouri
American Loan and Savings Association	Hannibal	Missouri
Central Trust Bank	Jefferson City	Missouri
Lafayette County Bank of Lexington/Wellington	Lexington	Missouri
Macon-Atlanta State Bank	Macon	Missouri
Regional Missouri Bank	Marceline	Missouri
Nodaway Valley Bank	Maryville	Missouri
Independent Farmers Bank	Maysville	Missouri
Heritage State Bank	Nevada	Missouri
Southwest Community Bank	Ozark	Missouri
Palmyra Saving & Building Association, F.A.	Palmyra	Missouri
Palmyra State Bank	Palmyra	Missouri
Farley State Bank	Parkville	Missouri
Perry County Savings Bank, FSB	Perryville	Missouri
Citizens Community Bank	Pilot Grove	Missouri
Farmers Bank of Portageville	Portageville	Missouri
Pulaski Bank, a Federal Savings Bank	Saint Louis	Missouri
Bank of Salem	Salem	Missouri
The Merchants and Farmers Bank of Salisbury	Salisbury	Missouri
Community Bank of Pettis County	Sedalia	Missouri
Liberty Bank	Springfield	Missouri
Empire Bank	Springfield	Missouri
Signature Bank	Springfield	Missouri
Bank Star of the BootHeel	Steele	Missouri
The Tipton Latham Bank, N.A.	Tipton	Missouri

Bank of Washington	Washington	Missouri
West Plains Savings and Loan Association	West Plains	Missouri
First and Farmers Bank	Portland	North Dakota
First International Bank & Trust	Watford City	North Dakota
Wells Fargo Bank South Dakota, N.A.	Sioux Falls	South Dakota

Federal Home Loan Bank of Dallas—District 9

Farmers Bank and Trust Company	Clarksville	Arkansas
First Arkansas Valley Bank	Dardanelle	Arkansas
Bank of Eureka Springs	Eureka Springs	Arkansas
McIlroy Bank and Trust	Fayetteville	Arkansas
First National Bank of Fort Smith	Fort Smith	Arkansas
Bank of the Ozarks, nwa	Jasper	Arkansas
Bank of Lake Village	Lake Village	Arkansas
First State Bank	Lonoke	Arkansas
Union Bank of Mena	Mena	Arkansas
First Bank of Montgomery County	Mount Ida	Arkansas
First State Bank	Parkin	Arkansas
Bank of Salem	Salem	Arkansas
First Security Bank	Searcy	Arkansas
Simmons First Bank	Searcy	Arkansas
Springdale Bank and Trust	Springdale	Arkansas
Bank of Yellville	Yellville	Arkansas
Fidelity Bank and Trust Company	Baton Rouge	Louisiana
First National Bank	Gonzales	Louisiana
Schwegmann Bank and Trust Company	Harvey	Louisiana
Washington Life Insurance Company	Lafayette	Louisiana
Globe Homestead Federal Savings Association	Metairie	Louisiana
State-Investors Savings and Loan, FSA	Metairie	Louisiana
Home FS&LA of Shreveport	Shreveport	Louisiana
Citizens Bank and Trust Company of Vivian	Vivian	Louisiana
Cleveland Community Bank, s.s.b.	Cleveland	Mississippi
First Federal Bank for Savings	Columbia	Mississippi
SOUTHBank, a FSB	Corinth	Mississippi
Quitman County Federal Credit Union	Marks	Mississippi
Community First National Bank	Las Cruces	New Mexico
Pioneer Savings Bank	Roswell	New Mexico
First National Bank of Santa Fe	Santa Fe	New Mexico
Liberty Bank, SSB	Austin	Texas
International Bank of Commerce—Brownsville	Brownsville	Texas
First American Bank Texas, S.S.B.	Bryan	Texas
American Bank, N.A.	Corpus Christi	Texas
Pacific Southwest Bank	Corpus Christi	Texas
Bank of the Southwest	Dallas	Texas
Bluebonnet Savings Bank, FSB	Dallas	Texas
Guaranty Federal Bank, F.S.B.	Dallas	Texas
State Bank and Trust Company, Dallas	Dallas	Texas
Del Rio Bank & Trust Company	Del Rio	Texas
Western Bank and Trust	Duncanville	Texas
Mid-Coast Savings Bank, S.S.B.	Edna	Texas
Bank of the West	El Paso	Texas
Houston Savings Bank, fsb	Houston	Texas
New Era Life Insurance Company	Houston	Texas
OmniBank, N.A.	Houston	Texas
Southwest Bank of Texas, N.A.	Houston	Texas
First National Bank of Hughes Springs	Hughes Springs	Texas
Bayshore National Bank of La Porte	La Porte	Texas
International Bank of Commerce	Laredo	Texas
First State Bank of Moulton	Moulton	Texas
Liberty Bank	North Richland Hills	Texas
Crockett County National Bank	Ozona	Texas
Interstate Bank, ssb	Perryton	Texas
Cypress Bank, FSB	Pittsburg	Texas
Community Credit Union	Plano	Texas
First National Bank in Quanah	Quanah	Texas
Benchmark Bank	Quinlan	Texas
Peoples State Bank	Rocksprings	Texas
Texas State Bank	San Angelo	Texas
Frost National Bank	San Antonio	Texas
State Bank & Trust of Seguin, Texas	Seguin	Texas
Cedar Creek Bank	Seven Points	Texas
Citizens Bank of Lubbock County	Slaton	Texas
Texas National Bank	Tomball	Texas
Southside Bank	Tyler	Texas
First Victoria National Bank	Victoria	Texas

Texas Bank	Weatherford	Texas
International Bank of Commerce	Zapata	Texas

Federal Home Loan Bank of Topeka—District 10

Gateway Credit Union	Aurora	Colorado
FirstBank of Avon	Avon	Colorado
Canon National Bank	Canon City	Colorado
Ent Federal Credit Union	Colorado Springs	Colorado
First State Bank, Colorado Springs	Colorado Springs	Colorado
Citizens State Bank of Cortez	Cortez	Colorado
Guaranty Bank and Trust Company	Denver	Colorado
Peoples Bank of Leadville	Leadville	Colorado
The State Bank	Rocky Ford	Colorado
FirstBank of Vail	Vail	Colorado
Community State Bank	Coffeyville	Kansas
First National Bank of Conway Springs	Conway Springs	Kansas
City State Bank	Fort Scott	Kansas
Liberty Savings Association, FSA	Fort Scott	Kansas
First FS&LA of Independence	Independence	Kansas
First National Bank	Independence	Kansas
MidAmerican Bank & Trust Company, N.A.	Leavenworth	Kansas
Kansas State Bank of Manhattan	Manhattan	Kansas
Stockgrowers State Bank	Maple Hill	Kansas
The Citizens State Bank	Marysville	Kansas
The First National Bank	Medicine Lodge	Kansas
Montezuma State Bank	Montezuma	Kansas
Kansas State Bank	Overbrook	Kansas
First National Bank in Pratt	Pratt	Kansas
Rose Hill Bank	Rose Hill	Kansas
Bennington State Bank	Salina	Kansas
First National Bank of Scott City	Scott City	Kansas
Security State Bank	Scott City	Kansas
Centera Bank	Sublette	Kansas
Sylvan State Bank	Sylvan Grove	Kansas
First Federal Savings & Loan	WaKeeney	Kansas
First National Bank of Wamego	Wamego	Kansas
Kaw Valley State Bank and Trust Company	Wamego	Kansas
Fidelity Bank	Wichita	Kansas
Columbus Federal Savings Bank	Columbus	Nebraska
First National Bank of Fullerton	Fullerton	Nebraska
Geneva State Bank	Geneva	Nebraska
Equitable Building and Loan Association, FSB	Grand Island	Nebraska
Home FS&LA of Grand Island	Grand Island	Nebraska
Harvard State Bank	Harvard	Nebraska
Hershey State Bank	Hershey	Nebraska
Nebraska National Bank	Kearney	Nebraska
Platte Valley State Bank and Trust	Kearney	Nebraska
Bank of Keystone	Keystone	Nebraska
Home FS&LA of Nebraska	Lexington	Nebraska
Lincoln Federal Savings Bank of Nebraska	Lincoln	Nebraska
Security Federal Savings	Lincoln	Nebraska
Sherman County Bank	Loup City	Nebraska
First National Bank Northeast	Lyons	Nebraska
Bank of Madison	Madison	Nebraska
Madison County Bank	Madison	Nebraska
Bank of Norfolk	Norfolk	Nebraska
First National Bank	North Platte	Nebraska
Nebraskaland National Bank	North Platte	Nebraska
Marquette Bank Nebraska	O'Neil	Nebraska
First American Savings Bank, FSB	Omaha	Nebraska
Pender State Bank	Pender	Nebraska
Midwest Bank	Pierce	Nebraska
Ravenna Bank	Ravenna	Nebraska
Sidney Federal Savings and Loan Association	Sidney	Nebraska
Dakota County State Bank	South Sioux City	Nebraska
Springfield State Bank	Springfield	Nebraska
Bank of St. Edward	St. Edward	Nebraska
Tecumseh Building and Loan Association	Tecumseh	Nebraska
The First National Bank of Utica	Utica	Nebraska
Farmers State Bank	Wallace	Nebraska
Saline State Bank	Wilber	Nebraska
Citizens National Bank of Wisner	Wisner	Nebraska
66 Federal Credit Union	Bartlesville	Oklahoma
Bank of Cordell	Cordell	Oklahoma
Bank of Hydro	Hydro	Oklahoma

Citizens State Bank	Okemah	Oklahoma
First Enterprise Bank	Oklahoma City	Oklahoma
Union Bank and Trust Company	Oklahoma City	Oklahoma
Will Rogers Bank	Oklahoma City	Oklahoma
First National Bank of Texhoma	Texhoma	Oklahoma
Community Bank and Trust Company	Tulsa	Oklahoma
Energy One Federal Credit Union	Tulsa	Oklahoma
Grand Lake Bank	Tulsa	Oklahoma
Armstrong Bank	Vian	Oklahoma
First Bank and Trust	Wagoner	Oklahoma
Weleetka State Bank	Weleetka	Oklahoma
Canadian State Bank	Yukon	Oklahoma

Federal Home Loan Bank of San Francisco—District 11

Fremont Investment and Loan	Anaheim	California
Vista Federal Credit Union	Burbank	California
First Bank and Trust	Huntington Beach	California
La Jolla Bank, F.S.B.	La Jolla	California
Eastern International Bank	Los Angeles	California
Wescom Credit Union	Pasadena	California
San Diego County Credit Union	San Diego	California
California Bank and Trust	San Francisco	California
Chevron Federal Credit Union	San Francisco	California
Patelco Credit Union	San Francisco	California
United Commercial Bank	San Francisco	California
Bank USA, FSB	Santa Cruz	California
Luther Burbank Savings & Loan Association	Santa Rosa	California
Tracy Federal Bank, F.S.B.	Tracy	California
Yolo Community Bank	Woodland	California
Redding Bank of Commerce	Yuba City	California

Federal Home Loan Bank of Seattle—District 12

National Bank of Alaska	Anchorage	Alaska
First Bank	Ketchikan	Alaska
First Savings & Loan Association of America	Dededo	Guam
Central Pacific Bank	Honolulu	Hawaii
Territorial Savings and Loan Association	Honolulu	Hawaii
Farmers and Merchants State Bank	Boise	Idaho
D.L. Evans Bank	Burley	Idaho
Home FS&LA of Nampa, Idaho	Nampa	Idaho
Valley Bank of Helena	Kalispell	Montana
American Bank of Montana	Livington	Montana
Liberty Federal Bank, A S.B.	Eugene	Oregon
Centennial Bank	Eugene	Oregon
Wood Products Credit Union	Eugene	Oregon
Chetco Federal Credit Union	Harbor	Oregon
Premier West Bank	Medford	Oregon
Pioneer Trust Bank, N.A.	Salem	Oregon
West Coast Bank	Salem	Oregon
Draper Bank and Trust	Draper	Utah
McKay Dee Hospital Credit Union	Ogden	Utah
American Investment Bank, N.A.	Salt Lake City	Utah
Mountain America Credit Union	Salt Lake City	Utah
Zions First National Bank	Salt Lake City	Utah
Heritage Bank	St. George	Utah
Kitsap Community Federal Credit Union	Bremerton	Washington
State Bank of Concrete	Concrete	Washington
Washington State Bank NA	Federal Way	Washington
Issaquah Bank	Issaquah	Washington
First Community Bank of Washington	Lacey	Washington
Spokane Teachers Credit Union	Liberty Lake	Washington
Cowlitz Bank	Longview	Washington
Pacific Northwest Bank	Seattle	Washington
United Savings and Loan Bank	Seattle	Washington
Viking Community Bank	Seattle	Washington
The Wheatland Bank	Spokane	Washington
Sound Banking Company	Tacoma	Washington
TAPCO Credit Union	Tacoma	Washington
Banner Bank	Walla Walla	Washington
Equality State Bank	Cheyenne	Wyoming
Security First Bank	Cheyenne	Wyoming
Ranchester State Bank	Ranchester	Wyoming

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before April 30, 2001, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2000–01 fifth quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2000–01 fifth quarter review cycle must be delivered to the Finance Board on or before the May 25, 2001 deadline for submission of Community Support Statements.

By the Federal Housing Finance Board.
Dated: March 27, 2001.

James L. Bothwell,

Managing Director.

[FR Doc. 01–8042 Filed 4–13–01; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Mahaska Investment Company ESOP, Oskaloosa, Iowa; to acquire an additional .76 percent, for 14.92 percent, of the voting shares of Mahaska Investment Company, Oskaloosa, Iowa and thereby indirectly acquire shares of Mahaska State Bank, Oskloosa, Iowa, and Pella State Bank, Pella, Iowa. Mahaska Investment Company also controls Central Valley Bank, Ottumwa, Iowa and Midwest Federal Savings & Loan of Eastern Iowa, Burlington, Iowa, pursuant to section 225.28(b)(4) of Regulation Y.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Gideon Management L.L.C., Topeka, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Gideon Enterprises L.P., Topeka, Kansas, and thereby indirectly acquire Silver Lake Bank, Topeka, Kansas.

Board of Governors of the Federal Reserve System, April 10, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–9274 Filed 4–13–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 4, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Indiana Corporation, Indianapolis, Indiana; to acquire First Indiana Bank, FSB, Indianapolis, Indiana, and thereby indirectly acquire Pioneer Service Corporation, Indianapolis, Indiana, and thereby engage in community development activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, April 10, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–9275 Filed 4–13–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants

were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—03/19/2001			
20011555	ABN AMRO Holding N.V	ING Groep N.V	ING Groep N.V.
20011559	Republic Services, Inc	Bay Collection Services, Inc	Bay Collection Services, Inc.
20011560	Republic Services, Inc	Bay Landfills, Inc	Bay Landfills, Inc.
20011565	Paul G. Desmarais	MacKenzie Financial Corporation	MacKenzie Financial Corporation.
20011588	Hudson United Bancorp	Vereniging AEGON	Vereniging AEGON.
20011597	Green Equity Investors, L.P	Oshman's Sporting Goods, Inc	Oshman's Sporting Goods, Inc.
Transactions Granted Early Termination—03/20/2001			
20011590	AMVESCAP PLC	National Asset Management Corporation	National Asset Management Corporation.
Transactions Granted Early Termination—03/21/2001			
20000686	DTE Energy Company	MCN Energy Group Inc	MCN Energy Group Inc.
Transactions Granted Early Termination—03/22/2001			
20011543	REMY Capital Partners III, L.P	Patterson Energy, Inc	Patterson Energy, Inc.
20011556	Pope Resources	Plum Creek Timber Company, Inc	Plum Creek Timber Company, Inc.
Transactions Granted Early Termination—03/23/2001			
20011539	Logitech International S.A	Labtec Inc	Labtec Inc.
20011540	Boston Scientific Corporation	Interventional Technologies, Inc	Interventional Technologies, Inc.
20011591	Fiber Mark, Inc	Rexam PLC	Rexam DSI Inc.
20011600	Ledcor Inc	NetRail, Inc	NetRail, Inc.
20011604	Performance Food Group Company	Henry Torres	Empire Imports, Inc. Empire Seafood Holding Corp.
20011606	Briggs & Stratton Corporation	The Beacon Group III—Focus Value Fund, L.P	Generac Portable Products, Inc.
20011608	Peregrine Sytstems, Inc	Extricity, Inc	Extricity, Inc.
20011612	Commemorative Brands Holding Corp.	Paul C. and Ann W. Krouse	Educational Communications, Inc.
20011613	Lockheed Martin Corporation	Intelsat, Ltd	Intelsat, Ltd.
20011616	Aon Corporation	ASO Solutions Incorporated	ASO Solutions Incorporated.
20011618	Intel Corporation	VxTel, Inc	VxTel, Inc.
Transactions Granted Early Termination—03/26/2001			
20011584	Welsh, Carson, Anderson & Stowe, VIII, L.P.	Peter T. Loftin	BTI Telecom Corp.
20011611	Alamosa Holdings, Inc	Southwest PCS Holdings, Inc	Southwest PCS Holdings, Inc.
Transactions Granted Early Termination—03/27/2001			
20011621	The First American Corporation	Credit Management Solutions, Inc	Credit Management Solutions, Inc.
20011626	American Capital Strategies, Ltd	Roy F. Weston, Inc	Roy F. Weston, Inc.
Transactions Granted Early Termination—03/29/2001			
20011445	Northrop Grumman Corporation	Litton Industries, Inc	Litton Industries, Inc.
20011614	Exel plc	Joseph T Coughlin	Coughlin Transportation. Coughlin Worldwide Logistics, L.L.C. F.X. Coughlin Co., Inc.
20011617	GTCR Fund VII, L.P	PSINet, Inc	PSINet Transaction Solutions Inc.
Transactions Granted Early Termination—03/30/2001			
20011629	i2 Technologies, Inc	Internet Capital Group, Inc	Right Works Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

Transaction No.	Acquiring person	Acquired person	Acquired entities
20011631	XL Capital Ltd	Credit Suisse Group	Winterthur International America, Winterthur International.
20011641	Xcel Energy Inc	George T. Lewis, Jr. and Betty G. Lewis (husband and wife).	LSP Batesville Holdings, LLC.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commisision, Premerger Notificaiton Office, Bureau of Competition, Room 303 Washington, D.C. 20580, (202) 326–3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 01–9352 Filed 4–13–01; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 001 0212]

Siemens AG, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 9, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Yolanda Gruendel, FTC/S–2308, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2971.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 6, 2001), on the World Wide Web, at "http://www.ftc.gov/os/2001/04/index.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Siemens AG ("Siemens") and Vodafone Group Plc ("Vodafone"), which is designed to remedy the anticompetitive effects resulting from Siemen's acquisition of certain voting securities of Atecs Mannesmann AG ("Atecs"), a subsidiary of Vodafone. Atecs is comprised of Mannesmann Rexroth AG ("Rexroth"), Mannesmann Dematic AG ("Dematic"), Mannesmann Demag Krauss-Maffei Kunststofftechnik GmbH ("Demag Krauss-Maffei"), Mannesmann VDO AG ("VDO") and Mannesmann Sachs AG ("Sachs"). Under the terms of the Consent Agreement, Siemens and Vodafone will be required to divest Vodafone's Mannesmann Dematic Postal Automation business ("MDPA business") to Northrop Grumman Corp. ("Northrop") no later than ten (10) days from the date Siemens consummates its acquisition.[1]

The proposed Consent Agreement has been placed on the public record for thirty (30) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order.

Pursuant to an April 14, 2000 Share Purchase Agreement and related amendments, Siemens agreed to acquire just over 50% of the voting securities of Atecs from Vodafone, and subsequently to purchase the remainder of the Atecs voting securities through the exercise of a "Put-Call-Option." The total value of the transaction is expected to exceed $9 billion. Under the terms of the agreement, Siemens will operate and retain ownership of four Atecs subsidiaries, Dematic, VDO, Demag Krauss-Maffei and Sachs. Robert Bosch GmbH will lease from Siemens the right to operate the fifth Atecs subsidiary, Rexroth. The Commission's complaint alleges that the acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the market for the research, development, manufacture, integration, sale and service of postal automation systems.

Siemens and Vodafone, through its Atecs Dematic subsidiary, are the two leading suppliers of postal automation systems in the world. Public postal services throughout the world purchase these systems to process letter mail and flat mail, which includes over-sized envelopes, catalogs, and magazines. These highly integrated systems are able to cancel stamps or meter marks, read addresses using optical character recognition technology, translate

[1] Because Vodafone will no longer have control over the assets to be divested following the acquisition, its obligations under the Consent Agreement terminate at the time the acquisition is consummated.

addresses into destination barcodes, and use these barcodes to sort mail by country, state, city and/or street. Postal automation systems reduce the amount of labor needed to reliably handle the millions of pieces of mail received daily by public postal services.

The world market for postal automation systems is highly concentrated, and the proposed acquisition would allow Siemens, the largest supplier of these systems, to purchase its closest competitor. Siemens and Dematic regularly bid against each other for significant public postal contracts, and they supply postal automation systems to virtually all of the major public postal services in the world, including the United States Postal Service. By eliminating competition between these two leading suppliers, the proposed acquisition would allow Siemens to exercise market power unilaterally, thereby increasing the likelihood that purchasers of postal automation systems would be forced to pay higher prices and that innovation and service levels in the market would decrease. Siemens's proposed acquisition of Vodafone would also increase the likelihood that the remaining suppliers of postal automation systems could collude to the detriment of customers in the market for postal automation systems.

Significant impediments to new entry exist in the postal automation systems market. Customers require highly sophisticated and reliable systems in order to process the large volume of mail they handle daily. Consequently, customers do not consider new suppliers of postal automation systems unless they first establish a track record of successfully delivering smaller component parts. A supplier must then develop a competitive system and have the resources to participate in the very lengthy competitions typical in this market. These steps are difficult, expensive and time-consuming. For this reason, new entry into the market for postal automation systems would not be accomplished in a timely manner or be likely to occur at all even if prices increased substantially after the proposed acquisition.

The Consent Agreement effectively remedies the acquisition's anticompetitive effects in the postal automation systems market by requiring Siemens and Vodafone to divest the MDPA business. Pursuant to the Consent Agreement, Siemens and Vodafone are required to divest the MDPA business to Northrop no later than ten (10) days from the date Siemens consummates its acquisition of certain voting securities of Vodafone. If the Commission determines that Northrop is not an acceptable buyer or that the manner of divestiture is not acceptable, Siemens and Vodafone must divest the MDPA business to a Commission-approved buyer within three (3) months from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the MDPA business.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer of divested assets must not itself present competitive problems. The Commission is satisfied that Northrop is a well-qualified acquirer of the divested assets. Northrop is a publicly-traded corporation and a leading systems integrator. It has the necessary industry expertise to replace the competition that existed prior to the proposed acquisition. Furthermore, Northrop poses no separate competitive issues as the acquirer of the divested assets.

The Consent Agreement contains several provisions designed to ensure that the divestiture of the MDPA business is successful. The Consent Agreement requires Siemens and Vodafone to provide incentives to certain employees to continue in their positions until the divestiture is accomplished. Under certain circumstances, Siemens is also required to provide additional incentives to key employees to accept employment, and remain employed, by the acquirer. For a period of one (1) year from the date the divestiture of the MDPA business is accomplished, Siemens and Vodafone are prohibited from soliciting or inducing any employees or agents of the MDPA business to terminate their employment with MDPA. Furthermore, for a period of four (4) months following the date the divestiture is accomplished, Siemens and Vodafone are prohibited from hiring any employees or agents of MDPA. Siemens and Vodafone are also prohibited from soliciting MDPA customers for a period of two (2) years from the date Siemens signs its divestiture agreement with the acquirer of the MDPA business. Finally, Siemens is not permitted to disclose to any person or use any information it obtains relating to the MDPA business.

In order to ensure that the Commission remains informed about the status of the MDPA business pending divestiture, and about the efforts being made to accomplish the divestiture, the Consent Agreement requires Siemens and Vodafone to file reports with the Commission within thirty (30) days of the date they sign the Consent Agreement, and periodically thereafter, until the divestiture is accomplished.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or to modify in any way its terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 01–9350 Filed 4–13–01; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will discuss its ongoing project on ethical and policy issues in research involving human participants. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on May 15 from 1:00–1:30 pm.

Dates/times	Location
May 15, 2001—8:30 am–5:00 pm.	The Mayflower Hotel, Colonial Room, 1127 Connecticut Avenue, NW., Washington, DC 20036.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as

soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Crank, National Bioethics Advisory Commission, 6705 Rockledge Drive, Suite 700, Bethesda, Maryland 20892–7979, telephone (301) 402–4242, fax number (301) 480–6900.

Dated: April 10, 2001.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 01–9310 Filed 4–13–01; 8:45 am]

BILLING CODE 4167–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 01055]

Building Influenza Surveillance Capacity In Asia; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program with the Western Pacific Regional Office of the World Health Organization (WHO) for building influenza surveillance capacity in Asia. This program addresses the "Healthy People 2010" focus areas of Immunization and Infectious Diseases and Public Health Infrastructure. For additional information on "Healthy People 2010" visit the internet site: http://www.health.gov/healthypeople.

The purpose of the program is to build influenza surveillance capacity in Asia by improving infrastructure and providing training and technical assistance. Asia has long been thought by experts to be the starting point for new influenza viruses.

Improving the infrastructure and surveillance capacity for influenza surveillance in Asia has a direct impact on the United States (U.S.) and globally by improving influenza surveillance, the basis for international and U.S. vaccine decisions, and improving the early detection system for influenza viruses with pandemic potential.

B. Eligible Applicants

Assistance will be provided only to the Western Pacific Regional Office (WPRO) of the World Health Organization (WHO). No other applications are solicited.

WPRO is the only international, non-government organization in the Western Pacific region qualified to conduct the activities under this cooperative agreement because:

1. As a Regional Office of WHO, they are in a unique position to act as the technical agency for health within the United Nations.

2. WPRO's location in Manila and formal collaborative ties to 37 countries in the region gives them access to the national health promotion and disease prevention programs and potential sites to expand influenza surveillance in the countries located in the region.

3. WPRO collaborates with other international organizations to accomplish its mission by disseminating information related to infectious disease program needs and services, making recommendations for improved policies and programs, and provides consultation and guidance at all levels in the region.

4. As a regional office of WHO, WPRO offers special opportunities for furthering research programs through the use of unusual talent resources and through a vast working knowledge of the specific abilities and needs in each country in the region.

5. WPRO is uniquely qualified to conduct activities to enhance influenza surveillance capacity which have specific relevance to the mission and objectives of CDC and which have potential to advance knowledge that benefits the U.S. and the international community.

C. Availability of Funds

Approximately $125,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about August 1, 2001, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop strategies to enhance influenza surveillance capacity for both diseased-based and virologic surveillance of influenza and build infrastructure for those programs in the region.

b. Analyze national resources of the countries in the region devoted to influenza surveillance and identify shortfalls in human, technical, and equipment resources, then develop plans to resolve recognized deficiencies.

c. Assist public health authorities in the Western Pacific Region in developing and implementing effective prevention and control strategies for influenza including surveillance, pandemic planning activities, facilitating improvement of vaccine production, supply and distribution issues, and regional coordination of these issues.

d. Conduct applied surveillance research focusing on recognition and response to novel influenza virus isolates.

e. Monitor and evaluate program performance.

2. CDC Activities

a. Provide technical assistance in the design, conduct, and evaluation of surveillance projects and activities.

b. Perform selected laboratory tests, as requested by WPRO, on isolates collected from the region.

c. Assist in data collection, data management, data analysis, and interpretation of data generated from surveillance projects.

d. Participate in dissemination of program information and surveillance data.

e. Provide educational and training materials as appropriate.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 40 double-spaced pages, printed on one

side, with one-inch margins, and unreduced font.

The application should follow this format:

1. *Introduction:* Present the overall objectives of the cooperative agreement program. Present the general plan for management and implementation of the activities.

2. *Individual Project Proposals:* Present a detailed proposal for each separate project/activity (for multi-year projects, present details for the first year and include only a brief description of future-year activities). Each proposal should include the following sections in this order:

a. Title
b. Background and Need
c. Objectives
d. Operational Plan
e. Budget and Justification

If requesting funds in the "Contractual" line-item, the Budget section should include the following information for each contract: (a) name of proposed contractor, (b) breakdown and justification for estimated costs, (c) description and scope of activities to be performed by contractor, (d) period of performance, and (e) method of contractor selection (e.g., sole-source or competitive solicitation).

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001)(adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit.

On or before June 1, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

G. Evaluation Criteria

The application will be evaluated against the following criteria by an independent review group appointed by CDC.

1. *Background and Need* (25 points):

The extent to which the background and need are clearly presented for the program.

2. *Objectives* (30 points):

The extent to which the activities proposed and their objectives are clear and consistent with the purpose and Program Requirements of this cooperative agreement announcement.

3. *Operational Plan* (45 points):

The extent to which the operational plan(s) for conducting the proposed activities

a. are clear, detailed, and appropriate to achieve the stated objectives;

b. identify the key personnel and organizations responsible for the proposed activities;

c. identify a specific timetable for activities;

d. include a plan for evaluation of progress towards objectives; and

4. *Human Subjects* (not scored):

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

5. *Budget* (not scored):

The extent to which the project budget includes detailed line-item justification and is appropriate for the activities proposed.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Progress reports (semiannual);

2. Financial Status Report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

For descriptions of the following Other Requirements, see Attachment I.

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 307, and 317(k)(1) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 241(a), 2421, and 247b(k)(1) and 247(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To obtain additional information, contact: Mattie B. Jackson, Lead Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number 770–488–2718, Email address mij3@cdc.gov.

For program technical assistance, contact: Ann Moen, Public Health Advisor, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, N.E. MS G–16, Atlanta, GA 30333, Telephone 404–639–4652, Email address amoen@cdc.gov.

Dated: April 10, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–9314 Filed 4–13–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement #01048]

Cooperative Agreement for Early Hearing Detection and Intervention (EHDI) Tracking, Research, and Integration; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program in Early Hearing Detection and Intervention.

This program addresses the "Healthy People 2010" focus area of Vision and Hearing.

The purpose of this cooperative agreement is to: (1) assist States in developing or enhancing a sustainable, centralized EHDI tracking and surveillance system, (2) integrate the EHDI system with other newborn screening programs, and (3) conduct applied research. Early Hearing Detection and Intervention (EHDI) is a national initiative to improve the communicative, cognitive, and social outcomes of children with hearing loss through a program of services and research.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Only one application from each State or Territory may be submitted.

Two levels of cooperative agreements will be awarded: Level I: Eligible applicants for Level I funding are States or Territories that (1) do not have an established State centralized EHDI surveillance and tracking program, or (2) are in the beginning stages of establishing a centralized EHDI tracking and surveillance, or (3) already have a program but would like to refine their existing surveillance and tracking program to integrate it with other newborn screening and tracking programs.

Level II: Eligible applicants for Level II are those States that (1) have an existing State-wide, centralized, electronic, population-based (i.e., complete geographic coverage) surveillance and tracking program or (2) States that have a regional centralized, electronic, EHDI surveillance and tracking program that includes data on at least 85 per cent of all live births in the region from a birth population of at least 10,000 live births per year. Level II States must have integrated or be in the process of integrating the EHDI tracking and surveillance system with other newborn screening systems, such as blood spot screening and birth defects registries.

States that were awarded FY 2000 Level I funds under CDC Program Announcement 00076 and meet the Level II component criteria may request additional funds from this FY 2001 announcement for Level II activities.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization, described in section 501(c)(4) of the Internal Revenue Code of 1986, which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

C. Availability of Funds

Approximately $1,900,000 will be available in FY 2001 to fund up to 10 awards. It is expected that up to 7 awards will be made to Level I applicants, ranging from $100,000 to $150,000. It is expected that up to 3 awards will be made to Level II applicants. Level II awards are expected to range from $250,000 to $350,000. Awards for States with existing Level I awards requesting funds for Level II activities will range from an additional $150,000 to $200,000.

It is expected that awards will begin on or about August 1, 2001, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may vary and are subject to change. Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and availability of funds.

Use of Funds

Project funds may not be used to supplant other available applicant or collaborating agency funds or to supplant State funds available for screening, diagnosis, intervention, or tracking for hearing loss, or other disorders detected by newborn screening. Project funds may not be used for construction, for lease or purchase of facilities or space, or for patient care.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the Level I and Level II recipients will be responsible for activities under Section 1. (Recipient Activities). CDC will be responsible for the activities listed under Section 2. (CDC Activities).

1. Recipient Activities

Level I

a. Establish and implement a State surveillance and data tracking system to assure minimal loss to follow-up by monitoring the status and progress of infants through the three components of the EHDI program (screening, detection, and intervention);

b. Establish methods for populating the EHDI data base (e.g., linking with the electronic birth certificate);

c. Develop strategies to collect standardized EHDI data (including the type of hearing loss and type of intervention services) from multiple sources, e.g. birthing hospitals, diagnostic centers, audiologists, physician, intervention programs;

d. Develop and enumerate reporting systems that will ensure that tracking and surveillance data collected from multiple sources will be used so that there is minimal loss to follow-up;

e. Develop mechanisms to identify and collect standardized data on infants/children with late onset or progressive hearing loss;

f. Outline an analytic plan to use State EHDI data in order to obtain outcome data such as: percent of infants screened, referred, evaluated, and enrolled in intervention programs; unexpected clusters of infants with hearing loss in particular regions at particular times; unexpected differences in measure of EHDI screening performance between participating birthing hospitals; false positive rates; loss to follow-up rates;

g. Document concerns from parents and professionals about the EHDI process;

h. Design the program so that it can be integrated with other screening and tracking programs that identify children with special health care needs such as newborn blood spot screening, birth defects registries, fetal alcohol syndrome surveillance, and Part C of the Individuals with Disabilities Education Act (IDEA);

i. Collaborate with State programs such as Maternal and Child Health, Part C, private service programs, and advocacy groups to build a coordinated EHDI infrastructure;

j. Develop an evaluation plan to monitor progress on activities and to assess the timeliness, completeness, and success of the project; and

k. Prepare and publish manuscript(s) which describe(s) the tracking system, definitions, methodology, collaborative relationships, data collection, findings, and recommendations across sites. Collaboration with other participating sites is encouraged.

Level II Research Activities

Level II applicants will be responsible for all Level I activities. They will also be responsible for activities that build on the integration of EHDI with other newborn screening and monitoring systems in order to design and carry out the additional Level II activities.

Level II recipients will collaborate with other Level II recipients to develop and participate in a common set of activities. Applicants are encouraged to develop collaborative relationships with universities in carrying out the Level II activities. The recipients will:

a. Share information and collaborate with other Level I and Level II recipients, and with other federal and national agencies (such as, but not limited to, Health Resources and Services Administration, National Institute on Deafness and other Communication Disorders, Directors of Speech and Hearing Programs in State Health and Welfare Agencies, Joint Committee on Infant Hearing, and advocacy groups);

b. Work with other Level II recipients to identify genetic and other causes of hearing loss. Develop a common data set from a population-based set of children with hearing loss identified from the State EHDI programs. Collect biological samples from these children;

c. Choose an additional research area such as one of the following and develop a research plan:

1. costs and effectiveness of EHDI programs,

2. benefits of early identification and intervention for children with hearing loss,

3. psychological and family issues related to hearing loss.

d. Collaborate with other Level II recipients to develop a common set of research questions, and implement a common research protocol and analytic plan; and

e. Collaborate with other Level II recipients in a pooled anonymized data set. Data analysis will be conducted at the State and federal levels.

2. CDC Activities

a. Provide technical assistance as needed on the design, development, and evaluation methods and approaches used for State-based EHDI tracking and surveillance;

b. Provide technical assistance as needed on the development of research questions and analytic guidance;

c. Provide technical assistance as needed for the collection and analysis of data across sites; and

d. Facilitate collaborative efforts to compile and disseminate program results through presentations and publications.

E. Application Content

Use the information in the Program Requirements, Application Content, Evaluation Criteria, and Other Requirements sections to develop the application content. Forms are in the application kit. Applications will be evaluated on the criteria listed, so it is important to follow them in describing the program plan. The applicant should provide a detailed description of first-year activities and briefly describe future-year objectives and activities.

The application must contain the following:

Cover Letter: A one-page cover letter stating whether the applicant is applying for: Level I funding only, (2) Level II funding, or (3) already funded for Level I activities and is requesting additional funds for Level II Activity. If applying for Level II, applicant must explain how the applicant fulfills eligibility requirements.

Budget and Budget Justification: The budget should be reasonable, clearly justified, and consistent with the intended use of the agreement funds. The applicant must include a detailed first-year budget justification with future annual projections. Budgets should include costs for travel for two project staff to attend annual meetings. The applicant should provide a budget justification for each budget item. Proposed sub-contracts should identify the name of the contractor, if known; describe the services to be performed; provide an itemized budget and justification for the estimated costs of the contract; specify the period of performance; and describe the method of selection.

Abstract: A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number. The abstract should clearly state for which level of activities the applicant is applying (Level I, Level II, or Research only). The abstract should briefly summarize the project for which funds are requested, the activities to be undertaken, and the applicant's organization structure.

The abstract should precede the Program Narrative.

Table of Contents: A table of contents that provides page numbers for each of the following sections should follow the abstract (all pages must be numbered).

Narrative: The narrative for Level I applicants should be no more than 25 double-spaced pages. For Level II applicants, the narrative should be no more than 35 double-spaced pages. For applicants with existing Level I awards who are requesting additional Level II funds, the narrative should be no more than 25 pages and must include an update of all activities required by Program Announcement 00076. The narrative is to be printed on one side, with one inch margins, and unreduced font (12 pitch). The narrative must contain the following sections:

a. Understanding the Problem and Current Status

b. Goals and Objectives

c. Description of Program and Methodology

d. Collaborative Efforts

e. Evaluation Plan

f. Staffing and Management System (One-page CV or resume for each key personnel must be included in an attachment). Plan must also provide details of the role of each key personnel.

g. Organizational Structure and Facilities (Must include an organizational chart)

h. Human Subjects Review

F. Submission and Deadline

Letter of Intent

A letter of intent (LOI) is requested to enable CDC to determine the level of interest in the announcement. The LOI should specify the Level for which the applicant is applying. Include name, address, and telephone number for key contact.

The LOI is requested on or before May 11, 2001. Submit the letter of intent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189) on or before June 11, 2001 to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the Objective Review Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be evaluated by the review panel and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review panel appointed by CDC.

1. Understanding the Problem and Current Status (20 percent)

a. Extent to which the applicant has a clear, concise understanding of the requirements and purpose of the cooperative agreement;

b. Extent to which the applicant understands the challenges, barriers, and problems associated with developing and implementing an EHDI tracking and surveillance program;

c. Extent to which the applicant describes the need for funds to develop/enhance an EHDI tracking and surveillance program in their State;

d. Extent to which the applicant describes the target population and the current status of their existing EHDI program, e.g., number of birthing hospitals with and without universal hearing screening programs; number of infants born, number of infants screened, identified and referred to intervention; protocol for screening and referral, including informed consent information;

e. Extent to which applicant describes (1) Their current EHDI tracking and surveillance system (if any exists); (2) other relevant tracking, surveillance

systems, or registries in the State; and (3) linkages with other relevant systems;

f. Extent to which applicant describes diagnostic facilities and intervention services available in the State for infants/children with hearing loss; and

g. Extent to which applicant shows willingness to integrate EHDI surveillance and tracking system with other newborn screening program activities.

2. Goals and Objectives (10 percent)

a. Extent to which applicant clearly describes the short- and long-term goals and measurable objectives of the project;

b. Extent to which applicant's goals and objectives are realistic and are consistent with the stated goals and purpose of this announcement; and

c. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation and justification when representation is limited or absent.

3. Description of Program and Methodology (35 percent)

a. Extent to which applicant describes the methods they will use to address all Level I activities, such as: establishing and implementing an EHDI tracking and surveillance system; describing methods of populating the data base; standardizing data from multiple sources; developing strategies for reporting system; documenting methods for collecting data on infants/children with late onset or progressive hearing loss; designing analytic plan, documenting concerns; and preparing manuscripts;

b. Extent to which applicant describes plan for integrating EHDI data with other newborn screening systems;

c. (Level II States Only) Extent to which applicant demonstrates that their State meets the criteria to be a Level II State, i.e., has a state-wide or regional annual birth population of >10,000);

d. (Level II States Only) Extent to which applicant describes a feasible plan for designing and implementing Level II activities, including the specific plan for a study of genetic and other causes of hearing loss, and the collection of biologic samples;

e. (Level II States Only) Extent to which applicant demonstrates willingness to collaborate with other recipients to develop a research plan and carry out the research project that allows for anonymized pooling of data; and

f. (Level I and Level II) Extent to which applicant provides a time line which includes activities to be accomplished and personnel responsible to complete the project.

4. Collaborative Efforts (10 percent)

a. Extent to which applicant describes their methods for collaboration with multiple data sources (include written assurances) such as hospitals, diagnostic centers, and intervention service providers;

b. Extent to which collaborative relationships are documented which will facilitate linkage with other screening programs. (Letters of agreement and cooperation from collaborating programs should be included);

c. Extent to which collaborative efforts with other relevant programs are documented (such as MCH, Part C, etc.);

d. (Level II States only) Extent to which applicant is willing to work collaboratively with other agencies and Level II recipients to develop multi-site research questions and analytic guidelines; and

e. Extent to which applicant states their willingness to work collaboratively with other funded States and to modify their projects if necessary in order to allow anonymized pooled data sets of standardized data.

5. Evaluation Plan (10 percent)

Extent to which applicant describes an evaluation plan that will monitor progress, and assess timeliness, completeness, and success of the objectives and activities of the project.

6. Staffing and Management System (10 percent)

a. Extent to which key personnel have skills and experience to develop and implement an EHDI tracking and surveillance system;

b. Extent of the managerial ability to coordinate the tracking, surveillance, and research, and integration components of the project;

c. Extent to which expertise in abstracting screening, identification, and intervention records are demonstrated;

d. Extent to which expertise in epidemiologic methods, public health surveillance, data management and computer programming is demonstrated; and

e. Extent to which there is sufficient dedicated staff time to develop and implement an EHDI tracking and surveillance system and to integrate the EHDI system with other newborn screening systems (include percentage of time each staff member will contribute to the project).

7. Organizational Structure and Facilities (5 percent)

Extent to which organization structure and facilities/space/equipment are adequate to carry out the activities of the program.

8. Human Subjects Review (Not Scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

9. Budget (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds.

H. Other Requirements

Recipients will regularly share anonymized individual State EHDI data with other award recipients.

Recipients will provide CDC with the original plus two copies of:

1. Semi-annual progress reports, no more than 30 days after the end of the report period;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317 of the Public Health Service Act, 42 U.S.C. sections 241 and 247b, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other documents may be downloaded through the CDC homepage on the Internet at http://www.cdc.gov (click on "Funding"). Refer to Program Announcement #01048 when you request information.

For business management technical assistance, contact: Sonia Rowell, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2718, E-mail address: srowell@cdc.gov/

For program technical assistance, contact: June Holstrum, Ph.D., Early Hearing Detection and Intervention Program, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop F–15, Atlanta, GA 30341–3717, Telephone number: 770–488–7361, E-mail address: jholstrum@cdc.gov

Dated: April 10, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–9315 Filed 4–13–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Epidemiology Research Needs Related to the Radiofrequency Energy From Wireless Phones

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

The Food and Drug Administration (FDA) is announcing a public meeting to discuss the health effects of radio frequency (RF) emissions from wireless phones. Currently, the scientific literature relating to the health effects of low level exposure to RF does not demonstrate the existence of any health risk from wireless phones. National and international scientific experts will discuss the need for research into the incidence, distribution, and control of any adverse effects related to RF energy from wireless phones. This meeting is being convened as part of the Cooperative Research and Development Agreement (CRADA) between FDA's Center for Devices and Radiological Health and the Cellular Telecommunications Industry Association (CTIA). This is the second meeting on this subject. FDA announced the first meeting on April 18 and 19, 2001 in the **Federal Register** of March 27, 2001.

Date and Time: The meeting will be held on May 2, 2001, 8:30 a.m. to 5 p.m. and on May 3, 2001, 8:30 a.m. to 5 p.m.

Location: The meeting will be held at the Marriott Kingsgate Conference Center, University of Cincinnati, Cincinnati, OH 45219.

Contact: Russell D. Owen, Center for Devices and Radiological Health, Food and Drug Administration (HFZ–114), 12709 Twinbrook Pkwy., Rockville, MD 20857, 301–443–7118, FAX 301–594–6775. Further information about the CRADA is available on the Internet at http:// www.fda.gov/cdrh/ocd/wlessphonecrada.html.

Agenda: On May 2, 2001, the scientific experts will review completed and ongoing epidemiology studies and discuss scientific questions that have been raised by this research. On May 3, 2001, the scientific experts will discuss specific studies that could address these scientific questions.

Procedure: Interested persons may present scientific information relevant to items on the agenda. Written submissions may be made to the contact person by April 23, 2001. Oral presentations from the public will be scheduled on May 2, 2001, between 3 p.m. and 5 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 23, 2001, and submit a brief statement of the general nature of the information they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

If you need special accommodations due to a disability, please contact Abiy B. Desta, 301–443–7192 at least 7 days in advance.

Dated: April 11, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–9403 Filed 4–12–01; 9:55 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–312]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Conflict of Interest and Ownership and Control Information;

Form No.: HCFA–R–312 (OMB# 0938–0795);

Use: This Conflict of Interest questionnaire is sent to all Medicare Fiscal Intermediaries (FIs) and Carriers to collect full and complete information on any entity's or individual's ownership interest (defined as a 5 per centum or more) in an organization that may present a potential conflict of interest in their role as a Medicare FI or Carrier. The information gathered is used to ensure that all potential, apparent and actual conflicts of interest involving Medicare contracts are appropriately mitigated and that employees of the contractors, including officers, directors, trustees and members of their immediate families, do not utilize their positions with the contractor for their own private business interest to the detriment of the Medicare program;

Frequency: Annually;

Affected Public: Not-for-profit institutions, and Business or other for-profit;

Number of Respondents: 37;
Total Annual Responses: 37;
Total Annual Hours: 11,100.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, HCFA–R–312, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 4, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–9287 Filed 4–13–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–263]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: On Site Inspection for Durable Medical Equipment (DME) Supplier Location & Supporting Regulations in 42 CFR, section 424.57;

Form Nos.: HCFA–R–263 (OMB# 0938–0749);

Use: To identify and implement measures to prevent fraud and abuse in the Medicare program. Controlling the entry of suppliers of durable medical equipment, prosthetics, orthotics, or supplies (DMEPOS) to Medicare has been identified as one of the most effective ways to prevent fraud and abuse. To meet this challenge, HCFA is moving forward with a plan to improve the quality of the process for enrolling and reenrolling DMEPOS suppliers into the Medicare program by enhancing procedures for verifying supplier information collected on the Form HCFA–855S (DMEPOS Supplier Enrollment Application, OMB Approval No. 0938–0685). This form will be used to complete information on DMEPOS suppliers' compliance with regulations found in 42 CFR § 424.57.

Frequency: On occasion;

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government;

Number of Respondents: 20,000;

Total Annual Responses: 20,000;

Total Annual Hours: 10,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, HCFA–R–263, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

April 4, 2001.

John P. Burke, III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–9288 Filed 4–13–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10037]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* Real Choice Systems Change Grants; Nursing Facility Transition/Access Housing Grants; Community Personal Assistance Service and Supports Grants, National Technical Assistance and Learning Collaborative Grants to Support Systems Change for Community Living; *Form No.:* HCFA–10037 (OMB# 0938–XXXX); *Use:* Information sought by CMSO/DEHPG is needed to award competitive grants to States and other eligible entities for the purposes of designing and implementing effective and enduring improvements in consumer-directed long term service and support systems; *Frequency:* Annually; *Affected Public:* State, local or tribal gov.; *Number of Respondents:* 76; *Total Annual Responses:* 76; *Total Annual Hours:* 7600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown Attn.: HCFA–10037, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 5, 2001.

John P. Burke, III

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–9289 Filed 4–13–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2099–PN]

Medicare and Medicaid Programs; Application by the American Osteopathic Association (AOA) for Approval of Deeming Authority for Critical Access Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice with comment period acknowledges the receipt of an initial application by the American Osteopathic Association (AOA) for consideration as a national accreditation program for critical access hospitals that wish to participate in the Medicare or Medicaid programs. Section 1865(b)(3)(A) of the Social Security Act (the Act) requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: Written comments will be considered if received at the appropriate address, as provided in **ADDRESSES**, no later than 5 p.m. on May 16, 2001.

ADDRESSES: Mail written comments (an original and three copies) to the following address only: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2099–PN. P.O. Box 8010, Baltimore, MD 21244–1850.

If you prefer, you may deliver by courier your written comments (an original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the indicated addresses may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2099–PN.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the following address: 7500 Security Blvd., Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: (410) 786–7197) to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Irene H. Dustin, (410) 786–0495.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a critical access hospital (CAH) provided the hospital meets certain requirements. Sections 1820(c)(2)(B) and 1861(mm) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a CAH. Under this authority, the Secretary has set forth in regulations minimum requirements that a CAH must meet to participate in Medicare. The regulations at 42 CFR part 485, subpart F (Conditions of Participation: Critical Access Hospitals (CAHs)) determine the basis and scope of covered services provided by a CAH, set out rural health network specifications and establish staff qualifications. Conditions for Medicare payment for critical access services can be found at § 413.70. Applicable regulations concerning provider agreements are at 42 CFR part 489 (Provider Agreements and Supplier Approval) and those pertaining to the survey and certification of facilities are at 42 CFR part 488, (Survey, Certification and Enforcement Procedures), subparts A General Provisions and B Special Requirements.

In order for a CAH to be approved for participation in or coverage under the Medicare program, the hospital must have a current provider agreement to participate in the Medicare program as a hospital at the time the hospital applies for CAH designation and be in compliance with part 482 (Conditions of Participation for Hospitals), as well as part 485, subpart F (Conditions of Participation: Critical Access Hospitals (CAHs)). Generally, in order to enter into a provider agreement, a hospital must first be certified by a State survey agency as complying with the conditions or standards set forth in the statute and part 482 of our regulations. Then, the hospital is subject to regular surveys by a State survey agency to determine whether it continues to meet Medicare requirements. There is an alternative, however, to surveys by State agencies. Exceptions are provided in the Balanced Budget Refinement Act of 1999 (Pub. L. 106–113) for rural health clinics that were previously downsized from an acute care hospital, or for a closed hospital that is requesting to reopen as a CAH. In these instances, only the provisions of 42 CFR part 485, subpart F apply.

Section 1865(b)(1) of the Act permits "accredited" hospitals to be exempt from routine surveys by State survey agencies to determine compliance with Medicare conditions of participation. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation. Section 1865(b)(1) of the Act provides that, if a provider demonstrates through accreditation that all applicable Medicare conditions are met or exceeded, we can "deem" the hospital as having met the requirements. If an accrediting organization is recognized in this manner, any provider accredited by a national accrediting body approved program would be deemed to meet the Medicare conditions of coverage. To date, no organizations have been recognized with deeming authority for critical access hospitals.

A national accreditation organization applying for approval of deeming authority under part 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited providers to meet requirements that are at least as stringent as the Medicare conditions of participation.

II. Approval of Deeming Organizations

Section 1865(b)(2) of the Act requires that our findings concerning review of

national accrediting organizations consider, among other factors, an accreditation organization's requirements for the following: accreditation, survey procedures, resources for conducting required surveys, capacity to furnish information for use in enforcement activities, and monitoring procedures for provider entities found not in compliance with the conditions or requirements, and ability to provide us with necessary data for validation.

Section 1865(b)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from our receipt of the request to publish approval or denial of the application.

The purpose of this notice with comment period is to inform the public of our consideration of AOA's request to become a national accreditation program for CAHs. This notice also solicits public comment on the ability of AOA requirements to meet or exceed the Medicare conditions for coverage for CAHs.

III. Evaluation of Deeming Authority Request

On January 5, 2001, AOA submitted all the necessary materials concerning its request for approval as a deeming organization for CAHs to enable us to make a determination. Under section 1865(b)(2) of the Act and our regulations at § 488.8 (Federal review of accreditation organizations.), our review and evaluation of AOA will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of AOA's standards for a critical access hospital as compared with our comparable critical access hospital conditions of participation.
- AOA's survey process to determine the following:

—Survey team composition, surveyor qualifications, and the capacity of the organization to provide continuing surveyor training.

—The comparability of AOA's processes to that of State agencies, including survey frequency and the ability to investigate and respond appropriately to complaints against accredited facilities.

—AOA's processes and procedures for monitoring providers or suppliers found to be out of compliance with AOA program requirements. These monitoring procedures are used only when AOA identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(b)(3).

—AOA's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

—AOA's capacity to provide us with electronic data in an ASCII comparable format as well as the reports necessary for validation and assessment of the organization's survey process.

—The adequacy of AOA's staff and other resources, and its financial viability.

—AOA's capacity to adequately fund required surveys.

—AOA's policies with respect to whether surveys are announced or unannounced.

—AOA's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

IV. Response to Comments and Notice Upon Completion of Evaluation

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all public comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a final notice, we will respond to the public comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

In accordance with the provisions of Executive Order 12866, this proposed notice was not reviewed by the Office of Management and Budget.

Authority: Sec. 1865(b)(3)(A) of the Social Security Act (42 U.S.C. 1395bb(b)(3)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: March 22, 2001.

Michael McMullan,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 01–9446 Filed 4–13–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2001 Funding—Restricted Eligibility

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of restricted eligibility.

NOTICE: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT), Center for Substance Abuse Prevention (CSAP), and Center for Mental Health Services (CMHS) were instructed in Public Law 106–554 to make one year awards of financial assistance in fiscal year 2001 in specified amounts totaling $24,605,000 for the projects specified below. Department of Health and Human Services policy requires that all planned noncompetitive awards, and the reasons therefore, be announced in the **Federal Register**. These financial assistance awards will implement explicit statutory instruction. This Notice does not invite applications from the entities identified. Necessary instructions and OMB required application form PHS 5161–1 (revised 7/00) will be provided directly to each of the named entities. The entities eligible for these awards, by Center, are:

Center for Mental Health Services

—The Hope Center in Lexington, Kentucky (jointly with CSAT)
—Steinway Child and Family Services, Inc. in Queens, New York for HIV/AIDS prevention
—The American Trauma Society to support its Second Trauma Program which helps train trauma system health care professionals to assist individuals facing the shock of an unexpected death or critical injury to their family members
—The Concord-Assabet Family Services Center for a model transitional living program for troubled youth
—Preschool Anger Management, Family Communications
—The Life Quest Community Mental Health Center in Wasilla, Alaska
—Pacific Clinics in Arcadia, California, to support a school-based mental health demonstration program for Latina adolescents in partnership with community groups, mental health agencies, local governments and school systems in Southeast Los Angeles county
—The Bert Nash Community Mental Health Center in Lawrence, Kansas, to

provide mental health services in schools and other settings to prevent juvenile crime and substance abuse among high-risk youth
—The Alaska Federation of Natives for innovative homeless mental health services in Alaska
—Iowa State University Extension to develop a program which would provide outreach, training, and counseling services in rural areas
—The United Power for Action and Justice demonstration project in Chicago and area to end the cycle of homelessness
—Mentally ill offender crime reduction demonstration in Ventura County, California to create the building blocks for a continuum of care for mentally ill offenders who enter the jail system in the county
—University of Connecticut for urban health initiatives to improve mental health services
—University of Florida National Rural Behavioral Health Center to train extension agents in crisis intervention and stress management to better equip them to deal with emotional and stress related problems
—The Ch'eghutsen program in interior Alaska
—The Alaska Federation of Natives to use integrated community care to treat native Alaska children with mental health disorders.
—Community Assessment and Intervention Centers providing integrated mental health and substance abuse services in four Florida communities

Center for Substance Abuse Prevention

—The City of Alexandria, Virginia, substance abuse prevention demonstration program for high-risk Latino youth;
—The Rock Island County Council on Addiction in East Moline, Illinois, for a youth substance abuse prevention program
—The Drug-free Families Initiative at the University of Missouri, St. Louis.
—Community Prevention Partnership of Berks County Inc.
—Family Planning Council of Pennsylvania

Center for Substance Treatment

—The Vermont Department of Health Office of Alcohol and Drug Abuse Prevention to examine adolescent residential treatment programs
—Center Point, Inc., in Marin County, California, to continue support for substance abuse and related services for minority, homeless and other at risk populations
—Green Door in Washington, D.C. to treat minority consumers with substance abuse problems and mental health issues
—The Allegheny County Drug and Alcohol Rehabilitation Program
—The Cook Inlet Council on Alcohol and Drug Abuse Treatment
—The House of Mercy in Des Moines, Iowa to support treatment programs for pregnant and post-partum women
—The State of Wyoming to carry out an innovative substance abuse prevention and treatment program
—Humboldt County, California, to support residential substance abuse and related services for women who have children
—The Hope Center in Lexington, Kentucky (jointly with CMHS)
—The Grove Counseling Center in Winter Springs, Florida for a demonstration project of effective youth substance abuse treatment methods
—The Fairbanks LifeGivers Pregnant and Parenting Teens program
—The Alaska Federation of Natives to identify best substance abuse treatment practices
—The City of San Francisco's model Treatment on Demand program for the homeless
—The Baltimore City Health Department to use innovative methods to enhance drug treatment services

Dated: April 10, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–9337 Filed 4–13–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2001 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP), and the Center for Substance Abuse Treatment (CSAT) announce the availability of FY 2001 funds for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, Minority Fellowship Program, and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2001	Est. No. of awards	Project period
Minority Fellowship Program	May 16, 2001	$3,090,000	Four	3 years

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of application received. FY 2001 funds for the activity discussed in this announcement were appropriated by Congress under Public Law 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement application were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: The National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, MD 20847–2345, 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: http://www.samhsa.gov

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to

apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention, (CSAP), and the Center for Substance Abuse Treatment (CSAT) announce the availability of FY2001 funds for the Minority Fellowship Program (MFP). The MFP facilitates entry of ethnic minority students into mental health and substance abuse disorders careers, and increases the number of psychology, psychiatry, nursing, and social work professionals trained to teach, administer, conduct services research, and provide direct mental health/substance abuse services to ethnic/racial/social/cultural minority groups.

Eligibility: Eligibility is limited to the American Nurses Association (ANA), the American Psychiatric Association (ApA), the American Psychological Association (APA), and the Council on Social Work Education (CSWE). These professional organizations have unique access to those students entering their profession. The fields of psychiatric nursing, psychiatry, psychology, and social work have been nationally recognized for decades as the four core behavioral health disciplines, proving part of an essential core of services for individuals with serious mental illness and also less severe mental disorders. The ANA, ApA, and APA are the largest national professional organizations in the country for nursing, psychiatry, and psychology, respectively. The ANA, ApA, and APA and their affiliates have activities in all major areas of national policies affecting nursing and psychiatry as professions, including education and training. In the field of social work, the CSWE is the leading national organization which is focused just on the education and training of social workers, and it maintains a close working relationship with the National Association of Social Workers, the largest professional social work organization in the country.

All four organizations, the ANA, ApA, APA, and CSWE, along with their affiliates, have direct involvement in curriculum development, school accreditation, and pre/post doctoral training. All four have had decades of experience in working directly with university training programs, from which the pools of participants are selected. These are the only organizations that have the infrastructure and expertise in place to administer this program. They already have mechanisms and databases in place to identify minority students based on race/ethnicity demographics and to recruit each group based on the proportion they represent in the population. All four organizations developed relationships with appropriate minority professional organizations which may serve as useful liaisons.

Availability of Funds: Approximately $3,090,000 will be available for four awards. The average award is expected to range from $600,000 to $900,000 in total costs (direct and indirect). Actual funding levels will depend on the quality of each application and the availability of funds.

Period of Support: Awards may be requested for up to three years. Annual awards will be made subject to the continued progress achieved and the availability of funds.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.230.

Program Contact: For questions on treatment services program issues and the coordinating center, contact:

Paul Wohlford, Ph.D., Project Officer, Division of State and Community Systems Development, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 15C–26, Rockville, MD 20857, Telephone: 301–443–3503, E-mail: pwohlfor@samhsa.gov

Or

Mattie Cheek, Ph.D., Alt. Project Officer, Division of State and Community Systems Development, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 15C–26, Rockville, MD 20857, Telephone: 301–443–7710, E-mail: mcheek@samhsa.gov.

For questions regarding grants management issues, contact: Stephen Hudak, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rm 13–103, Rockville, MD 20857, (301) 443–9996, E-mail: shudak@samhsa.gov.

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

(a) A copy of the face page of the application (Standard form 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2001 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2001 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. Executive Order

12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: April 10, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–9338 Filed 4–13–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4652–N–10]

Notice of Proposed Information Collection for Public Comment; Indian Housing Block Grant Program under the Native American Housing Assistance and Self-Determination Act: Data Collection

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 15, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (2) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Under the Native American Housing Assistance and Self-Determination Act HUD/ONAP provides Indian Housing Block Grants: Data Collection Indian Housing Plan and Annual Performance Report

OMB Control Number: 2577–0218

Description of the need for the information and proposed use: The Native American Housing Assistance and Self Determination Act (NAHASDA) requires recipients (which includes both tribes and tribally designated housing entities (TDHEs)) to submit specific, information that is necessary if they want to implement low-income housing programs in their communities using Indian Housing Block Grant (IHBG) funds. Recipients have the option of preparing and submitting the required information in a paper format or electronically. Electronic submissions may be prepared and submitted on computer diskettes or over the Internet. Recipients are encouraged to submit their information electronically. IHBG funds are made available using a formula developed through negotiated rulemaking procedures.

Agency form numbers, if applicable: Indian Housing Plan (HUD–52735); Annual Performance Report (HUD–52735–A)

Member of affected public: state or Local Government (Indian Tribes and Alaska Native Villages).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 366 respondents, 1 response per respondent (two forms) 732 total responses, 181 average hours per response, 132,492 hours for a total reporting burden.

Status of the proposed information collection: Extension; reinstatement (HUD–52735–A)

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 9, 2001.

Gloria Cousar,

Acting General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 01–9309 Filed 4–13–01; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4631–FA–02]

Announcement of Funding Awards for Fiscal Year 2001 Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year 2001 Community Development Work Study Program (CDWSP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to attract economically disadvantaged and minority students to careers in community and economic development, community planning and community management, and to provide a cadre of well-qualified professionals to plan, implement, and administer local community development programs.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8110, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1537, extension 5918. To provide service for persons who are hearing- or

speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8399, or 202–708–1455. (Telephone numbers, other than the two "800" numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The CDWSP is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. The Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education and creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The CDWSP was enacted in the Housing and Community Development Act of 1988. (Earlier versions of the program were funded by the Community Development Block Grant Technical Assistance Program from 1982 through 1987 and the Comprehensive Planning Assistance Program from 1969 through 1981.) Eligible applicants include institutions of higher education having qualifying academic degrees, and States and areawide planning organizations who apply on behalf of such institutions. The CDWSP funds graduate programs only. Each participating institution of higher education is funded for a minimum of three students and a maximum of five students under the CDWSP. The CDWSP provides each participating student up to $9,000 per year for a work stipend (for internship-type work in community building) and $5,000 per year for tuition and additional support (for books and travel related to the academic program). Additionally, the CDWSP provides the participating institution of higher education with an administrative allowance of $1,000 per student per year.

The Catalog of Federal Domestic Assistance number for this program is 14.512.

On November 29, 2000 (65 FR 71228) HUD published a Notice of Funding Availability (NOFA) announcing the availability of $3 million in FY 2000 funds for the CDWSP. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 2001 Community Development Work Study Program Funding Competition, By Name, Address, Phone Number, Grant Amount and Number of Students Funded

New England

1. Massachusetts Institute of Technology, Professor Langley C. Keyes, Massachusetts Institute of Technology, Department of Urban Studies & Planning, 77 Massachusetts Avenue, Cambridge, MA 02139, (617) 253–1540. Grant: $90,000, to fund three students.

2. New Hampshire College, Dr. Michael Swack, New Hampshire College, 2500 N. River Road, Manchester, NH 03102, (603) 644–3125. Grant: $90,000 to fund three students.

New York/New Jersey

3. Rutgers University, Dr. Lisa Servon, Rutgers University, 33 Livingston Avenue, Suite 300, New Brunswick, NJ 08901, (732) 932–5475. Grant: $90,000 to fund three students.

4. State University of New York-Buffalo, Dr. Henry L. Taylor, Jr., Center for Urban Studies, 101C Fargo Quad, Building 1, Ellicott Complex, Buffalo, NY 14261, (716) 829–2133, ext. 212. Grant: $90,000 to fund three students.

5. New School University, Dr. Susan Morris, New School University, 66 West 12th Street, New York, NY 10011, (212) 229–5311, ext. 1106. Grant: $90,000 to fund three students.

Mid-Atlantic

6. Carnegie Mellon University, Dr. Barbara Brewton, Carnegie Mellon University, H. John Heinz III School of Public Policy and Management, 5000 Forbes Avenue, Pittsburgh, PA 15213, (412) 268–2162. Grant: $90,000 to fund three students.

7. University of Pennsylvania, Sandra Houck, University of Pennsylvania, 133 South 36th Street, Mezzanine, Philadelphia, PA 19104, (215) 573–6710. Grant: $90,000 to fund three students.

8. University of Pittsburgh, Dr. David Miller, University of Pittsburgh, 350 Thackeray Hall, Pittsburgh, PA 15260, (412) 648–2605. Grant: $90,000 to fund three students.

9.Washington Council of Governments, Kristin O'Connor, Washington Council of Governments, 777 North Capitol Street, NE, Washington DC 20002, (202) 962–3278. Grant: $360,000 to fund three students each at the University of Maryland, the University of the District of Columbia, Howard University, and George Mason University.

Southeast

10. Alabama A&M University, Dr. Constance J. Wilson, Alabama A&M University, P.O. Box 411, Normal, AL 35762, (256) 851–5425. Grant: $90,000 to fund three students.

11. University of Alabama at Birmingham, Janice Hitchcock, University of Alabama at Birmingham, OB 15 Room 141, 1530 3rd Avenue South, Birmingham, AL 35294, (205) 934–3500. Grant: $90,000 to fund three students.

12. Savannah State University, Dr. Shirley Geiger, Savannah State University, P.O. Box 20385, Savannah, GA 31404, (912) 356–2340. Grant: $90,000 to fund three students.

13. Eastern Kentucky University, Dr. Terry Busson, Eastern Kentucky University, 113 McCreary Hall, Richmond, KY 40475, (606) 622–1019. Grant: $90,000 to fund three students.

14. Duke University, Donna Dyer, Duke University, P.O. Box 90239, Durham, NC 27708, (919) 613–7383. Grant: $90,000 to fund three students.

15. University of North Carolina at Chapel Hill, Dr. William Rohe, University of North Carolina at Chapel Hill, CB#4100, Room 300-Bynum Hall, Chapel Hill, NC 27599, (909) 962–3077. Grant: $88,470 to fund three students.

16. Clemson University, Dr. M. Grant Cunningham, Clemson University, 131 Lee Hall, Box 340511, Clemson, SC 29634, (864) 656–1587. Grant: $87,555 to fund three students.

17. University of Tennessee at Chattanooga, Dr. Diane Miller, University of Tennessee at Chattanooga, Office of Graduate Studies, 615 McCallie Avenue, Chattanooga, TN 37403, (423) 755–4431. Grant: $90,000 to fund three students.

Midwest

18. Southern Illinois University Edwardsville, Dr. T.R. Carr, Southern Illinois University Edwardsville, Campus Box 1046, Edwardsville, IL 62026, (618) 650–3762. Grant: $90,000 to fund three students.

19. University of Chicago, Dr. Nancy O'Connor, University of Chicago, 5801 S. Ellis Street, Chicago, IL 60637, (773) 834–0136. Grant: $90,000 to fund three students.

20. Minnesota State University, Mankato, Perry Wood, Minnesota State University, Mankato, Mankato, MN 56001, (507) 389–6949. Grant: $90,000 to fund three students.

21. Cleveland State University, Frances Hunter, Cleveland State University, 1983 East 24th Street,

Cleveland, OH 44115, (216) 687–4589. Grant: $90,000 to fund three students.

22. University of Cincinnati, Dr. David Varady, University of Cincinnati, School of Planning, P.O. Box 21067, Cincinnati, OH 45221, (513) 556–0215. Grant: $90,000 to fund three students.

Southwest

23. Texas A&M University, Dr. Marlynn May, Texas A&M University, College Station, TX 77843, (979) 458–1328. Grant: $90,000 to fund three students.

24. Texas Tech University, Dr. Montgomery Van Wart, Texas Tech University, 203 Holden Hall, Lubbock, TX 79409, (806) 742–3125. Grant: $90,000 to fund three students.

Great Plains

25. Arkansas State University, Dr. Patrick Stewart, Arkansas State University, P.O. Box 1750, State University, AR 72467, (870) 972–3048. Grant: $85,440 to fund three students.

26. Kansas State University, Dr. Larry Lawhon, Kansas State University, 2 Fairchild Hall, Manhattan, KS 66506, (785) 532–5961. Grant: $89,991 to fund three students.

Pacific

27. Northern Arizona University, Dr. Alan Lew, Northern Arizona University, Box 4130, Flagstaff, AZ 86011, (520) 523–2383. Grant: $74,111 to fund three students.

28. California Polytechnical Institute at San Luis Obispo, Dr. William Siembieda, California Polytechnical Institute at San Luis Obispo, One Grand Avenue, San Luis Obispo, CA 93407, (805) 756–1315. Grant: $88,800 to fund three students.

29. University of Southern California, Dr. Tridib Banerjee, University of Southern California, 380 Von KleinSmid Center, Los Angeles, CA 90089, (213) 740–4724. Grant: $90,000 to fund three students.

Northwest/Alaska

30. Eastern Washington University, Dr. William Kelley, Eastern Washington University, 210 Showalter Hall, Cheney, WA 99004, (509) 358–2226. Grant: $90,000 to fund three students.

31. University of Washington, Carol Zuiches, University of Washington, 3935 University Way NE, Seattle, WA 98105, (206) 543–4043. Grant: $90,000 to fund three students.

Dated: April 6, 2001.

Lawrence L. Thompson,

General Deputy Assistant, Secretary for Policy Development and Research

[FR Doc. 01–9308 Filed 4–13–01; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1220–PA–01–24 1A]

OMB Approval Number 1004–0133; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduced Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On November 30, 2000, the BLM published a notice in the **Federal Register** (65 FR 71331) requesting comments on this proposed collection. The comment period ended on January 29, 2001. The BLM receive no comments from the public in response to that notice. You may obtain copies of the proposed collection and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer, (1104–0133), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

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 the BLM's estimate of the burden collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Permit Fee Envelope (36 CFR 71).

OMB Approval Number: 1004–0133.

Bureau Form Number: 1370–36.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for 36 CFR 71. Respondents supply identifying information and data on the campsite number, dates camping, number of party, zip code, fee paid, vehicle license number, and primary purpose of visit. This information allows the BLM to determine if all users paid the required fee, the number of users, and their State of origin.

Frequency: On occasion (one per campground visit).

Description of Respondents: Respondents are individuals desiring to use the campground.

Estimated Completion Time: 2 minutes.

Annual Responses: 353,000.

Filing Fee per Response: 0.

Annual Burden Hours: 11,767.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: March 20, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–9272 Filed 4–13–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1231–EB–01–24 1A]

OMB Approval Number 1004–0119; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On November 30, 2000, the BLM published a notice in the **Federal Register** (65 FR 71330) requesting comments on this proposed collection. The comment period ended on January 29, 2001. The BLM received no comments from the public in response to that notice. You may obtain copies of the proposed 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 is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the

Office of Management and Budget, Interior Department Desk Officer, (1004–0119), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

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 the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Special Recreation Application and Permit (43 CFR 8370).

OMB Approval Number: 1004–0119.

Bureau Form Number: 8370–1.

Abstract: Respondents supply identifying information on proposed commercial, competitive, or individual recreational use when required to determine the eligibility for a permit. BLM uses this information to authorize the requested use and determine the appropriate fees. BLM also uses this information to tabulate recreation use data for the annual Federal Recreation Fee Report as required by the Land and Water Conservation Act.

Frequency: On occasion.

Description of Respondents: Recreation visitors to areas of the public lands and related waters where BLM requires special recreation permits.

Estimated Completion Time: 30 minutes.

Annual Responses: 31,000.

Filing Fee Per Response: 0.

Annual Burden Hours: 15,500.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: March 20, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–9273 Filed 4–13–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on April 27, 2001 to discuss the 2002 Ecosystem Restoration Program Implementation Plan, project selection process, and other issues. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The BDAC's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 2:30 p.m. on Friday, April 27, 2001.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, 1416 Ninth Street, Room 1131, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Terry Mills, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the State of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan that addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: April 6, 2001.

Kirk C. Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 01–9316 Filed 4–13–01; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Sanction for Breach of Commission Protective Order

AGENCY: International Trade Commission.

ACTION: Sanction for breaches of Commission protective order.

SUMMARY: Notice is hereby given of the sanction imposed by the Commission for a breach of the administrative protective order ("APO") issued in Certain Steel Wire Rod, Inv. No. 201-TA–69. The Commission found that Martin J. Lewin and Adam S. Apatoff breached the APO by failing to delete business proprietary information ("BPI") from the public version of the pre-hearing brief filed on behalf of their client. APOB Inv. #189. This public reprimand is being issued because this

breach was the third breach for both Lewin and Apatoff in less than two years and the fourth breach by Lewin within two and one-half years.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: In connection with the Wire Rod investigation, Messrs. Lewin, Apatoff, and one other attorney filed applications for access to APO information with the Commission. In the applications, they swore (i) not to disclose without written permission any of the information obtained under the APO except to certain enumerated categories of approved persons, (ii) to serve all materials containing BPI disclosed under the APO as directed by the Secretary, and (iii) to otherwise comply with the terms of the APO and the Commission's regulations regarding access to BPI. They also acknowledged in the APO that violation of the APO could subject them, and their firm, to disbarment from practice before the Commission, referral to the U.S. Attorney or appropriate professional association, or "[s]uch other administrative sanctions as the Commission determines to be appropriate * * *" 19 CFR 206.17(d). The Commission granted their applications.

The firm with which Lewin and Apatoff were affiliated at the time of this breach and the prior breaches was very experienced in Commission practice and Lewin, Apatoff, and other attorneys at the firm appeared regularly before the Commission and sought access to APO information on a regular basis. None of the prior breaches committed by Lewin or Apatoff were egregious enough to warrant a public reprimand when considered separately, and were instead dealt with through private means. Although this breach is no more egregious than the prior breaches, the Commission is issuing this public reprimand because it takes very seriously its responsibility to safeguard the BPI it acquires during its investigations. The Commission cannot allow private attorneys to gain access to other parties' BPI and to treat it in a careless way on multiple occasions. Therefore, the Commission has decided that this public reprimand is appropriate. The Commission has decided not to suspend Lewin's and Apatoff's access to APO information at this time because they have not been the subject of any breach allegations since this breach occurred almost two years ago.

Martin J. Lewin and Adam S. Apatoff are reprimanded for failing to delete BPI from the public version of the pre-hearing brief they filed on behalf of their client in this investigation and for committing multiple APO breaches over a relatively short period of time.

The authority for this action is conferred by section 206.17(d) of the Commission's Rules of Practice and Procedure (19 CFR 206.17(d)).

Issued: April 10, 2001.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–9270 Filed 4–13–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–455]

In the Matter of Certain Network Interface Cards and Access Points for Use in Direct Sequence Spread Spectrum Wireless Local Area Networks and Products Containing Same; Notice of Change of Administrative Law Judge

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to change the presiding administrative law judge ("ALJ") in the above-captioned investigation from Judge Paul J. Luckern to Judge Debra Morriss. This change was effective as of April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, tel. (202) 205–3096. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission may also be obtained by accessing the Commission's internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://www.usitc.gov/eol/public.*

SUPPLEMENTAL INFORMATION: The Commission instituted this investigation on April 3, 2001, based on a complaint filed by Proxim, Inc. Fourteen firms were named as respondents. Judge Paul J. Luckern was designated as the presiding ALJ.

Approximately three weeks earlier, on March 14, 2001, the Commission instituted Inv. No. 337–TA–454, Certain Set-Top Boxes and Components Thereof. Judge Debra Morriss was designated as the ALJ in that investigation.

On March 21, 2001, Judge Morriss issued a notice in which she advised the parties in the Set-Top Box investigation that she owns one of the accused set-top boxes and that she has an ongoing service contract with DISH Network, which she believes is related to EchoStar Communications Corporation, one of the respondents. In light of these disclosures, Judge Morriss stated that, if any party requested her disqualification as ALJ in the Set-Top Box investigation, she would seek to recuse herself from the investigation. She directed each party to file a written submission on her attorney-advisor by April 2, 2001, indicating whether the party requested her disqualification or, alternatively, whether the party consented to her continuing to preside over the investigation.

By notice issued on April 4, 2001, Commission Chairman Stephen Koplan directed that the submissions ordered by Judge Morriss be filed with the Commission by the close of business on April 6, 2001.

Respondents Pioneer Corporation, Pioneer North America, Inc., Pioneer Digital Technologies, Inc., and Pioneer New Media Technologies, Inc., subsequently filed a submission with the Commission requesting disqualification of Judge Morriss as ALJ.

On April 10, 2001, the Commission issued an order designating Judge Luckern as the presiding ALJ in the Set-Top Box investigation and an order designating Judge Morriss as the presiding ALJ in this investigation.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337). Copies of the ALJ's notice, the Commission's order, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

Issued: April 10, 2001.
By Order of the Commission.
Donna R. Koehnke,
Secretary.
[FR Doc. 01–9269 Filed 4–13–01; 8:45 am]
BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–454]

In the Matter of Certain Set-Top Boxes and Components Thereof; Notice of Change of Administrative Law Judge

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to changed the presiding administrative law judge ("ALJ") in the above-captioned investigation from Judge Debra Morriss to Judge Paul J. Luckern. This change was effective as of April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, tel. (202) 205–3096. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission may also be obtained by accessing the Commission's internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://www.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 14, 2001, based on a complaint filed on behalf of Gemstar-TV Guide International, Inc. and StarSight Telecast, Inc. Seven firms were named respondents. Judge Debra Morriss was designated as the presiding ALJ.

On March 21, 2001, Judge Morriss issued a notice in which she advised the parties that she owns one of the accused products (an EchoStar 4900 set-top box) and that she has an ongoing service contract with DISH Network, which she believes is related to EchoStar Communications Corporation, one of the respondents. In light of these disclosures, Judge Morriss stated that, if any party requested her disqualification as ALJ, she would seek to recuse herself from the investigation. She directed each party to file a written submission on her attorney-advisor, Ms. Cynthia Lynch, by April 2, 2001, indicating whether the party requested her disqualification or, alternatively, whether the party consented to here continuing to preside over the investigation.

By notice issued on April 4, 2001, Commission Chairman Stephen Koplan directed that the submissions ordered by Judge Morriss be filed with the Commission by the close of business on April 6, 2001.

Respondents Pioneer Corporation, Pioneer North America, Inc., Pioneer Digital Technologies, Inc., and Pioneer New Media Technologies, Inc. subsequently filed a submission with the Commission requesting disqualification of Judge Morris as ALJ.

On April 10, 2001, the Commission issued an order designating Judge Paul J. Luckern as the presiding ALJ in this investigation in place of Judge Morriss.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337). Copies of the ALJ's notice, the Commission's order, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

Issued: April 10, 2001.
By Order of the Commission.
Donna R. Koehnke,
Secretary.
[FR Doc. 01–9268 Filed 4–13–01; 8:45 am]
BILLING CODE 7020–02–U

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 3, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ESA, and PWBA contact Marlene Howze ((202) 693–4120 or by email to Howze-Marlene@dol.gov). To obtain documentation for ETA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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 submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Participant Directed Individual Account Plans (ERISA section 404(c) Plans.

OMB Number: 1210–0090.

Affected Public: Individuals or households; Business or other for-profit; and Not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 294,800.

Estimated Time Per Response: 294,800.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 52,900.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing) services): $22,126,000.

Description: Section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA) provides that if a pension plan that provides for individual accounts permits a participant or beneficiary to exercise contol over assets in his account and that participant or beneficiary in fact exercises such control, the participant

or beneficiary shall not be deemed to be a fiduciary by such exercise of control, and no person otherwise a fiduciary shall be liable for any loss or breach which results from this exercise of control. The opportunity to exercise control includes the opportunity to obtain sufficient information alternatives. This regulation describes the type and extent of information required to be made available to participants and beneficiaries for this purpose. In the absence of such disclosures, participants might not be able to make informed decisions about the investment of their individual accounts, and persons who are otherwise fiduciaries with respect to these plans would not be afforded relief from the fiduciary responsibility provisions of Title I of ERISA with respect to these transactions.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 01–9277 Filed 4–13–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 5, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ESA, and PWBA contact Marlene Howze ((202) 693–4120 or by email to Howze-Marlene@dol.gov). To obtain documentation for ETA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

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 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 submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Prohibited Transaction Class Exemption 92–6; Sale of Individual Life Insurance or Annuity Contracts.

OMB Number: 1210–0063.

Affected Public: Individuals or households; business or other for-profit; and not-for-profit institutions.

Frequency: On occasion; Third party disclosure.

Number of Respondents: 7,656.

Number of annual responses: 7,656.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 1,531.

Total Annualized Capital/Startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $2,800.

Description: Prohibited Transaction Class Exemption 92–6 exempt from the prohibited transaction restrictions of ERISA the sale of individual life insurance or annuity contracts held by an employee benefit plan to: (1) Plan participants insured under such contracts; (2) relatives of such participants who are the beneficiaries under the contract; (3) employers, any of whose employees are covered by the plan; (4) other employee benefit plans that have a party in interest relationship; (5) owner-employees (as defined in section 401(c)(3) of the Code), or (6) shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the enactment of the Subchapter S Revision Act of 1982), for the cash surrender value of the contracts, provided certain conditions set forth in the class exemption are met. The Department has included in the class exemption a basic disclosure requirement.

If the participant elects not to purchase the contract, the relative, the employer, another plan, the owner-employees, or the shareholder-employees may purchase the contract from the plan upon the receipt by the plan of the written consent of the participant. The disclosure requirement of the class exemption does not apply if the contract is sold to the plan participant.

The disclosure requirement incorporated within this class exemption is intended to protect the rights of plan participants and beneficiaries by putting them on notice of the plan's intention to sell insurance or annuity contracts under which they are insured, and by giving them the right of first refusal to purchase such contracts. Without the disclosure requirement, the Department, which may only grant an exemption if it can find that participants and beneficiaries are protected, would be unable to effectively enforce the terms of the class exemption and ensure user compliance.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–9278 Filed 4–13–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 5, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ESA, and PWBA contact Marlene Howze ((202) 693–4120 or by email to Howze-Marlene@dol.gov). To obtain documentation for ETA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E–Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days

from the date of this publication in the **Federal Register**.

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 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 submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: ERISA Technical Release 91–1; Transfer of Excess Assets From a Defined Benefit Plan to a Retiree Health Benefits Account.

OMB Number: 1210–0084.

Affected Public: Individuals or households; business or other for-profit; and not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 66.

Number of Annual Responses: 66.

Estimated Time Per Response: 1.7 minutes.

Total Burden Hours: 5,775.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $90,950.

Description: Section 101(e) of the Employee Retirement Income Security Act of 1974 (ERISA) sets forth certain notice requirements which must be satisfied before an employer may transfer excess assets from a defined benefit plan to a retiree health benefit account as otherwise permissible after satisfying the conditions set forth in section 420 of the Internal Revenue Code of 1986, as amended (Code). Section 101(e) describes the plan administrator's obligation to provide advance written notification of such transfers to participants and beneficiaries and the employer's obligation to provide advance written notification to the Secretaries of Labor and the Treasury, the plan administrator, and each employee organization representing participants in the plan. ERISA Technical Release 91–1 provides guidance on the information to be provided in the notices to both the participants and beneficiaries and to the Secretaries.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–9279 Filed 4–13–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 233 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,424; Georgia Pacific, Chip and Saw Plant, Baileyville, ME

TA–W–38,338; Cooper Energy Services, Mt. Vernon, OH

TA–W–38,383; Burruss Co., Galax, VA

TA–W–38,566; Fechheimer Brothers Co., SOL Frank Div., San Antonio, TX

TA–W–38,553; Ingersoll Milling Machine Co., Rockford, IL

TA–W–38,593; Innovative Home Products, Birmingham, MI

TA–W–38,601; Arka Knitwear, Inc., Ridgewood, NY

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–38,636; Cookson Pigments, Inc., Newark, NJ

TA–W–38,475; Ames True Temper, Inc., Davisville Distribution Center, Davisville, WV

TA–W–38,746; Danieli Corp., Cranberry Township, PA Including Danieli Wean United, Danieli Automation, Danieli Morgardshammal and Danieli Centro Met.

TA–W–38,527; Price Pfister, Pacoima, CA

TA–W–38,773; Day and Zimmermann, Inc., Parsons, KS

TA–W–38,600; H.L. Miller and Son, Dallas, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,874; Valleo Climate Control, Arcola, IL

TA–W–38,141; Lilly Industries, Paulsboro, NJ

TA–W–38,709; Flint Ink Corp., West St. Paul, MN

TA–W–38,570; Commerce Plastics, Inc., Commerce, GA

TA–W–38,604; Lawson Mardon, Clifton, NJ

TA–W–38,605; Komag, Eugene, OR

TA–W–38,613; Budge Industries, Inc., Telford, PA

TA–W–38,401; Calibrated Charts Corp., Batavia, NY

TA–W–38,649; Mother Parkers Tea and Coffee Co. USA Ltd., Palesades Park, NJ

TA–W–38,487; Stanley Access Technologies, Farmington, CT

TA–W–38,787; Medley Company Cedar, Inc., Pierce, ID

TA–W–38,474; Honeywell Aerospace, Teterboro, NJ

TA–W–38,680; Johns Manville Corp., Vienna, WV

TA–W–38,626; 3 Day Blinds, Inc., Anaheim, CA

TA–W–38,717 & A; International Paper, Costigan Mill, Milford, ME, Passadumkeag Mill, Passadumkeag, ME

TA–W–38,743; Collis, Inc., Elizabethtown, KY

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–38,676; West Ark/Dunbrooke Industries, Inc., Versailles, MO: February 1, 2000.

TA–W–38,765; Burlington Industries, Inc., Burlington House Floor Accents, Monticello, AR: February 15, 2000.

TA–W–38,569; O/Z-Gedney Co., Div. of EGS Electrical Group, Terryville, CT: January 5, 2000.

TA–W–38,732; Artech Printing, Inc., Sturtevant, WI: February 9, 2000.

TA–W–38,625; Hays Lemmerz International, Automotive Brake, Components, Homer, MI: January 19, 2000.

TA–W–38,699; General Electric, Industrial Systems Div., Morrison, IL: February 2, 2000.

TA–W–38,669; Matsushita Compressor Corp. of Ameica, Mooresville, NC: January 29, 2000.

TA–W–38,616; Texprint (GA), Inc., Macon, GA: January 19, 2000.

TA–W–38,323; Winpak Films, Senoia, GA: October 27, 1999.

TA–W–38,716; Toshiba America Information System, Inc., Irvine, CA: February 9, 2000.

TA–W–38,435; Blackfeet Writing Instruments, Inc., Browning, MT: November 21, 1999.

TA–W–38,836; Lionel LLC, Chesterfield, MI: February 22, 2000.

TA–W–38,614; Production Stamping, Div. of Talon Automotive Group, Oxford, MI: January 17, 2000.

TA–W–38,428; U.S. Tape and Sticky Products, Gloucester, MA: November 30, 1999.

TA–W–38,233; Konica Graphic Imaging International, Inc., Glen Cove, NY: October 10, 1999.

TA–W–38,640; Magnetic Head Technologies, Michigan Magnetics, St. Croix Falls, WI: January 18, 2000.

TA–W–38,735; Motorola Energy Systems Group, Harvard, IL: January 23, 2000.

TA–W–38,652; National Electrical Carbon Products, Inc., The Morgan Crucible Co, Plc, East Stroudsburg, PA: January 23, 2000.

TA–W–38,465; Cookson Semiconductor Packaging Materials, Div. of Alpha-Fry Technologies, Warwick, RI: December 8, 1999.

TA–W–38,762; Pridecraft Enterprises, Inc., Enterprise, AL: February 12, 2000.

TA–W–38,609; Gates Rubber Co., Global Fluid Power Div., Gates Corp., Charlestown, MO: January 10, 2000.

TA–W–38,305; Stora Enso Consolidated Papers, Inc., d/b/a Stora Enso North America Administrative Offices, Wisconsin Rapids, WI Including the Following Locations: A; Biron Mill, formerly known as Biron Div., Wisconsin Rapids, WI, B; Kimberly Mill, formerly known as Inter Lake Papers Div., Kimberly, WI, C; Wisconsin Rapids Pulp Mill, formerly known as Kraft Div., Wisconsin Rapids, WI, D; Duluth Paper Mill and Duluth Recycled Pulp Mill, formerly known as Lake Superior Paper Industries, Duluth, MN, F; Wisconsin Rapids Paperboard, formerly known as Paperboard Products Div., Wisconsin Rapids, WI, G; Research, Research and Development, Wisconsin Rapids, WI, H; Stevens Point Mill, formerly known as Stevens Point Div., Stevens Point, WI, I; Wisconsin Rapids Paper Mill, formerly known as Wisconsin Rapids Div., & Converting Div., Wisconsin Rapids, WI, J; Whiting Mill, Wisconsin River Div., Stevens Point, WI; October 31, 1999.

TA–W–38,305E; Niagara Division, Niagara, WI: All workers of the Niagara Division, Niagara, WI are denied eligibility to apply for adjustment assistance because workers are eligible under TA–W–36,240 which expires on October 28, 2001.

TA–W–38,467; MDF Moulding and Millwork Co., Las Vegas, NM: December 6, 1999.

TA–W–38,491 & A; Jefferson Apparel, Jefferson, NC and Maid Bess Corp., Salem, VA: December 18, 1999.

TA–W–38,715; Vilter Manufacturing Corp., Vessels Dept, Cudahy, WI: February 9, 2000.

TA–W–38,580; Fox Distribution, Fox Companies, Laurel, MT: January 11, 2000.

TA–W–38,282; Weeks Textile Co., Quitman, GA: October 20, 1999.

TA–W–38,777; Steele Apparel, Inc., Kilmichael, MS: February 9, 2000.

TA–W–38,781; Clahoun Apparel, Inc., Calhoun City, MS: February 12, 2000.

TA–W–38,429; Paper Calmenson & Co., St. Paul, MN: December 4, 1999.

TA–W–38,558; Clark Metal Products, Inc., Marion, OH: December 19, 1999.

TA–W–38,505; TDK Electronics Corp., Irving, CA: December 14, 1999.

TA–W–38,638; Honeywell International, Specialty Chemicals Div., Ironton, OH: January 18, 2000.

TA–W–38,612; Owens and Hurst Lumber Co., Inc., Eureka, MT: January 17, 2000.

TA–W–38,520; Auburn Steel Co., Lemont Div., Lemont, IL: January 9, 2000.

TA–W–38,591; Horix Manufacturing Co., McKees Rocks, PA: January 16, 2000.

TA–W–38,477; Gilison Knitwear, Hicksville, NY: December 12, 1999.

TA–W–38,581; American Standard, Inc., Trenton, NJ: January 10, 2000.

TA–W–38,468; J & L Structural, Inc., Aliquippa, PA: December 8, 1999.

TA–W–38,546; Tower Electronics, Inc., Minneapolis, MN: December 21, 1999.

TA–W–38,586; OGB Manufacturing Distribution Co., Oshkosh, B'Gosh, Inc., Liberty, KY: January 12, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of March, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04466; Clevenger Sox, Inc., Black Mountain, NC

NAFTA–TAA–04454; Innovative Home Products, Inc., Birmingham, MI

NAFTA–TAA–04448; NACCO Materials Handling Group, Danville, IL

NAFTA–TAA–04461; Arka Knitwear, Inc., Ridgewood, NY

NAFTA–TAA–04584 & A; International Paper, Costigan Mill, Milford, ME and Passadumkeag Mill, Passadumkeag, ME

NAFTA–TAA–04364; New Venture Gear, Inc., New Process Gear Div., East Syracuse, NY

NAFTA–TAA–04507; Magnetic Head Technologies—Michigan Magnetics, St. Croix Falls, WI

NAFTA–TAA–04501; Louisiana Pacific Corp., Oroville, CA

NAFTA–TAA–04432; Georgia Pacific Corp., G–P Gypsum West Plant, Grand Rapids, MI

NAFTA–TAA–04441; Georgia Pacific, Chip and Saw Plant, Baileyville, ME

NAFTA–TAA–04473; Ingersoll Milling Machine Co., Rockford, IL

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–04438; Price Pfister, Pacoima, CA

NAFTA–TAA–04516; Pacific North Equipment Co., Fairbanks Branch, Fairbanks, AK

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04531; Xerox Corp., Webster, NY: January 30, 2000.

NAFTA–TAA–04605; Ropak Northwest, Inc., A Div. of Ropak Corp., Kent, WA: February 21, 2000.

NAFTA–TAA–04627; Samsonite Corp., Denver Manufacturing Plant, Denver, CO: March 8, 2000.

NAFTA–TAA–04555; Brown Wooten Mills, Inc., Finishing Department, Mount Airy, NC: February 12, 2000.

NAFTA–TAA–04449; Fox Distributions, Fox Companies, Laurel, MT: January 11, 2000.

NAFTA–TAA–04489; 3 Day Blinds, Inc., Anaheim, CA: January 19, 2000.

NAFTA–TAA–04619; Thomas and Betts Corp., Dark To Light Div., Pembroke, MA: February 22, 2000.

NAFTA–TAA–04403; Gynecare, Menlo Park, CA: December 21, 1999.

NAFTA–TAA–04539 & A; Sony Music, Inc., Sony Disc Manufacturing, Carrollton, GA: January 30, 2000; All workers engaged in the production of audio cassette shells (CD's) and audio cassette jewel boxes who became totally or partially separated from employment on or after January 30, 2000. All workers engaged in employment related to the production of audio cassette recording tape are denied.

NAFTA–TAA–04549; Matsushita Battery Industrial Corp., of America, Storage Battery Div., Columbus, GA: January 13, 2000.

NAFTA–TAA–04395; U.S. Tape and Sticky Products, Gloucester, MA: December 12, 1999.

NAFTA–TAA–04505; National Electrical Carbon Products, Inc., The Morgan Crucible Co. Plc, East Stroudsburg, PA: January 23, 2000.

NAFTA–TAA–04589; Puget Plastics Corp., Tualatin, OR: February 14, 2000.

NAFTA–TAA–04568; Ansell Healthcare, Ansell Golden Needles, Wilkesboro, NC: February 19, 2000.

NAFTA–TAA–04513; Georgia–Pacific Corp., Kalamazoo, MI: January 19, 2000.

NAFTA–TAA–04497; Seco Manufacturing Co., Inc., Soft Goods Department, Redding, CA: January 30, 2000.

NAFTA–TAA–04528; Fruit of the Loom, Greenville, MS: January 30, 2000.

NAFTA–TAA–04374; Paper, Calmenson and Co., St. Paul, MN: December 4, 1999.

NAFTA–TAA–04276; Stora Enso Consolidated Papers, Inc., d/b/a Stora Enso North America, Administrative Offices, Wisconsin Rapids, WI Including the Following Locations: A; Biron Mill, formerly known as Biron Div., Wisconsin Rapids, WI, B; Kimberly Mill, formerly known as Inter Lake Papers Div., Kimberly, WI, C; Wisconsin Rapids Pulp Mill, formerly known as Kraft Div., Wisconsin Rapids, WI, D; Duluth Paper Mill and Duluth Recycled Pulp Mill, formerly known as Lake Superior Paper Industries, Duluth, MN, F; Wisconsin Rapids Paperboard, formerly known as Paperboard Products Div., Wisconsin Rapids, WI, G; Research, Research and Development, Wisconsin Rapids, WI, H; Stevens Point Mill, formerly known as Stevens Point Div., Stevens Point, WI, I; Wisconsin Rapids Paper Mill, formerly known as Wisconsin Rapids Div. and Converting Div., Wisconsin Rapids, WI, J; Whiting Mill, Wisconsin River Div., Stevens Point, WI: October 31, 1999.

NAFTA–TAA–04267E; Niagara Division, Niagara, WI: All workers of the Niagara Div., Niagara, WI are denied eligibility to apply of NAFTA–TAA because the workers are eligible under NAFTA–03145 which expires October 28, 2001.

NAFTA–TAA–04394; Prime Cast, Inc., Beloit, WI: December 14, 1999.

NAFTA–TAA–04408; Clark Metal Products Co., Inc., Marion, OH: December 20, 1999.

NAFTA–TAA–04644; Valeo Climate Control, Arcola, IL: March 13, 2000.

NAFTA–TAA–04573; Medley Company Cedar, Inc., Pierce, ID: February 20, 2000.

I hereby certify that the aforementioned determinations were issued during the month of March, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 3, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–9281 Filed 4–13–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38, 816]

Donaldson/DCE, Inc., Louisville, Kentucky; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 12, 2001, in response to a worker petition filed by a company official on behalf of workers at Donaldson/DCE, Inc., Louisville, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 30th day of March, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–9283 Filed 4–13–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 26, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 26, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 12th day of March, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix—Petitions Instituted On 03/12/2001

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,790	Wilkins Industries, (Co.)	McRae, GA	03/02/2001	Ladies' Jeans.
38,791	Sierra Pacific, Industries (WCIW)	Loyalton, CA	02/23/2001	Lumber.
38,792	Stitches, Inc (Co.)	Gamaliel, KY	02/26/2001	Mens' Ladies' & Childrens' Apparel.
38,793	U.S. Intec—Permaglas (Wkrs)	Corvallis, OR	02/26/2001	Roofing Materials.
38,794	Eric Scott Leathers (Wkrs)	Ste Genevieve, MO	01/09/2001	Time Management Binders, Checkbook Cover.
38,795	Donnkenny Apparel (Co.)	Wytheville, VA	02/22/2001	Ladies' Sportswear.
38,796	IEC Electronics (Co.)	Edinburg, TX	03/02/2001	Printed Circuit Boards.
38,797	Lehigh Coal & Navigation (UMWA)	Tamaqua, PA	02/26/2001	Anthracite Coal, Coke, Silt.
38,798	PTC Alliance (USWA)	Jane Lew, WV	02/20/2001	Steel Tubing.
38,799	Dana Spicer (UAW)	Plymouth, MN	02/02/2001	Axles and Gears.
38,800	TI Automotive (Wkrs)	New Haven, MI	02/22/2001	Automotive Electrical Connectors.
38,801	Converse, Inc (Wkrs)	North Reading, MA	02/24/2001	Casual Footwear.
38,802	Inman Mills (Co.)	Inman, SC	02/23/2001	Woven, Greige Goods.
38,803	Motion Control Industries (IUE)	Ridgway, PA	02/23/2001	Heavy Friction Material (Brakes).
38,804	Playtex Apparel (Wkrs)	New York, NY	02/27/2001	Sleepwear and Daywear (Ralph Lauren).
38,805	Lenox Crystal (Wkrs)	Mt. Pleasant, PA	02/28/2001	Crystal Glassware.
38,806	Chicago Steel, LLP (Wkrs)	Gary, IN	02/27/2001	Coil to Coil Tension Leveling.
38,807	Heckett Multiserv Harsco (USWA)	Warren, OH	02/27/2001	Steel Mill Services.
38,808	Hit or Miss (Wkrs)	Stoughton, MA	03/01/2001	Clothing Distribution & Retail Sales.
38,809	Blue Mountain Lumber (Wkrs)	Pendleton, OR	02/16/2001	Dimension Soft Wood Lumber.
38,810	Truform Rubber Products (Wkrs)	Hudson, OH	02/28/2001	Rubber Parts for Automobiles.
38,811	Universal Furniture (Co.)	Morristown, TN	02/10/2001	Furniture—Bedroom & Dinning Room.
38,812	Regal Headwear USA (Wkrs)	Gladewater, TX	02/22/2001	Headwear.
38,813	Blount, Inc. (Co.)	Prentice, WI	02/12/2001	Hydraulic Log Loaders & Bunchers.
38,814	C. Hager and Son's Hinge (Wkrs)	Oxford, AL	02/23/2001	Hinges.
38,815	Johnston Industries (Wkrs)	Columbus, GA	02/15/2001	Industrial Fabrics.
38,816	Donaldson Co., Inc. (Co.)	Louisville, KY	02/22/2001	Fabrication of Components.
38,817	GalvPro L.P. (Co.)	Jeffersonville, IN	02/21/2001	Hot Dipped Galvanized Sheet.
38,818	STB Systems 3D–FX Inter. (Wkrs)	El Paso, TX	02/21/2001	PC Boards, Computer Games, DVD's
38,819	New Era Die Co (Co.)	Red Lion, PA	02/01/2001	Sharp Edged Cutting Dies.
38,820	Stanley Fastening Systems (Co.)	Hamliet, NC	01/29/2001	Staples.
38,821	Donohue Industries, Inc. (PACE)	Houston, TX	02/19/2001	Newsprint Paper.
38,822	LTV Steel Co., Inc. (Wkrs)	Cleveland, OH	02/20/2001	Hot and Cold Rolled Steel.
38,823	Danaher/API Gettys (Wkrs)	Racine, WI	02/16/2001	Small Electric Motors.
38,824	Heritage Sportswear (Wkrs)	Marion, SC	02/05/2001	Tee Shirts.
38,825	Thermal Corporation (Wkrs)	Selmer, TN	02/21/2001	Brake Calipers for Light Trucks.
38,826	Giddings and Lewis Mahine (Wkrs)	Fond du Lac, WI	02/22/2001	Machinery.
38,827	Gina Fashions, Inc. (UNITE)	Brooklyn, NY	02/20/2001	Ladies' Coats.
38,828	Genicom Corp. (UE)	Waynesboro, VA	02/15/2001	Computer and Printer Repair.
38,829	Anvil Knitwear, Inc (Wkrs)	Mullins, SC	02/22/2001	Cutting T-Shirt Material.

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,830	Maregaglia USA, Inc. (Wkrs)	Greenville, PA	02/16/2001	Welded Stainless Steel Tube and Pipe.
38,831	Shoe Doctor, inc (Co.)	Dover, NH	02/21/2001	Ladies' Leather Footwear.
38,832	Decatur Casting (Wkrs)	Decatur, IN	02/20/2001	Molds—Iron Castings.
38,833	O and E Machine Corp. (PACE)	Green Bay, WI	02/17/2001	Paper Converting Machine Parts.
38,834	K-Ybte Reptron (Wkrs)	Gaylord, MI	02/14/2001	Electronic Circuit Assemblies.
38,835	Allegheny Color Corp (Co.)	Ridgway, PA	02/21/2001	Green Pigment.
38,836	Lionel LLC (Co.)	Chesterfield, MI	02/22/2001	Toy Trains.
38,837	WCI Steel, INc. (USWA)	Warren, OH	01/22/2001	Hot and Cold Rolled Steel.
38,838	Centec Roll Corp. (USWA)	Bethlehem, PA	02/22/2001	Spin Cast Rolls and Static Pour Rolls.
38,839	ASARCO, Inc. (Co.)	East Helena, MT	02/27/2001	Lead Bullion, Sulfuric Acid.
38,840	Globe Manufacturing Corp. (Co.)	Fall River, MA	02/12/2001	Spandex Fiber—Woven and Nonwoven.
38,841	Pathfinders USA (Co.)	Sedro Woolley, WA	02/07/2001	Soft Luggage.

[FR Doc. 01–9282 Filed 4–13–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 26, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 26, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 19th day of March, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix—Petitions Instituted On 03/19/2001

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,842	Wisconsin Machine Tool (UAW)	West Allis, WI	03/06/2001	Drill and Boring Heads Machinery.
38,843	Brand Mills Ltd (UNITE)	Hackensack, NJ	02/28/2001	Lace Knitting.
38,844	Discwax Corp (Wkrs)	Stanley, NC	02/12/2001	Knitted Yarn.
38,845	Borg Warner Transmission (Wkrs)	Coldwater, MI	02/27/2001	Automotive Dampers.
38,846	Black and Decker (Comp)	Beloit, WI	03/06/2001	Screwdriver Bits.
38,847	Racewater Designs, Inc. (Comp)	El Cajon, CA	03/04/2001	Jackets, Crew Shirts.
38,848	Allval (USWA)	Latrobe, PA	03/02/2001	Specialty Steels.
38,849	Bi-Comp, Inc (Wkrs)	York, PA	03/03/2001	Textbooks, Medical Journals.
38,850	Perfect Fit Industries (Comp)	Richfield, NC	02/28/2001	Comforters, Bed Spreads.
38,851	Norgren, Inc. (Wkrs)	Mt. Clemens, MI	03/02/2001	Valve Assembly.
38,852	Lucia, Inc. (Comp)	Winston Salem, NC	03/02/2001	Ladies' Apparel.
38,853	Kasle Steel/Auto Press (IBT)	Dearborn, MI	02/16/2001	Coiled Steel.
38,854	Ivex Corp/Chargurs (PACE)	Troy, OH	02/26/2001	Carpet Masking.
38,855	Willamette Industries (Wrks)	Sweet Home, OR	03/01/2001	Plywood.
38,856	Garon Manufacturing (Wrks)	Oak Grove, LA	02/20/2001	Cut Piece Goods.
38,857	Erie Coke Corp. (Wkrs)	Erie, PA	02/22/2001	Foundry Coke.
38,858	Goodyear Tire and Rubber (Wkrs)	Cartersville, GA	02/28/2001	Dipped Tire Cord Fabrics.
38,859	Fonda Group, Inc. (Wrks)	Maspeth, NY	03/01/2001	Paper Goods.
38,860	Coil Center Corp. (UAW)	Howell, MI	03/01/2001	Steel Blanks.
38,861	Brach Confections, Inc. (IBT)	Chicago, IL	02/27/2001	Hard Candy, Chocolates, Gum.
38,862	Pacific Tube Co (Comp)	Los Angeles, CA	03/01/2001	Drawn on Mandrel (DOM) & Steel Tubing.
38,863	Honeywell-Serck (Comp)	Burkesville, KY	03/02/2001	Heat Trangler Products.
38,864	International Wire (Comp)	Elkmont, AL	02/28/2001	Wire.
38,865	I and H Engineered System (UAW)	Gaylord, MI	02/14/2001	Equipment—Food Industry.
38,866	Global, dba Appalachian (Wkrs)	Belington, WV	02/28/2001	Wooden Arms.

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,867	Kerr McGee Chemical, LLC (Wkrs) ..	Hamilton, MS	03/02/2001	Manganese Metal and Maganese Briquette.
38,868	PACCAR–Kenworth (Wkrs)	Chillicothe, OH	03/02/2001	Heavy Duty Trucks.
38,869	Westfield Tanning (Wkrs)	Westfield, PA	03/02/2001	Leather Components—Footwear.
38,870	American Bag Corp (Comp)	Winfield, TN	03/08/2001	Automotive Airbags.
38,871	Vishay Sprague, Inc (Comp)	Sanford, ME	03/08/2001	Surface Mounted Capacitors.
38,872	J. Paul Levesque and Sons (Comp)	Ashland, ME	03/02/2001	Lumber.
38,873	Kodak Polychrome Graphics (Wkrs)	Holyoke, MA	02/16/2001	Lithographic Plates.
38,874	Valeo Climate Control (Comp)	Arcola, IL	03/05/2001	Automobile Air Conditioner Modules.
38,875	Drexel Heritage (Comp)	Black Mountain, NC	03/05/2001	Residential Furniture.
38,876	Worthington Steel Malvern (USWA)	Malvern, PA	03/03/2001	Hot and Cold Rolled Steel.
38,877	Trinity Industries (USWA)	Johnstown, PA	03/05/2001	Railroad Freight Car Axles.
38,878	Richard Leeds Internation (Wkrs)	Scotland Neck, NC	03/01/2001	Ladies' Sleepwear.
38,879	Hastings Manufacturing Co (Wkrs) ..	Hastings, MI	03/08/2001	Piston Rings.
38,880	Cooper Energy Service (IAMAW)	Springfield, OH	03/06/2001	Machined Parts.
38,881	Viasystems Technologies (CWA)	Richmond, VA	03/09/2001	Printed Circuit Boards.
38,882	Thalman Manufacturing (UNITE)	Hempstead, NY	03/09/2001	Neckties.
38,883	Graphic Packaging (AWPPW)	Portland, OR	03/06/2001	Board Stock Products.
38,884	Freightliner Truck (IAM)	Portland, OR	03/09/2001	Commercial Trucks.
38,885	Grote Industries, LLC (IAM)	Madison, IN	03/06/2001	Electrical Wiring Harnesses.

[FR Doc. 01–9280 Filed 4–13–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Division of Foreign Labor Certification; the Use of Sheepherders for Vegetation Management; General Administration Letter No. 3–01

The Employment and Training Administration administers and interprets the requirements of the temporary, alien agricultural labor certification (H–2A) program. These interpretations are issued in General Administration Letters (GAL's) to its Regional Offices and the State Employment Security Agencies. The GAL below is published in the **Federal Register** in order to inform the public.

GAL No. 3–01

GAL No. 3–01 provides policy clarification and procedural guidance for the processing of nonagricultural sheep and goat herder applications as H–2A.

Dated: April 6, 2001.

Raymond J. Uhalde,

Deputy Assistant Secretary of Labor.

BILLING CODE 4510–30–P

U. S. Department of Labor Employment and Training Administration Washington, D.C. 20210	**CLASSIFICATION** H-2A/ Sheepherders
	CORRESPONDENCE SYMBOL OWS
	DATE March 28, 2001

DIRECTIVE: GENERAL ADMINISTRATION LETTER NO. 3-01

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM: LENITA JACOBS-SIMMONS
Deputy Assistant Secretary

SUBJECT: The Use of Sheepherders for Vegetation Management.

1. Purpose. To provide policy clarification and procedural guidance for the processing of nonagricultural sheep and goat herder applications as H-2A .

2. References. 20 CFR part 655, Subpart B 20 CFR 655.103.

3. Background. In the past few years, employers in some States have utilized the provisions of the Immigration and Nationality Act to recruit nonimmigrant foreign workers to work as sheepherders in conjunction with their operations, specifically, the use of sheep and goats to graze the land under power lines. The employers are contracting this service to electrical utilities who have electrical power transmission lines. The unique occupational characteristics of such operations have caused many employers to petition for foreign workers under the H-2B nonagricultural temporary program. They have argued that this is not agricultural labor because the employer is not producing an agricultural commodity but only providing a service (clearing vegetation from power line areas) that is not agricultural in nature.

4. Policy Clarification/Procedural Guidance. There are provisions in the H-2A regulations which recognize that certain activities incidental to agriculture and, thus, not themselves agricultural activities, are still services of an agricultural nature, e.g., cooks in labor camps. The activity in this instance, is a service and not a commodity. While the sheep that consume vegetation are engaged in a commercial activity, i.e., vegetation control, consuming vegetation also happens to be necessary to raising the sheep.

RESCISSIONS	EXPIRATION DATE
None	March 31, 2002

The characteristics of sheep and goat herding for vegetation control purposes are similar to, and often indistinguishable from, the practice of open range and fenced production of sheep and goats. So too are the housing requirements, working hours, working conditions, travel requirements and other characteristics extremely similar to the activities covered under the H-2A sheep herding program.

5. Action Required. SESAs are instructed to adhere to H-2A Temporary Agricultural regulations when reviewing any applications filed for a sheep/goat herder for the purpose of vegetation management.

6. Inquiries. Questions should be directed to Charlene Giles at (202) 693-3010 (x2950).

[FR Doc. 01–9276 Filed 4–13–01; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2001–14; Exemption Application No. D–10571, et al.]

Grant of Individual Exemptions; Keystone Brokerage, Inc. (Keystone) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Keystone Brokerage, Inc. (Keystone), *et al.* Located in Williamsport, PA

[Prohibited Transaction Exemption 2001–14 Exemption Application No. D–10571]

Exemption

Section I. Covered Transactions

The sanctions resulting from the application of section 4975 of the Code, by reason of 4975(c)(1)(A) through (D) of the Code shall not apply, effective October 3, 1997 through June 30, 2000, to the purchase or redemption of shares, by a self-directed individual retirement account (the IRA), of investment portfolios (the Portfolios) of certain mutual funds that were affiliated with Keystone (the Affiliated Funds) or in other mutual funds that were unaffiliated with Keystone (the Third Party Funds),[1] in connection with the IRA's participation in the KeyPremier Nautilus Series Program, or its successor, the Nautilus Series Program, (together, the Investment Advisory Program).

In addition, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, effective October 3, 1997 through June 30, 2000, to (1) the provision, by Keystone, of asset allocation and related services to an independent fiduciary of an IRA (the Independent Fiduciary), which resulted in the selection of Portfolios in the Investment Advisory Program by the Independent Fiduciary for the investment of IRA assets; and (2) the receipt of fees by Martindale Andres & Co., Inc. and Governor Group Advisors, Inc. (GGA), affiliates of Keystone, in connection with provision of investment advisory or sub-advisory services to the Fund Portfolios.

This exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The participation by an IRA in the Investment Advisory Program was approved by an Independent Fiduciary.

(b) As to each IRA, the total fees that were paid to Keystone and its affiliates constituted no more than reasonable compensation for the services provided.

(c) With the exception of distribution-related fees paid to Keystone pursuant to Rule 12b–1 (the Rule 12b–1 fees) of the Investment Company Act of 1940 (the Investment Company Act) which were offset, no IRA paid a fee or commission by reason of the acquisition or redemption of the shares of the Funds.

(d) The terms of each purchase or redemption of shares in the Funds remained at least as favorable to an investing IRA as those obtainable in an arm's length transaction with an unrelated party.

(e) Keystone provided written documentation to each IRA's Independent Fiduciary of its recommendations or evaluations regarding the Fund Portfolios as well as the design and parameters with respect to an asset allocation model (the Asset Allocation Model), based upon objective criteria that were uniformly applied.

(f) Any recommendation or evaluation made by Keystone to an Independent Fiduciary was implemented only at the express direction of such Independent Fiduciary.

(g) The quarterly fee paid by an IRA to Keystone and its affiliates for asset allocation and related services rendered to such IRA under the Investment Advisory Program (the Outside Fee) was offset by—

(1) All gross investment management fees (the Advisory Fees) that were paid by the Affiliated Funds to Keystone, including any sub-advisory fees that were paid by the Affiliated Funds to third party sub-advisers;

(2) All administrative fees (the Administrative Fees) that were paid to GGA and BISYS Fund Services Limited Partnership (BISYS), an unrelated party; and

(3) All Rule 12b–1 Fees that were paid by the Third Party Funds to Keystone or its current and former affiliates with respect to an Investment Advisory Account (the Account), such that the sum of the offset and the net Outside Fee always equaled the aggregate Outside Fee, thereby making the selection of Affiliated Funds or Third Party Funds revenue-neutral.

(h) With respect to its participation in the Investment Advisory Program, prior to purchasing shares in the Portfolios of the Affiliated Funds and the Third Party Funds—

(1) Each Independent Fiduciary received the following written or oral disclosures from Keystone:

(A) A brochure describing the Investment Advisory Program; an Investment Advisory Program Account Agreement (the Account Agreement); a description of the Asset Allocation Models; and a reference guide/disclosure statement providing details

[1] The Affiliated Funds and the Third Party Funds are collectively referred to herein as the Funds.

about the Investment Advisory Program, the fees charged thereunder, the procedures for establishing, making additions to and withdrawing from the Accounts, and other related information;

(B) A risk tolerance and goal analysis questionnaire (the Questionnaire) or a written report of responses given by the Independent Fiduciary in a personal interview with a Keystone representative (the Interview Report);

(C) Copies of applicable prospectuses (the Prospectuses) for the Fund Portfolios discussing the investment objectives of the Portfolios; the policies employed to achieve the objectives of the Portfolios; the corporate affiliation existing between Keystone and its affiliates; the compensation paid to such entities; disclosures relating to rebalancing and reallocating Asset Allocation Models; and information explaining the risks attendant to investing in Portfolios for the Affiliated Funds and the Third Party Funds;

(D) Upon written or oral request to Keystone, a Statement of Additional Information supplementing the applicable Prospectus, which described the types of securities and other instruments in which the Portfolios could invest and the investment policies and strategies that the Portfolios could utilize, including a description of the risks;

(E) A copy of the Account Agreement between the IRA and Keystone relating to the IRA's participation in the Investment Advisory Program;

(F) A written recommendation of a specific Asset Allocation Model, together with a copy of the Questionnaire and response or the Interview Report;

(G) Upon written request to Keystone, a copy of any investment advisory agreement or sub-advisory agreement between Keystone and the Affiliated Funds; and

(H) Written disclosures of Keystone's affiliation or non-affiliation with the parties who act as sponsors, distributors, administrators, investment advisers and sub-advisers, custodians and transfer agents of the Portfolios.

(2) If accepted as an investor in the Investment Advisory Program, the Independent Fiduciary was required to acknowledge in writing to Keystone prior to purchasing shares of the Fund, that such Independent Fiduciary had received copies of the documents described in paragraph (h)(1) of this Section II and represent to Keystone that such individual was—

(A) Independent of Keystone and its affiliates;

(B) Knowledgeable with respect to the IRA in administrative matters and funding matters related thereto; and

(C) Able to make an informed decision concerning participation in the Investment Advisory Program.

(i) Subsequent to its participation in the Investment Advisory Program, each Independent Fiduciary received the following written or oral disclosures from Keystone with respect to ongoing participation:

(1) Written confirmations of each purchase or redemption transaction involving shares of an Affiliated Fund or a Third Party Fund Portfolio (including transactions resulting from the realignment of assets caused by a change in the Asset Allocation Model's investment mix and from periodic rebalancing of Account assets);

(2) Telephone quotations of such Independent Fiduciary's IRA Account balance;

(3) A periodic, but not less frequently than quarterly, Statement of Account specifying the net asset value of the IRA's assets in such Account, a summary of purchase, sale and exchange activity and dividends received or reinvested, a summary of cumulative realized gains and/or losses, and a statement of fees paid to Keystone and its affiliates;

(4) Semiannual and annual reports that included financial statements for the Portfolios;

(5) A quarterly report pertaining to the applicable Asset Allocation Model describing the Asset Allocation Model's performance during the preceding quarter; market conditions and economic outlook; and, if applicable, prospective changes in Portfolio allocations for the Asset Allocation Model and the reasons therefor;

(6) At least annually, a written or oral inquiry from Keystone to ascertain whether the information provided on the Questionnaire or in the Interview Report was still accurate or required updating; and

(7) At least annually during the first calendar quarter of each year after March 24, 1999, or at other times specified in Section II(l), a termination form (the Termination Form), meeting the requirements of Section II(k) and (l) below.

(j) If authorized in writing by the Independent Fiduciary, the IRA was automatically rebalanced on a quarterly basis by Keystone (using the net asset values of the affected Funds as of the close of business on a pre-established date) to the Asset Allocation Model previously prescribed by the Independent Fiduciary, if one or more Fund allocations deviated from the Asset Allocation Model prescribed by the Independent Fiduciary because—

(1) At least one transaction required to rebalance the IRA among the Funds involved a purchase or redemption of securities valued at $250 or more; and

(2) The net asset value of the Fund affected was more than 5 percent of the IRA's investment in such Fund.

(k) Keystone was authorized to provide written notice to the Independent Fiduciary, at least 30 days prior to the implementation of any of the following changes:

(1) A change in the asset mix outside the current Asset Allocation Model;

(2) The division of a class of assets (the Asset Class);

(3) The replacement of a Third Party Fund with an Affiliated Fund, or an Affiliated Fund with a Third Party Fund; and

(4) An increase in the Outside Fee.

(l) The written notice described above in Section II(k) was required to —

(1) State that the Independent Fiduciary could terminate the IRA's participation in the Investment Advisory Program at will and without penalty, upon receipt by Keystone of written notice from the Independent Fiduciary; and

(2) Explain that any of the proposed changes noted in paragraphs (k)(1)–(4) of Section II would go into effect if the Independent Fiduciary did not elect to withdraw by the effective date.

(3) For changes occurring after March 24, 1999, the notice was to be accompanied by a Termination Form containing instructions identical to those set forth above in paragraphs (l)(1)–(2) of this Section II.

(m) Keystone was not authorized to replace an Affiliated Fund with a Third Party Fund Portfolio or vice versa, nor was Keystone authorized to make an additional Third Party Fund Portfolio available for investment under the Investment Advisory Program.

(n) Keystone will maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Keystone and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than Keystone, shall be subject to the taxes imposed by section 4975(a) and 4975(b) of the Code if the records are not maintained or are not available for

examination as required by paragraph (o) of this Section II below.

(o)(1) Except as provided in section (o)(2) of this paragraph, the records referred to in paragraph (o) of this Section II are unconditionally available at their customary location during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any Independent Fiduciary of a participating IRA or any duly authorized representative of such Independent Fiduciary; and

(C) Any participant or beneficiary of any participating IRA or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in paragraphs (o)(1)(B) and (o)(1)(C) of this paragraph (o) are authorized to examine the trade secrets of Keystone or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) The term "Keystone" means Keystone Brokerage, Inc. and any affiliate of Keystone, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of Keystone includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Keystone; (For purposes of this subparagraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any individual who is an officer, director or partner in Keystone or a person described in subparagraph (b)(1); and

(3) Any corporation or partnership of which Keystone or an affiliate or a person described in subparagraphs (b)(1) or (b)(2) of this Section III, is a 10 percent or more partner or owner.

(c) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer performing a policy-making function for the entity.

(d) The term "IRA" includes a self-directed individual retirement account which is described in section 408(a) of the Code and which is not an "employee benefit plan" covered under Title I of the Act. The term "IRA" does not include any IRAs that were sponsored or maintained by Keystone or its affiliates for their own employees nor does it include any IRAs that were held by employees of Keystone or its affiliates in their individual capacities.

(e) The term "Independent Fiduciary" means an individual who was covered under a self-directed IRA which invested in shares of the Funds.

(f) The term "Asset Class" means an asset class under a classification system used by Morningstar, Inc. (Morningstar) or Lipper, Inc. (Lipper). For purposes of this exemption, two Funds were not in the same Asset Class if they were classified differently under either the Morningstar or Lipper classification systems. Thus, for example, if two Funds were treated in separate Asset Classes under the Morningstar system, they would be treated as being in separate Asset Classes even if the Funds were in the same Asset Class (or were not classified at all) under the Lipper system.

(g) The term "Affiliated Fund" means a portfolio of an investment company registered under the Investment Company Act for which Keystone or an affiliate acted as the investment adviser and may have also acted as the sub-adviser, co-administrator or custodian.

(h) The term "Third Party Fund" means a portfolio of an investment company that is registered under the Investment Company Act for which neither Keystone nor any affiliate acted as an investment adviser, sub-adviser, co-administrator or custodian.

(i) The "Advisory Fees" refer to the investment advisory fees that were paid by the Affiliated Funds to Keystone and its affiliates.

(j) The "Administrative Fees" refer to the co-administration fees that were paid by the Affiliated Funds to GGA and BISYS.

(k) The "Rule 12b–1 Fees" were paid to Keystone and its affiliates by the Third Party Funds in connection with certain distribution-related services (e.g., advertising) that were made pursuant to a written plan of distribution.

Effective Date: This exemption is effective from October 3, 1997 until June 30, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published on January 22, 2001 at 66 FR 6679.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Ibbotson Associates, Inc. (Ibbotson) Located in Chicago, Illinois

[Prohibited Transaction Exemption 2001–15; Exemption Application No.: D–10897]

Exemption

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the provision of asset allocation services (the Service) by Ibbotson to Plan participants and the receipt of fees by Ibbotson from Service Providers in connection with the provision of such asset allocation services, provided that the following conditions are met.

I. General Conditions

A. The retention of Ibbotson to provide the Service will be expressly authorized in writing by an independent fiduciary of each Plan.

B. Ibbotson shall provide the independent fiduciary of each Plan with the following, in writing:

(1) Prior to authorization, a complete description of the Service and disclosure of all fees and expenses associated with the Service.

(2) Any other reasonably available information regarding the Service that the independent fiduciary requests.

(3) A contract for the provision of the Service which defines the relationship between Ibbotson, the Service Providers and the Plan sponsor, and the obligations thereunder. Such contract shall be accompanied by a termination form with instructions on the use of the form. The termination form must expressly state that a Plan may terminate its participation in the Service without penalty at any time. However, a Plan which terminates its participation in the Service before the expiration of the contract will pay its pro-rata share of the fees that it would otherwise owe for the Service under the contract and, if applicable, any direct costs actually incurred by Ibbotson which would have been recovered from the Plan but for the termination of the contract, including any direct setup expenses not previously recovered. Thereafter, the termination form shall be provided no less than annually.

(4) At least 45-days prior to the implementation of any material change to the Service or increase in fees or expenses charged for the Service, notification of the change and an explanation of the nature and the amount of the change in the Service or increase in fees or expenses.

(5) A copy of the proposed and final exemption as published in the **Federal Register**.

(6) An annual report of Plan activity which summarizes the performance of the asset allocation categories provided to the Plan and provides a breakdown of all fees and expenses paid to Ibbotson in connection with the provision of the Service to the Plan for the year. Such report shall be provided no more than 45 days after the period to which it relates. Upon the independent fiduciary's or Plan sponsor's request, such report may be provided more frequently.

C. Ibbotson will provide each Plan participant with the following:

(1) Written notice that the Service is available and provided by Ibbotson, an entity independent of the Service Provider and the Plan sponsor.

(2) Prior to using the Service, full written disclosures that will include information about Ibbotson and a description of the Service.

(3) Access to a web site or paper-based communications which will clearly indicate that the Plan participant is receiving the Service from Ibbotson, and that Ibbotson is independent of the Service Provider.

(4) A questionnaire which must be completed prior to utilization of the Service.

(5) An investment advisory service agreement under which the Plan participant will acknowledge his or her understanding that the Service is provided by Ibbotson and not the Service Provider. This agreement must be completed prior to utilization of the Service.

D. Any investment advice given to a Plan participant by Ibbotson under the Service will be based solely on the responses provided by the Plan participant through the Service's interactive computer program or through a paper or telephone interview and will be based on the application of an objective methodology developed by Ibbotson.

E. Any investment advice given to a Plan participant will be implemented only at the express direction of the Plan participant.

F. The total fees paid to Ibbotson and a Service Provider, in connection with the provision of the Service, by each Plan does not exceed "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

G. The only fees which are payable to Ibbotson in connection with the provision of the Service include, subject to negotiation, one or more of the following:

(1) An annual flat fee based on a fixed dollar amount per Plan participant for the Service. This fee may be paid by the Plan, Plan sponsor, Plan participant or the Service Provider.

(2) A technology licensing fee payable by the Service Provider in the first year that the Service is provided to a Plan. The fee will be a fixed dollar amount based on the number of Plan participants and beneficiaries contained on the Service Provider's record-keeping system. Each time the number of Plan participants and beneficiaries on the Service Provider's record-keeping system increases by at least 10%, an additional fixed dollar amount based on the increase in Plan participants and beneficiaries will be assessed and charged to the Service Provider for the new Plan participants and beneficiaries (the Revised Technology Fee).

(3) For subsequent years, Ibbotson will charge the Service Provider an annual technology maintenance fee equal to up to 20% of the technology licensing fee charged to the Service Provider in the first year plus up to 20% of the Revised Technology Fee.

(4) Ibbotson will charge the Plan or Plan sponsor an Internet customization fee where a Plan sponsor contracts directly with Ibbotson for the provision of the Service. This flat fee will be based on the time spent by Ibbotson personnel on its customization of the Service for the particular Plan.

(5) For those Plan sponsors electing to receive a Plan analysis report, an annual flat fee based on a fixed dollar amount per Plan investment analysis report. This fee will be paid by the Plan sponsor or Service Provider.

H. No portion of any fee or other consideration payable by the Plan or the Plan sponsor to Ibbotson in connection with the Service will be received or shared with a Service Provider.

I. Neither the fees charged nor the compensation received by Ibbotson will be affected by the investment selections or the decisions made by the Plan participants and beneficiaries regarding investments of the assets in their accounts.

J. Each Service Provider shall represent to Ibbotson that it will not impose any additional fees and/or charges (relating to the investment products made available to Plans) on Plans who contract for the Service unless such fees and charges are imposed on the Service Provider's similarly situated clients who do not contract for the Service.

K. Ibbotson will maintain insurance coverage from an insurer with a rating in one of the three highest generic categories by at least one nationally recognized statistical rating service, in the amount of at least $5 million for the payment of any liabilities that may arise with respect to the Service by reason of a breach of fiduciary duty described in section 404 of the Act or a violation of the prohibitions of section 406 of the Act or section 4975 of the Code. Such insurance coverage will be provided under a "claims made" policy. In the event that Ibbotson changes insurers or ceases to provide the Service, Ibbotson will maintain "trail coverage" with respect to claims made during the period in which the policy was in effect for a period of three years following such a change or cessation of the Service.

L. No Service Provider shall at any time own any interest, by vote or value in Ibbotson, and neither Ibbotson nor any affiliate shall own any interest, by vote or value, in a Service Provider.

M. The annual revenues derived by Ibbotson from any one Service Provider shall not constitute more than 5% of the annual revenues of Ibbotson.

N. Ibbotson will maintain for a period of six years, the records necessary to enable the persons described in paragraph (O) of this section to determine whether the conditions of the exemption are met, including records of the recommendations made to Plan participants and beneficiaries and their investment choices, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Ibbotson, the records are lost or destroyed prior to the end of the six year period.

(2) No party in interest, other than Ibbotson shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code if records are not maintained or not available for examination as required by this paragraph and paragraph O(1) below.

O. (1) Except as provided in subparagraph (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to paragraph (N) of this section are unconditionally available at their customary location for examination during normal business hours by—

(a) Any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission,

(b) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary,

(c) Any contributing employer to any participating Plan or any duly authorized representative of such employer, or an employee organization whose members are participants and beneficiaries of a participating Plan; or

(d) Any Plan participant or beneficiary of any participating Plan or any duly authorized representative of such Plan participant or beneficiary.

(2) None of the persons described in paragraph (1)(b)–(d) of this paragraph (O) shall be authorized to examine trade secrets of Ibbotson, or commercial or financial information which is privileged or confidential.

III. Definitions

A. The term "Service" means the asset allocation service provided by Ibbotson to Plans which is accessed through computer software and other written communications in order to provide personalized recommendations to Plan participants regarding the allocation of their investments among the options offered under their Plan.

B. The term "Service Provider" means an entity that has been in the financial services business for at least three years, and during such period, has not been convicted of a felony offense involving abuse or misuse of such entity's employee benefit plan position or employment, or any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary. Such entity is also described in one of the following categories:

1. A bank, savings and loan association, insurance company or registered investment adviser which meets the definition of a "qualified professional asset manager" (QPAM) set forth in section V(a) of Prohibited Transaction Exemption 84–14 (49 Fed. Reg. 9494 (Mar. 13, 1984)), as corrected at 50 Fed. Reg. 41430 (Oct. 10, 1985) and in addition, has, as of the last day of its most recent fiscal year, total client assets under management and control in an amount not less than $250 million; or

2. A broker dealer registered under the Securities Exchange Act of 1934, which has, as of the last day of its most recent fiscal year, $1 million in shareholders' or partners' equity, and total client assets under management and control in an amount not less than $250 million.

C. The term "independent fiduciary" means a Plan fiduciary which is independent of Ibbotson and its affiliates and independent of the Service Provider and its affiliates.

D. The term "affiliate" includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, relative of, or partner in any such person; and

(3) Any corporation or partnership, of which such person is an officer, director or partner.

E. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

F. The term "Plan" means an employee benefit pension plan as defined in section 3(2) of the Act.

Effective Date: This exemption is effective for transactions occurring on or after January 22, 2001.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published at 66 FR 6689 (January 22, 2001).

Written Comments

The Department received one comment from interested persons which was submitted by Ibbotson (the Applicant).

Section I(C) describes the information that Ibbotson will provide Plan participants. Specifically, I(C)(3) states: "Access to Ibbotson's web site or paper-based communications which will clearly indicate that the Plan participant is receiving the Service from Ibbotson, and that Ibbotson is independent of the Service Provider." In its comments, the Applicant states that it has determined that access to the Service and to information relating to thereto and to Ibbotson will be housed on the website established and maintained by the Service Provider or by another entity on the Service Provider's behalf, and not on a separate Ibbotson website. The Applicant represented in its application, and as stated in representations 5 and 6 of the Summary of Facts and Representations of the Notice of proposed exemption, all recommendations resulting from the use of the Service will be generated by Ibbotson's proprietary forecasting engine, and that Ibbotson will always retain sole control of the content of the Service and the advice contained therein will monitor it. Thus, Ibbotson requests that the text of Section I(C)(3) be modified to read "Access to web site or paper-based communications which will clearly indicate that the Plan participant is receiving the Service from Ibbotson, and that Ibbotson is independent of the Service Provider." The Department has made the requested change. In light of this modification, the Department notes that the first sentence of the third paragraph of representation 5 has been changed to now read "If a Plan participant elects to receive his/her advice through the Internet, the Plan participant will access a website provided by the Service Provider or the Plan sponsor where the questionnaire and investment advice is housed." The second sentence of this paragraph has been deleted.

Section I(C)(4) states "A tolerance questionnaire which must be completed prior to utilization of the Service." The Applicant requests that the word "tolerance" be removed because it may be confusing to participants who might then expect to receive a separate questionnaire designed to evaluate risk tolerance. As stated in representation 5 of the Summary of Facts and Representations, the questionnaire is designed to evaluate a Plan participant's anticipated time horizon to retirement, savings rate and other personal financial factors. The Department has made the requested revision.

In its comments, the Applicant requested that the effective date of the exemption be made retroactive to the date of publication of the proposed exemption in the **Federal Register**. The Department concurs, and has made the final exemption effective January 22, 2001.

Lastly, at the request of the Applicant, in the second paragraph of representation 8, the Department has replaced the number 40 with 70. Thus, it now reads: "Step 1: Generate return and inflation data. Ibbotson's first step in this process is to generate hundreds of sets of asset return and inflation data covering the next 70 years."

FOR FURTHER INFORMATION CONTACT: Allison Padams Lavigne, U.S. Department of Labor, (202)219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does

it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of April, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 01–9348 Filed 4–13–01; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10876, et al.]

Proposed Exemptions; Retirement Plan of Plumbers and Steamfitters Local No. 489 of Cumberland, Maryland (the Plan) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. __, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons: Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Retirement Plan of Plumbers and Steamfitters Local No. 489 of Cumberland, Maryland (the Plan) Located in Cumberland, Maryland

[Application No. D–10876]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of certain real property (the Property) to the Plan by the Plumbers and Steamfitters Local No. 489 (the Union), a party in interest with respect to the Plan, provided the following conditions are satisfied:

(a) The terms and conditions of the transaction are no less favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) The Plan incurs no expenses from the Sale;

(d) The Plan pays the lesser of $100 or the fair market value of the Property; and

(e) An independent fiduciary will approve and enforce the terms of the proposed transaction, if granted.

Summary of Facts and Representations

1. The Plan is a multiemployer defined benefit pension plan. As of January 21, 2000, the estimated number of participants and beneficiaries affected by the proposed transaction is 199 and the approximate aggregate fair market value of the Plan's total assets is in excess of $14,000,000. The Plan is a Taft-Hartley trust fund established pursuant section 302(c)(5) of the Labor Management Relations Act which is intended to qualify under section 401(a) of the Code. The Plan is administered by a four member board of trustees (the Trustees) of whom two members are selected by the Union. The Plan is for employees covered by collective bargaining agreements between the participating employers and the Union, and for certain employees of the Plan and the Union.

2. The Property is located at 2 Park Street, Cumberland, Maryland. The Property contains an area of 15,751

square feet. The subject Property is improved by a one story concrete block and part brick veneer commercial building measuring 126 feet in width by 50.5 feet deep containing 6,363 square feet.

3. The Property was appraised by Dennis E. Perrin (the Appraiser), a state of Maryland Certified General Appraiser, employed by Perrin and Perrin, located in Cumberland, Maryland, who determined that the Property had a fair market value of $259,000, as of December 17, 1998. The Appraiser utilized in his valuation the highest and best use methodology for the Property.

4. The Union proposes to sell the Property to the Plan for cash in a one-time transaction with no expenses incurred by the Plan. The agreement between the Plan and the Union permits the Plan for a period of 365 days from the date of the purchase to nullify the Sale. The applicant represents that the Union will receive $100 as consideration for the Sale.[1]

5. The applicant also represents that compliance with the terms and conditions of the requested exemption will be monitored and enforced by an independent fiduciary, Glenn J. Robinette (Mr. Robinette) of the Law Office of Glenn J. Robinette, located in Cumberland, Maryland. Mr. Robinette represents that he has extensive experience in the field of real estate and estate planning manners. Mr. Robinette represents that the proposed Sale is in the best interests of the Plan and is protective of the rights of the participants and beneficiaries of the Plan. Mr. Robinette represents that (i) the Sale will provide the Plan with an opportunity to acquire a valuable asset which will appreciate in value; (ii) the Sale will serve to further diversify the portfolio, since the Plan holds no realty at this time; (iii) the Sale will comply with the Plan's growth objectives; (iv) the purchase price of $100 is extremely low; and (v) the 365 days provided to the Plan to nullify the Sale is beneficial and necessary for the proposed transaction.

6. The applicant represents that the Plan is prompted to take this action for the following reasons (i) the purchase of the Property would benefit the Plan in that it is a prudent investment of Plan assets and has potential for appreciation; (ii) the Plan will purchase the Property with a value greater than the purchase price; (iii) the value of the Plan assets will increase substantially upon the purchase of the Property; (iv) the purchase would provide diversification since the assets in the Plan are primarily invested in financial instruments and not real estate; and (v) the Plan maintaining the Property would provide a greater assurance that the Union will continue to exist and negotiate with participating employers so that contributions continue to be made to the Plan. The proposed transaction will be monitored and enforced by a qualified, independent fiduciary.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because (a) the Sale is a one-time transaction for cash; (b) the Plan will not incur any expenses from the transaction; (c) the Plan pays the lesser of $100 or the fair market value of the Property; and (d) the independent fiduciary will approve and enforce the terms of the proposed transaction.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif I. Ford of the Department, telephone (202) 219–8883 (this is not a toll-free number).

THS Profit Sharing Plan (the Plan) Located in Bedford Hills, New York

[Application No. D–10921]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of two life insurance policies (the Policies) which insure Tim H. Shoecraft, the sole participant (the Participant),[2] to the Shoecraft Family Trust Dated October 9, 1991 (the Trust), which is a disqualified party with respect to the Plan under section 4975(e)(2) of the Code, provided that the following conditions are met:

(a) The Participant is the insured under the contract;

(b) Prior to the Sale, the Plan will afford the insured notice of the Sale and the opportunity to purchase the Policies;

(c) The Sale will be for full and adequate consideration, based upon the cash surrender value of the Policies at the time of the transaction;

(d) The Plan is authorized to purchase and own life insurance;

(e) The amount received by the Plan as consideration for the Sale is at least equal to the amount necessary to put the Plan in the same cash position as it would have been in had it retained the contract, surrendered it, and made any distribution owing to the Participant of his vested interest under the Plan; and

(f) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which was created effective December 1, 1991. As of July 11, 2000, the Plan had net assets valued at approximately $60,000 and one participant, Mr. Shoecraft. The trustees of the Plan have full investment discretion and are comprised of the Participant and his wife, Marianne Shoecraft.

The Participant is the sole shareholder of Shoecraft and Associates, a financial advisory company located in the State of New York. The Participant is also the settlor of the Trust. The Trust is a grantor trust, which is defined as a trust that is taxed at the settlor's tax rate because the settlor has the power to control the beneficial enjoyment of the trust, retains a reversionary interest in the trust, has administrative powers over the trust, has the power to revoke the trust, or benefits from the income of

[1] The applicant represents that it is contemplated that the Plan will lease a portion of the Property to the Union; and the Union will be responsible for all utilities and will perform all necessary maintenance and/or remodeling for the building, but that the Plan would pay real estate taxes. Additionally, the applicant represents that the transaction will satisfy the conditions of PTE 76–1 and PTE 77–10 (41 FR 12740, March 26, 1976 and 42 FR 33918, July 1, 1977 respectively). The Department expresses no opinion as to whether or not the lease of a portion of the Property by the Plan to the Union as described herein satisfies the terms and conditions of PTE 76–1 and PTE 77–10. Furthermore, the Department is providing no relief for such lease transaction. Lastly, the Department notes that, although the Sale of the Property is the subject of a proposed exemption, the fiduciary of the Plan must still adhere to the fiduciary responsibility provisions of section 404 of the Act. Thus, although the proposed purchase price is just $100, the fiduciary of the Plan has a duty under section 404 to ensure that the purchase of the Property is prudent, taking into account the costs and benefits associated with ownership of such Property.

[2] Because Tim H. Shoecraft is the sole shareholder of Shoecraft and Associates and he is the only participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

the trust. The beneficiaries of the Trust are family members of the Participant.

2. The Plan, the owner of the Policies, purchased the Policies from the Participant for their cash surrender values on December 1, 1992.[3] The Participant is the insured under the Policies. The Policies were issued by the Massachusetts Mutual Life Insurance Company. The cash surrender values of the Policies are $2,748 (Policy Number 71042940 valued at $1,375 + Policy Number 71042900 valued at $1,373 = $2,748). The cash surrender values of the Policies represent 4.58% of the fair market value of the assets of the Plan.

3. The Participant no longer desires to maintain the Plan. He has not made contributions in several years and wishes to eliminate the reporting and administrative requirements. Upon termination of the Plan, the Plan must discontinue, liquidate or sell the Policies. The Participant, because he is uninsurable, wishes to maintain the Policies after the termination of the Plan. From an economic perspective, the Participant represents that the Trust is the ideal entity to purchase the Policies. Additionally, the Participant represents that the Trust allows for an allocation of the proceeds between the beneficiaries of the Policies on a needs basis. Accordingly, the Participant requests an administrative exemption from the Department in order to permit the sale of the Policies to the Trust.

4. The Sale will be for adequate consideration, i.e., the greater of $2,748 or the cash surrender value of the Policies at the time of the transaction. Prior to the Sale, the Plan will afford the Participant notice of the Sale and the opportunity to purchase the Policies. If the Participant decides not to purchase the Policies and authorizes the Sale to the Trust, only then will the proposed Sale occur.

5. The Participant represents that the proposed transaction would be administratively feasible because it would be a one-time transaction for cash. Furthermore, the Participant states that the proposed transaction would be in the best interest of the Participant and the Plan because the Plan would incur no commissions, costs, or other expenses as a result of the Sale.

6. In summary, the Participant represents that the proposed transaction satisfies the statutory criteria for an administrative exemption under section 4975(c)(2) of the Code because:

(a) The Participant is the insured under the contract;

(b) Prior to the Sale, the Plan will afford the Participant notice of the Sale and the opportunity to purchase the Policies;

(c) The Sale will be for full and adequate consideration, based upon the cash surrender value of the Policies at the time of the transaction;

(d) The Plan is authorized to purchase and own life insurance;

(e) The amount received by the Plan as consideration for the Sale will be at least equal to the amount necessary to put the Plan in the same cash position as it would have been in had it retained the contract, surrendered it, and made any distribution owing to the Participant of his vested interest under the Plan; and

(f) The Plan will not be required to pay any commissions, costs or other expenses in connection with the Sale.

Notice to Interested Persons

Because Mr. Shoecraft is the only participant in the Plan who will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Phoenix Home Life Mutual Insurance Company (Phoenix) Located in Hartford, CT

[Application No. D–10943]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[4]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of common stock (Stock) of The Phoenix Companies, Inc. (the Holding Company), the parent of Phoenix, or (2) the receipt of cash (Cash) or Policy Credits, by or on behalf of any Eligible Policyholder of Phoenix which is an employee benefit plan (a Plan), including any Eligible Policyholder that is a Plan maintained by Phoenix or its affiliates (Phoenix Plan), in exchange for such Eligible Policyholder's membership interest in Phoenix, in accordance with the terms of a plan of reorganization (the Plan of Reorganization) adopted by Phoenix and implemented pursuant to section 7312 of the New York Insurance Law.

In addition, if the exemption is granted, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt and holding of the Stock, by a Phoenix Plan, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

The proposed exemption is subject to the following conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Reorganization is subject to approval, review and supervision by the Superintendent of Insurance of the State of New York (the Superintendent) and is implemented in accordance with procedural and substantive safeguards that are imposed under New York law.

(b) The Superintendent reviews the terms and options that are provided to Eligible Policyholders of Phoenix as part of such Superintendent's review of the Plan of Reorganization and the Superintendent only approves the Plan of Reorganization following a determination that the Plan of Reorganization is fair and equitable to Eligible Policyholders and is not detrimental to the general public.

(c) Each Eligible Policyholder has an opportunity to vote to approve the Plan of Reorganization after full written disclosure is given to the Eligible Policyholder by Phoenix.

(d) Any determination to receive Stock, Cash or Policy Credits by an Eligible Policyholder which is a Plan, pursuant to the Plan of Reorganization, is made by one or more Plan fiduciaries which are independent of Phoenix and its affiliates and neither Phoenix nor any of its affiliates exercises any discretion or provides investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

[3] In this regard the Department notes that Prohibited Transaction Class Exemption 92–5 (PTCE 92–5) (57 FR 5019, February 11, 1992) provides conditional exemptive relief for the sale, transfer, or exchange of an individual life insurance or annuity contract to an employee benefit plan from a plan participant on whose life the contract was issued, or from an employer, any of whose employees are covered by the plan. The Department is expressing no opinion as to whether the original acquisition of the Policies by the Plan satisfied the requirements of PTE 92–5.

[4] For purposes of this proposed exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(e) In the case of the Phoenix Plans, an independent fiduciary with respect to the Phoenix Plans:

(1) Exercises its authority and responsibility to vote on behalf of the Phoenix Plans at the special meeting of Eligible Policyholders on the proposal to approve the Plan of Reorganization;

(2) Monitors, on behalf of the Phoenix Plans, the acquisition and holding of any Stock, Cash or Policy Credits received;

(3) Makes determinations on behalf of the Phoenix Plans with respect to the voting and continued holding of any Stock held by such Plans until such holding is reduced so that it does not exceed the limits of section 407(a) of the Act;

(4) Disposes of Stock exceeding the limits of section 407(a) of the Act within six months of the effective date of the Plan of Reorganization.

(5) Provides the Department with a complete and detailed final report as it relates to the Phoenix Plans prior to the effective date of the demutualization.

(f) After each Eligible Policyholder entitled to receive Stock is allocated a fixed number 37 shares of Stock (subject to possible adjustment as provided in the Plan of Reorganization), additional consideration is allocated to each Eligible Policyholder who owned participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of Phoenix, which formula has been approved by the Superintendent.

(g) All Eligible Policyholders that are Plans participate in the transactions on the same basis as all Eligible Policyholders that are not Plans.

(h) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of Stock or in connection with the implementation of the commission-free purchase and sale program.

(i) All of Phoenix's policyowner obligations remain in force and are not affected by the Plan of Reorganization.

(j) The terms of the transaction are at least as favorable to the Plans as an arm's-length transaction with an unrelated party.

Section III. Definitions

For purposes of this proposed exemption:

(a) An "affiliate" of Phoenix includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Phoenix. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual), and

(2) Any officer, director or partner in such person.

(b) The term "Eligible Policyholder" means a person who is (or collectively, persons who are) the owner(s) of one or more policies that are in force on the date of the adoption of the Plan of Reorganization.

(c) The term "Phoenix" means Phoenix Home Life Mutual Insurance Company and any of its affiliates, as defined in paragraph (a) of this Section III.

(d) The term "Policy Credit" means (a) for an individual or joint participating whole life insurance policy, the crediting of paid-up additions which will increase the cash value and death benefit of the policy; (b) for supplementary contracts issued under optional modes of settlement or annuities in the course of installment payment without a defined account value and that provide for the payment of additional interest, the crediting of an additional amount in the form of additional interest; (c) for supplementary contracts issued under optional modes of settlement or annuities in the course of installment payment without a defined account value not providing for the payment of additional interest, an increase in the installment payment amount; and (d) for all other individual or joint life policies and annuities, (i) if the policy or contract has a defined account value, an increase in the account value, to which the Company will apply no sales, surrender or similar charges, or that will be further increased in value to offset any of these charges, or (ii) if the policy or contract does not have a defined account value, the crediting of dividends under the policy or contract.

Summary of Facts and Representations

1. Phoenix is a mutual life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent. Phoenix is principally engaged in providing life insurance and annuities to individuals. It is authorized to transact life and health insurance in 50 states and the District of Columbia. As of December 31, 1999, Phoenix had total assets of approximately $19.6 billion (on a statutory accounting basis) and had more than $261 billion of life insurance in force.

As a mutual life insurance company, Phoenix has no stockholders. Policyholders of a mutual life insurance company are "members" of the company, and, in that capacity, they are entitled to vote to elect directors of the company and would be entitled to share in the assets of the company if it were liquidated.

Phoenix is the sole shareholder of PM Holdings, Inc. (Holdings), a holding company which is the sole or majority owner of a number of subsidiaries including life insurance companies, investment management companies, insurance brokers, broker-dealers, international business operations and trust companies. Holdings's most significant insurance company subsidiary is PHL Variable Insurance Company, a wholly-owned company which is primarily engaged in the sale and underwriting of variable annuity business. In addition, Holdings is the sole shareholder of W.S. Griffith & Co. Inc., a broker-dealer engaged in the sale and distribution of investment products of Phoenix and its subsidiaries. Holdings is also the sole shareholder of Phoenix Charter Oak Trust Company, which provides a full range of personal and institutional fiduciary services and life insurance trust services to Phoenix policyholders.

Holdings has an approximate 60% ownership interest in publicly traded Phoenix Investment Partners, Ltd. (PXP). PXP and its subsidiaries provide a variety of investment management and related services to a broad base of institutional, corporate and individual clients. PXP's businesses include investment advisory (for mutual funds and institutional clients), broker-dealer and investment research operations, as well as financial consulting services. Holdings is a direct or indirect owner of numerous other foreign and domestic corporations and enterprises, none of which has substantial involvement with U.S. employee pension or welfare plans.

2. As of April 1, 2000, Phoenix sold its group insurance business and therefore no longer sells or administers products in the employer-sponsored welfare plan market (e.g., group medical, dental, life and disability insurance and administrative services only contracts). Phoenix continues, however, to reflect on its records several thousand group insurance contracts which have been reinsured on a 100% indemnity basis with an unrelated insurer which is performing most of the services for such contracts. It is anticipated that such business will soon be entirely written on the reinsurer's paper.

While Phoenix remains active in the tax-sheltered annuity and individual retirement account market, it engages in few insurance product sales in the corporate qualified market. It maintains a group annuity product for a limited number of small 401(k) and profit

sharing plans; it also has a limited marketing effort for the sale of individual life insurance and annuity products in the corporate qualified market. The majority of the group and individual annuities issued by Phoenix to corporate qualified Plans and remaining on its books represent inactive cases.

Largely as a result of Phoenix' past activity in the employee benefit plans market, Phoenix had remaining, as of December 31, 1999, approximately 22,000 in force policies and contracts held on behalf of employee pension and welfare benefit plans. These included approximately 15,000 policies and contracts funding pension and profit sharing (including § 401(k)) plans and approximately 7,000 contracts providing welfare benefit plan coverage such as group life, short- and long-term disability, accidental death and dismemberment and group health coverage. In addition, Phoenix has approximately 24,000 annuity contracts funding 403(b) plans and individual retirement accounts. Phoenix no longer sells or administers group insurance policies or plans.

Phoenix and PXP sponsor the following Plans, which are expected to be Eligible Policyholders (collectively referred to herein as the "Phoenix Plans"):

(a) The Phoenix Home Life Mutual Insurance Company Employee Pension Plan (the Pension Plan) is a defined benefit pension plan. As of December 31, 1999, the Pension Plan had approximately 6,160 participants.

(b) The Phoenix Home Life Mutual Insurance Company Savings and Investment Plan (the Savings Plan) is a defined contribution plan. As of December 31, 1999, the Savings Plan had 3,002 participants.

(c) The Phoenix Home Life Mutual Insurance Company Agent Pension Plan (the Agent Pension Plan) is a defined contribution plan. As of December 31, 1999, the Agent Pension Plan had 1,024 participants.

(d) The Phoenix Home Life Mutual Insurance Company Agent Savings and Investment Plan (the Agent Savings Plan) is a defined contribution plan. As of December 31, 1999, the Agent Savings Plan had 535 participants.

(e) The Phoenix Home Life Mutual Insurance Company Employee Group Life Insurance Plan (the Group Life Plan) is a welfare benefit plan. As of December 31, 1999, the Group Life Plan had 2,889 participants.

(f) The Phoenix Home Life Mutual Insurance Company Agent Group Life Insurance Plan (the Agent Group Life Plan) is a welfare benefit plan. As of December 31, 1999, the Agent Group Life Plan had 773 participants.

(g) The Phoenix Investment Partners, Ltd. Group Profit Sharing Plan and Trust (the PXP Profit Sharing Plan) is a defined contribution plan. As of December 31, 1999, the PXP Profit Sharing Plan had 193 participants.

(h) The Phoenix Investment Partners, Ltd. Group Life Insurance Plan (the PXP Group Life Plan) is a welfare benefit plan. As of December 31, 1999, the PXP Group Life Plan had 493 participants.

(i) The Phoenix Investment Partners, Ltd. Group Long Term Disability Plan (the PXP Long Term Disability Plan) is a welfare benefit plan. As of December 31, 1999, the PXP Long Term Disability Plan had 359 participants.

3. On April 20, 2000, Phoenix's Board of Directors (the Board) authorized management to develop the Plan of Reorganization pursuant to which Phoenix would be converted from a mutual life insurance company to a stock life insurance company. Phoenix's Board of Directors adopted the Plan of Reorganization on December 18, 2000.

Under the Plan of Reorganization, Phoenix will convert from a mutual life insurance company to a stock life insurance company by operation of New York law. The ultimate result of the transaction will be a structure in which all of Phoenix's stock will be held by the Holding Company, which has been organized under Delaware law for this purpose. Eligible Policyholders of Phoenix will receive Holding Company Stock or, in certain cases, Cash or Policy Credits, and the membership interests and rights to surplus of Phoenix policyholders will be extinguished.[5]

An initial public offering (IPO), in which shares of Stock will be sold for cash, is to occur on the effective date of the reorganization. The Holding Company will contribute a portion of the proceeds from the IPO to Phoenix in an amount at least equal to the amount required to pay Cash and fund the crediting of Policy Credits to Eligible Policyholders who are to receive such consideration. As promptly as possible (but no later than 60 days) after the effective date of the reorganization, the Holding Company will pay, or cause Phoenix to pay, Cash or Policy Credits to Eligible Policyholders entitled under the Plan of Reorganization to receive such consideration.

The Holding Company will be a publicly-traded company, and an application will be made to list its stock on the New York Stock Exchange.

4. The main purpose of the reorganization is to demutualize Phoenix so that, as a stock insurance company subsidiary of the Holding Company, it can increase its potential for long-term growth and financial strength. A public structure would best enable Phoenix to accelerate its wealth management strategy and to grow its existing business and develop new business opportunities in the insurance and financial services industries. The Board believes that, by becoming a stock company, Phoenix will be able to raise money more efficiently and have greater flexibility to acquire other companies using the Holding Company Stock as acquisition currency. This would enable Phoenix to increase its market leadership, financial strength and strategic position, providing additional security to its policyholders.

Additionally, access to capital markets will enable Phoenix to invest in new technology, improved customer service, new products and channels of distribution. The Board also believes that the reorganization will enable Phoenix to enhance its position as a premier provider of wealth management products and solutions, distributed through a wide variety of financial advisors and financial institutions, and to serve the wealth accumulation, preservation and transfer needs of the high net worth and affluent markets. Phoenix will also obtain more financial flexibility with which to maintain its ratings and financial stability and be able to better attract, retain and provide incentives to management in a fashion consistent with other stock life insurance companies. As a mutual life insurer, Phoenix can increase its capital

[5] The proceeds of the demutualization will belong to a Plan if they would be deemed to be owned by the Plan under ordinary notions of property rights. See ERISA Advisory Opinion 92–02A, January 17, 1992 (assets of plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law). It is the view of the Department that, in the case of an employee welfare benefit plan with respect to which participants pay a portion of the premiums, the appropriate plan fiduciary must treat as plan assets the portion of the demutualization proceeds attributable to participant contributions. In determining what portion of the proceeds are attributable to participant contributions, the plan fiduciary should give appropriate consideration to those facts and circumstances that the fiduciary knows or should know are relevant to the determination, including the documents and instruments governing the Plan and the proportion of total participant contributions to the total premiums paid over an appropriate time period. In the case of an employee pension benefit plan, or where any type of Plan or trust is the policyholder, or where the policy is paid for out of trust assets, it is the view of the Department that all of the proceeds received by the policyholder in connection with a demutualization would constitute plan assets. If the demutualization proceeds belong to a Plan, the appropriate plan fiduciaries must take all necessary steps to safeguard such assets in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

only through retained surplus contributed by its businesses or through the sale of surplus notes or similar instruments issued by it. Neither source is fully adequate to generate substantial surplus accumulations or to provide permanent capital to Phoenix.

The reorganization will make it easier for Phoenix to benefit from changes in laws relating to affiliations between insurance companies and other types of companies, such as banks. These changes include the Gramm-Leach-Bliley Act of 1999, which permits mergers that combine commercial banks, insurers and securities firms under one holding company. Until the passage of the Gramm-Leach-Bliley Act, legislation had limited the ability of banks to engage in securities-related businesses and had restricted banks from being affiliated with insurance companies. In addition, Phoenix, as a stock insurer that is a subsidiary of the Holding Company, will have access through the Holding Company to the capital markets, enabling Phoenix to obtain capital from a variety of sources.

5. Phoenix will compensate the Eligible Policyholders for their respective policyholders' membership interests, which will be extinguished as part of the reorganization, by giving them shares of Stock, Cash or Policy Credits. The economic value of this compensation is not available to the Eligible Policyholders so long as Phoenix continues its operations as a mutual company. However, the reorganization will not in any way reduce the benefits, values, guarantees or dividend eligibility of existing policies or contracts issued by Phoenix. All of Phoenix's policyowner obligations remain in force and will not be affected by the Plan of Reorganization.

6. Section 7312 of the New York Insurance Law (Section 7312) establishes an approval process for the reorganization of a life insurance company organized under New York law. The Plan of Reorganization must be approved both by the Superintendent and by the Eligible Policyholders.

Under Section 7312, the conversion of a mutual life insurance company to a stock company is initiated by the board of directors of the mutual company. The Plan of Reorganization may be approved only by a vote of at least 75% of the entire board of directors. The approval must include a finding that the Plan of Reorganization is fair and equitable to Eligible Policyholders.

After approval by the mutual insurance company's board of directors, the Plan of Reorganization is then required to be submitted to the Superintendent for his or her review. In order for the Plan of Reorganization to become effective, the Superintendent must determine that the Plan of Reorganization does not violate the requirements imposed by Section 7312.

In order to aid the Superintendent in discharging his or her duties, Section 7312 permits the Superintendent to appoint an independent actuary to review actuarial aspects of the Plan of Reorganization. In addition, Section 7312 permits the Superintendent to appoint other qualified disinterested persons or institutions to act as consultants to the Superintendent. In the case of the Phoenix reorganization, the Superintendent retained The Blackstone Group to provide financial advice, Clifford Chance Rogers & Wells LLP to provide legal advice and Arthur Andersen LLP to provide actuarial and auditary advice.

Section 7312 also requires the Superintendent to hold a public hearing on a Plan of Reorganization which policyholders and other interested persons may express views on the Plan of Reorganization. Notice of the public hearing must be provided to each policyholder of the insurance company whose policy or contract is in force of the date of adoption of the Plan of Reorganization, and must be published in three newspapers of general circulation. The purpose of the public hearing is to allow interested persons to comment on the fairness of the terms and conditions of the Plan of Reorganization and the reasons and purposes for the reorganization of the insurer, and to consider whether the reorganization is in the interest of the insurer and its policyholders and is not detrimental to the public.

After the public hearing, the Superintendent must determine whether or not to approve the Plan of Reorganization. Under Section 7312, the Superintendent approves the Plan of Reorganization if he or she finds that it does not violate the insurance law, that it is fair and equitable to policyholders, that it is not detrimental to the public, and that, after giving effect to the reorganization, the insurer will have an amount of capital and surplus that the Superintendent deems to be reasonably necessary for the company's future solvency.

The Superintendent must also determine that the Plan of Reorganization does not fail to meet the following requirements of Section 7312(c):

(a) the Plan of Reorganization demonstrates a purpose and specific reasons for the proposed reorganization;

(b) the Plan of Reorganization is in the best interest of the mutual life insurer and its policyholders;

(c) the Plan of Reorganization is fair and equitable to the policyholders;

(d) the Plan of Reorganization provides for the enhancement of the operations of the reorganized insurer; and

(e) the Plan of Reorganization will not substantially lessen competition in any line of insurance business.

The Eligible Policyholders of the mutual insurance company must also be provided with notice of the Plan of Reorganization and an opportunity to vote whether to approve the Plan of Reorganization. Each policyholder is entitled to one vote, and the Plan of Reorganization must be approved by a vote of at least two-thirds of all votes cast by policyholders entitled to vote.

A decision by the Superintendent to approve a Plan of Reorganization pursuant to Section 7312 of the New York Insurance Law is subject to judicial review in the New York courts.

7. Phoenix's Plan of Reorganization provides for Eligible Policyholders, whose membership interests in the mutual company will be extinguished in the reorganization, to receive Stock, Cash or Policy Credits. For this purpose, an Eligible Policyholder generally is the owner of one or more policies that are in force on the date of the adoption of the Plan of Reorganization. In order to determine the amount of consideration to which each Eligible Policyholder is entitled, each Eligible Policyholder will be allocated (but, for those policyholders who do not receive Stock, not issued) a number of shares of Stock equal to the sum of (i) a fixed number of 37 shares of Stock (subject, with the approval of the Superintendent, to proportional adjustment in respect of the initial public offering) and (ii) where the Eligible Policyholder owns one or more participating policies, an additional number of shares based on actuarial formulas that take into account each participating policy's past and expected future contributions to the surplus of Phoenix.

Certain Eligible Policyholders will receive Cash or Policy Credits instead of Stock. The amount of Cash or Policy Credits shall be determined by reference to the price per share at which the Stock is offered to the public in the initial public offering and the number of shares allocated to such Eligible Policyholders.

Certain Eligible Policyholders, namely owners of individual retirement annuities, tax sheltered annuities, or certain other policies issued directly to participants in qualified pension or profit-sharing plans, will receive Policy

Credits equal in value to the Stock allocated to such Eligible Policyholders.

Certain other Eligible Policyholders will receive Cash instead of Stock. These Eligible Policyholders include:

(a) Eligible Policyholders who are not required to receive Policy Credits in accordance with the preceding paragraph and (i) whose address for mailing purposes is shown on Phoenix's records to be located outside the United States of America or with respect to whom Phoenix, after a reasonable effort to locate such Eligible Policyholder, has a reasonable belief that the most recent address for mailing purposes as shown on Phoenix's records is an address at which mail to such Eligible Policyholder is undeliverable or (ii) with respect to whom Phoenix determines in good faith to the satisfaction of the Superintendent that it is not reasonably feasible or appropriate to provide consideration in the form of Stock; and

(b) Eligible Policyholders who are allocated 60 or fewer shares of Stock and who have affirmatively indicated, on a form provided to such Eligible Policyholder that has been properly completed and received by Phoenix prior to a date set by Phoenix and approved by the Superintendent, a preference to receive Cash in lieu of Stock.

All Eligible Policyholders that are Plans will participate on the same basis as Eligible Policyholders that are not Plans. The terms of the transaction will be at least as favorable to the Plans as an arm's-length transaction with unrelated parties.

The Plan of Reorganization also provides that the Holding Company will establish a commission-free purchase and sale program which will begin no sooner than the first business day after the six-month anniversary of the effective date of the reorganization and no later than the first business day after the twelve-month anniversary of the effective date of the reorganization and will continue in either case for 90 days (and may be extended if the Board determines such extension to be appropriate and in the best interest of the Holding Company and its stockholders). Pursuant to such purchase and sale program, each Eligible Policyholder or other stockholder who holds 99 or fewer shares of Stock will have the opportunity to sell at prevailing market prices all, but not less than all, the shares of Stock owned by such stockholder, without paying brokerage commissions, mailing charges, registration fees or other administrative or similar expenses. The Holding Company will concurrently offer each stockholder entitled to participate in the purchase and sale program the opportunity to purchase that number of shares of Stock necessary in order to increase such stockholder's holdings to a 100-share round lot, without paying brokerage commissions, mailing charges, registration fees or other administrative or similar expenses. The purchase and sale arrangements described in the Plan of Reorganization will be subject to such limitations as are agreed upon between the Holding Company and the SEC.

8. Several Phoenix Plans are expected to be Eligible Policyholders entitled to receive consideration in connection with the implementation of the Plan of Reorganization. Phoenix has retained U.S. Trust Co., N.A. to serve as independent fiduciary for these Plans in connection with the implementation of the Plan of Reorganization. U.S. Trust will determine whether the Plan of Reorganization is in the best interest of such Plans and their participants and beneficiaries, and it will vote at the special meeting of Eligible Policyholders on the proposal to approve or not to approve the Plan of Reorganization. If the vote is to approve the Plan of Reorganization, U.S. Trust will make, on behalf of each affected Phoenix Plan, any decisions available under the Plan of Reorganization regarding the receipt of consideration in the form of Stock, Cash or Policy Credits. Additionally, U.S. Trust will monitor, on behalf of the affected Phoenix Plans, the acquisition and holding of any consideration received, make determinations on behalf of the Phoenix Plan with respect to voting and the continued holding of the Stock received by such Plan, dispose of any Stock held by the Phoenix Plan which exceeds the limitation of section 407(a)(2) of the Act as reasonably as practicable but in no event later than six months following the effective date of the demutualization, and take all actions that are necessary and appropriate to safeguard the interests of the Phoenix Plans. Further, U.S. Trust will provide the Department with a complete and detailed final report as it relates to the Phoenix Plans prior to the effective date of the demutualization. Finally, U.S. Trust states that it has conducted a preliminary review of Phoenix's Plan of Reorganization and it sees nothing in the Plan that would preclude the Department of Labor from proposing the requested exemption.

9. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The requested exemption will be administratively feasible because the Plan of Reorganization will be implemented pursuant to stringent procedural and substantive safeguards imposed under New York law and supervised by the Superintendent. Furthermore, each Eligible Policyholder will have an opportunity to determine whether to vote to approve the terms of the Plan of Reorganization and will also be solely responsible for any decisions that may be permitted under the Plan of Reorganization regarding the form of consideration to be received in the reorganization. Because of the extensive protections afforded to Plans under New York law, no ongoing involvement by the Department of Labor is required in order to safeguard the interests of Plan policyholders.

(b) The requested exemption will be in the interest of the participants and beneficiaries of the Plans that are policyholders because the requested exemption would allow ERISA-covered Eligible Policyholders, whose membership interests in Phoenix are canceled in the reorganization, to acquire Stock or other valuable property. To the extent distributions are made in the form of Stock, Eligible Policyholders that are Plans will have an opportunity to participate in Phoenix's future earnings through any stock dividends and any appreciation in the value of their Stock while they hold the Stock, and, because the Stock will be publicly traded, they will have an opportunity to sell their holdings of Stock if they decide that it is appropriate to do so. In addition, because the reorganization is expected to enhance Phoenix's ability to access the capital markets, implementation of the Plan of Reorganization will benefit all policyholders. The reorganization will not, in any way, change premiums or reduce policy benefits, values, guarantees or other policy obligations of Phoenix to its policyholders and contract holders.

(c) The proposed transaction will protect the rights of Plans that are Eligible Policyholders because each such Plan, like other Eligible Policyholders, will have an opportunity to comment on the Plan of Reorganization and because one or more independent fiduciaries of each Eligible Policyholder that is a Plan will have an opportunity to decide whether to vote to approve the Plan of Reorganization after disclosure of its terms. Moreover, as discussed above, the Superintendent must make an independent determination that the Plan of Reorganization is fair and equitable to

Phoenix's policyholders, including Plan policyholders.

FOR FURTHER INFORMATION CONTACT: Karen Lloyd of the Department, telephone (202) 219–8194. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of April, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 01–9347 Filed 4–13–01; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Homeless Veterans' Reintegration Project Competitive Grants for FY 2001

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA) for Homeless Veterans Reintegration Projects (SGA 01–02).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service, (VETS) announces a grant competition for Homeless Veterans Reintegration Projects (HVRP) authorized under the Stewart B. McKinney Homeless Assistance Act. Such projects will assist eligible veterans who are homeless by providing employment and training, supportive, and transitional housing assistance. Under this solicitation, VETS may award up to thirty grants in Fiscal Year (FY) 2001. This notice describes the background, the application process, description of program activities, evaluation criteria, and reporting requirements for Solicitation of Grant Applications (SGA) 01–02. VETS anticipates that up to $6.66 million will be available for grant awards under this SGA.

The information and forms contained in the Supplementary Information Section of this announcement constitute the official application package for this Solicitation. To receive any amendments to this Solicitation (Please reference SGA 01–02), which may be subsequently issued, all applicants must register their name and address with the Grant Officer at the following address: U. S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

DATES: Applications and proposals are to be submitted, including those hand-delivered, to the address below by no later than 4:45 p.m., Eastern Time, May 16, 2001, or be postmarked or date stamped by the U.S. Postal Service on or before that date.

ADDRESSES: Applications will be mailed or hand delivered to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 01–02, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 219–6445 [not a toll free number].

SUPPLEMENTARY INFORMATION

Homeless Veterans Reintegration Project Solicitation

I. Purpose

The U.S. Department of Labor (DOL), Veterans' Employment and Training Service, (VETS) is requesting grant applications for the provision of employment and training services in accordance with the Stewart B. McKinney Homeless Assistance Act (MHAA), now called the McKinney-Vento Homeless Assistance Act, as reauthorized and codified at Chapter 41 of 38 U.S.C. Section 4111. These instructions contain general program information, requirements, and forms for application for funds to operate a Homeless Veterans Reintegration Project (HVRP).

II. Background

The Stewart B. McKinney Homeless Assistance Act of 1987, enacted on July 22, 1987, under Title VII, Subtitle C, Section 738(a) provides that "The Secretary * * * shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to expedite the reintegration of homeless veterans into the labor force."

This program was reauthorized under Section 621 of the McKinney Homeless Assistance Amendments Act of 1990 (Public Law 101–645) for an additional three years, i.e., through FY 1993. Under the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102–590—enacted on November 10, 1992), the Homeless Veterans Reintegration Project was reauthorized through Fiscal Year 1995. However, the program was rescinded in FY 1995. Public Law 104–275, dated October 9, 1996, was amended to reauthorize the program through FY 1998. Public Laws 105–41 and 105–114, enacted in 1997, extend the program through FY 1999. Public Law 106–73, dated October 19, 1999, reauthorized and codified at Title

38, Chapter 41, Section 4111, extends the program through FY 2003.

The Homeless Veterans Reintegration Project was the first nationwide Federal program that focused on placing homeless veterans into jobs. In accordance with the MHAA, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making approximately $6.66 million of the funds available to award grants for HVRPs in selected cities in FY 2001 under this competition. Both types of projects, urban and rural, in the past have provided valuable information on approaches that work in the different environments.

III. Application Process

A. Potential Jurisdictions to be Served

Due to the demonstration nature of the Act, the amount of funds available, and the emphasis on establishing or strengthening existing linkages with other recipients of funds under the MHAA, the only potential jurisdictions which will be served through this urban competition for HVRPs in FY 2001 are the metropolitan areas of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. All potential HVRP jurisdictions are listed in Appendix E.

B. Eligible Applicants

Applications for funds will be accepted from State and local public agencies, and nonprofit organizations, including Faith based organizations follow:

1. Workforce Investment Boards (WIBS) as defined in the Workforce Investment Act, Pub. L. 105–220, are eligible applicants, as well as State and local public agencies. "Local public agency" refers to any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through sub grants, experienced public agencies, private nonprofit organizations, and private businesses which have an understanding of unemployment and the barriers to employment unique to homeless veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

2. Also eligible to apply are nonprofit organizations that have operated an HVRP or similar employment and training program for the homeless or veterans; have proven capacity to manage Federal grants; and have or will provide the necessary linkages with other service providers. Nonprofit organizations will be required to submit with their application, a recent (within one year) financial audit statements that attest to the financial responsibility and integrity of the organization. *Entities described in Section 501(c)4 of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this announcement.* The Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities if they engage in lobbying activities.

C. Funding Levels

The total amount of funds available for this solicitation is $6.6 million. It is anticipated that up to 30 awards may be made under this solicitation. Awards are expected to range from $200,000 to $250,000. The Federal government reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding this range by 15% or more may be considered non-responsive.

D. Period of Performance

The period of performance will be for twelve (12) months from date of award. It is expected that successful applicants will commence program operations under this solicitation by July 1, 2001.

E. Second-Year Option

As stated in Section II of this Part, the Homeless Veterans Reintegration Project was reauthorized and codified by statute at 38 U.S.C. Section 4111. Should there be action by Congress to appropriate funds for this purpose, a second-year option may be considered. The Government does *not,* however, guarantee second year funding for any awardee. Should VETS decide that an option year for funding be exercised, the grantees' performance during the first period of operations will be taken into consideration as follows:

1. By the end of the third quarter, the grantee must achieve at least 75% of the twelve month total goals for Federal expenditures, enrollments, and placements, or

2. The grantee must meet 85% of goals for Federal expenditures, enrollments, and placements for the twelve month period if planned activity is NOT evenly distributed in each quarter; and

3. The Grantee is in compliance with all terms identified in the solicitation for grant applications.

All instructions for modifications and announcement of fund availability will be issued at a later date. Please note that the Government does reserve the right to compete any subsequent funds appropriated for this purpose in lieu of an option year.

F. Submission of Proposal

A cover letter, an original and two (2) copies of the proposal will be submitted to the U.S. Department of Labor, Procurement Service Office, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. The proposal will consist of two (2) separate and distinct parts: One (1) blue ink-signed original SF 424, complete grant application, plus two (2) copies of the Technical Proposal, and two (2) copies of the Cost Proposal.

G. Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Office of Procurement Services after 4:45 p.m. ET, May 16, 2001, will *not* be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before May 16, 2001;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to May 16, 2001.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation

"bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post-Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will *not* be accepted.

H. Proposal Content

A cover letter, an original, and two (2) copies of the proposal must be submitted. The applicant must complete the forms provided (i.e. quarterly goals chart). The proposal will consist of two (2) separate and distinct parts:

Part I—Technical Proposal must consist of a narrative proposal that demonstrates the applicant's knowledge of the need for this particular grant program, its understanding of the services and activities proposed to alleviate the need and its capabilities to accomplish the expected outcomes of the proposed project design. The technical proposal must consist of a narrative not to exceed fifteen (15) pages double-spaced, font size no less than 11pt. and typewritten on one side of the paper only. The applicant must complete the forms provided (i.e. quarterly goals chart). Charts, and exhibits, letters of support and letters of reference are not counted against the page limit. The following format is strongly recommended:

1. *Need for the project:* the applicant must identify the geographical area to be served and provide an estimate of the number of homeless veterans and their needs, poverty and unemployment rates in the area, the gaps in the local community infrastructure that contribute to the employment and other barriers faced by the targeted veterans, and how the project would respond to these needs. Include the outlook for job opportunities in the service area.

2. *Approach or strategy to increase employment and job retention:* Applicants should be responsive to the Rating Criteria contained in Section VI and address all of the rating factors noted as thoroughly as possible in the narrative. The applicant must: (1) Provide the length of training, the training curriculum and how the training will enhance the eligible veterans employment opportunities within that geographical area; (2) describe the specific supportive, employment and training services to be provided under this grant and the sequence or flow of such services—flow charts may be provided; (3) provide a plan for follow up addressing retention after 90 and 180 days with participants who entered employment. (See discussion on results in Section VI. D.); and (4) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

3. *Linkages with other providers of employment and training services to the homeless and to veterans:* Describe the linkages this program will have with other providers of services to veterans and to the homeless outside of the HVRP grant. Include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representative (LVER) program, and programs under the Workforce Investment Act. List the type of services provided by each. Note the type of agreement and provide copies of the agreement(s) in place if applicable. Linkages with the workforce development system [inclusive of State Employment Security Agencies (SESA's)] should be delineated. Describe any linkages with resources and other programs for veterans. Describe any program and resource linkages with Department of Housing and Urban Development (HUD), Department of Health and Human Services (HHS), and Department of Veterans Affairs (DVA) for the homeless. Indicate how the applicant will coordinate with any "continuum of care" efforts for the homeless among agencies in the community.

4. *Proposed supportive service strategy for veterans:* Describe how supportive service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, local or community based programs, the applicant needs to fully explain the use of these resources and why they are necessary.

5. *Organizational capability in providing required program activities:* The applicant's relevant current or prior experience, to include program recidivism rate in operating employment and training programs should be delineated. Provide information denoting outcomes of past programs in terms of enrollments and placements. Applicants who have operated an HVRP program or Homeless Veterans Employment and Training (HVET) program should include final or most recent technical performance reports. (This information is also subject to verification by the Veterans' Employment and Training Service.) Provide evidence of key staff capability. Non-profit organizations must submit evidence of satisfactory financial management capability including recent financial and/or audit statements.

6. *Proposed housing strategy for homeless veterans:* Describe how housing resources for homeless veterans will be obtained or accessed. These resources may be from linkages or sources other than the HVRP grant such as HUD, HHS, community housing resources, DVA leasing, or other programs. The applicant must explain whether HVRP resources will be used and why this is necessary. Nonprofit organizations, including faith based organizations must submit evidence of satisfactory financial management capability, which will include recent financial and/or audit statements.

(For consideration by panel members, this information is subject to verification by the Government—Veterans' Employment and Training Service reserves the right to have a representative within your state provide programmatic and fiscal information about applicants and forward those findings to National Office during the review of the applications).

Note: Resumes, charts, and standard forms, transmittal letters, letters of support are not included in the page count. [If provided include these documents as attachments to the technical proposal.]

Part II—Cost Proposal will contain: (1) The Standard Form (SF) 424, "Application for Federal Assistance", (2) the Standard Form (SF) 424A "Budget Information Sheet" in Appendix B, if resources/matching funds and/or the value of in-kind contributions are made available please show in Section B of the Budget Information Sheet; (3) a *detailed* costs break out of each line item on the Budget Information Sheet. Please label this page or pages the "Budget Narrative" and ensure that costs reported on the SF424A coordinate accurately with the Budget Narrative. In addition to the cost proposal the applicants must include the Assurance and Certification signature page,

Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this solicitation.

The Catalog of Federal Domestic Assistance number for this program is 17.805, which should be entered on the SF 424, Block 10.

IV. Budget Narrative Information

As an attachment to the Budget Information Sheet, the applicant must provide at a minimum, and on separate sheet(s), the following information:

(a) A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including subgrantees);

(b) An explanation and breakout of extraordinary fringe benefit rates and associated charges (i.e., rates exceeding 35% of salaries and wages);

(c) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, subgrants/contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges will not exceed 34.5 cents per mile;

(d) In order that the Department of Labor meet legislative requirements, submit a plan along with all costs associated with retaining participant information pertinent to a longitudinal follow up survey for at least six (6) months after the ninety day (90) closeout period;

(e) Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and (f) Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind Services.

V. Participant Eligibility

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term "homeless or homeless individual" includes persons who 1ack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. (Reference 42 U.S.C. section 11302 (a)).

B. The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 U.S.C. Section 101(2)]

VI. Project Summary

A. Program Concept and Emphasis

The HVRP grants under Section 738 of the Stewart B. McKinney Homeless Assistance Act are intended to address dual objectives:

(1) To provide services to assist in reintegrating homeless veterans into meaningful employment within the labor force; and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing homeless veterans.

These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in FY 2001 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of housing resources for veterans entering the labor force, and strategies for employment and retention.

B. Required Features

1. *The proposal should include an outreach component.* It is recommended that the applicants coordinate these activities through veteran service providers who have experience working and serving the veteran population. This requirement can be modified to allow the project to utilize veterans in other positions where there is direct client contact if extensive outreach is not needed, such as intake, counseling, peer coaching, and follow up. This requirement applies to projects funded under this solicitation.

2. *Projects will be required to show linkages with other programs and services which provide support to homeless veterans.* Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representative (LVER) in the jurisdiction is required.

3. *Projects will be "employment focused".* The services provided will be directed toward increasing the employability of homeless veterans through training or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

C. Scope of Program Design

The project design must provide or arrange for the following services:

—Outreach, intake, assessment, counseling to the degree practical and employment services. Outreach must be provided at shelters, day centers, soup kitchens, VA medical centers, and other programs for the homeless. Program staff providing outreach services are to be veterans who have experienced homelessness.

Coordination with veterans' services programs and organizations such as:

—Disabled Veterans' Outreach Program (DVOP) Specialists, Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the newly instituted workforce development system's One-Stop Centers, and VWIP—Veterans' Workforce Investment Programs;

—Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary, and other programs, including those offering transitional housing; and

—Veteran service organizations such as The American Legion, Disabled American Veterans, and the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS);

Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

—Alcohol and drug;

—Medical;

—Post Traumatic Stress Disorder;

—Mental Health;

—Coordinating with MHAA Title VI programs for health care for the homeless;

Referral to housing assistance provided by:

—Local shelters;

—Federal Emergency Management Administration (FEMA) food and shelter programs;

—Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV;

—Permanent housing programs for the handicapped homeless funded under MHAA Title IV;

—Department of Veterans Affairs programs that provide for leasing or sale of acquired homes to homeless providers; and

—Transitional housing leased by HVRP funds (HVRP funds cannot be used to purchase housing or vehicles)

Employment and training services such as:

—Basic skills instruction;

—Basic literacy instruction;
—Remedial education activities;
—Job search activities;
—Job counseling;
—Job preparatory training, including resume writing and interviewing skills;
—Subsidized trial employment (Work Experience);
—On-the-Job Training;
—Classroom Training;
—Job placement in unsubsidized employment;
—Placement follow up services; and
—Services provided under WIA Program Titles

D. Results-Oriented Model

Based on past experience of grantees working with this target group, a workable program model evolved which is presented for consideration by prospective applicants. No model is mandatory. The applicant should design a program that is responsive to local needs, but will carry out the objectives of the homeless veteran to successfully reintegrate them into the workforce.

With the advent of implementing the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than program processes. While entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of programs. In order to do this, the following program discussion must be considered. Without a sound program foundation, the results of program are in question, which places the program success in jeopardy.

The first phase of activity consists of the level of outreach that is necessary to reach homeless veterans. This may also include establishing contact with other agencies that encounter homeless veterans such as shelters, soup kitchens, and other facilities. Once the eligible clients have been identified, an assessment should be made of their abilities or interests and needs. In some cases these clients may require referrals to services, such as social rehabilitation, drug or alcohol treatment, or a temporary shelter, before they can be enrolled into core training. When the individual is stabilized, the assessment should focus on the employability of the individual and their enrollment into the program. A determination should be made as to whether if they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff.

Entry into full-time employment or a specific job training program should follow in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Supportive services or transitional housing may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. Wherever possible, DVOP and LVER staff must be utilized for job development and placement activities for veterans who are ready to enter employment *or* who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources. *If the DVOP and LVER staff are not being utilized, the applicant must submit a written explanation detailing the reasons why they are not.*

The following program discussion emphasizes that follow up is an integral program component.

Follow up to determine whether the veteran is in the same or similar job at the 90 and 180 day period after entering employment is required. It is important that the grantee maintain contact with the veterans after placement to assure that employment related problems are addressed. *The 90 and 180 day follow up is fundamental to assessing the results of the program success.* Grantees should be careful to budget for this activity so that followup can and will occur for those placed at or near the end of the grant period. Such results will be reported in the final technical performance report.

Retention of records will be reflected in the Special Grant Provisions to be provided at the time of any award.

VII. Related HVRP Program Development Activities

Community Awareness Activities

In order to promote linkages between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, outstation staff, develop individual service contracts, and involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

a. *Providers of hands-on services to the homeless veteran,* such as shelter and soup-kitchen operators, to make them fully aware of services available to homeless veterans to make them job-ready and place them in jobs.

b. *Federal, State and local entitlement services* such as the Social Security Administration (SSA), Department of Veterans' Affairs (DVA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate WIA, labor exchange, and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of homeless veterans.

c. *Civic and private sector groups,* and especially veterans' service organizations, to describe homeless veterans and their needs.

d. *Stand Down Support*—A "Stand Down" as it relates to homeless veterans is an event held in a locality usually for three days where services are provided to homeless veterans along with shelter, meals, clothing, and medical attention. This type of event is mostly volunteer effort, which is organized within a community and brings service providers together such as the DVA, Disabled Veterans Outreach Program Specialists, Local Veterans' Employment Representatives from the State Employment Service Agencies, veteran service organization, military personnel, civic leaders, and a variety of other interested persons and organizations. Many services are provided on site with referrals also made for continued assistance after the event. This can often be the catalyst that enables the homeless veterans to get back into mainstream society. The Department of Labor has supported replication of this event. Many such events have been held throughout the nation.

In areas where an HVRP is operating, the grantees are encouraged to participate fully and offer their services for any planned Stand Down event. Towards this end, up to $5,000 of the currently requested HVRP MHAA grant funds may be used to supplement the Stand Down effort where funds are not

otherwise available and should be reflected in the budget and budget narrative.

VIII. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify approximately 30 applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, program and administrative costs, e.g., cost per enrollment and placement, demonstration models, and geographical service areas. While points will not be assessed for cost issues, cost per placements will be given serious consideration in the selecting of awards. The Grant Officer's determination for award under SGA 01–02 is the final agency action. The submission of the same proposal from any prior year HVRP or HVET competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. Need for the Project: 15 Points

The applicant will document the extent of need for this project, as demonstrated by: (1) The potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure to effectively address the employment barriers that characterize the target population.

2. Overall Strategy To Increase Employment and Retention: 40 Points

The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, any employer commitments to hire, placement, and post placement follow up services. Applicants must address their intent to target occupations in expanding industries, rather than declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training program such as SESAs (DVOP and LVER Programs), VWIP, other WIA programs, and Workforce Development Boards or entities where in place, must be presented. It should be indicated how the activities will be tailored or responsive to the needs of homeless veterans. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, and job retention. (See Appendix D)

3. Quality and Extent of Linkages With Other Providers of Services to the Homeless and to Veterans: 10 Points

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless veterans in the local community outside of the HVRP grant. For each service, it must be specified who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. Describe to the extent possible, how the project would fit into the community's continuum of care approach to respond to homelessness and any linkages to HUD, HHS or DVA programs or resources to benefit the proposed program.

4. Demonstrated Capability in Providing Required Program Services: 20 Points

The applicant must describe its relevant prior experience in operating employment and training programs and providing services to participants similar to that which is proposed under this solicitation. Specific outcomes achieved by the applicant must be described in terms of clients placed in jobs, etc. The applicant must also delineate its staff capability and ability to manage the financial aspects of Federal grant programs. Relevant documentation (within the last 12 months), such as financial and/or audit statements must be submitted (required for applicants who are non-profit). Final or most recent technical reports for HVRP, HVET, or other relevant programs should be submitted as applicable. *The applicant must also address its capacity for timely startup of the program.*

5. Quality of Overall Housing Strategy: 15 Points

The application must demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources, HUD, DVA lease, HVRP, or other means. HVRP funds will not be used to purchase housing or vehicles.

Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness of placement and enrollment costs.

IX. Post Award Conference

A post-award conference for those awarded FY 2001 HVRP funds is tentatively planned for July or August, 2001. Costs associated with attending this conference for up to two grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs must be charged as administrative costs and reflected in the proposed budget. The site of the conference has not yet been determined but will likely be for three days in Washington, DC. Please use Washington, DC for budget planning purposes. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and will also include best practices from past projects.

X. Reporting Requirements

The grantee will submit the reports and documents listed below:

A. Financial Reports

The grantee must report outlays, program income, and other financial information on a quarterly basis using SF 269A, *Financial Status Report, Short Form.* This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter (i.e., October 30, January 30, April 30 and July 30) during the grant period.

B. Program Reports

Grantees must submit a Quarterly Technical Performance Report 30 days

after the end of each Federal fiscal quarter to the DVET that contains the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) identification of corrective action which will be taken to meet the planned goals, and (ii) a timetable for accomplishment of the corrective action.

C. Final Report Packages

The grantee must submit no later than 90 days after the grant expiration date a final report containing the following:

1. Final Financial Status Report (SF–269A) (copy to be provided following grant awards);

2. Final Technical Performance Report—(Program Goals); and

3. Final Narrative Report identifying—(a) major successes of the program; (b) obstacles encountered and actions taken (if any) to overcome such obstacles; (c) the total combined number of veterans placed in employment during the entire grant period; (d) the number of veterans still employed at the end of the grant period; (e) an explanation regarding why those veterans placed during the grant period, but not employed at the end of the grant period, are not employed; and (f) any recommendations to improve the program.

D. Six (6) Month Close Out

No later than 6 months after the 90 day closeout period, the grantee must submit a follow up report containing the following:

1. Closeout Financial Status Report (SF–269A)

2. Closeout Narrative Report identifying—(a) The total combined (directed/assisted) number of veterans placed during the entire grant period; (b) the number of veterans still employed during follow up; (c) are the veterans still employed at the same or similar job, if not what are reasons; (d) was the training received applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improve the program.

XI. Administration Provisions

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, plus any indirect charges claimed.

2. Indirect costs claimed by the applicant shall be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

3. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

4. Rates traceable and trackable through the SESA Cost Accounting System represent an acceptable means of allocating costs to DOL and; therefore, can be approved for use in MHAA grants to SESAS.

B. Allowable Costs

Determinations of allowable costs will be made in accordance with the following applicable Federal cost principles:

State and local government—OMB Circular A–87

Nonprofit organizations—OMB Circular A–122

C. Administrative Standards and Provisions

All grants will be subject to the following administrative standards and provisions:

1. 29 CFR Part 93—Lobbying.

2. 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and with Commercial Organizations.

3. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements. This rule implements, for State and local governments and Indian tribes that receive Federal Assistance from the DOL, Office of Management and Budget (OMB) Circular A–128 "Audits of State and Local Governments" which was issued pursuant to the Single Audit Act of 1984, 31 U.S.C. Section 7501–7507. It also consolidates the audit requirements currently contained throughout the DOL regulations.

4. 29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

5. 29 CFR Part 98—Government wide Debarment and Suspension (Nonprocurement) and Government wide Requirements for Drug-Free Workplace (Grants).

6. 29 CFR Part 99—Audit Of States, Local Governments, and Non-profit Organization.

7. Section 168(b) of WIA—Administration of Programs Please note that Sections 181–195 may also apply.

8. 29 CFR Parts 30, 31, 32, 33 and 34—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally Assisted Programs of the Department of Labor, Effectuation of Title VI of the Civil Rights Act of 1964; and Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance (Incorporated by Reference). These rules implement, for recipients of federal assistance, non-discrimination provisions on the basis of race, color, national origin, and handicapping condition, respectively.

9. Appeals from non-designation will be handled under 20 CFR Part 667.260

10. 29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government.

Signed at Washington, DC this 5th day of April, 2001.

Lawrence J. Kuss,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet

Appendix C: Assurances and Certifications Signature Page

Appendix D: Technical Performance Goals Form

Appendix E: List of 75 largest U.S. Cities

Appendix F: HVRP Performance Goals Definitions

Appendix G: Direct Cost Descriptions for Applicants and Sub-Applicants

BILLING CODE 4510–79–U

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	**3. DATE RECEIVED BY STATE**	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

APPENDIX C

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.

RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

Performance Goals

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
Assessments				
Participants Enrolled				
Placed Into Transitional Or Permanent Housing				
Direct Placements Into Unsubsidized Employment				
Assisted Placements Into Unsubsidized Employment				
Combined Placements Into Unsubsidized Employment (Direct & Assisted)				
Cost Per Placement				
Number Retaining Jobs For 30 Days				
Number Retaining Jobs For 90 Days				
Rate of Placement Into Unsubsidized Employment				
Average Hourly Wage At Placement				

Employability Development Services - (As Applicable)

Classroom Training				
On-The-Job Training				
Remedial Education				
Vocational Counseling				
Pre-employment Services				
Occupational Skills Training				
_____				
_____				
_____				
_____				

Planned Expenditures

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Total Expenditures	$	$	$	$
Administrative Costs	$	$	$	$
Participant Services*	$	$	$	$

*Services may include training and/or supportive.

APPENDIX E.

Rank	Area Name	Census Population	
		April 1, 2000	April 1, 1990
1	New York--Northern New Jersey--Long Island, NY--NJ--CT--PA CMSA	21,199,865	19,549,649
2	Los Angeles--Riverside--Orange County, CA CMSA	16,373,645	14,531,529
3	Chicago--Gary--Kenosha, IL--IN--WI CMSA	9,157,540	8,239,820
4	Washington--Baltimore, DC--MD--VA--WV CMSA	7,608,070	6,727,050
5	San Francisco--Oakland--San Jose, CA CMSA	7,039,362	6,253,311
6	Philadelphia--Wilmington--Atlantic City, PA--NJ--DE--MD CMSA	6,188,463	5,892,937
7	Boston--Worcester--Lawrence, MA--NH--ME--CT CMSA	5,819,100	5,455,403
8	Detroit--Ann Arbor--Flint, MI CMSA	5,456,428	5,187,171
9	Dallas--Fort Worth, TX CMSA	5,221,801	4,037,282
10	Houston--Galveston--Brazoria, TX CMSA	4,669,571	3,731,131
11	Atlanta, GA MSA	4,112,198	2,959,950
12	Miami--Fort Lauderdale, FL CMSA	3,876,380	3,192,582
13	Seattle--Tacoma--Bremerton, WA CMSA	3,554,760	2,970,328
14	Phoenix--Mesa, AZ MSA	3,251,876	2,238,480
15	Minneapolis--St. Paul, MN--WI MSA	2,968,806	2,538,834
16	Cleveland--Akron, OH CMSA	2,945,831	2,859,644
17	San Diego, CA MSA	2,813,833	2,498,016
18	St. Louis, MO--IL MSA	2,603,607	2,492,525
19	Denver--Boulder--Greeley, CO CMSA	2,581,506	1,980,140
20	San Juan--Caguas--Arecibo, PR CMSA	2,450,292	2,270,808
21	Tampa--St. Petersburg--Clearwater, FL MSA	2,395,997	2,067,959
22	Pittsburgh, PA MSA	2,358,695	2,394,811
23	Portland--Salem, OR--WA CMSA	2,265,223	1,793,476
24	Cincinnati--Hamilton, OH--KY--IN CMSA	1,979,202	1,817,571
25	Sacramento--Yolo, CA CMSA	1,796,857	1,481,102
26	Kansas City, MO--KS MSA	1,776,062	1,582,875
27	Milwaukee--Racine, WI CMSA	1,689,572	1,607,183
28	Orlando, FL MSA	1,644,561	1,224,852
29	Indianapolis, IN MSA	1,607,486	1,380,491
30	San Antonio, TX MSA	1,592,383	1,324,749
31	Norfolk--Virginia Beach--Newport News, VA--NC MSA	1,569,541	1,443,244
32	Las Vegas, NV--AZ MSA	1,563,282	852,737
33	Columbus, OH MSA	1,540,157	1,345,450
34	Charlotte--Gastonia--Rock Hill, NC--SC MSA	1,499,293	1,162,093
35	New Orleans, LA MSA	1,337,726	1,285,270
36	Salt Lake City--Ogden, UT MSA	1,333,914	1,072,227
37	Greensboro--Winston-Salem--High Point, NC MSA	1,251,509	1,050,304
38	Austin--San Marcos, TX MSA	1,249,763	846,227
39	Nashville, TN MSA	1,231,311	985,026
40	Providence--Fall River--Warwick, RI--MA MSA	1,188,613	1,134,350
41	Raleigh--Durham--Chapel Hill, NC MSA	1,187,941	855,545
42	Hartford, CT MSA	1,183,110	1,157,585

43	Buffalo--Niagara Falls, NY MSA	1,170,111	1,189,288
44	Memphis, TN--AR--MS MSA	1,135,614	1,007,306
45	West Palm Beach--Boca Raton, FL MSA	1,131,184	863,518
46	Jacksonville, FL MSA	1,100,491	906,727
47	Rochester, NY MSA	1,098,201	1,062,470
48	Grand Rapids--Muskegon--Holland, MI MSA	1,088,514	937,891
49	Oklahoma City, OK MSA	1,083,346	958,839
50	Louisville, KY--IN MSA	1,025,598	948,829
51	Richmond--Petersburg, VA MSA	996,512	865,640
52	Greenville--Spartanburg--Anderson, SC MSA	962,441	830,563
53	Dayton--Springfield, OH MSA	950,558	951,270
54	Fresno, CA MSA	922,516	755,580
55	Birmingham, AL MSA	921,106	840,140
56	Honolulu, HI MSA	876,156	836,231
57	Albany--Schenectady--Troy, NY MSA	875,583	861,424
58	Tucson, AZ MSA	843,746	666,880
59	Tulsa, OK MSA	803,235	708,954
60	Syracuse, NY MSA	732,117	742,177
61	Omaha, NE--IA MSA	716,998	639,580
62	Albuquerque, NM MSA	712,738	589,131
63	Knoxville, TN MSA	687,249	585,960
64	El Paso, TX MSA	679,622	591,610
65	Bakersfield, CA MSA	661,645	543,477
66	Allentown--Bethlehem--Easton, PA MSA	637,958	595,081
67	Harrisburg--Lebanon--Carlisle, PA MSA	629,401	587,986
68	Scranton--Wilkes-Barre--Hazleton, PA MSA	624,776	638,466
69	Toledo, OH MSA	618,203	614,128
70	Baton Rouge, LA MSA	602,894	528,264
71	Youngstown--Warren, OH MSA	594,746	600,895
72	Springfield, MA MSA	591,932	587,884
73	Sarasota--Bradenton, FL MSA	589,959	489,483
74	Little Rock--North Little Rock, AR MSA	583,845	513,117
75	McAllen--Edinburg--Mission, TX MSA	569,463	383,545

HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans'Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

APPENDIX G. Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

Sub-Total _____ _____

	Administration	Program
Fringe Benefits For All Positions	_____	_____
Contractual	_____	_____
Travel	_____	_____
Indirect Costs	_____	_____
Equipment	_____	_____
Supplies	_____	_____
Total Costs ----------	_____	_____
	Administration	Program

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

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BILLING CODE 4510–79–C

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Veterans' Workforce Investment Program, Program Year 2000; Information Technology Competitive Grants

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA) for Veterans' Workforce Investment Program (VWIP), Section 168, Program Year 2000—Information Technology Competitive Grants (SGA 01–01)

SUMMARY: All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service, (VETS) announces a grant competition for Veterans' Workforce Investment Program (VWIP), Section 168, Program Year 2000—Information Technology Competitive Grants. Such programs will assist eligible veterans who are identified as veterans with service-connected disabilities, veterans who served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized, recently separated veterans and those veterans with significant barrier to employment by providing employment, training, and supportive service assistance to these individuals in the area of information technology (IT). VETS anticipates that up to $500,000 will be available for grant awards under this solicitation. Under this solicitation, VETS expects to award up to two grants in Program Year (PY) 2000. The VWIP programs are designed to be flexible in addressing the universal as well as local or regional problems barring veterans from the IT workforce. The program in PY 2000 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of supportive service resources for veterans entering the labor force, and strategies for employment and retention.

This notice describes the background, the application process, description of program activities, evaluation criteria, and reporting requirements for this Solicitation of Grant Application.

The information and forms contained in the Supplementary Information Section of this announcement constitute the official application package for this Solicitation. This notice contains all of the necessary information and forms needed to apply for grant funding. To receive amendments to this Solicitation (Please reference SGA 01–01), *all applicants must register their name and address with the Grant Officer at the following address:* U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

CLOSING DATE: Applications and proposals are to be submitted, including those hand delivered, to the address below by no later than 4:45 p.m., Eastern Standard Time, May 16, 2001, or be postmarked or date stamped by the U.S. Postal Service on or before that date.

ADDRESSES: Applications will be mailed or hand-delivered to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 01–01, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 219–6445 [this is not a toll free number].

SUPPLEMENTARY INFORMATION: Veterans' Workforce Investment Program, Section 168, Program Year 2000—Information Technology Competitive Grants Solicitation

I. Purpose

The U.S. Department of Labor (DOL) VETS is requesting grant applications that will provide employment and training services for Veterans who meet the eligibility criteria set forth in accordance with the VWIP, Section 168 of the Workforce Investment Act, Pub. L. 105–220 (WIA). These instructions contain general program information, requirements, and forms to apply for funds to operate a veterans employment and training program in the area of Information Technology. Accordingly, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making up to $500,000 of the funds available to award grants for unique and innovative Employment and Training programs. Programs should maximize the eligible veterans' military skills, training, and experience by effectively exploring the transitional or transferable occupational opportunities in the geographical area that the grant would be awarded. For example, programs may develop Licensing and Certification employment and training programs that target occupations that are essential to the Information Technology such as, Fiber Optics, website designers, computer programmer, etc., IT fields that have a direct impact within the economic environment that the eligible veteran resides in.

II. Background

Section 168 of the Veterans' Workforce Investment Program, provides that the Secretary will conduct, directly or through grants or contracts, such employment and training programs as the Secretary deems appropriate to assist veterans with service-connected disabilities, veterans who served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized, and recently separated veterans and those veterans with significant barrier to employment to obtain gainful employment.

III. Application Process

A. Eligible Applicants

Applications for funds will be accepted from State and local public agencies and private nonprofit organizations, including faith based organizations, that have familiarity with the area and populations to be served and can administer an effective program. The group that can be eligible applicants are as follows:

1. State and Local Workforce Investment Boards (WIBs) as defined in Sections 111 and 117 of the Workforce Investment Act are eligible applicants.

2. Local public agencies refers to any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through sub grants, experienced public agencies, private nonprofit, private businesses and Faith based organizations which have an understanding of unemployment and the barriers to employment unique to veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

3. Also eligible to apply are private nonprofit organizations, that have operated an employment and training program for veterans; have proven capacity to manage Federal grants; and have or will provide the necessary linkages with other service providers. All Nonprofit organizations will be

required to submit with their application, a recent (within one year) financial audit statement that attests to the financial responsibility and integrity of the organization. *Entities described in Section 501(c)(4) of the Internal Revenue Codes that engage in lobbying activities are not eligible to receive funds under this announcement* as Section 18 of the Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities.

B. Funding Levels

The total amount of funds anticipated for this solicitation is $500,000. It is anticipated that two awards will be made under this solicitation. Individual Awards will not exceed $250,000. The Federal Government reserves the right to negotiate the amounts to be awarded under this competition. Applicants exceeding the $250,000, will be considered non-responsive.

C. Period of Performance

The VWIP funds for this competition are for a period of one year or twelve (12) months. The period of performance will be for twelve months from date of the award. VETS expects that successful applicants will commence program operations under this solicitation on or before June 30, 2001. There will be no further financial commitment by the U.S. Department of Labor after June 29, 2002. VETS has no plans to provide second year funding beyond this period.

D. Requirements of Submission

A cover letter, an original proposal, and two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Service Office, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. The proposal must consist of two (2) separate and distinct parts: (1) one completed, blue ink-signed original SF 424 grant application; plus two (2) copies of the Technical Proposal; and two (2) copies of the Cost Proposal.

E. Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Office of Procurement Services after 4:45 P.M. EST, May 16, 2001 will *not* be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail.no later than the fifth calendar day before May 16, 2001;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 P.M. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to May 16, 2001.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram, electronic mail, or facsimile (FAX) will not be accepted.

F. Proposal Content

The proposal will consist of two (2) separate and distinct parts:

PART I—Technical Proposal will consist of a narrative proposal that demonstrates the applicant's knowledge of the need for this particular grant program; an understanding of the services and activities proposed to alleviate the need for such services; and the capability to accomplish the expected outcomes of the proposed project design. The technical proposal will consist of a narrative not to exceed fifteen (15) pages double-spaced—font size no less than 11pt. and typewritten on one side of the paper only. The applicant must complete the forms, i.e., quarterly goals chart provided or referred to in the SGA. Charts and exhibits are not counted toward the page limit. The following format is strongly recommended:

1. *Need for the project:* The applicant must identify the geographical area to be served and provide an estimate of the number of veterans and their needs, poverty and unemployment rates in the area, the gaps in the local community infrastructure that contribute to employment and other barriers faced by the targeted veterans and how the project would respond to these needs. Also include the outlook for job opportunities in the service area.

2. *Approach or strategy to provide training, employment and job retention:* REQUIRED FEATURES

There are four program activities that all applications must contain to be found technically acceptable under this SGA. These activities are:

—Pre-Enrollment Assessments
—Employment Development Plans for all clients;
—Core Training for eighty percent (80%) or more of the clients; and
—Job Placement and 90 and 180 day Follow-up Services for all clients. The applicant must be responsive to the Rating Criteria contained in Section VIII, and address all of the rating factors as thoroughly as possible in the narrative. The applicant must: (1) provide the length of the training, the training curriculum and describe how the training will enhance the eligible veterans employment opportunities within that geographical area; (2) describe the specific supportive services and employment and training services to be provided under this grant and the sequence or flow of such services—flow charts may be provided; (3) provide a plan for follow up to address retention after 90 and 180 days with participants who entered employment. (See discussion on results in Section X. D., 2.); and (4) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

3. Linkages with other providers of employment and training services to veterans: The applicant must describe the linkages this program will have with other providers of services to veterans outside of the grant; include a description of the relationship with other employment and training programs such as Disabled Veterans'

Outreach Program (DVOP), the Local Veterans' Employment Representative (LVER) program, and programs operated under the Workforce Investment Act; list the types of services provided by each. Note the type of agreement in place, if applicable. Linkages with the workforce development system [inclusive of State Employment Security Agencies (SESA's)] must be delineated. Describe any linkages with any other resources and/or other programs for veterans. Indicate how the program will be coordinated with any efforts for veterans that are conducted by agencies in the community.

4. Proposed supportive service strategy for veterans: Describe how supportive or ancillary service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, or community-based programs, the applicant must fully explain the use of these resources and why they are necessary.

5. Organization's capability to provide required program activities: The applicant's relevant current or prior experience in operating employment and training programs should be clearly described. The applicant must provide information showing outcomes of past programs in terms of enrollments and placements. An applicant who has operated a Veterans program, JTPA IV–C program or VWIP program, must include final or most recent technical performance reports. The applicant must also provide evidence of key staff capability. Nonprofit organizations must submit evidence of satisfactory financial management capability, which must include recent financial and/or audit statements.

(For consideration by panel members, this information is subject to verification by the government. Veterans' Employment and Training Service reserves the right to have a representative within each State provide programmatic and fiscal information about applicants and forward those findings to the VETS National Office during the review of the applications).

Note: Resumes, charts, and standard forms, transmittal letters, letters of support are not included in the page count. [If provided, include these documents as attachments to the technical proposal.] PART II—The COST PROPOSAL must contain: (1) The Standard Form (SF) 424, "Application for Federal Assistance"; (2) the Standard Form (SF) 424A "Budget Information Sheet" in Appendix B; and (3) a detailed costs break out of each line item on the Budget Information Sheet. Please label this page or pages the "Budget Narrative" and ensure that costs reported on the SF424A correspond accurately with the Budget Narrative.

In addition to the cost proposal, the applicants must include the Assurance and Certification signature page, Appendix C and copies of all required forms with instructions for completion are provided as appendices to this solicitation.

The *Catalog of Federal Domestic Assistance* number for this program is 17.802, which must be entered on the SF 424, Block 10.

IV. Budget Narrative Information

As an attachment to the Budget Information Sheet (SF 424A), the applicant must provide, at a minimum, and on separate sheet(s), the following information:

(a) A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including sub grantees);

(b) An explanation and breakout of extraordinary fringe benefit rates and associated charges (i.e., rates exceeding 35% of salaries and wages);

(c) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, sub grants/contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges will not exceed 34.5 cents per mile;

(d) In order that the Department of Labor meet legislative requirements, the applicant must submit a plan along with all costs associated with retaining participant information pertinent to a longitudinal follow-up survey for at least six months after the ninety-day closeout period;

(e) Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, and personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

(f) Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services. If resources/matching funds and/or the value of in-kind contributions are made available please show in Section B of the Budget Information Sheet.

V. Participant Eligibility

To be eligible for participation under this program, an individual must be a veterans with service-connected disabilities, veterans who served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized, and recently separated veterans and those veterans with significant barrier to employment as defined as follows:

A. The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 U.S.C. 4101(2)]

B. The term "Campaign veteran"—refers to any veteran who applies for participation in a program funded under WIA, Public Law 105–220, Sec. 168 and served on active duty in the United States armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized. A list of the Wars, Campaigns and Expeditions can be found at the Office of Personnel Management website at *http://www.opm.gov/veterans/html/vgmedal2.htm.*

C. The term "service-connected disabled"—refers to an individual who was discharged or released from active duty because of a service-connected disability. (38 U.S.C. § 4211).

D. The term "recently-separated veteran"—refers to any veteran who applies for participation in a VWIP funded activity within 48 months after separation from military service. (29 U.S.C., 2801 (49))

VI. Project Summary

A. Program Concept and Emphasis

The grants awarded under this SGA are intended to address two objectives: (1) to provide services to assist in reintegrating veterans into meaningful employment within the labor force; and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing veterans.

In addition to the mandatory activities, proposed programs should include, Optional Program Activities such as ancillary and/or support services, to assure that participants are placed in unsubsidized employment that meets their "minimum economic need." Both categories of program activities are more fully described below.

1. Mandatory Program Activities

a. Pre-Enrollment Assessments

The utilization of Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff for pre-enrollment assessments is strongly encouraged.

A definition of pre-enrollment assessment can be found in the Glossary of Terms. Costs are allowed for pre-enrollment assessments that enable grantees to determine the employability

needs of applicants by conducting meaningful evaluations of applicant skills and barriers. Grantees are then able to refer those applicants who may not be appropriate for the services of the proposed program to other service providers. The assessment of applicants prior to enrollment is an allowable cost to VWIP provided it has been determined that the assessed applicants meet the legislative criteria for VWIP eligibility. In the Program Design, the grant applicant must identify the means of pre-enrollment assessment that it intends to use and the purpose for the information to be derived from those assessments.

b. The Employment Development Plan (EDP)

The utilization of Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff in the EDP process is strongly encouraged. A definition of Employment Development Plan (EDP) can be found in the Glossary of Terms. The implementation of an EDP is required for all veterans enrolled in programs supported by VWIP resources. A copy of an EDP is maintained in each participant's file. The EDP must document a summary of the assessments conducted to ascertain the abilities, barriers and needs of the participant. At a minimum, the EDP must substantiate the participant's minimum income needs, identify barriers and skill deficiencies, and describe the services needed and the competencies to be achieved by the participant as a result of program participation. The applicant must also include a description of their proposed EDP process.

c. Core Training Activities

A definition of Core Training Activities can be found in the Glossary of Terms. It refers to any training program that leads to the development of job skills for the client. At least 80% of all clients who are enrolled in VWIP must receive some form of core training. The Program Design narrative must identify the core training components to be employed in the applicant's program, and these components must agree in scope with the definitions found in the Glossary of Terms. Core training components proposed by the applicant that do not fit the glossary terms or definitions must be adequately described and justified in the Program Design narrative. Core training activities described in this section must include but are not limited to the following:

i. Classroom training;
ii. On-the-job training;
iii. Remedial education;
iv. Literacy and bilingual training;
v. Institutional skills training;
vi. Occupational skills training;
vii. On-site industry-specific training;
viii. Customized training;
ix. Apprenticeship training; and
x. Upgrading and retraining.

Definitions of these core training activities are found in the Glossary of Terms.

d. Job Placement and Follow-up Services

The utilization of Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff for Job Placement and Follow-up services is strongly encouraged.

A definition of Job Placement and Follow-up Services can be also found in the Glossary of Terms. The ultimate objective of VWIP services is to place each eligible veteran into meaningful, gainful employment that allows the client to become economically self-sufficient. The applicants must describe in the Program Design how job placements will occur after core training activities and/or after job development or referral efforts are initiated. Applicants are required to include follow-up in their proposed program to track applicant's progress and status after initial placement. Applicants must describe in the Program Design the follow-up activities that clients will be provided; the description must include the nature of those services. Please note that follow-up is required 90 and 180 days after entering employment.

B. Scope of Program Design

The project design must provide or arrange for the following:

1. Projects must show linkages with other programs and services which provide support to veterans. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representative (LVER) is strongly encouraged.

2. Projects will be "employment-focused". The services provided will be directed toward increasing the employability of veterans by providing information technology training which will increase employment opportunities for the participants with employment opportunities.

Outreach should, to the degree practical, be provided at Veterans' Job Fairs, Transition Assistance centers, or Family Service Center at military installations, and other programs or events frequented by veterans.

Coordination with veterans' services programs and organizations such as:

—The State Employment Security/Job Service Agencies (SESA's) or in the newly instituted workforce development system's One-Stop Centers, or other VWIP Veterans' Employment Programs
—Department of Veterans' Affairs (DVA) services, including its Education, programs.
—Veterans' service organizations, such as The American Legion, Disabled American Veterans (DAV), Veterans of Foreign Wars (VFW), Vietnam Veterans of America (VVA), and American Veterans (AMVETS)

C. Results-Oriented Model

Based on the past experiences of grantees working with veterans, a workable program model evolved which is presented for consideration by prospective applicants. No model is mandatory, and the applicant must design a program that is responsive to local needs, and will carry out the objectives of the veteran to successfully reintegrate into the workforce.

With the advent of implementing the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than just program processes. Although entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of programs. Without a sound program foundation, the results of program are in question which places the program success in jeopardy. The following program discussion must be considered. The first phase of activity must consist of the level of outreach that is necessary to reach eligible veterans. Such outreach will also include establishing contact with other agencies that encounter veterans. Once the eligible clients have been identified, an assessment must be made of the their abilities or interests and needs. In some cases these clients may require referrals to services such as drug or alcohol treatment or a temporary shelter before they can be enrolled into core training. When the individual is stabilized, the assessment should focus on the employability of the individual and their enrollment into the program. A determination must be made as to whether the client would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, Job development, or entry into classroom or on-the-job training. Such services must also be noted in an Employability Development Plan so that successful completion of the plan can be

monitored by the staff. Entry into full-time employment or a specific job training program must follow in keeping with the objective of the program, which is to bring the participant closer to self-sufficiency. Supportive Services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. Wherever possible, DVOP and LVER staff need to be utilized for job development and placement activities for veterans who are ready to enter employment or who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have as a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources. If the DVOP and LVER staff are not being utilized, the applicant must submit a written explanation explaining the reasons why they are not.

The following program discussion emphasizes that followup is an integral program component. Follow up to determine whether the veteran is in the same or similar job at the 90- and 180-day period after entering employment is required. It is important that the grantee maintain contact with the veterans after placement to assure that employment related problems are addressed. The 90- and 180-day follow up is fundamental to assessing the results of the program success. Grantees must be careful to budget for this activity so that follow up can and will occur for those placed at or near the end of the grant period. Such results will be reported in the final technical performance report.

Retention of records will be reflected in the Special Grant Provisions to be provided at the time of any award.

VII. Related Program Development Activities

1. Community Awareness Activities

In order to promote linkages between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by the grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, outstation staff, develop individual service contracts, and involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

a. Providers of hands-on services to the veteran, to make them fully aware of services available to veterans to make them job-ready and place them in jobs.

b. Federal, State and local entitlement services such as the Department of Veterans Affairs (DVA), State Employment Security Agencies (SESA's) and their local Job Service offices, and One-Stop Centers (which integrate WIA, labor exchange, and other employment and social services) to familiarize them with the nature and needs of veterans.

c. Civic and private sector groups, and especially veterans' service organizations, to describe veterans and their needs.

VIII. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, administrative costs, program costs *e.g.* cost per enrollment and placement, demonstration models, and geographical service areas. The Grant Officer's determination for award under SGA 01–01 is the final agency action. The submission of the same proposal from any prior year competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. Need for the Project: 15 points

The applicant will document the extent of need for this project, as demonstrated by: (1) The potential number or concentration of veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure to effectively address the employment barriers which characterize the target population.

2. Overall Strategy to Increase Employment and Retention: 40 points

The application must include a description of the proposed approach to providing comprehensive employment services and Information Technology training, including job development, employers' commitment to hire, placement, and post-placement follow up services. The applicant must address their intent to target occupations in expanding Information Technology Industries, rather than on declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training program such as SESA's (DVOP and LVER Programs), VWIP, other WIA programs, and Workforce Investment or Development Boards or entities where in place, must be presented. It must be indicated how the activities will be tailored or responsive to the needs of veterans. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant must complete the chart of proposed program outcomes to include participants served, and job retention. (See Appendix D)

3. Quality and Extent of Linkages With Other Providers of Services to the Veterans: 10 points

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the veterans in the local community and/or on the reservation and outside of the grant. For each service, it must be specified who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. [Describe to the extent possible, how the project would respond to the needs of the Veterans and any linkages to DVA programs or resources to benefit the proposed program.]

4. Demonstrated Capability in Providing Required Program Services: 20 points

The applicant must describe its relevant prior experience in operating employment and training programs and providing services to participants similar to that which is proposed under this solicitation. Specific outcomes achieved by the applicant must be described in terms of clients placed in jobs, etc. The applicant must also delineate its staff capability and ability to manage the financial aspects of Federal grant programs. Relevant documentation such as recent (within the last 12 months) financial and/or audit statements must be submitted (required for applicants that are nonprofit organizations). Final or most recent technical reports for other relevant programs must be submitted as applicable. The applicant must also address its capacity for timely startup of the program.

5. Quality of Overall Employment and Training Strategy: 15 points

The application must demonstrate how the applicant proposes to meet the employment and training, and supportive services needs for veterans in the program and who will be entering the labor force. This discussion must specify the provisions made to access transportation, child care, temporary, transitional, and permanent housing for participants through community resources, HUD, lease, WIA, or other means. The Grant funds will not be used to purchase housing or vehicles.

Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness of the placement and enrollment costs.

IX. Post Award Conference

A post-award conference will be held for those awarded PY 2000 VWIP funds from the competition. It is expected to be held in July or August 2001. It is required that up to two grantee representatives will be present, a fiscal and programmatic representative are recommended. The site of the Post-Award conference will be at a location convenient for the grantee and Grant Officer Technical Representative (GOTR). The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and will also include best practices from past projects.

X. Reporting Requirements

The grantee will submit the reports and documents listed below:

A. Financial Reports

The grantee will report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET), whose address will be provided, no later than 30 days after the ending date of each Federal fiscal quarter (i.e., October 30, January 30, April 30, and July 30) during the grant period.

B. Program Reports

Grantees will submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET which contains the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts; and

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) identification of corrective action which will be taken to meet the planned goals, and (ii) a timetable for accomplishment of the corrective action.

C. Final Report Packages

The grantee will submit no later than 90 days after the grant expiration date a final report containing the following:

1. Final Financial Status Report (SF–269A) (copy to be provided following grant awards)

2. Final Technical Performance Report—(Program Goals)

3. Final Narrative Report identifying—(a) Major successes of the program; (b) obstacles encountered and actions taken (if any) to overcome such obstacles; (c) the total combined number of veterans placed in employment during the entire grant period; (d) the number of veterans still employed at the end of the grant period; (e) an explanation regarding why those veterans placed during the grant period, but not employed at the end of the grant period, are not so employed; and (f) any recommendations to improve the program.

D. Six (6) Month Close Out

No later than 6 months after the 90-day closeout period, the grantee will submit a follow up report containing the following:

1. Closeout Financial Status Report (SF–269A).

2. Closeout Narrative Report identifying—(a) the total combined (directed/assisted) number of veterans placed during the entire grant period; (b) the number of veterans still employed during follow up; (c) are the veterans still employed at the same or similar job, if not what are reasons; (d) was the training received applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improve the program.

XI. Administration Provisions

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, plus any indirect charges claimed, may not exceed 10 percent of the total amount of the grant.

2. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

3. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

4. Rates traceable and trackable through the SESA Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to SESA's.

B. Allowable Costs

Determinations of allowable costs will be made in accordance with the following applicable Federal cost principles:

1. State and local government—OMB Circular A–87

2. Educational institutions—OMB Circular A–21

3. Nonprofit organizations—OMB Circular A–122

C. Administrative Standards and Provisions

All grants will be subject to the following administrative standards and provisions:

1. 29 CFR part 93—Lobbying.

2. 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations, and with Commercial Organizations, Etc.

3. 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants,

Contracts and Agreements. This rule implements, for State and local governments and Indian tribes that receive Federal Assistance from the DOL, Office of Management and Budget (OMB) Circular A–128 "Audits of State and Local Governments" which was issued pursuant to the Single Audit Act of 1984, 31 U.S.C., Sec. 7501–7507. It also consolidates the audit requirements currently contained throughout the DOL regulations.

4. 29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

5. 29 CFR part 98—Government wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)

6. 29 CFR part 99—Audit Of States, Local Governments, and Non-profit Organization.

7. Section 168(b) of WIA—Administration of Programs Please note that Sections 181–195 also apply.

8. 29 CFR parts 30, 31, 32, 33 and 34—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally Assisted Programs of the Department of Labor, Effectuation of Title VI of the Civil Rights Act of 1964; and Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance (Incorporated by Reference). These rules implement, for recipients of federal assistance, non-discrimination provisions on the basis of race, color, national origin, and handicapping condition, respectively.

9. Appeals from non-designation will be handled under 20 CFR part 667.

Signed at Washington, DC, this 5th day of April, 2001.

Lawrence J. Kuss,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet, SF 424A

Appendix C: Assurances and Certifications Signature Page

Appendix D: Technical Performance Goals Form

Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants

Appendix F: Glossary of Terms

BILLING CODE 4510–79–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

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PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

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PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

Appendix C

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

Appendices D

Quarterly Performance and Enrollment Goals

(Enter all data cumulatively)

Grant Number: **Program Year:** 2000

Performance Goals

	Quarters			
	1	2	3	4
Participants/Enrollments				
Assessments				
Employment Development Plans				
Job Placement Assistance				
Placements				
Terminations				
Follow-ups				

Core Training

	Quarters			
	1	2	3	4
Classroom Training				
On-the-job training				
Remedial education				
Literacy and bilingual training				
Institutional skills training				
Occupational skills training				
On-site industry-specific training				
Customized training				
Apprenticeship training				
Upgrading and retraining				
Supportive Services				
Other (specify)				

Cost per placement =
Cost per enrollment =

Supportive or Ancillary Services

	Quarters 1	2	3	4
Counseling				
Job Search Assistance				
Case Management				
Job Club				
Work Experience				
Other (specify)				

Enrollment Goals by Eligibility Groups (do not double count)

	Quarters 1	2	3	4
Campaign/Wartime				
Service-Connected Disabled veteran				
Recently separated veteran				
Significant Barriers to Employment				

Enrollment Goals by Eligibility Subgroups (from above, as applicable, include here)

	Quarters 1	2	3	4
Female veterans				
Homeless veterans				
African-American veterans				
Hispanic veterans				
Native American veterans				
Other minority veterans				

Benchmarks

	Quarters 1	2	3	4
Average Wage at Placement				
Placement Rate				

Appendices E

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

Sub-Total _____ _____

	Administration	Program
Fringe Benefits For All Positions	_____	_____
Contractual	_____	_____
Travel	_____	_____
Indirect Costs	_____	_____
Equipment	_____	_____
Supplies	_____	_____

	Administration	Program
Total Costs ----------	_____	_____

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

Appendices F

GLOSSARY OF TERMS

Adequate Employment - See Unsubsidized Employment.

Administrative Costs - All direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of recipients and sub-recipients of the VWIP funds.

Adult Basic Education - Education for adults whose inability to speak, read or write the English language or to effectively reason mathematically, constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, which is designed to help eliminate such inability and raise the level, of education of such individuals with a view to making them less likely to become dependent on others, to improve their ability to benefit from occupational training and otherwise increase their opportunities for more productive and profitable employment, and to make them better able to meet their adult responsibilities.

Ancillary Services - Employment and training related activities other than core training which may enhance a participant's employability.

Apprenticeship Training - A formal occupational training program which combines on-the-job training and related instruction and in which workers learn the practical and conceptual skills required for a skilled occupation, craft, or trade. It may be registered or unregistered.

Assurances and Certifications - The act of certifying compliance with applicable federal and state laws and regulations regarding the receipt and expenditures of grant monies.

ASVET - Assistant Secretary for Veterans' Employment and Training (USDOL)

Average Wage at Placement - This is an average of the wages earned by participants upon entering employment. In the VWIP program this average should never be less than that of the Statewide average for Title IIA achieved during PY98.

Barriers to Employment - Characteristics that may hinder an individual's hiring, promotion or participation in the labor force. Some examples of individuals who may face barriers to employment include: single parents, women, displaced homemakers,

youth, public assistance recipients, older workers, substance abusers, teenage parents, veterans, ethnic minorities, and those with limited English speaking ability or a criminal record or with a lack of education, work experience, credentials, child care arrangements, transportation or alternative working patterns.

Case Management - A client centered approach in the delivery of services, designed to prepare and coordinate comprehensive employment plans for participants, to assure access to the necessary training and supportive services, and to provide support during program participation and after job placement. In accordance with this definition, the case manager acts as a facilitator in assisting the participant toward a successful completion of training.

Classroom Training - Any training of the type normally conducted in an institutional setting, including vocational education, which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, throughout the provision of courses such as remedial education, training in the primary language of persons with limited English language proficiency, or English-as-language training.

Cognizant Federal Agency - The federal agency that is assigned audit or indirect cost rate approval responsibility for a particular recipient organization by the Office of Management and Budget. (OMB Circulars A-87, A-102)

Core Training - Core training activities are employment focused interventions which address basic vocational skills deficiencies that prevent the participant from accessing appropriate jobs and/or occupations.

Counseling - Counseling in this sense can be any form of assistance which (1) provides guidance in the development of a participant's vocational goals and the means to achieve those goals; and/or (2) assist a participant with the solution to a variety of individual problems which may pose a barrier(s) to the participant in achieving vocational goals, e.g., PTSD counseling, substance abuse counseling, job counseling, etc.

Customized Training - A training program designed to meet the special requirements of an employer who has entered into an agreement with a Service Delivery Area to hire individuals who are trained to the employer's specifications. The training may occur at the employer's site or may be provided by a training vendor able to meet the employer's requirements. Such training usually requires a commitment from the employer to hire a

specified number of trainees who satisfactorily complete the training.

Disabled Veteran - A veteran who is entitled to compensation under laws administered by the Veterans Administration; or an individual who was discharged or released from active duty because of service-connected disability.

USDOL - United States Department of Labor

USDVA - United States Department of Veterans Affairs (Formerly the Veterans Administration).

DVET - Director for Veterans' Employment and Training

DVOP - Disabled Veterans' Outreach Program

Economically Disadvantaged - means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program; (B) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673 (2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), or (ii) 70 percent of the lower living standard income level; (C) is receiving (or has been determined within the 6-month period prior to the application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977; (D) qualified as a homeless individual under section 103 of the Stewart B. McKinney Homeless Assistance Act; (E) is a foster child on behalf of whom State or local government payments are made or (F) in cases permitted by regulations of the Secretary, is an individual with a disability whose income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements.

Employment Development Plan (EDP) - An individualized written plan or intervention strategy for serving an individual which, as a result of an assessment of the veteran's economic needs, vocational interests, aptitudes, work history, etc., defines a reasonable vocational or employment goal and the developmental services or steps required to reach the goal and which documents the accomplishments made by the individual.

ETA - The Employment and Training Administration

Enrolled Veteran - Shall be synonymous with the term

participant. A veteran who has been determined eligible for services at intake and who is receiving or scheduled to receive core training.

Follow-up - The tracking of what happens to participants when they leave the program for a period of 180 days after initial placement. The reporting requirements are to include the following data/information employment status (number of Entered Employments/Placements at 180 days after program has ended), average hourly wage (earnings change at 180 days after program has ended), and job retention (of those enrolled in training, provide number of those still employed in trained occupation at 180 days after program has ended), these measures can be used to assess long-term program performance and activity strategies for clients with diverse characteristics.

FTE - Full-time Equivalent, a personnel charge to the grant equal to 2,080 hours per annum.

FY - Fiscal Year. For federal government purposes, any twelve month period beginning on October 1 and ending on September 30.

GED - General Equivalency Diploma. A high school equivalency diploma which is obtained by passing the General Educational Diploma Equivalency Test which measures the application of skills and knowledge generally associated with four years of traditional high school instruction.

In-kind services - Property or services which benefit a federally assisted project or program and which are contributed without charge to the grantee.

Indirect Cost - A cost that is incurred for a common or joint purpose benefitting more than one cost objective and that is not readily assignable to the cost objectives specifically benefitted.

Institutional Skills Training - Skills training conducted in an institutional setting and designed to ensure that individuals acquire the skills, knowledge and abilities necessary to perform a job or group of jobs in an occupation for which there is a demand.

Intake - A process for screening individual applicants for eligibility; making an initial determination whether the program can benefit the applicants; providing information about the program, its services and the availability of those services; and selecting individual applicants for participation in the program.

Job Club Activities - A form of job search assistance provided in a group setting. Usually job clubs provide instruction and

assistance in completing job applications and developing resumes and focus on maximizing employment opportunities in the labor market and developing job leads. Many job clubs use telephone banks and provide group support to participants before and after they interview for openings.

Job Development - The process of marketing a program participant to employers, including informing employers about what the participant can do and soliciting a job interview for that individual with the employer.

Job Placement Services - Job placement services are geared towards placing participants in jobs and may involve activities such as job search assistance, training, or job development. These services are initiated to enhance and expedite participants' transition from training to employment.

Job Search Assistance (JSA) - An activity which focuses on building practical skills and knowledge to identify and initiate employer contacts and conduct successful interviews with employers. Various approaches may be used to include participation in a job club, receive instruction in identifying personal strengths and goals, resume and application preparation, learn interview techniques, and receive labor market information. Job search assistance is often a self-service activity in which individuals can obtain information about specific job openings or general job or occupational information.

Labor Exchange - Refers to the services provided to job seekers and employers by the State Employment Service Agencies, WIA Service -Delivery Areas, or other entities. Services to job seekers may include assessment, testing, counseling, provision of labor market information and referral to prospective employers. Employer service may include accepting job orders, screening applicants, referring qualified applicants and providing follow-up.

Labor Force - The sum of all civilians classified as employed and unemployed and members of the Armed Forces stationed in the United States. (Bureau of Labor Statistics Bulletin 2175)

Literacy and Bilingual Training - See Adult Basic Education.

LVER - Local Veterans' Employment Representative

Minimum Economic Need - The level of wages paid to a program participant that will enable that participant to become economically self-sufficient.

Minority Veterans - For the purposes of this SGA, veterans who are IV-C eligible and are members of the following ethnic categories: African American, Hispanic, American Indian or Alaskan Native,

Asian or Pacific Islander.

Occupational Skills Training - Includes both (1) vocational education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs, and (2) on-the-job training.

Offender - Any adult or juvenile who has been subject to any stage of the criminal justice process for whom services under this Act may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

OASVET - Office of the Assistant Secretary for Veterans' Employment and Training (ASVET)

OJT - On-the-Job-Training - Training for a specific job and based in the employer's work site. A contract is written through which the employer receives an amount of money, which shall never exceed 50% of the trainee's wages. This payment is made to offset the employer's costs for training an unskilled worker(s). The period of training may never exceed that prescribed by the Dictionary of Occupational Titles (DOT) for the occupation in which the participant is being trained. Usually in the OJT agreement, this is a promise on the part of the employer to hire the trainee upon successful completion of the training.

On-site Industry-specific Training - This is training which is specifically tailored to the needs of a particular employer and/or industry. Participants may be trained according to specifications developed by an employer for an occupation or group of occupations at a job site. Such training is usually presented to a group of participants in an environment or job site representative of the actual job/occupation, and there is often an obligation on the part of the employer to hire a certain number of participants who successfully complete the training.

Outreach - An active effort by program staff to encourage individuals in the designated service delivery area to avail themselves of program services.

Outside Funds - Resources pledged to the VWIP program which have a quantified dollar value. Such resources may include training funds from programs such as WIA Title I that are put aside for the exclusive use by participants enrolled in a VWIP program. Outside funds do not include in-kind services.

Participant, or Enrolled Participant - Means a veteran who: (1) has been determined eligible for participation upon intake; and (2) started or is scheduled to receive training or **ancillary** services.

An individual who receives only outreach and/or intake and assessment services does not meet this definition.

Placement Rate - This is a method used to determine the percentage of participants who become employed. The figure is calculated by dividing the number of total participants who were enrolled in the program by the number of participants who were placed or entered employment through the program.

Placement - The act of securing unsubsidized employment for or by a participant.

Pre-apprenticeship Training - Any training designed to increase or upgrade specific academic, or cognitive, or physical skills required as a prerequisite for entry into a specific trade or occupation.

Pre-enrollment Assessment - The process of determining the employability and training needs of individuals before enrolling them in the VWIP program. Individual factors usually addressed during pre-enrollment assessment include: an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, and personal circumstances.

Program Resources - Includes the total of both VWIP and outside funds.

PY - Program Year. The 12-month period beginning July 1, and ending, on June 30, in the fiscal year for which the appropriation is made.

Recently Separated Veteran - refers to any veteran who applies for participation in a IV-C funded activity within 48 months after separation from military service. (29 U.S.C., Chapter 19, section 1503(27)(C))

Remedial Education - Educational instruction, particularly in basic skills, to raise an individual's general competency level in order to succeed in vocational education or skill training programs, or employment.

Service-Connected Disabled - refers to (1) a veteran who is entitled to compensation under laws administered by the Department of Veterans' Affairs (DVA), or (2) an individual who was discharged or released from active duty because of a service-connected disability. (29 U.S.C., Chapter 19, section 1503(27)(B))

SESA - State Employment Security Agency, the state level organization affiliated with DOL's United States Employment Service.

SGA - Solicitation for Grant Application

Subgrant - An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee.

Subgrantee - The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Suitable Employment - See "Unsubsidized Employment"

Substance Abuser - An individual dependent on alcohol or drugs, especially narcotics, whose dependency constitutes or results in a substantial barrier to employment..

Supportive Services - means services which are necessary to enable an individual eligible for training under this Act, but who cannot afford to pay for such services, to participate in a training program funded under the this Act. Such supportive services may include transportation, health care, financial assistance, (except as a post-termination service), drug and alcohol abuse counseling and referral, individual and family counseling, special services and materials for individuals with disabilities, job coaches, child care and dependent care, temporary shelter, financial counseling, and other reasonable expenses required for participation in the training program and may be provided in-kind or through cash assistance.

Unsubsidized Employment - Employment not financed from funds provided under VWIP. In the VWIP Program the term "adequate" or "suitable" employment is also used to mean placement in unsubsidized employment which pays an income adequate to accommodate the participant's minimum economic needs.

Upgrading and Retraining - Training given to an individual who needs such training to advance above an entry level or dead-end position. This training shall include assisting veterans in acquiring needed state certification to be employed in the same field as they were trained in the military (i.e., Commercial Truck Driving License (CDL), Emergency Medical Technician (EMT), Airframe & Powerplant (A&P), Teaching Certificate, etc.).

Veteran - shall refer to an individual who served in the United States active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. (29 U.S.C. Chapter 19, section 1503(27)(A))

Veterans' Workforce Investment Program (VWIP) - Reference made to the "VWIP Program" means all activity funded by VWIP and outside resources.

VWIP Resources - This term is synonymous with VWIP funds/funding.

Vocational Exploration Training - Through assessments such as interest inventories and/or counseling, a process of identifying occupations or occupational areas in which a person may find satisfaction and potential, and for which his or her aptitudes and other qualifications may be appropriate.

Welfare and/or Public Assistance recipient - An individual who, during the course of the program year, receives or is a member of a family who receives cash welfare or public assistance payments under a Federal, State, or local welfare program.

Workforce Investment Act (WIA) - The purpose of this Act is to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals, including veterans, who face serious barriers to employment and who are in need of such training to obtain prospective employment. The Act requires the ASVET to consult with the Secretary of the DVA to ensure that programs funded under VWIP of this Act meet the employment and training needs of service-connected disabled, Campaign and recently separated veterans and are coordinated, to the maximum extent feasible, with-related programs and activities.

Work Experience - A temporary activity (six months or less) which provides an individual with the opportunity to acquire the skills and knowledge necessary to perform a job, including appropriate work habits and behaviors, and which may be combined with classroom or other training. When wages are paid to a participant on work experience and when such wages are wholly paid for under WIA, the participant may not receive this training under a private, for profit employer.

Youth - An individual, between the age of 20 and 24 years of age, who served on active duty in the U.S. Armed Forces.

[FR Doc. 01–9345 Filed 4–13–01; 8:45 am]
BILLING CODE 4510–79–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–042)]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

DATES: Tuesday, April 24, 2001, 12 Noon–1 p.m. Eastern Daylight Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 7W41, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows: To assess the safety and operational issues associated with flying a non-professional astronaut/cosmonaut to the International Space Station during the upcoming April 2001 Soyuz 2 taxi flight.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: April 11, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–9380 Filed 4–13–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–043)]

NASA Advisory Council (NAC), Technology and Commercialization Advisory Committee (TCAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

DATES: Thursday, May 3, 2001, 8:30 a.m. to 5 p.m. and Friday, May 4, 2001, 8 a.m. to 12 Noon.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street SW, Room 6H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory M. Reck, Code R, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4700).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status Update.

—Technology Core Competency Update.

—Work Plan for 2001 and 2002.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: April 11, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–9381 Filed 4–12–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used to evaluate requests for access to records whose use has been restricted because they contain highly personal information. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before June 15, 2001 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Statistical Research in Archival Records Containing Personal Information.

OMB Number: 3095–0002.

Agency Form Number: None.

Type of Review: Regular.

Affected Public: Individuals.

Estimated Number of Respondents: 1.

Estimated Time Per Response: 7 hours.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 7 hours.

Abstract: The information collection is prescribed by 36 CFR 1256.16 and 36 CFR 1256.4. Respondents are researchers who wish to do biomedical statistical research in archival records containing highly personal information. NARA needs the information to evaluate requests for access to ensure that the requester meets the criteria in 36 CFR 1256.4 and that the proper safeguards will be made to protect the information.

Dated: April 10, 2001.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 01–9271 Filed 4–13–01; 8:45 am]

BILLING CODE 7515–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–416]

Entergy Operations, Inc.; Grand Gulf Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from 10 CFR Part 50.71(e)(1) for Facility Operating License No. NPF–29 issued to Entergy Operations, Inc., the licensee, for operation of the Grand Gulf Nuclear Station (GGNS), Unit 1, located in Claiborne County, Mississippi.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to revise the GGNS, Unit 1, Updated Final Safety Analysis Report (UFSAR) via the World Wide Web (WWW), and discontinue paper submittals of the updates to the NRC. The UFSAR would be maintained and updated on the WWW in accordance with the frequency outlined in 10 CFR Part 50.71(e).

The proposed action is in accordance with the licensee's application for exemption dated November 28, 2000.

The Need for the Proposed Action

The proposed action is needed to reduce and eliminate technical issues related to the present submission of UFSAR updates via CD–ROM. It would also improve public access to the GGNS, Unit 1, UFSAR.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action is administrative in nature and unrelated to plant operations.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any 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 involve 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.

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

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the GGNS, Unit 1, dated September 1981, in NUREG–0777.

Agencies and Persons Consulted

In accordance with its stated policy on March 30, 2001, the staff consulted with the Mississippi State official, Robert W. Goff, of the Mississippi Department of Health, Division of Radiological Health, 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 the licensee's letter dated November 28, 2000. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 9th day of April, 2001.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Director, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–9318 Filed 4–13–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

Nuclear Management Company, LLC; Duane Arnold Energy Center; 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–49, issued to Nuclear Management Company, LLC (NMC, the licensed operator) and IES Utilities Inc., Central Iowa Power Cooperative, Corn Belt Power Cooperative (the licensed owners), for operation of the Duane Arnold Energy Center, located in Linn County, Iowa.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Facility Operating License No. DPR–49 to change the Technical Specifications (TS) for Duane Arnold Energy Center (DAEC and the facility) by relaxing operability requirements for secondary containment (aka, the reactor building), including associated isolation instrumentation, valves, dampers, and the standby gas treatment system, during core alterations and movement of irradiated fuel assemblies. The proposed action would also provide for a change in design and licensing bases for a selective application of the alternate radiological source term (AST) in accordance with 10 CFR 50.67, "Accident Source Term," and revised meteorology dispersion values, both being limited to evaluations of the consequences of a design-basis fuel handling accident (FHA).

The proposed action is in accordance with a portion of NMC's application for amendment by letter dated October 19, 2000, as supplemented November 16, 2000, and April 9, 2001, and as limited in scope by NMC's letter dated March 23, 2001.

The Need for the Proposed Action

Changing DAEC's TS to relax requirements for the operability of the secondary containment (including associated isolation instrumentation, isolation valves and dampers, and the standby gas treatment system) when core alterations are occurring or spent fuel is being moved provides increased flexibility to NMC in the scheduling and conduct of refueling activities. Changing the design and licensing bases regarding an AST for a FHA recognizes advances in understanding of the behavior of radiological releases resulting from the

accident, and is in accordance with 10 CFR 50.67. Changing the design and licensing bases regarding atmospheric dispersion values for use in evaluating the potential consequences of a radiological release due to a FHA is needed as a result of more recent data obtained from DAEC's meteorological program over the period of January 1, 1997, to December 31, 1999. NMC states that DAEC's historical atmospheric dispersion data did not meet its current expectations for level of documentation and design bases, and was not sufficient for analysis of new transport pathways in the AST methodology.

Environmental Impacts of the Proposed Action

In December 1999, the NRC issued 10 CFR 50.67, which provides a mechanism for licensees of power reactors to replace the traditional radiological source term used in the design-basis accident (DBA) analyses with an AST. The NRC also issued Regulatory Guide (RG) 1.183, "Alternative Radiological Source Terms for Evaluating Design-Basis Accidents at Nuclear Power Reactors," to provide guidance for implementing these ASTs. Section 50.67 provides that a licensee who seeks to revise its current accident source term in design basis radiological consequence analyses shall submit an application for a license amendment containing an evaluation of the consequences of applicable DBAs previously analyzed in the safety analysis report. By letter dated October 19, 2000, Nuclear Management Company, LLC (NMC and the licensee) requested a license amendment to apply the AST to a spectrum of DBAs. NMC's evaluation of the radiological consequences for the spectrum of DBAs applied the AST consistent with NMC's application for amendment, by letter dated November 16, 2000, to increase the maximum power level from 1658 thermal megawatts (MWt) to 1912 MWt. In a subsequent letter dated March 23, 2001, NMC requested that the portion of the October 19, 2000, application addressing a design-basis FHA be reviewed separately and in an expedited manner to facilitate an upcoming refueling outage. By letter dated April 9, 2001, NMC forwarded typed TS replacement pages reflecting certain TS changes proposed in the March 23, 2001, letter.

Accordingly, as requested in NMC's letter dated March 23, 2001, this environmental assessment addresses only the following portions of the original October 19, 2000, application for license amendment: (1) Implementing the AST in the radiological consequence analysis of a design-basis FHA performed to show compliance with 10 CFR 50.67(b)(2); (2) using revised atmospheric dispersion factors for radiological releases related to release points and human receptors associated with an FHA; and (3) eliminating TS requirements for operability of secondary containment (TS 3.6.4.1), its isolation instrumentation (TS 3.3.6.2), isolation valves and dampers (TS 3.6.4.2), and the standby gas treatment system (TS 3.6.4.3) during core alterations and movement of irradiated fuel assemblies.

The application for amendment describes NMC's radiological analysis of the design-basis FHA implementing the AST for a reactor core designed to operate at up to 1912 MWt. The accident analysis postulates that a spent fuel assembly is dropped from 30 feet above the top of the reactor core during refueling operations, resulting in the breaching of the cladding for 151 fuel rods. The drop over the reactor core is more limiting (damages more fuel rods) than any drops that could occur over the fuel pool. The assumption of 151 damaged fuel rods is more conservative than the existing design and licensing basis value of 125 fuel rods. Consistent with DAEC refueling procedures, a post-shutdown period of 60 hours is credited for radioactive decay in determining the release activity inventory, which is greater than the existing design and licensing basis of 24 hours. All the activity in the gap between the fuel pellets and the cladding of the damaged fuel rods is assumed to be released instantaneously into the pool. A pool water iodine decontamination factor of 200 is used, which is higher than the value of 100 used in the existing licensing basis analysis. NMC assumed no decontamination for noble gases released in the pool and full retention of all aerosol and particulate fission products by the pool water. Any activity leaving the pool enters the reactor building. All of the FHA activity is assumed to be released within 2 hours from the reactor building as a ground release, with no credit for holdup or dilution by the reactor building, and no credit for operation of the standby gas treatment system. Not crediting any dilution, holdup, or cleanup by the standby gas treatment system of the activity released from the pool represents a more conservative basis than that used in the existing licensing basis FHA analysis. NMC used atmospheric dispersion values derived from additional meteorology data from DAEC's meteorological program over the period of January 1, 1997, to December 31, 1999. The new atmospheric dispersion values are more conservative (e.g., provide higher offsite doses) than the previous values. The NRC staff finds that these assumptions and input parameters for the design-bases FHA are consistent with NMC's application to (1) change the TS to relax requirements for the operability of the secondary containment (including associated isolation instrumentation, isolation valves and dampers, and the standby gas treatment system) when core alterations are occurring or spent fuel is being moved, (2) change the design and licensing bases to apply an AST for a FHA, and (3) change the design and licensing bases to apply the updated atmospheric dispersion values for the FHA consequence analysis.

The results of NMC's analyses indicate that the dose at the exclusion area boundary would be no more than 0.94 rem total effective dose equivalent (TEDE) [1] and the dose at the low-population zone would be no more than 0.23 rem TEDE. These results are less than the TEDE criterion of 6.3 rem set forth in RG 1.183 (Table 6) and, therefore, are acceptable. Therefore, the proposed action to change the TS and the licensing and design bases regarding the design-basis FHA does not represent a significant offsite radiological impact to the human environment.

Using the above AST and the updated atmospheric dispersion values, NMC evaluated the dose to operators in the control room assuming that operators manually actuate control room isolation within 10 minutes. NMC evaluated the dose to personnel in the technical support center (TSC), which was assumed to be isolated manually after a 30-minute delay. These delay times are consistent with NMC's proposed TS change to relax the operability requirements for isolation of the control room and TSC. The analyses also assumed 1000 cubic feet per minute of unfiltered inleakage into the control room and TSC, even though both areas are designed to be pressurized to preclude such inleakage after an accident. The control room and TSC doses were analyzed over a 30-day period. The results indicate that the control room operators would receive no more than 3.16 rem TEDE and TSC personnel would receive no more than

[1] As part of the implementation of the AST, the TEDE acceptance criterion of 10 CFR 50.67(b)(2) replaces the previous whole body and thyroid dose guidelines of 10 CFR 100.11, "Reactor Site Criteria—Determination of Exclusion Area, Low Population Zone, and Population Center Distance," and General Design Criterion (GDC)–19 of 10 CFR part 50, appendix A, which (based upon NMC's selective application) is limited to the FHA only.

2.83 rem TEDE. These doses are less than the TEDE limit of 5 rem contained in 10 CFR 50.67 and are, therefore, acceptable. Therefore, the proposed action would not result in a significant onsite radiological impact to the human environment.

The proposed action to change the TS and to change the licensing and design bases with respect to the FHA will not increase the probability or consequences of accidents, no significant changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, the NRC concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. The proposed action does not involve any physical features of the plant or procedure changes involving a potential nonradiological release. Thus, the proposed action 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.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no action" alternative). Denial of the application would not result in a significant improvement in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Relating to the Operation of Duane Arnold Energy Center," dated March 1973.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the Iowa State official, Mr. D. Fleeter of the Department of Public Health, 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 the application dated October 19, 2000, as supplemented by letters dated November 16, 2000, and April 9, 2001, and as limited in scope by letter dated March 23, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 11th day of April 2001.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–9465 Filed 4–13–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License To import Radioactive Waste

Pursuant to 10 CFR 110.70(c) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following application for an import license. Copies of the application are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *<http://www.nrc.gov/NRC/ADAMS/index.html>* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning the application follows:

NRC IMPORT LICENSE APPLICATION

Name of applicant Date of application Date received Application No.	Description of material			
	Material type	Total Qty.	End use	Point of origin
Allied Class Technology Group December 22, 2000; March 22, 2001 (Revised) December 28, 2000; March 23, 2001. IW011	Class A radioactive waste. Scrap metal contaminated with Cobalt 60 and Cesium-137.	3,000 tons	Decontamination of metals for recycle or solid waste disposal. Secondary low-level radioactive waste generated from processing will be disposed of at US Ecology facility in Richland, WA.	Taiwan.

For the Nuclear Regulatory Commission.

Dated this 9th day of April 2001 at Rockville, Maryland.

Ronald D. Hauber,

Deputy Director, Office of International Programs.

[FR Doc. 01–9323 Filed 4–13–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on Standard Review Plan

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland. The meeting will provide an opportunity for discussion on the revised draft Chapter 3 entitled, "Integrated Safety Analysis" of NUREG–1520 for 10 CFR part 70, Standard Review Plan (SRP) for the Review of a License Application for a Fuel Cycle Facility. The March 30, 2001, draft Chapter 3 can be found in both a "clean" and marked-up version in the NRC Public Electronic Reading Room under "Recently Released Documents, April 3, 2001". It can also be found on the Internet at the following website:

http://techconf.llnl.gov/cgi-bin/library?source=*&library=Part_70_lib

The web site can also be reached by the following method:

1. Go to the main NRC web site at: http://www.nrc.gov.

2. Scroll down to the bottom of that page and click on the word "Rulemaking."

3. Scroll down on the Rulemaking page until the words "Technical Conference" appear. Click on those words.

4. On the page titled "Welcome to the NRC Technical Conference Forum," click on the link "Conference" or "Technical Conferences".

5. Scroll down to the topic "Draft Standard Review Plan and Guidance on Amendment to 10 CFR Part 70."

6. Select "Document Library."

Purpose: This meeting will provide an opportunity to discuss comments on the staff's revised draft Chapter 3 and its appendix.

DATES: The meeting is scheduled for Tuesday, May 8, 2001, from 1:00 p.m. to 4:00 p.m. The meeting is open to the public.

ADDRESSES: Two White Flint North, 11545 Rockville Pike, Room T–10A1, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Yawar H. Faraz, Senior Project Manager, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–8113, e-mail *yhf@nrc.gov.*

Dated at Rockville, Maryland this 9th day of April, 2001.

For the Nuclear Regulatory Commission.

Lidia Roché,

Acting Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–9319 Filed 4–13–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 9, 2001, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, May 9, 2001—2:30 p.m. Until the Conclusion of Business

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: April 9, 2001.

James E. Lyons,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 01–9321 Filed 4–13–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Plant Operations; Notice of Meeting

The ACRS Subcommittee on Plant Operations will hold a meeting on May 9, 2001, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 9, 2001—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the Reactor Oversight Process excluding the Action Matrix. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman and written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff,

and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore, can be obtained by contacting the cognizant ACRS staff engineer, Ms. Maggalean W. Weston (telephone 301/415–3151) between 8 a.m. and 5:30 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: April 10, 2001.

James E. Lyons,

Associate Director for Technical Support.

[FR Doc. 01–9322 Filed 8–13–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been 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.

Regulatory Guide 1.189, "Fire Protection for Operating Nuclear Power Plants," has been developed to provide a comprehensive fire protection guidance document and to identify the scope and depth of fire protection that the NRC staff has determined to be acceptable for operating nuclear plants.

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. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection or downloading at the NRC's web site at <*WWW.NRC.GOV*> under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site; Regulatory Guide 1.189 has Accession Number ML010920084. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301)415–2289, or by email to <*DISTRIBUTION@NRC.GOV*>. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. 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 6th day of April 2001.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 01–9317 Filed 4–13–01; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Certification Regarding Rights to Unemployment Benefits; OMB 3220–0079

Under Section 4 of the Railroad Unemployment Insurance Act (RUIA), an employee who leaves work voluntarily is disqualified for unemployment benefits unless the employee left work for good cause and is not qualified for unemployment benefits under any other law. RRB Form UI–45, Claimant's Statement—Voluntary Leaving of Work, is used by the RRB to obtain additional information needed to investigate a claim for unemployment benefits when the claimant indicates on RRB Form UI–1, Application for Unemployment Benefits and Employment Service (OMB 3220–0022) that he has voluntarily left work. Completion of Form UI–45 is required to obtain or retain benefits. One response is received from each respondent.

RRB Form UI–45 is being revised to include language that asks a claimant, if they have been denied state unemployment benefits or unemployment benefits under any law other than the RUIA, to attach a copy of any letter received that denied them the benefits they applied for. Minor non-burden impacting editorial changes are also being proposed. The completion time for the UI–45 is estimated at 15 minutes per response. The RRB estimates that approximately 2,900 responses are received annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer, at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 01–9290 Filed 4–13–01; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Pay Rate Report; OMB 3220–0097

Under Section 2(a) of the Railroad Unemployment Insurance Act, the daily benefit rate for unemployment and sickness benefits depends on the claimant's last daily rate of pay in the base year. The procedures pertaining to the use of a claimant's daily pay rate in determining the daily benefit rate are prescribed in 20 CFR 330.

The RRB utilizes Form UI–1e, Request for Pay Rate Information, to obtain information from a claimant about their last railroad employer and pay rate, when it is not available from other RRB records. Form UI–1e also explains the possibility of receiving a higher daily benefit rate if a claimant reports their daily rate of pay for railroad work in the base year. Completion is required to obtain or retain benefits. One response is requested of each respondent.

The RRB proposes minor non-burden impacting editorial changes to Form UI–1e. The completion time for Form UI–1e is estimated at 5 minutes per response.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 01–9291 Filed 4–13–01; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 16, 2001.

A closed meeting will be held on Wednesday, April 18, 2001, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Wednesday, April 18, 2001 will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: April 11, 2001.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44166; File No. SR–Amex–2001–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Its Annual Electronic Access Fee.

April 6, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 Amex proposes to (i) amend Article VII of the Exchange Constitution by deleting the requirement that the annual electronic access fee be fixed by the Board of Governors ("Board") based on a given formula; and (ii) set the year 2001 electronic access fee at $61,363.00. Below is the text of the proposed rule change. Text in brackets indicates material to be deleted, and text in italics indicates material to be added.

American Stock Exchange Constitution

* * *

Article VII

Sec. 1(a)–(d) No change.

(e) Associate members—The initiation fee for associate membership shall be a sum equal to 5% of the latest price at which a regular membership shall have been sold and transferred to an applicant for regular membership, otherwise than for a nominal consideration or through a private sale prior to the date when such initiation fee is due, provided, however, that the initiation fee for an associate member who is approved as the nominee of an associate member firm or corporation pursuant to Article IV, section 1(d) shall be $100. The annual membership fee for associate membership shall be $4,000 per month for associate member firms and $3,000 per year for individual associate members and off-floor traders. Associate members shall be permitted to waive these fees by demonstrating to the Exchange's Financial Regulatory Services Department that ten percent (10%) of the associate member's and/or individual off-floor trader's volume is transacted on the Floor of the Exchange. [The annual membership fee for associate membership access to the Exchange electronic systems as provided in Article IV, section 1(d) shall be fixed by the Board once a year, and shall be a sum equal to 10% of the average price at which regular memberships shall have been sold and transferred to applicants for regular membership, otherwise than for nominal consideration or through private sale, during the preceding twelve months.] Effective August 7, 2000, all new associate members shall be required to pay the annual electronic access fee, *as provided in Article IV, section 1(d),* as well as the monthly and/or annual fees. Such initiation, monthly and/or annual and electronic access fee shall be paid prior to the approval by the Exchange of an applicant for associate membership, and prior to renewal of such membership at the end of the period for which such fees have been paid.

(f) No change.

* * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently imposes on associate memberships an annual electronic access fee for access to the Exchange's electronic systems. Pursuant to Article VII, section 1(e) of the Exchange Constitution, this annual electronic access fee is required to be fixed by the Board once a year and is calculated on a formula of ten (10%) percent of the average price at which regular memberships have been sold and transferred to applicants for regular memberships, other than for nominal consideration or through a private sale, during the preceding twelve months, from January through December. The electronic access fee for the year 2001 is the year 2000 fee fixed at $61,363.00. The Exchange proposes to amend its Constitution by deleting both the 10% formula and the requirement that the Board fix the electronic access fee each year. The Exchange further proposes to fix the electronic access fee for the year 2001 at its current level at $61,363.00 and add it to the Exchange's schedule of fees to treat it in the future on a schedule rather than on a formula basis.

It is cumbersome and inefficient for the Board to have to address, on an annual basis, the issue of one fee. Furthermore, the Exchange is in the process of reviewing its overall fee structure and intends to perform this review on an ongoing annual basis. The purpose of this review is to keep fees current, in accordance with prevailing economic conditions, and simplify the process while remaining competitive with other options and equities exchanges.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of section 6(b)(4) of the Act [4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using Exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–15 and should be submitted by May 7, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–9307 Filed 4–13–01; 8:45 am]

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[5] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44169; File No. SR–DTC–99–6]

Self-Regulatory Organizations; the Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Establishment of a Matured Book-Entry Only Certificate Destruction Service

April 10, 2001.

On October 25, 1999, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–99–6) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on June 15, 2000.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Prior to this rule change, shortly before a debt security held by DTC matures, DTC sends to the redemption agent: [3] (i) A DTC "letter of transmittal;" (ii) a DTC "redemption payment summary form;" and (iii) the certificate(s) that represent the maturing issue. This procedure is in place for issues that are evidenced both by non-engraved certificates which are typically book entry only ("BEO") securities [4] and by engraved certificates. DTC then removes the security certificate(s) from its vault and delivers the certificate(s) to a commercial courier service that in turn delivers the certificates to the redemption agent. There, the certificates are processed in accordance with the redemption agent's individual policies and practices.[5]

Under DTC's rule change, DTC will offer a new optional service to

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 42912 (June 8, 2000), 65 FR 37585.

[3] For the majority of maturing debt securities, the transfer agent is also the redemption agent. Sometimes the issuer itself will serve as the redemption agent or will appoint a third party other than the transfer agent to serve as the redemption agent.

[4] A BEO security is represented by a paper certificate held in a securities depository while all transactions relating to that security are completed electronically. Beneficial owners of BEO securities generally cannot obtain a paper certificate evidencing their ownership interests in BEO securities, and certificates are generally not moved outside the depository. This format is widely used for many debt securities.

[5] Historically, some agents have contracted with commercial vendors for the physical destruction of such certificates.

redemption agents under which DTC will destroy BEO certificates in lieu of shipping the certificates to the redemption agent.[6] Redemption agents that wish to use this new service will deliver to DTC an executed "matured BEO certificate destruction request."[7] DTC will continue to present the DTC "letter of transmittal" and the DTC "redemption payment summary form" but not the BEO certificate(s) to the redemption agent in advance of the issue's maturity. In addition, DTC will present to the redemption agent a "notice of destruction"[8] stating that DTC intends to destroy the BEO certificate(s) in accordance with the procedures set forth in this rule filing as they may be amended from time to time. If the redemption agent requests in writing in a timely manner that DTC not destroy the certificates, DTC will honor the redemption agent's request.

The matured BEO security certificates will be physically destroyed on DTC's premises only after: (i) DTC has received the redemption proceeds in full and (ii) an additional thirty days have passed after DTC receives such proceeds. Authorized DTC personnel will oversee and witness the destruction of the cancelled certificates. DTC will maintain detailed ledger control over the BEO certificates through the point of destruction. An accurate record of all canceled certificates will be maintained and will be searchable by date of cancellation. Prior to destruction, the maturing BEO security certificates will be microfilmed or imaged by DTC. DTC will retain the microfilm or computer images of these BEO certificates for ten years following destruction of the certificates, and for the first six months, DTC will maintain the microfilm or computer images in a place that is easily accessible by authorized DTC personnel.[9] Copies of the microfilm (at no fee) or eventually images (at a fee) will be available to the redemption agent during the ten years following destruction. DTC will be liable for gross negligence and willful misconduct.

As a result of this new service, such BEO security certificates, once deposited in DTC, will never have to be physically removed from DTC's vault. They will be maintained in a secure location that does not allow access to the public or unauthorized personnel. Additionally, by centralizing the destruction of matured BEO debt security certificates, DTC will provide uniform and consistent controls and procedures (as well as physical safeguards) for all such certificates in the U.S. capital market.

II. Discussion

Section 17A(b)(3)(F)[10] of the Act requires the rules of a clearing agency be designed to assure the safeguarding of securities which are in the clearing agency's custody or control or for which it is responsible. The Commission believes that DTC's rule change is consistent with DTC's obligation under the Act because the new procedures will help to reduce the risks currently associated with the processing of matured BEO certificates by eliminating much of the physical handling currently involved in processing BEO certificates. In addition, the Commission believes that DTC's BEO certificate destruction policy contains sufficient safeguards concerning the selection of BEO certificates that will be destroyed, the oversight of the destruction, and the recordkeeping of destroyed BEO certificates.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–99–6) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[6] At this time, DTC will offer this service only for non-engraved BEO certificates.

[7] A copy of the "matured BEO certificate destruction request" is set forth as Exhibit B of DTC's proposed rule change, which is available through the Commission's Public Reference Branch or through DTC.

[8] A copy of the "notice of destruction" is set forth in Exhibit C of DTC's proposed rule change, which is available through the Commission's Public Reference Room or through DTC.

[9] DTC has informed the Commission's staff that for the time period that such microfilm or imaged records must be maintained, whether by DTC or by a third party on behalf of DTC, such records will: (i) Be available at all times for examination by the Commission and the appropriate regulatory agency for immediate, easily readable projection/enlargement; (ii) be arranged and indexed in a manner that permits immediate location of any particular record; (iii) be immediately provided upon request by the Commission or appropriate regulatory agency; and (iv) be copied and stored separately from the original records.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44138; File No. SR–PCX–01–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. to Trade Standardized Equity Options on Trust Issued Receipts

March 30, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new listing and maintenance standards to allow for trading of standardized equity options on trust issued receipts. The text of the proposed rule change follows. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Options

Rule 3.6(a)–(b)—No Change.

* * * * *

Commentary

.01–.06—No change.

.07 Securities deemed appropriate for options trading shall include shares or other securities ("Trust Issued Receipts") that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as a national market security, and that represent ownership of the specific deposited securities held by a trust, provided:

(a)(i) the Trust Issued Receipts meet the criteria and guidelines for underlying securities set forth in Rule 3.6(a); or

(ii) the Trust Issued Receipts must be available for issuance or cancellation each business day from the Trust in exchange for the underlying deposited securities; and

(b) not more than 20% of the weight of the Trust Issued Receipt is represented by ADRs on securities for which the primary market is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

not subject to a comprehensive surveillance agreement.

* * * * *

Withdrawal of Approval of Underlying Securities

Rule 3.7(a)–(b)—No change.

* * * * *

Commentary

.01–.10—No change.

.11 *Absent exceptional circumstances, securities initially approved for options trading pursuant to Commentary .07 to PCX Rule 3.6 (such securities are defined and referred to in that Commentary as "Trust Issued Receipts") shall not*[3] *be deemed to meet the Exchange's requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Trust Issued Receipts, whenever the Trust Issued Receipts are delisted and trading in the Receipts is suspended on a national securities exchange, or the Trust Issued Receipts are no longer traded as national market securities through*[4] *the facilities of a national securities association. In addition, the Exchange shall consider the suspension of opening transactions in any series of options of the class covering Trust Issued Receipts in any of the following circumstances:*

(1) In accordance with the terms of Commentary .01 of this Rule in the case of options covering Trust Issued Receipts when such options were approved pursuant to paragraph (a)(i) of Commentary .07 under Rule 3.6;

(2) The Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;

(3) The Trust has fewer than 50,000 receipts issued and outstanding;

(4) The market value of all receipts issued and outstanding is less than $1,000,000; or

(5) Such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

.12 *For Holding Company Depositary Receipts (HOLDRs), the Exchange will not open additional series of options overlying HOLDRs (without prior Commission approval) if: (1) the proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80% (as measured by their relative weightings in the HOLDRs trust); or (2) less than 80% of the total number of securities held in a HOLDRs trust underlie standardized equity options.*

* * * * *

[3] PCX corrected a typographical error that appeared in the proposed rule language. Telephone conversation between Hassan A. Abedi, Attorney, PCX and Susie Cho, Attorney, Division of Market Regulation ("Division"), Commission, March 30, 2001.

[4] PCX corrected a typographical error that appeared in the proposed rule language. Telephone conversation between Hassan A. Abedi, Attorney, PCX and Susie Cho, Attorney, Division, Commission, March 26, 2001.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide for the trading of options, including FLEX equity options,[5] on trust issued receipts. The Exchange believes that the listing and maintenance criteria proposed in its new rule are consistent with the options listing and maintenance criteria for trust issued receipts currently used by the American Stock Exchange LLC ("Amex") and the Chicago Board Options Exchange, Inc. ("CBOE").[6] Trust issued receipts are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the receipts. They are negotiable receipts issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the trust issued receipts. Trust issued receipts, which trade in round-lots of 100, and multiples thereof, may be issued after their initial offering through a deposit with the trustee of the required number of shares of common stock of the underlying issuers. This characteristic of trust issued receipts is similar to that of exchange-traded fund shares, which also may be created on any business day upon deposit of the requisite securities comprising a creation unit.[7] The trust will only issue receipts upon the deposit of the shares of underlying securities that are represented by a round-lot of 100 receipts. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender trust issued receipts in a round-lot and round-lot multiples of 100 receipts.

Generally, options (including FLEX equity options) on trust issued receipts are proposed to be traded on the Exchange pursuant to the same rules and procedures that apply to trading in options on equity securities or indexes of equity securities. The Exchange will list option contracts covering 100 trust issued receipts, the minimum required round-lot trading size for the underlying receipts. Strike prices for the non-FLEX contracts will be set to bracket the trust issued receipts at the same intervals that apply to other equity options under PCX Rule 6.4. The proposed position and exercise limits for non-FLEX options on trust issued receipts would be the same as those established for other non-FLEX equity options, as set forth in PCX Rule 6.8 and PCX Rule 6.9 respectively. The Exchange anticipates that most options on trust issued receipts will initially qualify for the lowest position limit. However, as with other equity options, applicable position limits will be increased for options if the volume of trading in the trust issued receipts increases to the extent needed to permit a higher limit. As is the case of all FLEX equity options, no position and exercise limits will be applicable to FLEX equity options overlying trust issued receipts.

The listing and maintenance standards proposed for options on trust issued receipts are set forth respectively in proposed Commentary .07 to PCX Rule 3.6, and in proposed Commentary .11 to PCX Rule 3.7. Pursuant to the proposed initial listing standards, the Exchange will list only trust issued receipts that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as national market securities. In addition, the initial listing standards require that either: (i) the trust issued receipts meet the uniform options listing standards in PCX Rule 3.6(a), which include criteria covering the minimum public float, trading volume, and share price of the underlying security in order to list the option; [8] or (ii) the trust issued receipts

[5] FLEX equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style and certain exercise prices.

[6] The Commission approved the Amex provisions on June 15, 2000. *See* Securities Exchange Act Release No. 42947 (June 15, 2000), 65 FR 39211 (June 23, 2000) (SR-Amex-99-37). The Commission approved the CBOE provisions on July 17, 2000. *See* Securities Exchange Act Release No. 43043 (July 17, 2000), 65 FR 46520 (July 28, 2000) (SR–CBOE–00–25).

[7] The Exchange received approval to trade options on exchange-traded fund shares on February 28, 2001. *See* Securities Exchange Act Release No. 44025 (February 28, 2001), 66 FR 13986 (March 8, 2001).

[8] Specifically, PCX Rule 3.6(a) requires the underlying security to have a public float of 7,000,000 shares, 2,000 holders, trading volume of 2,400,000 shares in the preceding 12 months, a share price of $7.50 for the majority of the business days during the three calendar months preceding

must be available for issuance or cancellation each business day from the trust in exchange for the underlying deposited securities.

In addition, listing standards for options on trust issued receipts will require that any American Depositary Receipts (ADRs) in the portfolio on which the Trust is based for which the securities underlying the ADRs' primary markets are in countries that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20 percent of the weight of the portfolio.

The Exchange's proposed maintenance standards provide that if a particular series of trust issued receipts should cease to trade on an exchange or as national market securities in the over the-counter market, there will be no opening transactions in the options on the trust issued receipts, and all such options will trade on a liquidation-only basis (*i.e.*, only closing transactions to permit the closing of outstanding open options positions will be permitted). In addition, the Exchange will consider the suspension of opening transactions in any series of options of the class covering trust issued receipts if: (i) For options on trust issued receipts that were listed pursuant to the equity option listing standards in PCX Rule 3.6(a), the options fail to meet the option maintenance standards in Commentary .01 to PCX Rule 3.7; [9] (ii) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of trust issued receipts for 30 or more consecutive trading days; (iii) the trust has fewer than 50,000 receipts issued and outstanding; (iv) the market value of all receipts issued and outstanding is less than $1,000,000; or (v) such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealing in such options on the Exchange inadvisable. Furthermore, the Exchange will not open additional series of options on any Holding Company Depositary Receipts ("HOLDRs"), a type of trust issued receipt, without prior Commission approval, if: (i) The proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80 percent (as measured by the relative weightings in the HOLDRs trust); [10] or (ii) less than 80 percent of the number of securities held by a HOLDR trust underlie standardized options.

Options on trust issued receipts will be physically settled and will have the American-style exercise feature used on all non-FLEX equity options, and not the European-style feature. The Exchange, however, also proposes to trade FLEX equity options which will be available with both the American-style and European-style exercise feature, as well as other FLEX equity features.[11]

The proposed margin requirements for options on trust issued receipts are at the same levels that apply to options generally under PCX Rule 2.16, except, with respect to trust issued receipts based on a broad-based portfolio, minimum margin must be deposited and maintained equal to 100 percent of the current market value of the option plus 15 percent of the market value of equivalent units of the underlying security value. Trust issued receipts that hold securities based upon a narrow-based portfolio must have options margin that equals at least 100 percent of the current market value of the contract plus 20 percent of the market value of equivalent units of the underlying security value. In this respect, the margin requirements proposed for options on trust issued receipts are comparable to margin requirements that currently apply to broad-based and narrow-based index options. Also, holders of options on trust issued receipts that exercise and receive the underlying trust issued receipts must receive a product description or prospectus, as appropriate.

Lastly, the Exchange believes it has the necessary systems capacity to support the additional series of options that would result from the trading of options on HOLDRs.

2. Statutory Basis

The PCX believes that, by providing investors with a better means to hedge their positions in the underlying trust issued receipts, as well as an alternative market center in which to trade these products, thereby increasing competition, the proposed rule change is consistent with section 6(b)(5) of the Act.[12] Section 6(b)(5) requires that exchange rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive comments on the proposed rule change.

III. 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, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–01–15 and should be submitted by May 7, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

the date of the selection, and that the issuer of the underlying security is in compliance with the Act.

[9] Specifically, Commentary .01 to Rule 3.7 provides that an underlying security will not meet the Exchange's requirements for continued listing when, among other things: (i) there are fewer than 6,300,000 publicly-held shares; (ii) there are fewer than 1,600 holders; (iii) trading volume was less than 1,800,000 shares in the preceding twelve months; or (iv) the share price of the underlying security closed below $5 on a majority of the business days during the preceding 6 months.

[10] The Exchange represents that the weight of each security in a HOLDR trust will be determined by calculating the sum of the number of shares of each security (represented in a single HOLDR) and underlying options multiplied by its respective share price divided by the sum of the number of shares of all securities (represented in a single HOLDR) multiplied by their respective share prices.

[11] An American-style option may be exercised at any time prior to its expiration, while a European-style option may be exercised only at its expiration date.

[12] 15 U.S.C. 78f(b)(5).

applicable to a national securities exchange, and in particular, with the requirements of section 6(b)(5).[13] The Commission notes that it has previously approved similar listing standards proposed by the Amex and the CBOE for options on trust issued receipts, and it believes that the PCX's proposal contains adequate safeguards, matching those previously approved.[14] As the Commission found in its previous approvals of the listing standards proposed by the Amex and the CBOE, the listing and trading of options, including FLEX equity options on exchange-traded trust issued receipts, should give investors a better means to hedge their positions in the underlying trust issued receipts. The Commission also believes that pricing of the underlying trust issued receipts may become more efficient, and market makers in these shares, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets. In sum, the Commission believes that options on trust issued receipts likely will engender the same benefits to investors and the marketplace that exist with respect to options on common stock, thereby serving to promote the public interest, to remove impediments to a free and open securities market, and to promote efficiency, competition, and capital formation.[15]

The Commission finds that the Exchange's listing and delisting criteria for options on trust issued receipts are adequate. The proposed listing and maintenance requirements should ensure that there exist adequate supplies of the underlying trust issued receipts in case of the exercise of an option, and a minimum level of liquidity to control against manipulation and to allow for the maintenance of fair and orderly markets. The PCX's additional requirements for opening additional series or options on HOLDRs will also ensure that the underlying securities are options eligible, and for the most part will satisfy minimum thresholds previously approved by the Commission.

The Commisssion also believes that the surveillance standards developed by the PCX for options on trust issued receipts are adequate to address the concerns associated with the listing and trading of such securities. The PCX's proposal to limit the weight of the portfolio that may be composed of ADRs whose primary markets are in countries that are not subject to comprehensive surveillance agreements is similar to that previously approved by the Commission.[16] As to domestically traded trust issued receipts themselves and the domestic stocks in the underlying portfolio, the Intermarket Surveillance Group ("ISG") Agreement will be applicable to the trading of options on trust issued receipts.[17]

Finally, the Commission believes that the PCX's proposed margin requirements are appropriate. The Commission notes that they are comparable to margin requirements that currently apply to broad-based and narrow-based index options, and to those previously approved for use at the Amex.[18]

The Commission finds good cause for approving the proposed rule change (SR–PCX–01–15) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** under section 19(b)(2) of the Act.[19] As noted above, the trading requirement for options on trust issued receipts at the PCX will be substantially similar to those at the Amex and the CBOE, which the Commission has approved.[20] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not already addressed and should benefit holders of trust issued receipts by permitting them to use options to manage the risks of their positions in the receipts. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[21] to approve the proposal on an accelerated basis.

V. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[22] that the proposed rule change (SR–PCX–01–15) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–9340 Filed 4–13–01; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra* note 6.

[15] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See supra* note 6.

[17] ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets.

[18] *See supra* note 6.

[19] 15 U.S.C. 78s(b)(2).

[20] *See supra* note 6.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Services (ISAC–13)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Services (ISAC–13) will hold a meeting on April 24, 2001, from 9 a.m. to 12 noon. The meeting will be opened to the public from 9 a.m. to 9:45 a.m. and closed to the public from 9:45 a.m. to 12 noon.

DATES: The meeting is scheduled for April 24, 2001, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce, Conference Room B–841A located at 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Holderman (202) 482–0345 Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (principal contact), or myself on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following topics will be covered:

- Results of March 2001 Stocktaking Exercise.
- Council for Trade Services Agenda Until WTO Ministerial in November, 2001 Negotiations.

Christina Sevilla,

Acting Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 01–9262 Filed 4–13–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–9380]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Towing Safety Advisory Committee (TSAC) will meet to consider draft comments from the Fire Suppression and Voyage Planning Working Group. The comments, when approved by the Committee, will be forwarded to the docket for the Coast Guard's rulemaking on Fire Suppression and Voyage Planning for Towing

Vessels. The meeting is open to the public.

DATES: The Committee will meet on Monday, April 30, 2001 from 2 p.m. to 3:30 p.m. This meeting may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before April 26, 2001.

ADDRESSES: TSAC will meet in room 1303 at Coast Guard Headquarters; 2100 Second Street, SW., Washington, DC 20593–0001. Send written materials and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1); Room 1210, 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: Mr. Gerald P. Miante, Assistant Executive Director, TSAC, telephone 202–267–0229, fax 202–267–4570, or e-mail at: gmiante@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes only TSAC's consideration of and voting on the recommended comments of its Fire Suppression and Voyage Planning Working Group. A Supplemental Notice of Proposed Rulemaking was published in the **Federal Register** on Wednesday, November 8, 2000 (FR 65 66941), and an Extension of Comment Period was published on Friday, February 23, 2001 (FR 66 11241). The Docket Number for this rulemaking is USCG–2001–6931.

Procedural

This meeting is open to the public. Please note that the meeting 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 Assistant Executive Director no later than April 26, 2001.

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 Assistant Executive Director as soon as possible.

Dated: April 10, 2001.

Joseph J. Angelo,

Director of Standards.

[FR Doc. 01–9383 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Supplemental Environmental Impact Statement for the Central Link Light Rail Transit Project

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS).

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to advise the public, tribes and agencies that an SEIS will be prepared to further evaluate station and route alternatives from Northeast (NE) 45th Street to Northgate Mall in Seattle, Washington, and possibly design refinements and variations in other segments of the project for the Central Link Light Rail Transit Project. This action is a supplement to the Central Link Light Rail Transit Project Final EIS, November 1999.

DATES: This EIS is a supplement to the Central Link Light Rail Transit Project Final EIS, November 1999, and scoping has been waived consistent with 23 CFR 771.130(d).

FOR FURTHER INFORMATION CONTACT: John Witmer, Federal Transit Administration, 915 2nd Avenue, Suite 3142, Seattle, WA 98174, Telephone: 206.220.7964 or Chris Townsend, Sound Transit, 401 South Jackson St., Seattle, WA 98104–2826, Telephone: 206.398.5135

SUPPLEMENTARY INFORMATION: FTA and the Puget Sound Regional Transit Authority (Sound Transit) will prepare a supplemental EIS on three route alternatives from NE 45th Street to Northgate Mall. The first option is the "12th Avenue Tunnel." This route is in a tunnel from NE 45th Street at the University of Washington to just north of Lake City Way near NE 76th Street and continues elevated mostly within the right-of-way of Interstate 5 (I–5) to Northgate. Stations would be located at (1) 12th Avenue NE and NE 65th Street and (2) Northgate. The second option is the "A2.1b 8th Avenue NE retained cut" alternative. This route is in tunnel from NE 45th Street to a West portal located just south of Ravenna Boulevard. From there it ascends to a new elevated station layout south of NE 65th Street adjacent to I–5, then into a retained cut-fill configuration along the east side of I–5, and then elevated to a station and three tail tracks at Northgate.

The third option is the "A2.1c 8th Avenue retained cut" alternative. This route is in tunnel from NE 45th Street to an East portal located just south of Ravenna Blvd. From there it also ascends to an elevated station south of NE 65th Street, then into a retained cut-fill configuration and storage track along the east side of I–5, and then elevated to a station and one tail track at Northgate. There are two new station and park-and-ride lot options at the Northgate Transit Center on the east side of First Avenue NE between NE 100th Street and NE 103rd Street. The supplemental EIS may also address design refinements and variations in other segments of the project.

Issued on: April 11, 2001.

Linda M. Gehrke,

FTA Deputy Regional Administrator.

[FR Doc. 01–9384 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–9397]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel Branch Office.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 16, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9397. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: Branch Office. *Owner:* Bill Pullman.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "50'—SPORT Fisherman 50,000 Lbs. Capacity 6 persons and 2 crew members."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Sunset Cruises/Possible Charter Fishing" "West Coast Florida—Sarasota to Key West."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1977. *Place of construction:* Unknown (Possibly in Europe). Built by Herb Philips of Striker of Ft. Lauderdale [who builds boats in various foreign locations but not in the United States].

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "This will have no effect on other commercial operators. This will be seasonal operations. All other similar existing operators are busy and 100% booked, therefore not affecting their operations."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "This waiver will have no effect on U.S. Shipyards, or vessel builders."

Dated: April 10, 2001.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–9335 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–9393]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel Gold Watch.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 16, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9393. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: Gold Watch. Owner: Robert C. Welch.

(2) Size, capacity and tonnage of vessel. According to the applicant: "33ft. 4" * * * 15.92 tons pursuant to 46 USC 14502"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Sportfishing charters on Great Lakes (particularly Lake Erie) coastwise, 12 passengers or less."

(4) Date and Place of construction and (if applicable) rebuilding. Date of

construction: 1972. Place of construction: Unknown.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Vessel will be engaged in sportfishing charters generated from sport shows, advertising and overflow bookings from other charters not affecting existing business, but creating new business and bringing more tourism dollars to the area."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Vessel built in 1972 and is maintained on a routine basis at U.S. based marinas."

Dated: April 10, 2001.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–9332 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–9396]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel KOKOPELLI.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 16, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9396. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR section 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: Kokopelli. *Owner:* Eliot W. Rothwell.

(2) Size, capacity and tonnage of vessel. According to the applicant: "C. & C. 33'" "7 gross tons"

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "I would like to take passengers for hire on a limited basis. I would estimate this would involve 10–15 days per summer and never more than four people on the boat at one time. The area I would primarily operate in is off Marblehead, Massachusetts, with an occasional trip no further South than Block Island, R. I., or further North than Monhegan Island, Maine."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1986. *Place of construction:* Ontario, Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "I do not believe this would have any adverse effect on * * * any other operator, as I don't believe there are more than one or two operators in my area."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "I do not believe this would have any adverse effect on and U.S. Shipyard * * *."

Dated: April 10, 2001.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–9333 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–9398]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel Little M.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 16, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9398.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: Little M. *Owner:* Little m, Inc.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Approximately 40 feet, give or take a few inches, and approximately 17,000 lbs, per manufacturer's documentation."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Day sailing in and around the Port Canaveral area, and overnight cruises in and around the Gulf Of Mexico and Florida's coastal waters, and US coastal waters (excluding Alaska)."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1980. *Place of construction:* Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "No anticipated impact whatsoever as there are no sailboats currently operating out of Port Canaveral on a charter basis. The closest impact would be either St. Augustine, Florida USA (two–three day sail north of Port Canaveral) or Melbourne Florida (one–two day sail/motor) south of Port Canaveral on the Inter Coastal Waterway, as there is no ocean accessible ports in Melbourne, FL)."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "Will benefit U.S. Shipyards by increasing repair and maintenance work in and around Port Canaveral, Florida, USA."

Dated: April 10, 2001.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–9336 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATAION

Maritime Administration

[Docket Number: MARAD–2001–9391]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel NIKE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 16, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9391. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: NIKE. Owner: Timothy Hermes.

(2) Size, capacity and tonnage of vessel. According to the applicant: "34.6 foot, sailing vessel with Gross WT. 16 tons as listed on my US Coast Guard Certificate of Documentation"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

"Intended to be used for Day Sailing Charters and some sunset cruises in Lake Erie along the coast of Kelleys Island, South Bass Island, Marblehead, OH, Vermilion, OH and nearby waters for no more than 6 paying passengers."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1971. Place of construction: C & C Corporation . . . at Niagara On The Lake, Ontario, Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Presently there is no other charter sailing operators serving Kelleys Island and nearby islands and waters of Lake Erie. I have been asked by my community to provide sailing excursions for the tourists and overnight guests that come to vacation on our island. There was one other Day Sailing vessel out of Port Clinton a few years ago, have not seen them advertised or running in a great while, but it does not service our area. There are no other vessels offering Day Sail, Sunset Cruises, Excursions to the nearby islands etc. from Kelleys Island."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Virtually, NONE . . . My vessel was built in 1971, almost 30 years ago. I keep her in Pristine Condition."

Dated: April 10, 2001.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–9329 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–9390]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel Perfect Adjustment.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 16, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9390. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: Perfect Adjustment. Owner: Marine Resources, Inc., RDZ Enterprises.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Draft—4′7″; Beam—20′3″; Length—68′4″; # of passengers—12; GRS Tons—88; Net Tons—70".

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Excursions for relaxation and recreation for a day or more." "Vessel will be used in the Northeast and Florida regions."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1986. Place of construction: Italy.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This vessel will be chartered for recreation and relaxation by individuals for their own use. This will not have any impact on commercial vessels because we expect to charter this vessel only six to ten times during the calendar year with individuals with whom we do our medical business. These individuals would probably not be chartering boats except for the fact that we will be promoting the concept with them."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "We would not have an impact on U.S. Shipyards as we are not producing boats or trying to market boats. The type of chartering we will be doing is in the area of recreation and relaxation and can be performed on any type of vessel."

Dated: April 10, 2001.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–9330 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–9392]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of

the Coastwise Trade Laws for the vessel Reality Check.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 16, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9392. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: Reality Check. Owner: William N. Olson.

(2) Size, capacity and tonnage of vessel. According to the applicant: "The size of the sailing vessel is 39.4 feet long with a breadth of 24.9 feet and depth of 6.5 feet. Her gross tonnage is 15 with a net tonnage of 13 measured pursuant to 46 U.S.C. 14502."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The intended use is to educate passengers, day and overnight sails very similar to the bare boat charters with the exception of providing a knowledgeable captain to ensure the safety and enjoyment of the experience. The geographic area intended is the Texas Coast including its waterways and tributaries and the Florida Coast including its waterways and tributaries and points in between."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1993. Place of construction: South Africa.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "There is currently no charter boat service that offers education or overnight excursions providing a knowledgeable captain/instructor to provide the expertise and safety throughout the excursion and I see no negative impact on the existing commercial passenger vessel services available. The existing services observed are: (a) One-to four-hour excursions that provide a sightseeing boat ride. These people are looking for a simple, low cost boat ride (around $25.00 per person) and would not be interested in chartering a sailing vessel such as mine. There is no impact with these vessels or businesses. (b) There are the large private party yacht charters for large groups larger than 12 passengers, generally a small group of twelve (12) people or less would not consider chartering one of these large private party yachts due to the cost of such charter. If these people would be interested in such a private yacht charter, they would not be interested in chartering my sailing vessel. (c) Passenger and car ferries transport passengers between predetermined ports. There is no impact with these vessels or businesses. (d) Water taxis used for the same purpose as land taxis, taking passengers from one place to another. Any passengers interested in hiring my vessel for such purpose would be similar to hiring a limousine for a time period and not be interested in using the taxi service. There is no impact with these vessels or businesses. (e) Bare boat chartering does offer similar sailing vessels for people to charter, but the safety and experience is left up to the individuals chartering the boat. The passengers are required to take total control and responsibility of the charter boat. This total control and responsibility would probably be enough to discourage them from chartering a boat, and they would not use their service. Therefore, there is no impact with these charter boats or businesses."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This waiver will have no impact on U.S. shipbuilders or shipyards."

Dated: April 10, 2001.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–9331 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2001–9389]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TAKARBUNE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD

determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 16, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9389. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: TAKARBUNE. Owner: Ronald M. Boettcher.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Size—Length 38.5′ Breadth—11.4′ Depth—6.1′ Capacity—To carry 12 or fewer passengers Tonnage—Gross 13 Net 12″.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The intended use of the vessel is to carry under 6 passengers for half day trips and extended destination trips." "The vessel will be used along New York, Long Island Sound to Martha's Vineyard, Nantucket Sound the bodies of water in-between Block Island Sound and Narragansett Bay."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1982. Place of construction: Rossett, United Kingdom.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "To the best of my knowledge there will be no adverse effect on other commercial passenger vessel operators in the area. I am not aware of any commercial passenger vessel operators doing the type of trips I plan to make. To my knowledge no one is doing destination trips at the request of the client."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "To the best of my knowledge the possible impact that my operation will have on U.S. Shipyards is the repair business for my vessel as a result of the approval of this waiver."

Dated: April 10, 2001.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–9328 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–9394]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TWO-CAN.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 16, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9394. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR section 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of

MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: Two-Can. *Owner:* Monroe & Jones, Inc.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "* * * registered length of 87.5 feet and a gross tonnage of 151 tons as measured by Bureau Veritas * * *."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "The vessel will be used in fishing operations and coastwise trade in the US coastal waters of the contiguous 48 states."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1968. *Place of construction:* Urk, Netherlands.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "There is no impact on the commercial passenger operations since the size and draft (10.2 feet) of the vessel preclude operations in shallow waters where the bulk of the existing operations are conducted."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "The impact on U.S. Shipyards will be a positive one, as repairs and maintenance will be performed by U.S. shipyards in Jacksonville, FL or Fairhaven, MA."

Dated: April 10, 2001.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–9334 Filed 4–13–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension of an information collection titled, "Examination Questionnaire."

DATES: You should submit written comments by June 15, 2001.

ADDRESSES:

You should direct all written comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0199, 250 E Street, SW, Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202)874–4448, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT:

You can request additional information or a copy of the collection from Jessie Dunaway or Camille Dixon, (202)874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Examination Questionnaire.

OMB Number: 1557–0199.

Description: This notice covers an extension of a currently approved collection of information titled Examination Questionnaire. Completed Examination Questionnaires provide the OCC with information needed to properly evaluate the effectiveness of the examination process and agency communications. The OCC will use the information to identify problems or trends that may impair the effectiveness of the examination process, to identify ways to improve its service to the banking industry, and to analyze staff and training needs.

There are two versions of the questionnaire—one for community and mid-sized banks and one for large banks. Community and mid-sized banks will receive the questionnaire as part of each safety and soundness examination or other examination-related activity. Large banks will be invited to provide comments annually.

Respondents: Businesses or other for-profit.

Number of Respondents: 2,600.

Total Annual Responses: 3,900.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 650 burden hours.

Type of Review: Extension of OMB approval.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and 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 has 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 10, 2001.

Mark J. Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 01–9349 Filed 4–13–01; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0234]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information

needed to determine the veteran's Veterans Mortgage Life Insurance (VMLI) premiums.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 15, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0234" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request to Mortgage Company for Amount of Unpaid Insurance, VA Form Letter 29–712.

OMB Control Number: 2900–0234.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used to request the amount of the veteran's unpaid mortgage from the lending institution with which he/she carries his/her mortgage. The information needed to determine the veteran's VMLI premiums.

Affected Public: Individuals or households.

Estimated Annual Burden: 75 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 450.

Dated: March 27, 2001.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–9389 Filed 4–13–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0162]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to ensure that the amount of benefits payable to a student who is pursuing flight training is correct.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 15, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0162" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Monthly Certification of Flight Training, VA Form 22–6553c.

OMB Control Number: 2900–0162.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans, individuals on active duty training and reservist training, may receive benefits for enrolling in or pursuing approved vocational flight training. VA Form 22–6553c serves as a report of flight training pursued and the termination of training. Payments are based on the number of hours of flight training completed during each month. Without this information, VA would not have a basis upon which to make payments.

Affected Public: Individuals or households, Business or other for-profit, and Not-for-profit Institutions.

Estimated Annual Burden: 6,050 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 12,100.

Dated: March 29, 2001.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–9390 Filed 4–13–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0046]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain

information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to establish entitlement to refundable credit.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 15, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0046" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501 " 3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran, VA Form Letter 29–596.

OMB Control Number: 2900–0046.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the administrator, executor, or next of kin of a deceased veteran to support a claim of money in the form of unearned or unapplied insurance premiums due the veteran's estate from VA.

Affected Public: Individuals or households.

Estimated Annual Burden: 78 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 312.

Dated: March 27, 2001.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–9391 Filed 4–13–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0212]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to accept or decline Veterans Mortgage Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 15, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0212" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Mortgage Life Insurance Statement, VA Form 29–8636.

OMB Control Number: 2900–0212.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by veterans who have received Specially Adapted Housing Grants to accept or decline Veterans Mortgage Life Insurance. VA uses the information to process veterans' requests.

Affected Public: Individuals or households.

Estimated Annual Burden: 113 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 450.

Dated: March 27, 2001.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–9392 Filed 4–13–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0442]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the

proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to verify eligibility for benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 15, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or email comments to irmnkess@vba.gov. Please refer to "OMB Control No. 2900–0442" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Armed Forces Separation Records from Veterans, VA Form Letter 21–80e.

OMB Control Number: 2900–0442.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: In order to establish entitlement to VA compensation or pension benefits, a veteran must have had active military service which resulted in separation under other than dishonorable conditions. VA Form Letter 21–80e is completed by the veteran to furnish information relative to his/her military service. The information is used to aid VA in requesting verification of military service. Benefits cannot be paid without verification of service.

Affected Public: Individuals or households.

Estimated Annual Burden: 17,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 102,000.

Dated: March 27, 2001.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–9393 Filed 4–13–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0020]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to designate a beneficiary and select an optional settlement.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 15, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail irmnkess@vba.va.gov. Please refer to "OMB Control No. 2900–0020" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Designation of Beneficiary, Government Life Insurance, VA Form 29–336.

OMB Control Number: 2900–0020.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to designate a beneficiary and select an optional settlement to be used when the insurance matures by death. The information is required to determine claimant's eligibility to receive proceeds of the insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 13,917 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 83,500.

Dated: March 27, 2001.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–9394 Filed 4–13–01; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 66, No. 73
Monday, April 16, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

[Docket No. FGIS–2001–001a

RIN 0580–AA75

Fees for Official Inspection and Official Weighing Services

Correction

In proposed rule document 01–8145 beginning on page 17817 in the issue of Wednesday, April 4, 2001, make the following corrections:

1. On page 17817, in the first column, in the third line from the bottom, the E-mail address "*comments@gipsadc.usd.gov*" should read "*comments@gipsadc.usda.gov*".

§800.71 [Corrected]

2. On page 17819, in Table 1, in the heading for the table's third column, "Monday to Friday (6 a.m. to 6 p.m.)" should read "Monday to Friday (6 p.m. to 6 a.m.)".

[FR Doc. C1–8145 Filed 4–13–01; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
April 16, 2001

Part II

Nuclear Regulatory Commission

10 CFR Part 1, et al.
Changes to Adjudicatory Process;
Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 50, 51, 52, 54, 60, 70, 73, 75, 76, and 110

RIN 3150–AG49

Changes to Adjudicatory Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations concerning its rules of practice to make the NRC's hearing process more effective and efficient. The proposed rule would fashion hearing procedures that are tailored to the differing types of licensing and regulatory activities the NRC conducts and would better focus the limited resources of involved parties and the NRC.

DATES: Comments on the proposed rule must be received on or before July 16, 2001. Comments received after this date will be considered if it is practical to do so. However, the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Rulemakings and Adjudications Staff.

Hand delivered comments should also be addressed to the Secretary, U.S. Nuclear Regulatory Commission, and delivered to: 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website *(http://ruleforum.llnl)*. This site also provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents relating to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Room O1–F21, Rockville, MD. The same documents may also be viewed and downloaded electronically via the rulemaking website, *http://ruleforum.llnl.gov*. Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.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. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

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*.

SUPPLEMENTARY INFORMATION:

I. Background

Among the very first actions taken by the Nuclear Regulatory Commission following its creation in 1975, was an affirmation of the fundamental importance it attributes to public participation in the Commission's adjudicatory process. 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." Northern States Power Company (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 hearing process associated with licensing and enforcement actions taken by the NRC 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 formal adjudicatory procedures is not essential to the development of an adequate hearing record; yet all too frequently their use resulted in protracted, costly proceedings. These less formal procedures sought to reduce the burden of litigation costs on applicants and other participants because of the informal nature of the hearing and to enhance 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 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 informal procedures that have continued to prolong the proceeding

without truly enhancing the decisionmaking process. Given this experience, and with the potential for new proceedings in the next few years 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 process to identify improvements that will result in a better use of all participants' limited resources. To that end, the Commission recently initiated several 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 as a foundation for possible rule changes.

A. Policy Statement

The Commission recently 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; August 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 21, 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 new Policy Statement urges presiding officers/boards to establish schedules for deciding issues before them. It also reminds presiding officers/boards of their authority to set schedules, resolve discovery disputes, and to take other action required to regulate the course of the proceedings. Case management by the presiding officers/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 ordered 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/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), 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 Atomic Energy Act of 1954, as amended, 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 Atomic Energy Act 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 due process rights of participants. The key statutory provision, Section 189.a. of the Atomic Energy Act, 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. A detailed discussion of Section 189 and its legislative history can be found in the Commission's decision in Kerr McGee Corporation (West Chicago Rare Earths Facility), CLI–82–2, 15 NRC 232 (1982); see also Advanced Medical Systems, ALAB–929, 31 NRC 271, 279–288 (1990).

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. *Florida East Coast Ry.*, 410 U.S. 224 (1973). 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 live presentation of witnesses and cross-examination. The Atomic Energy Commission (AEC) of the 1950s asserted that formal hearings were what Congress had intended. 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 complete 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 Improving the AEC Regulatory Process, Joint Committee on Atomic Energy, 87th Cong., 1st Sess., Vol. II, at 488 (1961).

The AEC thus took the official position that on-the-record hearings were not merely permissible under the Atomic Energy Act but required. AEC Regulatory Problems: Hearings before the Subcommittee on Legislation, Joint Committee on Atomic Energy, 87th Cong., 2nd Sess. 60 (1962) (Letter of AEC Commissioner Loren K. Olsen). At least two subsequent statutes contain implications—though no more than that—that the Congresses that enacted them believed that formal adjudication was required. These instances, both of which involve clauses beginning with the word "notwithstanding," are worth examining in some detail because they form much of the basis for arguments that the 1954 Act should be read to require on-the-record proceedings.

The first came in 1962, when Congress amended the Atomic Energy Act 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 requiring on-the-record adjudication. (The crux of the argument is that the "notwithstanding" clause would have been unnecessary if on-the-record adjudication were not mandatory.) However, that very year, as will be discussed below, the Joint Committee on Atomic Energy restated its belief that formal adjudication was not required in AEC proceedings.

In 1978, "notwithstanding" made its second appearance, but this time, it was the Atomic Energy Act, rather than the Administrative Procedure Act, that presented the problem. 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 Sec. 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). The inference can therefore be drawn that by 1978, Congress thought that without express statutory authorization to use other hearing procedures, on-the-record formal hearings would be called for by Section 189 of the Atomic Energy Act.

As a legal matter, the amount of weight given to retrospective legislative history—that is, one Congress's opinion of what an earlier Congress intended—depends greatly on the circumstances. While the Supreme Court recently reiterated that "(s)ubsequent legislation declaring the intent of an earlier statute is entitled to great weight in statutory construction," *Loving* v. *United States,* 517 U.S. 748, 770 (1996), the cases cited in that decision make clear that subsequent legislative history that falls short of explicitly "declaring the intent of an earlier statute," and instead gives rise merely to certain inferences, is entitled to far less weight. *In Loving,* the Court cited a 1979 case, *Consumer Product Safety Commission* v. *GTE Sylvania,* 447 U.S. 102, 117. There, the Court began its discussion of the issue of "subsequent legislative history" with "the oft-repeated warning that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.'" The more formal and explicit is Congress's statement of what it intended in its previous enactment, the more weight it will be accorded. Where Congress has passed legislation, which an agency has interpreted in a particular (and controversial) way, and Congress then enacts a second statute confirming that the agency's interpretation was consistent with what it had intended all along, then Congress can truly be said to have "declared the intent of an earlier statute," and that kind of "subsequent legislative history" will indeed be given great weight by a reviewing court. This was the case, for instance, with the FCC's "fairness doctrine," upheld by the Supreme Court in *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367 (1969). There, the Court said, Congress had not just kept its silence about the agency's interpretation but had "ratified it with positive legislation." 395 U.S. 367, 381–82.

Where subsequent legislative history is less formal and explicit, the Supreme Court has made clear that it becomes perilous to rely on it: "[A]s time passes memories fade and a person's perception of his earlier intention may change. Thus, even when it would otherwise be useful, subsequent legislative history will rarely override a reasonable interpretation of a statute that can be gleaned from its language and legislative history prior to its enactment." *GTE Sylvania,* 447 U.S. at 118 n.13. In *Oscar Mayer* & Co. v. *Evans,* 441 U.S. 750, 751 (1979), the Court brushed aside a conference committee report that, in dealing with amendments to a statute, offered its view of the proper interpretation of the original statute. The Court said the report was written 11 years after the original statute and thus was "in no sense part of the legislative history * * *. It is the intent of the Congress that enacted (the section) that controls." (Citations omitted.) Likewise, in *Teamsters* v. *United States,* 431 U.S. 324, 354 n. 39 (1977), the Court stated that "little if any weight" should be given to a conference committee report, written eight years after the original statute, that purported to interpret that earlier statute.

Applying the law to this matter, we see nothing in these two "notwithstanding" clauses that even approaches being a clear declaration of what section 189a of the 1954 Act provided. The most that can be said for the later statutes is that they give rise to possible inferences as to what the later Congresses—not the Congress that passed the 1954 Atomic Energy Act—may have believed. But even those inferences are far from unequivocal.

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, as a precaution, like many such legislative clauses, to anticipate potential legal objections and eliminate them. In view of the way that the law was then being applied by the AEC, 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. At this point, there is no good way to know whether they regarded these clauses as necessary or not, but we doubt that a reviewing court would care greatly one way or the other. To focus too much on Congress's thought processes in 1962, when it enacted section 191, and in 1978, when it passed the Nuclear Non-Proliferation Act, 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 189a.

For many years, the NRC did not depart from the longstanding assumption that the Atomic Energy Act 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 189a, 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 would be formal. In a final rule (46 FR 13971; February 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 high level waste 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 high level waste 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." [1] This provision can be interpreted in one of two ways: either as one more

[1] Atomic Energy Act of 1954, as amended, section 193, 42 U.S.C. 2243.

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 Administrative Procedure Act.

However, the view that formal adjudications were desirable and mandatory was not unanimously held. As early as 1962, a Senate subcommittee wrote, in words that might easily have been written today:

> By now, it has become apparent that the adversary type of proceeding, resembling as it does the processes of the courts, does not lend itself to the proper, efficient, or speedy determination of issues with which the administrative agencies frequently must deal * * *. Questions relating to * * * licensing of atomic reactors * * * might better be solved in some type of proceeding other than an administrative "lawsuit" among numerous parties.[2]

This report was cited with approval by the Joint Committee on Atomic Energy, which turned down a proposal recommended by its consultants, to provide explicit statutory authorization for the AEC to use informal procedures. The Joint Committee reasoned that such legislation was unnecessary, given that the Commission already had "legal latitude * * * to follow such procedures," that such procedures were desirable, and that the Committee had strongly encouraged the Commission to make use of them. Despite the Joint Committee's urgings, the AEC made no move in the direction of deformalization.

This interchange between Congress and the AEC over the nature of the hearing requirement of section 189 took place again in 1972, as Congress amended the AEA by adding a new section 192, to provide for the issuance of a temporary operating license during the pendency of an operating license hearing. This amendment, Public Law 92–307, 86 Stat. 191, explicitly provided that "The hearing required by this section and the decision of the Commission on the petition shall be conducted with expedited procedures as the Commission may by rule, regulation, or order deem appropriate for a full disclosure of material facts on all substantial issues raised in connection with the proposed temporary operating license." The legislative history of this provision is replete with reminders to the Commission that the procedures to be established for these actions are not to be trial-type procedures used in connection with the issuance of the final operating license, as well as that in a broader context, the Commission was not compelled to conduct formal, on-the-record proceedings. In keeping with the new section 192, the Commission fashioned expedited procedures in subpart F to 10 CFR part 2 (1973), providing for an informal proceeding not dramatically different in substance from the current provisions found in subpart L to 10 CFR part 2. Section 192 expired by its own terms in 1973, but was renewed, in revised form in 1983, as part of the NRC's authorization legislation for FY 1982–1983. Public Law 97–415, 96 Stat. 2067. The 1983 legislation stated that the provisions of Section 189a. would not apply to such licensing actions, which were to be completed "as promptly as practicable." See Public Law 97–415, sec. 11. The Commission's implementing regulations were set forth in subpart C (48 FR 46497, October 13, 1983). 10 CFR 2.308 expressly provided that for these temporary operating licenses formal adjudicatory procedures would not be used and that case-by-case procedures would be developed to deal with issues as they arose. As with its predecessor provision, the 1983 provision for the issuance of the temporary operating licenses expired by its own terms, in 1983.

Over the decades since the Atomic Energy Act was passed, debate over the value of on-the-record adjudication for the resolution of nuclear licensing issues, and indeed for resolving scientific issues generally, has only increased. 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 less 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, December 1995, at 39.

However, because of the early interpretation that formal hearings were required, as well as the NRC's long-standing practice of conducting formal hearings on reactor licensing actions, each time that the NRC has explored ways of deformalizing its proceedings, 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 Atomic Energy Act 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 (D.C. Cir. 1984), cert. denied, 469 U.S. 1132 (1984) (U.C.S. 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 (D.C. Cir. 1990) ("it is an open question whether section 189(a)—which mandates only that a 'hearing' be held and does not provide that that 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 (D.C. 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 (D.C. 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).

In *Chemical Waste Management* v. *EPA*, 873 F.2d 1477, 1480 (D.C. Cir. 1989), the D.C. Circuit stated that while the presence of the words "on the record" are 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 189a of the Atomic Energy Act might be a case where "exceptional circumstances" dictate formal, on-the-record hearing requirements, that observation has its roots in a dictum in U.C.S. I which suggests that in 1961 "the AEC specifically requested Congress to relieve it of its burden of "on the

[2] H.R. Rep. No. 1966, 87th Cong., 2d Sess. 6 (1962), quoted in Kerr McGee Corp., CLI–82–2, 15 NRC 232,251 (1982)(Attachment 1).

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. 1966, 87th Cong., 2d Sess., 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, 115 S.Ct. 2611 (1995), the court emphasized the NRC's latitude to determine the nature of the "hearing" mandated by the Atomic Energy Act.

The Commission's approach to deformalization 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., with written submissions only) on an amendment to a materials license. In doing so, it observed that the Atomic Energy Act 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 Act 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; February 28, 1989). In the Nuclear Waste Policy Act of 1982, sec. 134, 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; October 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 Atomic Energy Act 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 part 52, which provided for issuance of design certifications and "combined licenses" for construction and operation of nuclear power plants (54 FR 15386; April 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 D.C. 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 Information and Resource Service* v. *NRC*, 918 F.2d 189 (D.C. Cir. 1990), vacated & rehearing en banc granted, 928 F.2d 465 (D.C. Cir. 1991). However, the decision was later vacated by the entire D.C. Circuit, sitting en banc. *Nuclear Information and Resource Service* v. *NRC*, 969 F.2d 1169 (D.C. Cir. 1992). In its brief to the full court, the NRC argued unequivocally that the Atomic Energy Act'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. Subsequently, Congress enacted legislation (Pub. L. 102–486 (1992), endorsing part 52 and specifying that at the pre-operation phase, any hearing on whether the appropriate inspections and tests have been made, and the prescribed acceptance criteria have been met, shall be either "informal or formal adjudicatory," as the Commission may in its discretion determine.

The Commission has taken two more steps to further stake out its position that the Atomic Energy Act 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 attorney's 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 Administrative Procedure Act 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 attorney's 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 does 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, public interest 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 has received a number of public comments on its recent Policy Statement on the conduct of adjudicatory proceedings (63 FR 41872; August 5, 1998). The NRC is taking this opportunity to address those comments as part of this proposed 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 intervenor 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. 10 CFR 2.718 provides the presiding officer the power to regulate the course of the proceeding. In addition, under 10 CFR 2.711, licensing boards may, for good cause, shorten or lengthen the time required for filings. This provision expressly allows the boards 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 intervenor groups with limited resources.

Response. The Commission recognizes that, in some instances, the use of multiple licensing boards 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 proposing to codify 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 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. Some issues raised by a licensing board sua sponte may be addressed appropriately through adjudications, while others may not. In fact, the Commission has a process for considering the board'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.

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. 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 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 the boards the flexibility to make that determination in most proceedings.

Comment. The limitation of discovery on the NRC staff until after the Safety Evaluation Report (SER) and Final Environmental Statement (FES) 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 is the adequacy of the applicant's/licensee's proposal. Nevertheless, the NRC 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 FES and the SER are issued as it could delay the proceedings.

Response. In Subpart G 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 many issues until these documents have been completed. In many cases, it would 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.

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 the current procedures nor the proposed regulations 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 proposed changes to procedures for the less formal process do place limitations on cross-examination. Under these procedures, the presiding officer may question witnesses who testify at the hearing, but parties may not do so. However, parties may present the presiding officer with written suggestions for questions to be asked. The proposed rules would also allow motions to the presiding officer to allow cross-examination by the parties where this would be necessary to develop an adequate record. As a general matter, the presiding officer is authorized, under both the existing and proposed rules, to limit cross-examination in appropriate circumstances. The Commission requests public comments on these proposals to limit cross examination (see below in E. Summary and General Questions).

Comment. The Commission should be actively involved in overseeing proceedings and there should be expedited interlocutory review for novel legal or policy issues.

Response. Although providing for a Commission ruling on significant issues before the hearing is completed can focus the issues to be addressed in a hearing, on balance, the Commission believes that the additional delay necessarily associated with interlocutory appeals outweighs any potential reduction in hearing time that may come about through a Commission decision in such an appeal. Accordingly, the Commission has decided that it should depart from existing practice by not permitting interlocutory appeals 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 licensing board 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 licensing boards to issue timely decisions consistent with the boards' independence in performing their decisionmaking functions. The proposed rule explicitly addresses case management and would require the presiding officers/boards 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 licensing boards with respect to case management is not intended to intrude on the independence of licensing boards in discharging their independent decisionmaking responsibilities.

D. Comments From Hearing Process Workshop

The October 26–27, 1999, hearing process workshop involved participants from the nuclear industry, states, public interest groups, the academic community, ALJ community, and the NRC. Transcripts from the workshop are available in NRC's Public Document Room. 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. Possible action could range from the imposition of case management requirements in all proceedings to the removal of unnecessary formalities that divert the parties efforts and focus from addressing the merits of real issues. The NRC believes that using a less formal hearing process 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 in hearings for public participants.

As proposed in this rulemaking, well-supported specific contentions would be required in all proceedings, just as they are now required in those proceedings that use the NRC's formal hearing procedures. 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 effect 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 this proposed rule, early document disclosure and witness identification would be required of all parties in every case. In proceedings using informal hearing procedures, no other discovery would be permitted.

This approach should reduce the burdens 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. Because the proposed disclosure provision would require the applicant/licensee and the NRC staff to disclose and make available all documents in their possession that directly relate to the matter that is the subject of the hearing, there should be a wealth of information available for the parties to prepare their cases.

Under the proposed rules, cross-examination would be retained for formal hearings. Under the proposed informal hearing procedures, only the presiding officer would question witnesses. Nevertheless, the informal procedures would allow the parties to suggest questions for the presiding officer to ask and they would permit motions to allow the parties themselves to cross-examine witnesses where necessary to develop an adequate record for decision. This should ensure that there is questioning of witnesses sufficient to develop an adequate record. The Commission requests public comments on the provisions limiting cross examination (see below in E. Summary and General Questions).

Comment. Participants raised concerns regarding case management practices by the licensing boards. One concern raised by the representatives of the nuclear industry 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 (FEIS) 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 proposed rule. The Commission proposes to modify the intervention requirements for informal hearings to require the submission of specific, well-supported contentions as is currently required for formal hearings. This should result in hearings that focus on well-defined issues and obviate the need to receive evidence of questionable relevance. The Commission also proposes to modify the informal hearing procedures in a manner that should reduce the amount of motion practice over what hearing procedures to use. In addition, as noted earlier, the NRC staff itself is taking steps to better assure the timely completion of its review and associated documents. Finally, the Commission proposes hearing management procedures that provide for the integration of the NRC staff's review documents into the hearing schedules.

Comment. One of the attributes of the 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 truth. 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 urged that cross-examination must be used in enforcement hearings. Other licensee representatives suggested that certain proceedings, e.g. proceedings 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 proposed rule provides for cross-examination by the parties in enforcement proceedings and proceedings involving complex issues that warrant the use of formal subpart G hearing procedures. Other NRC proceedings would utilize the 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. Nonetheless, these proceedings would involve questioning of witnesses by the presiding officer and further cross-examination by the parties themselves where the presiding officer determines that 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.

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 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 law judge participant was that the NRC model its discovery rules on Rule 26 of the Federal Rules of Civil Procedure.

Response. The proposed rules provide that in all adjudicatory proceedings (whether formal or informal), the parties would exchange relevant documents and other information at the beginning of the proceeding. This approach is based on Rule 26 of the Federal Rules of Civil Procedure. Parties would also be required to exchange the identity of expert witnesses, as well as existing reports of their opinions. The more formal discovery available under the formal hearing procedures would remain for the formal hearings.

The Commission encourages interested persons to attend meetings between the NRC staff and the applicant, both before and after a license application is submitted. These meetings are noticed in advance and are open to all to observe. Public attendance at these meetings should provide individuals or groups early access to information so that they may participate more effectively in the hearing process. This may also result in reduction of issues that must be adjudicated.

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 proposed 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 proposes to codify 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): (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; (iii) the possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interests; (iv) the availability of other means for protecting the interests of the requestor/petitioner; (v) the extent to which the requestor's/petitioner's interests will be represented by existing parties; and (vi) the extent to which the requestor's/petitioner's participation will inappropriately broaden the issues or delay the proceeding. The Commission requests public comment on this proposal (see below in E. Summary and General Questions).

Comment. Citizen group representatives stated that the NRC should return to its pre-1989 contention standards. Some of these participants noted 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. However, a nuclear industry representative believed that this high contention threshold has been necessary to ensure that hearings are focused on legitimate issues.

Response. The NRC believes that the current contention standard is appropriate and should not be changed. This standard is necessary to ensure that hearings cover genuine and pertinent issues of 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. Ample information is provided in the application and related documents.

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. Nuclear industry representatives disagreed with these assertions. One participant noted that currently 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 regulatory or adjudicatory proceedings. Public Law 102–377, Title V, section 502, 106 Stat. 1342 (1992), 5 U.S.C. 504 note. Therefore, the proposed rule does not address this issue.

E. Summary and General Questions

From experience with, and the comments on, the 1998 Policy Statement, from the valuable discussions in the hearing process workshop, and consistent with the views expressed in the Staff Requirements Memorandum of July 22, 1999, the Commission has decided to propose modifications to the hearing procedures in 10 CFR part 2. As described in more detail below, the proposed rule would revise a number of current provisions of 10 CFR part 2 in order to fashion hearing procedures that are tailored to the different kinds of licensing and regulatory activities the Commission conducts. The Commission expects that the revised hearing procedures, ranging from informal to formal, will improve the effectiveness and efficiency of NRC's hearing process, and better focus and utilize the limited resources of all involved. The Commission seeks public comment on all aspects of this proposed rulemaking. In addition, the Commission has set forth a number of specific questions focusing on specific issues with respect to restructuring the agency's adjudicatory process; the Commission seeks public comment on these issues, together with alternative proposals where a member of the public disagrees with the Commission's proposals. The Commission's SRM on SECY–00–0017 approving the publication of this proposed rule, and the vote sheets of individual Commissioners, are available for viewing at *http://www.nrc.gov/NRC/COMMISSION/VOTE/index.html*. It is particularly important to review the individual Commissioner's vote sheets for insights on the issues considered by the Commission.

(1) *Overall Approach for Informal Hearings.* In preparing the proposed rule, the Commission carefully considered the advantages and disadvantages of each aspect 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 proposed rule reflects the Commission's current judgment about how these competing considerations should be accommodated in the NRC's hearing processes.

Nonetheless, the Commission is aware 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 is interested in public comments on the relevant considerations that should inform the Commission's decision in adopting informal hearing procedures, and whether the Commission's strategy in moving towards informal hearings should be continued. Overall, the Commission requests public comments identifying 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 due process, fundamental fairness, the need for timely decisionmaking, and accurate factfinding.

The Commission also seeks comments on whether the informal hearing processes embodied in subpart L and subpart N should be augmented or even supplanted by more informal, legislative-style hearing procedures. The informal hearing tracks currently approved by the Commission in part 2, as well as the procedures in subparts L and N that are addressed in this proposed rulemaking, all involve to a greater or lesser extent adversarial-style proceedings. In adversarial-style proceedings, the identification and framing of the issues, and development of the record is primarily under the control of the parties through their submission of contentions, and the presentation of testimony and submission of evidence to support their positions; the presiding officer is responsible for ensuring that the record is adequate for decision on the issues raised by the parties and for deciding law and facts based upon the record developed. A possible alternative to the adversarial concept, at least for matters for which subpart L and subpart N

procedures apply, would be to treat the proceedings as a legislative-style hearing, in which the Commission or presiding officer is responsible for the framing of issues and the development of the record, as well as being the ultimate decisionmaker. One possible method of implementing this approach would be for the Commission to be the presiding officer as in subpart M (§ 2.1319) rendering the decision; determinations of standing would be based less on judicial standards and more on ability of the hearing participant to contribute to the careful discussion of the issues; written submissions would be expected as a matter of course, as would oral presentations, both types being limited by regulations on length; and questioning in an oral hearing would be by the Commission itself, with some room for limited "cross-examination" of testifying witnesses by other hearing participants. The Commission requests public comment on the feasibility and desirability of using legislative-style hearing procedures for matters that would otherwise be subject to subpart L and subpart N procedures.

(2) *Hearing Tracks.* Under the hearing process reflected in the existing regulations in 10 CFR part 2, there are at least four hearing "tracks" or integrated sets of procedures that characterize a proceeding: subpart G that, apart from a number of provisions of general applicability, contains the procedures for a formal hearing; subpart L which contains the procedures for most informal hearings currently used for materials licensing actions; subpart M which contains the procedures for informal hearings on all license transfer actions; and subpart K which contains procedures for a "hybrid" hearing on spent fuel storage capacity expansions.

In reformulating the NRC's hearing process, the Commission believes that there should be at least three tracks—a formal hearing track, an informal hearing track, and as provided by statute, a hybrid procedure—but there is uncertainty over the value of additional, more specialized tracts within each of these broader categories. In the proposed rule, the Commission would retain a single formal hearing track—proposed subpart G—and the specialized "hybrid" hearing track—subpart K—but it would also provide for three different informal hearing tracks—revised subpart L for nearly all hearings; subpart M for license transfer hearings; and a new subpart N for expedited informal hearings. Formal hearings would be utilized only for proceedings specifically identified in the proposed rule, and for nuclear reactor licensing proceedings involving complex issues (see below in II.B.(2)). However, there are a number of alternatives for restructuring the overall NRC hearing processes that may offer some benefits in reduced complexity, thereby contributing to more expeditious conduct of hearings and increased public understanding and confidence in the fairness and efficacy of the hearings.

One alternative approach would be to reduce the hearing tracks to three—a single formal hearing procedure, a generally-applicable informal hearing procedure, and to comply with a statutory requirement a single hybrid procedure for expansions of spent nuclear fuel storage capacity at civilian nuclear power plants (currently reflected by the procedures in subpart K). Under this approach, the presiding officer would have the flexibility to adapt the selected hearing track to suit the case. For example, in the case of a formal hearing, the presiding officer could be authorized to limit discovery and to constrain duplicative testimony and non-productive cross-examination. Similarly, in the case of an informal hearing the presiding officer could be empowered to allow limited discovery in appropriate cases. The Commission requests public comments on: (i) The proposed rule's approach of multiple, specialized tracks tailored to certain types of issues, (ii) whether additional specialized tracks should be considered, (iii) the desirability of adopting an alternative approach of 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.

Another matter about which the Commission seeks public comment is whether there are better alternatives to the proposed rule's approach for defining what type of proceedings are appropriate for formal or informal hearing procedures. Is the proposed category of cases to which formal hearing procedures would apply too narrow? On the other hand, an alternative would be for the rule to specify that all proceedings would be informal hearings unless one or more criteria are met for the use of formal, subpart G hearing procedures. Some possible criteria would be whether the proceeding presents complex issues, raises difficult disputed issues of material fact or of expert opinion which cannot be resolved with sufficient accuracy except in a formal hearing (i.e., similar to the standard for a formal hearing in design certification rulemaking, 10 CFR 52.51(b)), and—to ensure that significant cases are captured—matters for which preparation of an environmental impact statement is necessary. Determinations regarding the criteria would be initially screened by the presiding officer, and certified to the Commission for final determination. The Commission requests public comments on this alternative, as well as proposals for other criteria for determining formal versus informal hearing procedures. 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.

(3) *Presiding Officer.* Under the hearing process reflected in the existing regulations in part 2, an Administrative Judge or an Atomic Safety and Licensing Board normally serves as the presiding officer to conduct the entire adjudicatory proceeding starting with the oversight of prehearing activities, through the conduct of the hearing itself, and ending with the formulation and issuance of an initial decision. A potential exception under current rules involves subpart M on license transfer actions which recognizes that the Commission itself may choose to serve as presiding officer or to appoint a person other than an Administrative Judge or a licensing board to serve as presiding officer in some cases. The Commission welcomes 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.

(4) *Discovery.* Under the existing part 2, parties are permitted discovery ranging from document production to multiple interrogatories and depositions of other parties' witnesses. In the proposals that follow, there would be 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 exchange of documents and written disclosures described above. The Commission welcomes comments on whether discovery should be eliminated or limited to requests from the presiding officer. Would a general disclosure obligation of the sort that would be required in the proposals that follow be

sufficient discovery for all NRC adjudicatory proceedings?

(5) *Witnesses, Cross-Examination, and Oral Statements by the Parties.* Under the existing part 2, as well as under the proposals that follow, provision is made for oral testimony of the parties' witnesses, although some proceedings are to be based on written evidence alone. The Commission seeks 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 proposed rule reflects the Commission's tentative determination that full-cross examination conducted by the parties often may not be the most effective means for ensuring that all relevant and material information with respect to a contested issue is most efficiently developed for the record of the proceeding. Thus, the informal hearing procedures contain provisions designating the presiding officer with the authority and responsibility to conduct the examination of witnesses, in some cases after considering suggested questions for witnesses posed by the parties. While this approach places greater emphasis and responsibility on the presiding officer to develop a full and complete record, some might argue that it is less supportive of the desires of the parties to focus the questioning on the information that they believe is most cogent and relevant. In addition, there may be concerns that this approach places too much responsibility and burden on the presiding officer—rather than on the parties—to establish the record on which the decision is to be based. Thus, with respect to cross-examination and questioning by the presiding officer, the Commission requests public comment on: (i) The relative value and drawbacks of cross-examination; (ii) whether the proposed approach that would limit cross-examination in favor of questioning by the presiding officer is appropriate; (iii), whether subpart L should retain traditional cross-examination as a fundamental element of any oral hearing; and (iv) assuming that cross-examination is necessary or more effective in certain circumstances to afford parties fundamental fairness, timely and effective identification of relevant and material information, or to provide public confidence in the hearing process, the appropriate criteria for identifying and distinguishing between proceedings where cross-examination should be used, versus those where cross-examination is not necessary.

Assuming that cross-examination as of right is not afforded in certain circumstances (as is currently proposed for, inter alia, subparts L and N), the Commission requests public comment regarding whether parties should be permitted to make oral statements of position, and, if so, whether time limits should be placed on such statements.

(6) *Time Limitations.* Although the existing part 2 and the proposals that follow set various time limits for filings, petitions, responses and the like,[3] there are no firm time schedules or limitations established within which major aspects or parts of the hearing process (e.g., discovery, issuance of an initial decision following the close of the evidentiary record) must be completed. The Commission welcomes comments on whether firm schedules or milestones should be established in the NRC's rules of practice in 10 CFR part 2.

(7) *Request for Hearing and Contentions.* In proposed subpart C, the Commission addresses the filing of petitions/requests for hearings and contentions for all proceedings. The Commission seeks public comment and views on the appropriate time frame for filing a petition/request for hearing and contentions.

(8) *Alternative Dispute Resolution.* Various methods of alternative dispute resolution (ADR) can serve to satisfy the parties on matters of concern and obviate the need to litigate issues in an agency adjudication. ADR is discussed at some length in the proposals that follow. The Commission welcomes comments and views on whether parties to NRC adjudications should be required to engage in ADR.

II. Description and Discussion of the Proposed Rule

A. Overview

To provide for a more effective and efficient hearing process, the Commission proposes to modify the procedures in 10 CFR part 2 to: (i) Establish a new subpart C to consolidate in one place the Commission's procedures for ruling on requests for hearing/petitions for leave to intervene and admission of contentions, to establish criteria for determining the specific hearing procedures (e.g.: formal—subpart G; informal—subparts L, M; hybrid—subpart K) that are to be used in particular cases and to set out the hearing-related procedures of general applicability; (ii) substantially modify the hearing procedures in the current subpart G and subpart L and expand the scope of applicability of those informal procedures; (iii) establish a new subpart N that will provide "fast track" hearing procedures to be used in appropriate cases; and (iv) make conforming amendments as necessary throughout Part 2.

The proposed new subpart C—Rules of General Applicability for NRC Adjudicatory Hearings —would be 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, a designated presiding officer, or a designated Atomic Safety and Licensing Board would rule on requests for hearing/petitions to intervene and the admissibility of proffered contentions using the standards and procedures of subpart C. Where 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 (e.g. subpart G for formal hearings, subpart L for general, informal hearings, subpart M for license transfer cases, subpart N for an expedited "fast track" hearing). subpart C also contains rules applicable in general to hearings conducted under the respective subparts.

The hearing procedure selection provision of proposed subpart C would reflect in large part the range of proceedings that currently use informal hearing procedures under the existing rules. This is in keeping with the Commission's intent to expand the use of informal procedures in an attempt to improve the effectiveness and efficiency of the NRC's hearing processes. Subject to certain exceptions, the norm would be an informal hearing process. These exceptions are: (i) Licensing of uranium enrichment facilities, (ii) initial licensing authorizing the construction of a high-level waste geological repository, and initial licensing authorizing the repository to receive and possess high level waste, (iii) enforcement matters, and (iv) complex issues in reactor

[3] It should be noted that the proposed revisions to 10 CFR part 2 generally do 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.

licensing. The hearing procedure selection process and criteria are discussed below under the description of § 2.310.

The Commission proposes to retain essentially all of the current procedures specific to the conduct of formal hearings under subpart G, but to substantially modify the existing procedures for informal hearings in subpart L to bring them more in line with the current procedures for hearings in subpart M for license transfer proceedings. The Commission also proposes a new subpart N that contains procedures for a "fast track" hearing. subpart N would provide for an expedited oral hearing and oral motions, and limit written submissions and the protracted written responses they often entail. 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. Conforming changes would be made to other subparts of 10 CFR part 2.

B. Specific Proposals and Request for Comment

1. Subpart C—Sections 2.300–2.347

The Commission proposes to establish a new subpart C that would contain the rules of general applicability for considering hearing requests, petitions to intervene and proffered contentions, for determining the appropriate hearing process 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 would 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) Provisions of General Applicability. A large part of the proposed subpart C essentially restates and updates the substance of many of the rules of general applicability that are currently contained in subpart G. The Commission proposes to transfer the following provisions, with modifications, from the existing subpart G to the proposed subpart C:

New section	Old section	Description/modification
2.301	2.700a	None.
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.
2.305	2.712	Addresses facsimile and electronic mail. Adds provision requiring service by most expeditious means.
2.306	2.710	Addresses computation of time for electronic mail and facsimile transmissions.
2.307	2.711	None.
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.
2.310	NA	New section setting forth criteria for different hearing tracks.
2.311	2.714a	None.
2.312	2.703	Clarified; no substantive change.
2.313	2.704	None.
2.314	2.713	Simplified and expanded.
2.315	2.715	Clarified; no substantive change.
2.316	2.715a	None.
2.317	2.716, 2.761a	Adds provision for establishment of separate hearings; no change to provision on consolidation of proceedings.
2.318	2.717	None.
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	None.
2.322	2.722	None.
2.323	2.730	Clarified and expanded to address motions for referral, reconsideration and certification.
2.324	2.731	None.
2.325	2.732	None.
2.326	2.734	None.
2.327	2.750	Removed subsection on provision of free transcripts.
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	None.
2.334	NA	New section setting forth schedules for proceedings.
2.335	2.758	None.
2.336	NA	New requirement for disclosure of materials.
2.337	NA	New section on Alternative Dispute Resolution (ADR).
2.338	2.761	None.
2.339	2.760a, 2.764	Consolidates provisions on effectiveness of initial decisions.
2.340	2.786	Clarified, codifies Commission practice of discretionary review of requests for interlocutory appeals.
2.341	2.788	None.
2.342	2.763	None.
2.343	2.770	None.
2.344	2.771	NRC staff not provided additional time to respond to petitions for reconsideration.

New section	Old section	Description/modification
2.345	2.772	Clarified; deletes authority to extend time for Commission review of Director's Decisions under § 2.206.
2.346	2.780	None.
2.347	2.781	None.
2.390	2.790	None.

(b) *Section 2.308—Secretary's Treatment of Requests for Hearing/ Petitions to Intervene.*

Proposed § 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. 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 Judge of the Atomic Safety and Licensing Board Panel, as appropriate, for further action.

(c) *Section 2.309—Hearing Requests, Petitions to Intervene, Requirements for Standing and Contentions.*

Proposed § 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 10 CFR 2.714 and applies those requirements to all NRC adjudicatory proceedings, whether formal (subpart G), informal (subparts L, M and N), hybrid (subpart K) or "fast track" (subpart N).

Standing. The requirements to establish standing for intervention-as-of-right, as set forth in existing § 2.714, would continue under proposed § 2.309. For intervention in the proceeding on the licensing of the HLW geologic repository, 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.

Discretionary Intervention. Under proposed § 2.309, the presiding officer would consider admitting the petitioner as a matter of discretion where the petitioner fails to establish his or her standing to intervene as-of-right, if the petitioner requests such consideration. In § 2.309(b)(2), the Commission proposes to codify 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 to require the presiding officers or licensing boards to apply those factors in all cases where a petitioner is found to lack standing to intervene as-of-right 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," Pebble Springs, 4 NRC at 615, by allowing the participation of persons who have shown an ability to contribute to the development of the evidentiary record, even though they cannot show the traditional interest in the proceeding.

The Commission requests public comment and suggestions 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 requests public comments on whether, as an alternative to codification of the six-part Pebble Springs standard for discretionary intervention, the Commission should adopt a simpler test for permitting discretionary intervention and the nature of such a standard. Commenters advocating a simpler standard should address how their alternative requirements would help ensure that proceedings are conducted in a timely fashion and are not made unduly complex by multiple intervenors.

Timing of Requests for Hearing/ Petitions to Intervene and Contentions. Proposed § 2.309 established the requirements for the filing of petition/ hearing requests, the content of the request, and the standards that must be met for a late-filed request. Different requirements are proposed for the timely filing of requests for hearings/ petitions, depending on whether formal notice of the proceedings and opportunity for hearing are published in the **Federal Register**. For those proceedings for which a **Federal Register** notice has been published, the requirements are much the same as those in existing 10 CFR 2.714. For those proceedings for which a **Federal Register** notice is not published, the requirements are derived from existing § 2.1205 but also provide for publication of notice on the NRC Website, *http://www.nrc.gov*. The Commission already makes available on the NRC Website a broad range of information, including receipt of applications for licenses and license amendments, notices of availability of NRC reports, and notices of availability of NRC safety evaluations. See, e.g., 64 FR 48942; September 9, 1999. Internet access is becoming increasingly available to the general public. The Commission believes that, as a practical matter publication of notice on the NRC Website provides at least as much access to the notice for the public as publication in the **Federal Register**. However, notice on the NRC Website costs substantially less than publication in **Federal Register**, and can be done in a more timely fashion than publication in the **Federal Register**. Accordingly, the Commission proposes that where **Federal Register** notice is not required by statute or regulation, any notice of agency action (for which an opportunity for hearing may be required) published on the NRC Website initiates the 45-day period in which timely requests for hearing must be filed. The Commission requests public comment on this proposal, including whether there are other notification methods that the NRC could utilize to provide timely notice of licensing actions which are not required to be noticed in the **Federal Register**.

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. Recognizing the potential need for more time for preparation of the request/petition and contentions, the Commission proposes to provide a minimum of 45 days from the date of publication (either in the **Federal Register** or on the NRC Website) of the notice of opportunity to request a hearing for the filing of requests/ petitions to intervene and contentions. Although this proposal represents a significant change from existing

requirements, the Commission believes this proposal will expedite proceedings in a manner that is fair to all interested stakeholders. The Commission requests public comment on this proposal, in particular, whether the proposed approach should be rejected and something closer to the current NRC practice be retained, viz., filing of petitions for hearing within thirty (30) days of notice, and filing of contentions later. The Commission also requests public comment and suggestions on whether it should allow seventy-five (75) days from notice of opportunity for hearing for filing of contentions, or whether some other time frame for requesting a hearing and submitting contentions should be established. Late-filed requests for hearing/petitions will continue to be governed by the criteria set forth in existing § 2.714.

Contentions. Proposed § 2.309(c) 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 (c)(1) and (2) of § 2.309 incorporate the longstanding contention support requirements of existing 10 CFR 2.714—no contention will be admitted for litigation in any NRC adjudicatory proceeding unless these requirements are met. By continuing to impose these contention support requirements, the Commission seeks to ensure that the adjudicatory process is used to address real, concrete, specific issues that are appropriate for litigation.

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 would be 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 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 for decision. 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 provide the bases for them in all hearings should focus litigation on real, concrete issues and result in a better, more understandable record for decision.

Appropriate Hearing Procedures. Proposed § 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. The Commission requests public comment on whether, if the Commission adopts the alternative proposal that requests for hearing be filed within thirty (30) days of appropriate notice (see discussion above under "Timing of Requests for Hearing/Petitions to Intervene and Contentions"), but that contentions be filed later (e.g., within 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.

State and Local Governments and Affected Indian Tribes. Proposed § 2.309(d)(2) addresses the participation of State and local governments and affected Indian Tribes as parties in NRC adjudicatory proceedings. A significant change, relative to existing requirements in § 2.715(c), is that governments and affected Tribes would be explicitly relieved of the obligation to demonstrate standing in order to be admitted as a party to the proceeding. The proposed rule continues the existing requirement in § 2.1014(c) that governments and affected Tribes who wish to intervene as parties in a geological waste repository proceeding must file at least one good contention.

Answers and Replies. Proposed § 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 permits the petitioner to file a written reply to the applicant/licensee and staff answers within 5 days after service of any answer. No other written answers or replies will be entertained. The Commission seeks public comment on whether the proposed time limits for replies and answers should be expanded.

(d) *Section 2.310—Selection of Hearing Procedures.*

A very significant part of this hearing procedure rulemaking is 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 hearing procedure selection criteria, the Commission recognized that, with only a single exception, it has broad authority and substantial flexibility to choose among formal trial-type procedures, informal oral or written hearing procedures, or any combination of formal and informal hearing procedures. The Commission seeks specific comments and suggestions on the matter of criteria for the selection of cases where the use of formal hearing procedures would be of benefit.

(i) *Formal Hearing Procedures.*

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 Atomic Energy Act of 1954, as amended, requires that hearings on uranium enrichment facility construction and operation be "on the record", thus requiring formal trial-type hearing procedures to be used. Proposed § 2.310(b) reflects this requirement by specifying that proceedings on licensing the construction and operation of uranium enrichment facilities must be conducted using the formal hearing procedures of subpart G.

Enforcement Matters. In its Staff Requirements Memorandum dated July 22, 1999, on SECY–99–006, Reexamination of the NRC Hearing Process, the Commission noted that formal hearing procedures would seem to be appropriate for hearings on enforcement actions. Several participants in the October 1999 hearing process workshop agreed, noting that formal 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 believes that the formal hearing procedures of subpart G are appropriate for application in enforcement cases and proposes, in § 2.310(a) of the proposed rule, to continue to require the use of formal procedures in hearings on enforcement actions unless all parties agree to the use of informal procedures. The Commission requests comments on the proposal to require the application of formal hearing procedures in hearings involving enforcement matters and views on whether and when to allow

the use of informal hearing procedures for these matters.

High Level Waste Repository Licensing. For many years, the AEC and the NRC assumed that the Atomic Energy Act required formal agency hearings despite the fact that assumption had never been reduced to a definitive holding. Consistent with that assumption, in 1978 the NRC declared that the hearing it would hold on an application to construct and operate a repository for high level waste (HLW) would be formal. In final rules published in 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 high level waste 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 high-level waste repository, but without a rule change, the NRC's regulations would require a formal hearing.

Although the Commission seeks to use more informal procedures for its hearings, the Commission has decided that the formal hearing procedures of subpart G should be used in proceedings for the initial authorization to construct a high-level waste repository, and proceedings for initial authorization to receive and possess high-level waste at a high level waste repository. The initial authorization of construction of a high-level waste repository, and the initial authorization to receive and possess high-level waste is likely to be highly controversial and involve a large number of complex issues, and thus fulfills one of the criteria in proposed § 2.310(c) for discretionary use of subpart G formal hearing procedures. Moreover, the Commission has long taken the position that it would provide a formal hearing for repository licensing, thereby raising public expectations. A change in Commission position to permit the use of informal procedures authorizing construction of a HLW repository and the receipt and possession of HLW at the repository would not advance public confidence in the Commission's decisionmaking process with respect to repository licensing. Based on these considerations, the Commission intends to continue to require, in § 2.310(e) of the proposed rule, that the initial application for construction of a HLW repository, and initial authorization to receive and possess HLW at the repository use formal hearing procedures of subpart G.

A balancing of these factors leads the Commission to a different conclusion with respect to hearing procedures for subsequent amendments to the authorization for the construction of a HLW repository, and for amendments of the authorization to receive and possess high-level waste. The public expectation of formal hearings likely extends only to the initial authorizations permitting construction and operation of the repository. Most important issues with respect to the technical feasibility and appropriateness of siting of the HLW repository are associated with initial construction licensing. Issues with respect to the adequacy of construction and the proposals for operation of the repository will be dealt with in the initial authorization for construction and operation—not subsequent changes to those authorizations. The Commission believes that it should retain flexibility to chose which hearing procedures to use in subsequent changes to the authorizations permitting construction and operation of any HLW repository. Accordingly, § 2.310 of the proposed rule provides that amendments to the construction authorization for the HLW repository, and amendments to the authority to receive and possess HLW should be subject to the same criteria as other proceedings in determining what hearing procedures will be used. The Commission welcomes public comment on this subject.

Complex Issues in Reactor Licensing. Reactor licensing proceedings can sometimes involve very complex technical safety and environmental issues, the resolution of which would clearly benefit from the application of more formal hearing procedures, including the use of cross-examination by the parties or the parties' experts. Accordingly, § 2.310(c) includes a criterion that would call for the use of the formal 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 requests public comments on the appropriateness of this criterion, and representative examples of the type of "complex issues" that would benefit from the use of formal hearing procedures. The Commission also requests public comment on whether this criterion should be modified to instead provide for subpart G formal hearings in: (i) Initial power reactor construction permit proceedings, (ii) initial operating license proceedings, (iii) combined license issuance proceedings under 10 CFR part 52, subpart C, and (iv) hearings associated with authorizations to operate under a combined license under 10 CFR 52.103.

(ii) *Informal Hearing Procedures.*

Expansion of Spent Fuel Storage Capacity. Existing subpart K contains "hybrid" hearing procedures for use in proceedings on the expansion of spent fuel storage capacity at civilian nuclear power reactors. Subpart K provides for the use of the hybrid hearing procedures upon the request of any party. The Commission proposes to retain subpart K and, by the hearing procedure selection provision in § 2.310(d), make the hearing procedures of subpart K available for use in any proceeding on the expansion of spent fuel storage capacity at a power reactor.

License Transfers. Existing subpart M 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 Commission proposes to retain subpart M and, by the hearing procedure selection provision in § 2.310(f), specify the use of subpart M hearing procedures in license transfer proceedings.

Other Proceedings. In § 2.310(g), the Commission proposes to apply the informal hearing procedures of the new subpart L to all other proceedings—i.e. proceedings involving hearings on the grant, renewal, licensee-initiated amendment or termination of licenses and permits subject to parts 30, 32 through 35, 36, 39, 40, 50, 52, 54, 55, 61, 70 and 72. 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 would be a significant change from current hearing practice for reactor licensing matters. Under longstanding practice, proceedings on applications for reactor construction permits, operating licenses and operating license amendments have used the formal hearing procedures of existing 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; December 13, 1991). Under the proposed rule, reactor licensing proceedings will generally use informal hearing procedures. The procedures of subpart L could also be applied in hearings involving enforcement matters if all parties agree.

Fast Track Procedures. In § 2.310(h), the Commission proposes to apply the informal "fast track" hearing procedures of new subpart N in any proceeding (other than those designated in § 2.310(a)–(f) 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 "fast track" procedures of subpart N may be particularly useful for reactor operator licensing cases or for small material licensee 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 Commission requests comments and suggestions on the appropriate criteria for the use of subpart N.

(e) *Section 2.311—Interlocutory Review of Rulings on Requests for Hearing/Petitions to Intervene and Selection of Hearing Procedures.*

Proposed § 2.311 continues unchanged the provision in § 2.714a that limits interlocutory appeal of rulings on requests for hearing and petitions to intervene to those that partly or completely grant or deny a petition to intervene.

(f) *Section 2.314—Appearance and representation.*

Proposed § 2.314 simplifies and expands the existing provisions in §§ 2.713 and 2.1215 on appearance and representation in NRC adjudications.

(g) *Section 2.317—Separate hearings; consolidation of proceedings.*

Proposed § 2.317 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.

(h) *Section 2.318—Commencement and termination of jurisdiction of presiding officer.*

Proposed § 2.318 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 presiding officer should dismiss a proceeding when an application has been withdrawn before a notice of hearing has been issued.

(i) *Section 2.323—Motions.*

Proposed § 2.323 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 Commission requests public comment on whether § 2.323(a) should be more specific with respect to the time limit for filing all motions by specifying a time limit of ten (10) days for filing of motions, beginning from the action or circumstance that engenders the motion. The proposed § 2.323(e) also departs from existing § 2.730 by establishing a standard for evaluating motions for reconsideration—viz., compelling circumstances, such as "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 requests public comment on whether this "compelling circumstances" standard in the proposed standard should be adopted or eliminated from the final rule. Proposed § 2.323 also addresses referral of rulings and certified questions by the presiding officer to the Commission. With regard to referrals, proposed § 2.323(f) has been expanded to 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 that issues or rulings involving novel questions which would benefit from early Commission guidance be certified to the Commission.

(j) *Section 2.332—General Case Scheduling and Management.*

Proposed § 2.332 addresses general case scheduling and management. It would require 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 groundrules 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. The Commission requests comment on the case management provisions proposed in § 2.332 and welcomes suggestions for additional case management techniques.

(k) *Section 2.334—Schedules for Proceedings.*

Proposed § 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 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.

(l) *Section 2.336—General Discovery.*

Proposed § 2.336 would impose a disclosure requirement on all parties (and the NRC staff) in all proceedings under Part 2, except for proceedings using the procedures of Subparts G and J. The discovery required by § 2.336 constitutes the totality of the discovery that may be obtained. This generally applicable discovery provision requires each party to disclose and/or provide the identity of witnesses and persons with discoverable information, pertinent documents, and pertinent applicant-NRC correspondence. The duty of disclosure continues over the pendency of the proceeding. Section 2.336 also 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)).

(m) *Section 2.337—Settlement of Issues; Alternate Dispute Resolution.*

Proposed § 2.337 addresses settlement and use of alternate dispute resolution in NRC proceedings. 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). The proposed rule includes a new provision on settlement that consolidates and amplifies existing rules pertaining to settlement (10 CFR 2.203, 2.,759, 2.1241). The proposed rule 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 has previously endorsed the appropriate use of settlement judges in Rockwell Int'l Corp., CLI–90–05, 31 NRC 337 (1990). The proposed rule is 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 intends no change in the bases for accepting a settlement by the proposed rule.

As suggested by several workshop participants, the Commission is also considering providing further guidance on the use of alternative dispute resolution (ADR) as part of its hearing procedures. This objective is also consistent with the NRC's continuing participation in the activities of the Interagency Working Group on Alternative Dispute Resolution chaired by the Attorney General, 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.

ADR can be defined as any technique that results in the conciliatory resolution of a dispute, including facilitation, mediation, fact finding, minitrials, 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, 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, it anticipates 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.

The Commission believes 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, because of the Commission's responsibility to make required public health and safety findings, the use of ADR may not be appropriate in all circumstances.

The Commission seeks public comment on the text of the proposed rule as well as on the broader issue of the use of ADR in NRC proceedings. In this regard the Commission invites comment on the following specific 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?

(n) *Section 2.340—Review of Decisions and Actions of a Presiding Officer.*

The proposed § 2.340 on Commission review of decisions and actions of the presiding officer is, in essence, a restatement of existing § 2.786. However, paragraph (f) makes clear what has been in fact practice since adoption of the current appellate procedures in 1991; i.e., the Commission will entertain in its discretion petitions by a party for review of an interlocutory matter in the circumstances described in paragraph (f). Minor changes would also be made to give guidance on the form and content of briefs, e.g., the proposed rule would increase 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.

(o) *Section 2.344—Petition for Reconsideration.*

Proposed § 2.344 contains largely unchanged the provisions in existing § 2.771, but would no longer provide 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 (10) days to file a reply brief to a petition for reconsideration.

(2) Subpart G—Sections 2.700–2.712

The Commission proposes to revise Subpart G, which currently sets forth the rules of general applicability to NRC adjudications and contains the formal adjudicatory procedures. Under the proposed revisions, Subpart G would set forth rules specifically applicable to formal adjudicatory proceedings, such as those appropriate to enforcement proceedings and to more complex reactor proceedings involving numerous issues. In large part, the existing provisions in the rules of general applicability have been restated in Subpart G without change except for renumbering and internal conforming reference renumbering. 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. As discussed above, numerous provisions of current subpart G would be relocated to the new Subpart C. In addition, several provisions have been removed. Following is a section-by-section analysis:

(a) The proposed § 2.700 would reflect the revised description of the applicability of this Subpart to a limited set of proceedings; the Commission requests public comment on whether

the set of proceedings for which formal hearings under this Subpart would be afforded (see above in I.E. Summary and General Questions, and II.A Overview) should be modified. In particular, the Commission requests public comment on whether subpart G should be used in all initial power reactor construction permit and operating license proceedings rather than in reactor licensing proceedings involving a "large number" of "complex issues." Section 2.700a continues, without change, the possible exceptions to the applicability of the procedures to be considered by the Commission.

(b) The current § 2.705, which provides for the filing of an answer to a notice of hearing, would be removed. Experience has shown this provision to be largely superfluous. For the same reason, § 2.751a, which provides for a special prehearing conference in connection with construction permit and operating license proceedings, and § 2.761a, which provides for separate hearings and decisions, would be removed. The provisions of § 2.752, which would be redesignated as § 2.318, provide for the conduct of a prehearing conference to accomplish the same purposes as those in § 2.751a. Therefore, there is no apparent reason to retain a duplicative requirement in § 2.751a.

(c) The existing provisions of § 2.765, immediate effectiveness of initial decision directing issuance or amendment of a license under Part 61 of this chapter, would be relocated to the revised Subpart L, which sets forth the provisions applicable to informal proceedings. The Commission is proposing to conduct proceedings regarding licensing matters under part 61 in accordance with subpart L. For that reason, this provision is pertinent to those provisions as opposed to those applicable to formal proceedings.

(d) Section 2.790 in the current rule would be redesignated in proposed subpart C as § 2.390. This regulation sets forth provisions of generic applicability concerning the public's access to information which apply irrespective of whether there is an NRC proceeding.

(e) Proposed § 2.702 is fundamentally a restatement of former § 2.720(a)—(h)(1). The provisions of former § 2.720(h)(2), which pertain to discovery against the NRC, has been retained and combined with former § 2.744 in a new § 2.709. This new section now sets forth in one place, all regulations governing discovery against the NRC in the Commission's formal administrative proceedings under Subpart G. 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, etc. under 10 CFR 9.17). Except for the foregoing, the substantive aspects of the former regulations are unchanged.

(f) The proposed § 2.703 would restate, without revision, § 2.733 regarding the examination and cross-examination of expert witnesses.

(g) The Commission proposes new §§ 2.704 and 2.705 that would revise the general provisions for discovery, except for discovery against the NRC. The new regulations would revise the existing provisions of § 2.740 to better reflect the provisions of Rule 26 of the Federal Rules of Civil Procedure, providing for the prompt and open disclosure of relevant information by the parties, without resort to formal processes, except if the need for 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 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. Proposed §§ 2.706, 2.707 and 2.708 would continue without change, the provisions of current §§ 2.740a, 2.740b, 2.741 and 2.742, regarding depositions, interrogatories, production of documents, and admissions.

(h) Section 2.709 would incorporate the formerly separate provisions of §§ 2.720(h)(2) and 2.744 providing for discovery against the NRC staff .

(i) Section 2.710 would generally retain the current provisions of § 2.749 regarding summary disposition. The proposed rule would expand the presiding officer's discretion not to consider a motion for summary disposition by providing that the presiding officer need not consider the summary disposition motion unless he or she determines that resolution of the motion will serve to expedite the proceeding. Alternatively, the Commission could adopt a standard whereby the presiding officer need not consider a summary disposition motion unless the motion would "substantially reduce the number of issues to be decided or otherwise expedite the proceeding." The Commission requests public comment on whether the revised standard for consideration of summary disposition motions in the proposed rule should be adopted, or whether the alternate standard set forth above should instead be adopted.

(j) The proposed § 2.711 would restate the requirements in current § 2.743 without change.

(k) The proposed § 2.712 would continue, without change, the provisions of § 2.754 regarding the requirement for the submission of proposed findings of fact and conclusions of law following completion of a formal hearing.

(l) The proposed § 2.713 would restate the requirements in current § 2.760, "Initial decision and its effect," without change.

(3) Subpart J

The Commission proposes 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: (i) As conforming changes to correct references to rules of general applicability in existing subpart G that are being transferred to the proposed subpart C, and (ii) to eliminate redundant or duplicate provisions in Subpart J that would be covered by the generally applicable provisions in the proposed subpart C. The Commission requests comments or suggestions on these or other changes to subpart J that would serve these intents.

(4) Subpart K

The Commission proposes 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. These proposed changes are 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.

(5) Subpart L—Sections 2.1200–2.1212

Although the informal hearing procedures of existing subpart L have been in place for a number of years, their implementation has shown that some aspects are cumbersome and inefficient in the development of a record. Under the existing subpart L, the parties sometimes devote substantial time and effort to litigation over the specific procedures to be used rather

than to the substantive issues. In addition, the absence of a specific contention requirement has sometimes resulted in the development of a paper record that is not effectively focused on the issues in dispute but rather, is burdened with extraneous material that makes the formulation of a decision unnecessarily difficult and time consuming. To address these problems, the Commission proposes to replace the existing subpart L in its entirety. The provisions of this new subpart L may be applied to 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 proceedings on the licensing of the construction and operation of a uranium enrichment facility. The proposed new informal hearing procedures would be patterned after the existing subpart M provisions on license transfers and would shift the focus to informal oral hearings (e.g., record developed through oral presentation of witnesses who are subject to questioning by the presiding officer to the extent necessary to ensure a complete record for decisionmaking), although all parties could agree to conduct the hearing based solely upon written submissions. In addition, a specific contention requirement would apply through subpart C; the Commission is proposing this requirement primarily to help focus the informal oral hearings—although such a requirement would also serve to focus hearings conducted solely on written submissions. The Commission requests public comment on the advantages and disadvantages of shifting the focus of subpart L to informal oral hearings, including the proposed requirement for submission of contentions, and the opportunity to pose questions indirectly to witnesses by proffering proposed questions to the presiding officer. The Commission is also considering whether the proposed rule should be further modified to provide explicitly for the option of the Commission or the Chief Administrative Judge to establish three-judge panels on a case-by-case basis, for example in cases where there are likely to be both significant technical matters as well as significant legal issues to be resolved in the hearing. Three-judge panels would be available as an option in oral hearings as well as hearings based solely upon written submissions. The Commission requests public comment on the desirability of appointing three-judge panels in informal hearings under subpart L, and the circumstances in which appointment of such panels would be useful.

Following is a section-by-section analysis of proposed subpart L:

(a) *Section 2.1200—Scope of Subpart.*

The proposed § 2.1200 would indicate that subpart L may be applied to all NRC adjudicatory proceedings except proceedings on the licensing of uranium enrichment facilities, proceedings on applications for a license to construct a high-level radioactive waste repository noticed under §§ 2.101(f)(8) or 2.105(a)(5), and proceedings on applications for a license to receive and possess high-level radioactive waste repository.

(b) *Section 2.1201—Definitions.*

The proposed § 2.1201 would indicate that subpart L has no unique definitions but relies on the definitions in existing § 2.4.

(c) *Section 2.1202—Authority and Role of NRC Staff.*

The proposed § 2.1202 would describe the authority and role of the NRC staff in the informal hearings under proposed subpart L. Similar to the situation in license transfer cases under existing 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. 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 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 proposed § 2.1212, the NRC staff's action would be subject to motions for stay.

Proposed § 2.1202 would provide that the NRC staff is not required to be a party to most proceedings conducted under proposed subpart L. Proposed § 2.1202(b)(1)(ii) also requires the NRC staff to participate as a party on specific issues where the presiding officer determines that resolution of such issues would be aided materially by the staff's participation as a party. In all other instances, the NRC staff must notify the Presiding officer and parties as to whether or not it desires party status.

(d) *Section 2.1203—Hearing File and Prohibition on Other Discovery.*

In a manner similar to existing subpart L, proposed § 2.1203 would require the NRC staff to prepare and provide a hearing file and to keep the hearing file up-to-date. In many respects, the Hearing File requirement for the NRC staff overlaps the "general discovery" provision of subpart C which is applicable to the staff for all proceedings. Proposed § 2.1203 would generally prohibit any other discovery in Subpart L proceedings.

(e) *Section 2.1204—Motions and Requests.*

The proposed § 2.1204 would make it clear that the provisions in subpart C on motions, requests and responses are to be applied in informal proceedings under subpart L. This section would also allow 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 the failure to permit cross examination will prevent the development of an adequate record for decision.

(f) *Section 2.1205—Summary Disposition.*

The proposed § 2.1205 would provide 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.

(g) *Section 2.1206—Informal Hearings.*

The proposed § 2.1206 would specify 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 would be 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 would be entertained absent unanimous consent of the parties.

(h) *Section 2.1207—Oral Hearings.*

The proposed § 2.1207 would specify the process and schedule for submissions and presentations in oral hearings under the new 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.

(i) *Section 2.1208—Hearings Consisting of Written Presentation.*

The proposed § 2.1207 would specify 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.

(j) *Section 2.1209—Findings of Fact and Conclusions of Law.*

The proposed § 2.1209 would require the filing of proposed findings of fact and conclusions of law within 30 days of the close of the hearing, unless the presiding officer specifies a different time.

(k) *Section 2.1210, 2.1211—Initial Decision and Its Effect.*

Currently, unless the Commission directs that the record be certified to it, the presiding officer renders an initial decision and that decision constitutes the final action of the Commission 40 days after issuance, unless any party files a petition for Commission review or the Commission decides to review on its own motion. Under proposed § 2.1210, an initial decision resolving all issues before the presiding officer would be effective upon issuance unless stayed or otherwise provided by the regulations in part 2. The proposed § 2.1211 would restate existing § 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.

(l) *Section 2.1212—Petitions for Commission Review of Initial Decision.*

The proposed § 2.1212 would specify that petitions for review of an initial decision must be filed pursuant to the generally applicable review provisions of § 2.340.

(m) *Section 2.1213—Applications for a Stay.*

The proposed § 2.1213 would specify 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. The procedures and standards are similar to the stay provision in existing § 2.788. Applications for a stay of an initial decision issued under Subpart L would be required to be filed under the generally applicable stay provisions of § 2.341.

(6) Subpart M

The Commission proposes changes to Subpart M that would eliminate §§ 2.1306, 2.1307, 2.1308, 2.1312, 2.1313, 2.1314, 2.1317, 2.1318, 2.1326, 2.1328, 2.1329, and 2.1330 because the substance of these sections is covered by rules of general applicability in proposed subpart C. Sections 2.1321, 2.1322 and 2.1331 would be amended to remove references to deleted sections and to reflect the fact that requests for hearing/petitions to intervene for proceedings under subpart M would be considered under the generally applicable requirements of § 2.309. The basic intent of these changes is to conform subpart M to the other changes to part 2 proposed in this rulemaking.

(7) Subpart N—Sections 2.1400—2.1407

The Commission proposes to establish a new subpart N—a "fast track" process—to provide a mechanism and procedures 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. This Subpart may be used for more complex issues if all parties agree. The Subpart may be applied to all NRC adjudications except proceedings on uranium enrichment facility licensing, and proceedings on the initial authorization to construct a HLW geological waste repository, and initial authorization to possess and receive HLW at a HLW geological waste repository. By the shortened response times and fairly rapid progression to actual hearing, subpart N procedures could result in the rendering of an initial decision within about two to three months of the issuance of the order granting a hearing if the issues are straightforward and deadlines are met. In view of the simplified procedures and the expedited nature of the litigation involved, subpart N would allow 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 small licensee 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. Following is a section-by-section analysis of Subpart N:

(a) *Section 2.1401—Definitions.*

The proposed § 2.1401 would indicate that subpart N has no unique definitions but would rely on the definitions in existing § 2.4.

(b) *Section 2.1402—General Procedures and Limitations.*

The proposed § 2.1402 would specify the general procedures and procedural limitations for the "fast track" hearing process of Subpart N. It is notable in its general limitations on the use of written motions and pleadings, the prohibitions on discovery beyond that provided by the general disclosure provisions of subpart C, and the prohibition on summary disposition. Section 2.1402 would allow 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 is not appropriate in the particular case. It would also permit any party to request that the presiding officer allow parties to cross-examine on particular contentions or issues if the party can show that a failure to allow cross-examination by the parties would prevent the development of an adequate record for decision.

(c) *Section 2.1403—Authority and Role of the NRC Staff.*

The proposed § 2.1403 describes the authority and role of the NRC staff in the "fast track" hearings under subpart N. Similar to the situation in informal hearings under proposed subpart L and license transfer cases under existing subpart 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. 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. Section 2.1403 would provide that the NRC staff is not required to be a party in most "fast track" proceedings. The NRC staff would be required to be a party in any subpart N proceeding involving an application denied by the NRC staff or an enforcement action proposed by the staff or 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 would be required to notify the presiding officer and the parties as to whether or not it desires party status.

(d) *Section 2.1404—Prehearing Conference.*

The proposed § 2.1404 would require the presiding officer to conduct a prehearing conference within 40 days of the issuance of the order granting

requests for hearing/petitions to intervene. At the prehearing conference, each party would identify its witnesses, provide a summary of the proposed testimony of each witness, report on its efforts at settlement, and provide questions that the party wishes the presiding officer to ask at the hearing. The presiding officer would memorialize the rulings and results of the prehearing conference in a written order.

(e) *Section 2.1405—Hearing.*

The proposed § 2.1405 describes the requirements applicable to "fast track" hearings. The hearing would commence no later than 20 days after the prehearing conference required by § 2.1404. The hearing would be open to the public and transcribed. At the hearing, the presiding officer would receive oral testimony and question the witnesses. The parties may not cross-examine the witnesses, but they would have had the opportunity at the prehearing conference to provide questions for the presiding officer to use at hearing. 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 would be prohibited unless requested by the presiding officer.

(f) *Section 2.1406—Initial Decision—Issuance and Effectiveness.*

The proposed § 2.1406 would encourage the presiding officer to render a decision from the bench, to be reduced to writing within 20 days of the close of the hearing. Where a decision is not rendered from the bench, it must be issued in writing within 30 days of the close of the hearing. These periods would be extended only with the approval of the Chief Administrative Judge or the Commission. The initial decision would be effective 20 days after issuance of the written decision unless a party appeals or the Commission takes review on its own motion. Under the proposed "fast track" process, the initial decision is effectively stayed if a party appeals or the Commission reviews on its own.

(g) *Section 2.1407—Appeal and Commission Review of Initial Decision.*

Under proposed § 2.1407, a party may appeal as-of-right by filing a written appeal with the Commission within 15 days after the service of the initial decision. The written appeal would be limited to 20 pages and must address the matters and standards for review listed in section 2.1407. Other parties may file written answers within 15 days after service of the appeal. Answers are also limited to 20 pages.

III. Plain Language

The Presidential memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made to these proposed provisions to improve the organization and readability of the existing language of the provisions being revised. The NRC requests comments on the proposed rule specifically with respect to the clarity and reflectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption.

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. In this proposed rule, the NRC proposes to approve changes to its procedures for the conduct of hearing in 10 CFR part 2. This proposed 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 proposed rule involves an amendment to 10 CFR part 2, and qualifies as an action eligible for the categorical exclusion from environmental review in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement or environmental assessment has been prepared for this rulemaking.

VI. Paperwork Reduction Act Statement

This proposed 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 proposed rule emanates from a longstanding concern that the Commission's hearing process is not as efficient or effective as it could be. The Commission is seeking to develop revised rules of procedure that will enhance public participation, produce more timely decisions, and reduce the resources that participants expend. The Commission's experience suggests that, in most instances, the use of formal adjudicatory procedures is not essential to the development of an adequate hearing record. However, their use all too frequently results in protracted, costly proceedings.

The Commission proposes that most NRC proceedings be conducted using 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 a better, quicker, and less costly means to resolve disputes.

The Commission would continue to use formal trial-type procedures in enforcement proceedings, in proceedings on the initial construction authorization and initial licensing of a high-level radioactive waste repository, as well as any proceeding to construct and operate an enrichment facility under section 193 of the Atomic Energy Act of 1954, as amended (AEA). The Commission also proposes to retain the option of using formal adjudicatory proceedings in other proceedings where it determines that this would be the better means to address and resolve particular issues. The Commission recognizes that in some cases, such as reactor licensing cases involving many complex issues, the use of formal adjudicatory proceedings may be the best means to develop an adequate record upon which a sound decision can be based.

The proposed changes in the rules 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 would have information that will 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 would 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 pose to the participants, and then permitting the presiding officer to pose whatever

questions he or she deems appropriate to the witnesses, a more focused and complete record should be developed.

Finally, for less complex disputes, a fast track option is proposed. Under this option, these cases could be resolved far more quickly than under current rules and with substantially reduced burdens to the participants.

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 proposed rule would improve the effectiveness of NRC hearings and at the same time reduce the overall burdens for participants—members of the public, interested State and local governments, NRC staff, applicants and licensees—in NRC hearings.

This constitutes the regulatory analysis for the proposed rule.

VIII. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule would apply in the context of Commission adjudicatory proceedings concerning nuclear reactors or nuclear materials. Reactor licensees are large organizations that do fall within the definition of a small business found in section 3 of the Small Business Act, 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 proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required for this proposed rule.

Lists 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 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 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. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 1, 2, 50, 51, 52, 54, 60, 70, 73, 75, 76 and 110.

PART 1—STATEMEMT 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.

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 2.345.

* * * * *

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.

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). Sections 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 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 rule making, and should be read in conjunction with the subpart governing a particular proceeding. Subpart I 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, the definitions of Commission adjudicatory employee, and NRC employee are revised to read as follows:

§ 2.4 Definitions.

As used in this part,

* * * * *

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, including an administrative law judge, 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 § 2.347, 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.

* * * * *

7. In § 2.101, paragraphs (a)(3)(ii), (b), 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, and telephone number 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 (a)(3)(ii) 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, and telephone number 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 (b) 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.

* * * * *

(g) * * *

(2) With respect to any tendered document that is acceptable for docketing, the applicant will be requested to submit to the Director of Nuclear Material Safety and Safeguards such additional copies as the regulations in Part 61 and subpart A of part 51 of this chapter require, 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, 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 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) of this section to the executives or bodies. All distributed copies shall be completely assembled documents identified by docket number. Subsequently distributed amendments, however, 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 shall not make public distribution of those parts of the application subject to § 2.390(d).

* * * * *

8. 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** pursuant to this subparagraph will also include a notice of hearing, if appropriate, or will state that any person whose interest may be affected by the proceeding may, pursuant to and in accordance with § 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.

9. 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 presiding officer 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.

* * * * *

10. 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 pursuant to § 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, pursuant to paragraph (a) of this section.

11. 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.

* * * * *

12. 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.

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:

(1) By delivery to the NRC Public Document Room at 11555 Rockville Pike, Room O1–F21, Rockville, Maryland; or

(2) By mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or

(3) By facsimile transmission addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC., Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; or

(4) By electronic mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, HEARINGDOCKET@NRC.GOV.

(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 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, by first class, certified or registered mail including air mail, by electronic or facsimile transmission (in which case the original signed copy shall be transmitted to the Secretary by personal delivery or by first class, certified or registered mail), or as otherwise authorized by law. 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 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., facsimile or electronic transmission, first class or express mail, personal delivery, or courier, 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 overnight mail 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.

(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) Express mail: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff.

(iii) E-mail: *SECY@NRC.gov.;* and facsimile: (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 or her 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 or her 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 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 transmission to an addressee was not deliverable, transmission to that person is not considered complete;

(4) By facsimile transmission, on transmission thereof; 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.

§ 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 mail, five (5) days is added to the prescribed period. Only two (2) days is added when a document is served by express mail. No time is added when the notice or paper is served by electronic mail or facsimile transmission if the recipient has the capability to receive electronic mail or facsimile transmissions. If a document is served by electronic transmission or facsimile and is not received by a party before 5 PM in the recipient's time zone on the date of transmission, the recipient's response date is extended by one 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 or Atomic Safety and Licensing Board, as appropriate, 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 § 2.309(e), 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 § 2.309(d) and has proposed at least one admissible contention that meets the requirements of § 2.309(f). In ruling on the request for hearing/petition to intervene submitted by petitioners seeking to intervene in the proceeding on the high-level waste 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 which a **Federal Register** notice of agency action is published, not later than the latest of:

(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;

(ii) The time provided in § 2.102(d)(3); or

(iii) Forty-five (45) days from the date of publication of the notice.

(2) In proceedings for which a **Federal Register** notice of agency action is not published, not later than the latest of:

(i) Forty-five (45) days after publication of notice on the NRC Website, *http://www.nrc.gov;* or

(ii) Forty-five (45) days after the requestor receives actual notice of a pending application, but not more than forty-five (45) days after agency action on the application.

(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 these factors 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 and local governments and affected Indian Tribes.

(i) 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 representative designated by the State in which the facility is located as well as a single designated representative of the local governmental body (county, municipality or other subdivision) in which the facility is located and any affected Indian Tribe as defined in Part 60 of this chapter, without requiring a further demonstration of standing.

(ii) The representative of the State or local government or affected Indian Tribe admitted under § 2.315(c) is not required to take a position with respect to any admitted contention. However, the representative will be required to identify those contentions on which it will participate in advance of any hearing held. A representative who wishes to litigate a contention not otherwise admitted in the proceeding must satisfy the requirements of paragraph (f) of this section with respect to that contention.

(iii) In any proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, the Commission shall permit intervention by the State and local governments (counties) in which such an area is located and by any affected Indian Tribe as defined in part 60 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 above, among other things. In enforcement proceedings, the licensee or other person against whom the action is taken shall have standing.

(e) Discretionary Intervention. 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 § 2.309(b)(1). Accordingly, in addition to addressing the factors in § 2.309(b)(1), 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 and for each contention—

(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 after the initial filing only with leave of the Presiding officer upon a showing that—

(i) The information upon which the amended contention is based was not previously available;

(ii) The information upon which the amended contention is based is materially different than information previously available; and

(iii) The amended contention has been submitted in a timely fashion based on the availability of the subsequent information.

(g) Selection of hearing procedures. A request for hearing and/or petition for leave to intervene must also address the selection of hearing procedures, taking into account the provisions of § 2.310.

(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 five (5) days after service of that answer.

(3) No other written answers or replies will be entertained.

§ 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) 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.

(b) 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.

(c) Reactor licensing proceedings involving a large number of very complex issues that would demonstrably benefit from the use of formal hearing procedures may be conducted under the procedures of subpart G of this part.

(d) At the request of any party in 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, the proceeding may be conducted under the procedures of subpart K of this part.

(e) Proceedings on an application for authorization to construct 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 application for authorization 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 the license to construct. Amendments to an authorization to construct a high-level radioactive waste repository at a geologic repository operations area, and amendments to an authorization to receive and possess high level waste at a geologic repository operations area may be conducted under the procedures of subpart L or N of this part.

(f) 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 may be conducted under the procedures of subpart M of this part.

(g) Except as determined through the application of paragraphs (a) through (f) of this section, proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to parts 30, 32 through 35, 39, 40, 50, 52, 54, 55, 61, and 70 may be conducted under the procedures of subpart L of this part.

(h) Except as determined through the application of paragraphs (a) through (f) of this section, proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to parts 30, 32 through 35, 39, 40, 50, 52, 54, 55, 61, 70 and 72, 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.

§ 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 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 § 2.340(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 hearing procedures may be appealed by any party on the question as to whether the selection of the particular hearing procedures was erroneous.

§ 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.

(a) The Commission may provide in the notice of hearing that one or more members of the Commission, or an Atomic Safety and Licensing Board, or a named officer who has been delegated final authority in the matter, shall preside. If the Commission does not so provide, the Chief Administrative Judge will issue an order designating an Atomic Safety and Licensing Board appointed under section 191 of the Atomic Energy Act of 1954, as amended. If the Commission has not provided for the hearing to be conducted by an Atomic Safety and Licensing Board, the Chief Administrative Judge will issue an order designating, as appropriate, either an administrative law judge appointed under 5 U.S.C. 3105, or an administrative judge.

(b) 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.

(c) If a party believes that the 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 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 board member does not disqualify himself, the motion must be referred to the Commission. The Commission will determine the sufficiency of the grounds alleged.

(d) 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.

(e) 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 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 rights 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 § 2.341(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 § 2.341(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 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 representatives of an interested State, county, municipality, Federally-recognized Indian Tribe, and/or agencies thereof, a reasonable opportunity to participate in those proceedings and to introduce evidence, interrogate witnesses where cross-examination by the parties is permitted, and advise the Commission without requiring the representative to take a position with respect to the issue. These representatives may also file proposed findings in those proceedings where findings are permitted and petitions for review by the Commission under § 2.340. The presiding officer may require the representatives to indicate with reasonable specificity, in advance of the hearing, the subject matters on which each representative desires to participate.

(d) If a matter is taken up by the Commission under § 2.340 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". A person who is not a party and desires to file a brief shall submit 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 or her 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 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, the Chief Administrative Judge will designate by order the administrative judge 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 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 cumulative, irrelevant, immaterial, or unreliable;

(e) Restrict irrelevant, duplicative, or repetitive 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 his/her 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; and

(p) 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 must study the written testimony and sit with the presiding officer to hear the presentation and cross-examination by the parties of all witnesses on the issues of the interrogators' expertise, and 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; or

(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.

(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. 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 § 2.340(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.

(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 subpart G. 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 therefore. 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 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.

(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 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; 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 presiding officer.

When, in the opinion of the presiding officer, time permits and the nature of the proceeding and the public interest warrant, he or she 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 § 2.704 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 such methods as 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 before the publication of the pertinent review document 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 may:

(a) Limit the number of witnesses whose testimony may be cumulative;

(b) Strike argumentative, repetitious, cumulative, or irrelevant evidence;

(c) Take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination; and

(d) Impose such time limitations on arguments as he or she 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 residing 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, any 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 not 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 a copy of the analysis or other authority upon which that person bases his or her opinion;

(2) The name and, if known, the address and telephone number of each person that the party believes is likely to have discoverable information relevant to the admitted contentions;

(3)(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.

(4) All other documents (for which there is no claim of privilege or protected status) that, to the party's knowledge, provide direct support for, or opposition to, the application or other proposed action that is the subject of the proceeding, and

(5) A list of all 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.

(b) 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) which act on the application or proposal that is the subject of the proceeding; and

(5) A list of all 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 subpart G discovery provisions 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 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 settling and terminating the proceeding. Settlements approved by a presiding officer are subject to the Commission's review in accordance with § 2.340.

§ 2.338 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.

§ 2.339 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. 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 § 2.340 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) Atomic Safety and Licensing Boards. Atomic Safety and Licensing Boards 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 Board'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 Licensing Board 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 Licensing Board 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 § 2.341.

(g) Nuclear power reactor operating licenses.

(1) Atomic Safety and Licensing Boards. Atomic Safety and Licensing Boards 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 Board'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 Licensing Board 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 Board 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 Licensing Board's decision. The Licensing Board'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 §§ 2.340 or 2.341.

§ 2.340 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 waste geologic 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. The filing of a petition for review is mandatory for a party to exhaust its administrative remedies before seeking judicial review.

(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 be filed, oral argument be held, or both.

(2) Unless the Commission orders otherwise, any briefs on review may not exceed thirty (30) pages in length, exclusive of pages containing the tables 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 motion for reconsideration will be evaluated against the standard in § 2.323(e) of this section.

(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 under § 2.323(f) will be reviewed if it either—

(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) The Commission may, in its discretion, grant interlocutory review at the request of a party if the party demonstrates that interlocutory Commission review is warranted under criteria specified in paragraph (f)(1) of this section, 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.

§ 2.341 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.

§ 2.342 Oral arguments.

In its discretion, the Commission may allow oral argument upon the request of a party made in a petition for review or brief on review, or upon its own initiative.

§ 2.343 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.

§ 2.344 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 § 2.340(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.

§ 2.345 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 2.340;

(f) Extend the time for the Commission to grant review on its own motion under § 2.340;

(g) Extend time for Commission review on its own motion of a Director's denial under 10 CFR 2.206(c);

(h) Direct pleadings improperly filed before the Commission to the appropriate presiding officer for action;

(i) 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;

(j) 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

(k) Take action on minor procedural matters.

§ 2.346 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 § 2.340, 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.

§ 2.347 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) The communications permitted by paragraph (b)(2) (i) through (iii) of this section may not 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 § 2.340.

(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 § 2.346.

(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), and (e) of this section, final NRC records and documents, 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 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)(1) A person who proposes that a document or a part be withheld in whole or part from public disclosure on the ground that it contains trade secrets or privileged or confidential commercial or financial information shall submit an application for withholding accompanied by an affidavit that:

(i) Identifies the document or part sought to be withheld and the position of the person making the affidavit; and

(ii) Contains a full statement of the reasons on the basis of which it is claimed that the information should be withheld from public disclosure. The statement must specifically address the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit must 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 must 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 must be submitted at the time of filing the information sought to be withheld. The information sought to be withheld must be incorporated, as far as possible, into a separate paper. The affiant may 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 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) If a request for withholding under paragraph (b) of this section is denied, the Commission will notify an applicant for withholding of the denial with a statement of reasons. The notice of denial will specify a time, not less than thirty (30) days after the date of the

notice, when the document will be available at the NRC Web site, http://www.nrc.gov. If, within the time specified in the notice, the applicant requests withdrawal of the document, the document will not be available at the NRC Web site, http://www.nrc.gov, and will be returned to the applicant: Provided, that information submitted in a rulemaking proceeding which subsequently forms the basis for the final rule will not be withheld from public disclosure by the Commission and will not be returned to the applicant after denial of any application for withholding submitted in connection with that information. If a request for withholding under paragraph (b) of this section is granted, the Commission will notify the applicant of its determination to withhold the information from public disclosure.

(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) 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).

13. 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.

14. 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 § 2.340. 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.

15. 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 pursuant to § 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(a)(1) through (4) and 2.309(d). The notice will be ruled upon by the Commission or Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene.

* * * * *

16. 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, 2.338, 2.339(b), 2.342, 2.712, and 2.713 shall apply to any partial initial decision rendered in accordance with this subpart. Section 2.339(c) shall not apply to any partial initial decision rendered in accordance with this subpart. A limited work authorization may not be issued under § 50.10(e) of part 50 of this chapter 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.

* * * * *

17. Subpart G is revised to read as follows:

Subpart G—Rules for Formal Adjudications

Sec.

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, reactor licensing proceedings involving a large number of very complex issues, proceedings for applications for authorization to construct a high-level radioactive waste at a geologic repository operations area noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings for applications for authorization 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 exaination or cross-examination.

(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 are 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;

(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 § 2.710.

(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 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, within 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 § 2.710(c), 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 a motion under § 2.704(c), 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 § 2.705 and the number of requests under §§ 2.706 and 2.707. 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 shall 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 shall 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), 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 upon written interrogatories; interrogatories to parties.

(a) Depositions upon oral examination and upon 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 (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.[1]

(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 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 § 2.705(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, 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, 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. 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 § 2.705 (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, without leave of the Commission or the presiding officer. The request must

[1] The sanction specified herein is not stated in the Rule 26 of the Federal Rules (which speaks of financial snactions), but is inserted to emphasize the seriousness with which breaches of the Commission's disclosure and discovery rules should be viewed.

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 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 shall advise the requesting party.

(d) If 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;

(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, 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 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 § 2.704 (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. 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. Motions may be filed at any time. 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. 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. In addition, the presiding officer may dismiss summarily or hold in abeyance 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.

(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) 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.

§ 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 (b)(2) of this section if so directed by the presiding officer, 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 each 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 may 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) Proceedings involving applications. In any proceeding involving an application, the NRC staff shall offer into evidence any report submitted by the ACRS in the proceeding in compliance with section 182b. 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.

(j) 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.

(k) 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 § 2.340 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 § 2.344; 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.

18. 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 pursuant to § 2.315(c).

19. Section 2.1000 is revised to read as follows:

§ 2.1000 Scope of Subpart.

The rules in this subpart, together with the rules in subpart G of this part, govern the procedure for applications 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 applications for authorization to receive and possess high level radioactive waste at a geologic repository operations area. The procedures in this subpart are to be used together with the generally applicable procedures in subpart C of this part, and, as appropriate, the procedures in subpart G of this part.

20. In § 2.1001, the definition, Party, is revised to read as follows

§ 2.1001 Definitions

* * * * *

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 of 1982, as amended (42 U.S.C. 10101), and a person admitted under § 2.309 to the proceeding on 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 applications for authorization to receive and possess high level radioactive waste at a geologic repository operations area under part 60 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.

* * * * *

21. 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 §§ 2.321(c) and 2.319.

* * * * *

22 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 high-level waste 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.

* * * * *

23. In § 2.1013, paragraphs (a)(1) and (b) 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 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 applications to receive and possess high level radioactive waste at a geologic repository operations area under part 60 of this chapter.

(2) * * *

(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.

* * * * *

§ 2.1014 [Removed]

24. Section 20.1014 is removed.

25. 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 Motions. [Removed]

26. Section 2.1016 is removed.

27. In § 2.1018, paragraphs (c), (f)(3) and (g) are revised to read as follows:

§ 2.1018 Discovery.

* * * * *

(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 pursuant to § 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 Depositions. [Amended]

28. In § 2.1019, paragraph (j) is removed.

29. Section 2.1021 is revised to read as follows:

§ 2.1021 First prehearing conference.

In any proceeding involving an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area under part 60 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, for a conference as provided by § 2.329.

30. In § 2.1023, the introductory test of paragraph (a) and paragraph (a)(1) are revised to read as follows:

§ 2.1023 Immediate effectiveness.

(a) Pending review and final decision by the Commission, an 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 § 60.31 of this chapter, or an authorization to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to § 60.41 of this chapter, will be immediately effective upon issuance except—

(1) As provided in any order issued in accordance with § 2.341 of this part that stays the effectiveness of an initial decision; or

* * * * *

31. 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]

32. Section 2.1111 is removed.

33. Section 2.1117 is revised to read as follows:

§ 2.1117 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.

34. Subpart L is revised to read as follows:

Subpart L—Informal Hearing Procedures for NRC Adjudications

Sec.

Subpart L—Informal Hearing Procedures for NRC Adjudications

§ 2.1200 Scope of subpart.

The provisions of this subpart may be applied to 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 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 authority to receive and possess high-level radioactive waste at a geologic repository operations area, and proceedings on enforcement matters.

§ 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 matter which is the subject of the hearing. Notice of the NRC staff's action must be promptly transmitted to the presiding officer and the parties to the proceeding. 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 at a geologic repository operations area falling under 10 CFR 60.32(c)(1);

(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;

(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 NRC 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 specifically identifying the issue(s) on which the NRC staff is to participate as well as setting forth the basis for the determination that NRC staff's 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 provide notice to the presiding officer and the parties on whether or not it desires to participate as a party, and identifying any contentions on which it wishes to participate as a party. Once the NRC staff chooses to participate as a party, it must be considered a party with all the rights and responsibilities of a party with respect to the admitted contentions of other parties which it identifies.

§ 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. 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 presiding officer may allow cross-examination by the parties 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. These questions 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.

(ii) Proposed questions directed to rebuttal testimony for the presiding officer to consider for propounding to persons sponsoring the testimony. These questions must be filed within seven (7) days of the service of the rebuttal testimony unless the presiding officer directs otherwise.

(iii) Questions submitted under paragraphs (a)(3)(i) and (ii) of this section may be propounded at the discretion of the presiding officer.

(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 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., an 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.

§ 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) Proposed written questions directed to the written responses and rebuttal testimony submitted under paragraph (a)(2) of this section for the presiding officer to consider for submittal to the persons offering the written responses and rebuttal testimony. 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.

(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 a 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 forty (40) days after the date of issuance, unless any party files a petition for Commission review in accordance with § 2.1210 or 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; and

(3) 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., § 2.312) or by the Commission in special circumstances.

§ 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 § 2.340. A petition for review must be filed for a party to exhaust its administrative remedies before seeking judicial review.

§ 2.1213 Applications 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 5 days of the issuance of the notice of 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 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 § 2.341.

35. The heading for Subpart M is revised to read as follows:

Subpart M—Procedures for Hearings on License Transfer Applications

§ 2.1306 [Removed]

36. Section 2.1306 is removed.

§ 2.1307 [Removed]

37. Section 1307 is removed.

§ 2.1308 [Removed]

38. Section 2.1308 is removed.

§ 2.1312 [Removed]

39. Section 2.1312 is removed.

§ 2.1313 [Removed]

40. Section 2.1313 is removed.

§ 2.1314 [Removed]

41. Section 2.1314 is removed.

§ 2.1317 [Removed]

42. Section 2.1317 is removed.

§ 2.1318 [Removed]

43. Section 2.1318 is removed.

44. 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.

* * * * *

45. 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.

* * * * *

§ 2.1326 [Removed]

46. Section 2.1326 is removed.

§ 2.1328 [Removed]

47. Section 2.1328 is removed.

§ 2.1329 [Removed]

48. Section 2.1329 is removed.

§ 2.1330 [Removed]

49. Section 2.1330 is removed.

50. 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.

51. A new Subpart N is added to read as follows:

Subpart N—Expedited Proceedings with Oral Hearings

Sec.

Subpart N—Expedited Proceedings with Oral Hearings

§ 2.1400 Purpose and scope.

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 may be applied to 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—.

(a) Proceedings on the licensing of the construction and operation of a uranium enrichment facility; and

(b) 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), and for an initial application for authorization to receive and possess high level radioactive waste at a geologic repository operations area under part 60 of this Chapter.

§ 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, requests for discovery will not be entertained.

(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 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. Notice of the NRC staff's action must be promptly transmitted to the presiding officer and the parties to the proceeding. 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;

(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) If the NRC staff desires to participate as a party, the staff shall notify the presiding officer and the parties no later than the time of the prehearing conference provided by § 2.1404. After the appropriate notification, the NRC staff is a party with all the rights and responsibilities of a party.

§ 2.1404 Prehearing conference.

(a) No later than 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 receive oral evidence that is not 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. The filing of an appeal with the Commission is mandatory for a party to exhaust its administrative remedies 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.

52. 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 A LICENSE TO RECEIVE AND POSSESS HIGH-LEVEL RADIOACTIVE WASTE AT A GEOLOGICAL REPOSITORY OPERATIONS AREA

Day	Regulation (10 CFR)	Action
0	2.101(f)(8), 2.105(a)(5)	FEDERAL REGISTER Notice of Hearing.
30	2.1014(a)(1)	Petition to intervene/request for w/contentions.
	2.309(h)	Petition for status as interested government participant.
55	2.309(i)(1)	Answers to intervention & interested government participant petitions.
60	2.309(i)(2)	Petitioner's response to answers.
70		Prehearing Conference.
100	2.1021, 2.329	Prehearing Conference Order; identifies participants in proceeding, admits cotentions, sets discovery and other schedules.
110	2.1015(b)	Appeals from Prehearing Conference Order.
120	2.1015(b)	Briefs in opposition to appeals.
150		Commission ruling on appeals from Prehearing Conference Order.

APPENDIX D TO PART 2.—SCHEDULE FOR THE PROCEEDING ON APPLICATION FOR A LICENSE TO RECEIVE AND POSSESS HIGH-LEVEL RADIOACTIVE WASTE AT A GEOLOGICAL REPOSITORY OPERATIONS AREA—Continued

Day	Regulation (10 CFR)	Action
548		Staff issues SER.
578		Prehearing conference.
608		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	2.1015(b)	Briefs in opposition to appeals.
658		Commission ruling on appeals from Prehearing Conference Order.
660		Last practical date for summary disposition motions.
680		Replies to last practical summary disposition motions.
690		Discovery complete.
720		Evidentiary hearing begins.
810		Evidentiary hearing ends.
840	2.712(a)(1)	Applicant's proposed findings.
850	2.712(a)(2)	Other parties' proposed findings.
855	2.712(a)(3)	Applicant's reply to other parties' proposed findings.
955	2.713	Initial decision.
965	2.341(a), 2.344(a), 2.1015(c)(1)	Stay motion, petition for reconsideration, notice of appeal.
975	2.341(d), 2.344(b),	Other parties' response to stay motion, petition for reconsideration.
995		Commission ruling on stay motion.
985	2.1015(c)(2)	Appellant's briefs.
1015	2.1015(c)(3)	Appellees' briefs.
1125		Commission decision.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

53. 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).

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).

54. 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 under § 2.323 of this chapter, 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.

55. 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 subpart L of this chapter. For amendments subject to subpart L of this chapter, 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 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

56. 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)).

57. 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 Appeal 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.

58. 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.

59. In § 51.109, paragraph (a)(2) is revised to read as follows:

§ 51.109 Public hearings in proceedings for issuance of materials license with respect to a geologic repository.

(a)(1) * * *

(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 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

60. 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).

61. 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.

62. 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.

* * * * *

63. 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 subparts C, G and L 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 application for initial licenses.

* * * * *

64. 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 this part 52 governs Commission approval, or certification, of standard designs by rulemaking.

* * * * *

65. In § 52.51, paragraphs (b) and (c) are revised to read as follows:

§ 52.51 Administrative review of applications.

* * * * *

(b) The rulemaking procedures must provide for notice and comment and an opportunity for an informal hearing under subparts C and L before an Atomic Safety and Licensing Board. The procedures for the informal hearing must include the opportunity for written presentations made under oath or affirmation and for oral presentations and questioning if the Board finds them either necessary for the creation of an adequate record or the most expeditious way to resolve controversies. Ordinarily, the questioning in the informal hearing will be done by members of the Board, using either the Board's questions or questions submitted to the Board by the parties. The Board may also request authority from the Commission to use additional procedures, such as direct and cross examination by the parties, or may request that the Commission convene a formal hearing under subparts C and G of 10 CFR part 2 on specific and substantial disputes of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in a formal hearing. The NRC staff will be a party in the hearing.

(c) The decision in such a hearing will be based only on information on which all parties have had an opportunity to comment, either in response to the notice of proposed rulemaking or in the informal hearing. 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.

66. 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.

* * * * *

67. 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.

* * * * *

68. 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.

* * * * *

69. 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.

* * * * *

70. 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

71. 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.

72. 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 § 2.355 have been addressed.

PART 60—DISPOSAL OF HIGH LEVEL WASTE IN GEOLOGICAL REPOSITORIES

73. 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).

74. In § 60.63, paragraph (a) is revised to read as follows:

§ 60.63 Participation in license reviews.

(a) State and local governments and affected Indian Tribes may participate in license reviews as provided in subpart C 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 Indian Tribe shall have an unquestionable legal right to participate as a party in such proceedings.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

75. 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).

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).

76. 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 30 days before the hearing.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

77. 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).

78. 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(e) of this chapter.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

79. 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).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

80. 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

81. 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. 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).

82. In § 76.41, paragraph (b) is revised to read as follows:

§ 76.41 Record underlying decision.

* * * * *

(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.

83. 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.

* * * * *

84. 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, 2.306, 2.307, and 2.305. 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 2.345.

(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 2.346 and 2.347 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 and G, 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

85. 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).

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.).

86. 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 5th day of April, 2001.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–8886 Filed 4–13–01; 8:45 am]

BILLING CODE 7590–01–P

Federal Register

Monday,
April 16, 2001

Part III

Department of Education

Final Requirements for Fiscal Year (FY) 2001 Competitions Under the Transition to Teaching Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No: 84.350]

Final Requirements for Fiscal Year (FY) 2001 Competitions Under the Transition to Teaching Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final requirements for fiscal year (FY) 2001 competitions under the Transition to Teaching program.

SUMMARY: We announce final requirements to govern the initial grant competition and FY 2001 awards under the new Transition to Teaching program. The program is funded in the Department's FY 2001 appropriation under Title II, part A, of the Elementary and Secondary Education Act. These requirements are needed to promote a fair and appropriate grants competition, and to ensure that all projects will be conducted consistent with the purposes of the program.

DATES: These requirements are effective May 16, 2001.

FOR FURTHER INFORMATION CONTACT: Frances Yvonne Hicks, School Improvement Programs, Office of Elementary and Secondary Education, 400 Maryland Ave. SW, Room 3E224, Washington, DC 20202–6140: Telephone: (202) 260–0964. Inquiries also may be sent by e-mail to: *transition to teaching@ed.gov* or by FAX to: (202) 205–5630. 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 contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Nation faces a severe shortage of qualified teachers. America's schools will need to hire 2.2 million teachers over the next ten years, and if the Nation is to achieve its education goals, they will need to be the most talented and qualified generation of teachers ever.

The need to recruit talented Americans of all ages into the teaching profession, and particularly those who already have content-area expertise, is self-evident. Nationally, nearly 13 percent of teachers of academic subjects have neither an undergraduate major nor a minor in their main assignment fields, and the problem is even more severe in high-poverty schools. Many schools—particularly those in high-poverty areas—face severe teacher shortages, particularly in high-need fields such as mathematics, science, foreign languages, bilingual education, reading, and special education. See, e.g., U.S. Department of Education, National Center for Education Statistics, "America's Teachers: Profile of a Profession, 1993–94" (1997). In mathematics and science, the need for better-prepared teachers is particularly acute. High attrition rates further complicate the challenge of providing all of America's students with high-quality teachers. As school enrollments continue to grow and retirements from the current teacher force increase, the Nation's teacher recruitment and preparation challenges will grow more daunting.

On December 21, 2000, the President signed into law the Department of Education Appropriations Act, a component of the Consolidated Appropriations Act 2001, P.L. 106–554. This Act provides $31 million for competitive grants to encourage and help individuals in two important and largely untapped groups to become licensed and successful teachers: (1) Mid-career professionals with work experience in high-need areas, such as engineers and scientists, corporate professionals, and returning Peace Corps volunteers, and (2) recent college graduates with outstanding academic records but without a baccalaureate in education. Under this program, grantees will—

- Recruit individuals in one or both of these groups to become teachers in areas in which specific local educational agencies (LEAs) face critical shortages (for instance in such fields as mathematics, science, foreign languages, bilingual education, reading, and special education);
- Provide these individuals intensive short-term guidance and personal support as they make their career moves, as well as training in areas such as pedagogy and classroom management that will enable them to begin teaching as soon as possible the subjects in which they are qualified to teach;
- Work with the specific LEAs (where the grantee is not itself an LEA) to ensure that these individuals are hired as teachers in schools that need them;
- Help these individuals to (1) complete high-quality training in pedagogy, classroom management, and other requirements of licensure or certification (in State- or LEA-approved alternative routes, where applicable) in the State in which they will teach, and (2) pass any assessment the State (or LEA) requires for a teaching license or certification; and
- Ensure that these individuals receive special high-quality support during at least their first two years of teaching, through such activities as mentoring, co-teaching with experienced teachers, and observation and consultation with experienced teachers, in order to help ensure that they are successful in their new teaching careers.

To encourage those recruited into the program to become qualified teachers, grantees also (1) will use program funds both to pay expenses related to becoming a licensed or certified teacher, and (2) may use program funds to provide these individuals, as may be needed to recruit them into teaching, a financial stipend or incentive of up to $5,000 per year for up to two years.

The Transition to Teaching program provides an historic opportunity to advance two important objectives. First, the program will help participating schools and school districts to address their teacher shortages, particularly those in high-need areas and subjects. It will do so by enabling them to quickly hire individuals who, while currently working in non-teaching occupations, want to make career moves into teaching and already have content knowledge, experience, and talents that likely would help them to become good teachers. Second, the activities that grantees will conduct will likely help to stimulate other talented non-teaching professionals to take advantage of State alternative routes to teacher licensure and certification, and help other LEAs to understand how they can attract similar individuals into teaching. In this regard, once the grants provided under this program are completed, the Department intends to determine which approaches have been most successful in addressing the teaching shortages of participating LEAs, and widely disseminate information about these approaches to the public at large.

A notice inviting applications for grants under the Transition to Teaching program is published elsewhere in this edition of the **Federal Register.** That notice also explains how the public may obtain an application package. This package explains how to apply for a grant, information that applicants must provide, suggestions for designing a quality application, and the criteria in the Education Department General Administrative Regulations (EDGAR) the Department will use to select those to receive grant awards.

Rules Applicable to This Program for the FY 2001 Competition

In calling for this program in the conference report accompanying the Department's FY 2001 Appropriations Act, Congress said that the purpose of this program is to provide grants—

"for local educational agencies, State educational agencies, educational service agencies, or nonprofit agencies and organizations, including organizations with expertise in teacher recruitment, or partnerships comprised of these entities to recruit, prepare, place and support mid-career professionals from diverse fields who possess strong subject matter skills to become teachers, particularly in high-need fields such as mathematics, science, foreign languages, bilingual education, reading, and special education; and to attract, recruit, screen, select, train, place and provide financial incentives to recent college graduates with outstanding academic records and a baccalaureate in a field other than education to become fully qualified teachers through nontraditional routes."

See House (Conference) Report 106–1033 on H.R. 4577, page 182.

While this statement of purpose is clear, certain aspects of this new grant program—such as how the Department can fairly evaluate the relative quality of projects proposed by these very different kinds of entities—need definition. Therefore, in order to administer the program fairly and in a manner that is consistent with this statement of purpose, the Department has established the following rules to govern this competition and activities to be undertaken by those who receive grant awards:

The Application Review Process

Given the variety of entities that may apply for grants under this program, the Department expects the scope of proposed recruitment and placement efforts to vary widely. For example, a nonprofit organization might propose activities in communities throughout the nation, an SEA might propose activities to be conducted on a statewide basis, and an LEA might propose activities that would focus on its own teaching needs. In order to evaluate fairly the relative merits of applications proposing projects of such widely varied scope, applications will be placed into and reviewed as part of one of three categories, depending on whether the LEAs to benefit from the project are located (1) in more than one State, (2) statewide or in more than one area of a State, or (3) in a single area of a State. The anticipated average grant amounts and other information regarding these three categories are more fully explained in the notice inviting applications for new awards that is published separately in this edition of the **Federal Register**.

Because of the variety of entities that may apply for grants under this program, it is possible that an LEA may be the recipient of services under both (1) its own application and (2) the application of the SEA of the State in which the LEA is located or of an educational service agency or nonprofit organization. In this event, should those applications propose duplicative recruitment and placement activities, the Department will offer the LEA a choice of receiving its own grant award or participating in the other entity's project. In the event the LEA chooses to receive its own award, the Department will adjust the other entity's grant award accordingly.

Information That Must Be Included in a Project Application

The success of this program in enhancing the quality of the Nation's teaching force depends on the quality of activities grantees undertake. In particular, it depends on: (1) How well grantees, in response to the teacher shortage needs of participating LEAs, recruit and prepare mid-career professionals with relevant work experience, and recent college graduates with outstanding academic records to become qualified teachers, (2) the extent to which these individuals become employed as teachers in the LEAs and schools that most need them, and (3) the kinds of special support they receive during their first years of teaching. These, in turn, depend on the commitment of the applicant and its partners to ensure that the LEA or LEAs that participate in the project will benefit from the new qualified teachers the project will produce.

How applicants propose to accomplish the objectives of this program is left to their own judgment, ingenuity, and imagination. However, to ensure that funded projects are of high quality and respond to the teacher shortage needs of participating LEAs, all applications will need, at minimum, to identify the following:

1. The critical teacher shortage needs that one or more LEAs have identified (for instance in such fields as mathematics, science, foreign languages, bilingual education, reading, and special education), and the basis for the LEA's assessment of these needs (e.g., numbers of teachers teaching without certification or out-of-field, high teacher attrition, etc.).

2. The target group upon which the project would focus, i.e., either or both—

- Career-changing professionals with work experience in the relevant subject fields (along with any academic background that the LEA or LEAs who would hire them may require), and
- Recent college graduates with outstanding academic records but without a baccalaureate in education.

3. For projects that recruit recent college graduates with outstanding academic records, the applicant's criteria (e.g., minimum grade-point average overall or in area of college major, inclusion in top "xx" percent of the graduating class, receipt of academic honors, etc.) for what constitutes an "outstanding academic record."

4. The estimated number of these individuals who will become teachers through this project in each participating LEA.

5. The applicant's strategies for ensuring that, to the maximum extent possible, those recruited into the program make teaching in the participating LEA or LEAs their long-term career. In addressing this issue, applicants must describe the proposed strategies with which they will—

- Identify and recruit the target group of individuals to become teachers in participating LEAs (including the applicant's strategy for ensuring that any recruitment costs—including costs that may be needed for non-local travel—are reasonable and necessary); and then ensure that these recruits—
- Receive guidance and personal support needed to ease their transitions from one career to another, as well as appropriate short-term training in areas such as pedagogy and classroom management before they begin teaching—which shall begin as quickly as possible and no later than the beginning of the 2002–03 school year;
- Complete high-quality training in pedagogy, supervised teaching, and other requirements of licensure or certification of the State (and, where applicable, the LEA) in which they will teach;
- Become licensed or certified in the area(s) in which they will teach through, where applicable, a State- (or LEA-) approved alternative route to teacher certification or licensure that does not require completion of a full course of study in a teacher preparation program;
- Teach only in subject areas in which they have prior experience or sufficient academic background until they receive a teaching license or certificate confirming they have met all State (and, if applicable, LEA)

requirements related to the subjects they will teach; and

• Receive the special support they will need during at least their first two years of teaching so that they are able to learn to help the diverse groups of students who will be in their classrooms achieve to high standards. This support will include activities such as: mentoring, co-teaching with experienced teachers, observation and consultation with experienced teachers, training in the use of technology, and other sustained and high-quality professional development tied to State and district standards and assessments.

6. The applicant's plans, as part of its overall strategy, for—

• Paying the costs of required courses, State assessments and other expenses related to project participants becoming licensed or certified teachers, and

• determining—

(a) The circumstances under which the applicant, in order to implement the project successfully, would provide to each individual recruited into the program a stipend or financial incentive of up to $5,000 per year for up to two years;

(b) At what point(s) in the project period an individual would receive the stipend or financial incentive; and

(c) The total amount of stipends or incentives the applicant expects to provide out of program funds.

7. The State (or, where applicable, LEA) procedures under which project participants would be certified or licensed including, where available, those for any alternative routes to teacher certification or licensure that the State (or LEA) provides.

8. If applicable, the ways in which the proposed project will help further State and local efforts to establish alternative routes to teacher certification or licensure.

9. The identities of any agencies and organizations that will work with the applicant to implement project activities.

Applicants also will need to include an assurance that recruitment and hiring efforts supported with program funds will expand existing efforts that the applicants or the participating LEAs conduct.

Finally, applicants also will need to include a written statement from the LEA or LEAs in which the project will focus—

• Offering support for the project and a commitment to employ all of the project's participants as soon as possible, but no later than the beginning of the 2002–03 school year, provided that they, in fact, have the subject-matter backgrounds and academic training appropriate to the high-need subjects and fields they would teach, and

• Confirming that, should the applicant propose to use program funds to provide stipends or financial incentives to a program participant after he or she is hired as a teacher (or in the first year of the project in another capacity), the LEA that would hire the individual agrees with these plans.

Applications that do not contain the information identified in items 1 through 9, above, and in the preceding paragraphs will be considered incomplete and not be eligible for funding.

Limitation on Indirect Costs

The amount of indirect costs that a grantee or recipient may charge to Transition to Teaching program funds is limited to (1) eight percent of its direct cost base or (2) the amount determined through operation of an approved negotiated indirect cost rate, whichever is less.

Section 75.562 of EDGAR already imposes this limitation on the reimbursement of indirect costs that a grantee other than an agency of a State or local government may charge on an educational training grant. Section 75.562(a) acknowledges that educational training grants typically have a large proportion of their funds available for direct costs, since these grants largely implement previously developed materials and methods, rather than "support activities involving research, development, and dissemination of new educational materials and methods." This is likely to be true of the training, instruction, and support activities that Transition to Teaching projects provide. Moreover, while grantees receiving funds under the Transition to Teaching program also must undertake recruitment and placement activities, the thrust of the program is the training and support for teaching candidates and new teachers of the kind described in § 75.562(a) of EDGAR. Hence, we believe that the Transition to Teaching projects as a whole fit the category of "educational training grants."

There is no reason to believe that LEAs, SEAs, or educational service agencies merit a different measure. As noted above, § 75.562 does not apply to LEAs and State agencies. We recognize the legitimacy of their indirect costs which, absent other requirements, would be limited only by negotiated indirect cost rate agreements that comport with applicable Office of Management and Budget (OMB) cost principles, §§ 75.560–75.564, and the agency's own overall cost structure. However, the best data available to the Department indicate that over 20 States have indirect cost rates of over 15 percent, and two States have indirect cost rates of over 30 percent. Because the program does not use a "restricted indirect cost rate" (see § 75.564), applicable LEA indirect cost rates may also be fairly high. If those reviewing applications recommend these States or LEAs for award of Transition to Teaching program grants, absent a similar limitation on their indirect cost rates, very large amounts of the funds that Congress appropriated for these Transition to Teaching projects would support these agencies' overhead through indirect cost reimbursement rather than the direct costs of activities designed to improve teacher quality.

We believe that such a result is inconsistent with the purpose of the Transition to Teaching program and the expectations that Congress and the Nation have for its success. Therefore. given (1) the pivotal significance of the Transition to Teaching program, (2) the national need for this program to have a maximum impact on the quality and quantity of highly-qualified new teachers, and (3) the fact that this program is competitive, we have determined that it is appropriate to establish a reasonable limitation on the indirect cost rate that any grantee may charge to these educational training grants.

Still, certain activities that grantees must undertake, in particular recruitment and placement of those recruited into the program as teachers in participating LEAs, are not themselves educational training activities. Even if we looked solely at these activities we would require that, regardless of grantee or recipient, a maximum eight-percent indirect cost rate should apply to the costs of these activities as well. We do not believe that Transition to Teaching program grantees or other recipients need to employ higher indirect cost rates to fairly compensate themselves for the costs of their recruitment and placement activities. Rather, since grantees may reasonably undertake recruitment and placement activities as direct costs of their projects, we believe that it is appropriate that all grantees and recipients use the same cap—eight percent—on the indirect cost rate they may use to calculate allowable indirect costs charged to the program's recruitment and placement activities.

This requirement strikes a reasonable balance between the need to focus as much funding as possible under the Transition to Teaching program on direct services tied to identifying,

hiring, training, and supporting new teachers from mid-career professionals and recent college graduates, and the reality that, to do so, recipients invariably must encounter some indirect costs. (It also avoids the uncertainty and confusion that grantees would likely face in apportioning the time of project officers and staff among activities with different indirect cost rates.)

Therefore, so that all applicants are competing for and administering projects under a common set of requirements, and to ensure that the funds Congress appropriated for this program are used to recruit, prepare, hire, and support new teachers rather than for project overhead, the Department requires that each grantee and recipient of Transition to Teaching program funds apply an indirect cost rate of eight-percent or its approved negotiated rate, whichever is less, in determining the indirect costs it may charge to program funds.

Note: A grantee may not charge indirect costs to any funds that it provides to individuals as stipends or financial incentives. See section 75.564(c) of EDGAR.

Procedures To Govern Any Partial Termination of Grants

As explained in the section of this notice entitled "Information that Must Be Included in a Project Application," to be eligible for funding an application must include, among other things, the estimated number of individuals who will become teachers through this project in each year of the grant. In the event that the actual number of individuals recruited into the program who have become teachers is significantly less than the number the grantee had estimated, the amount of funding the grantee will need to pay for training and support activities and for any needed stipends and other financial incentives will be significantly less than the grantee had projected in its approved application. Accordingly, should the Department find that the actual number of teachers hired through a project is less than the number the grantee had estimated, the remaining amount of the grantee's award may be adjusted accordingly. Consistent with §§ 74.61 and 80.43 of EDGAR, before taking any action, the Department will provide the grantee notice and reasonable opportunity to show cause why an adjustment of this kind should not be taken.

So that the Department may receive the information it needs to determine how a grantee's recruitment and hiring efforts compare to the level of recruitment and hiring proposed in the approved grant application, each grantee must provide the Department with this information as part of the annual performance report it submits as required by section 75.590 of EDGAR.

The Government Performance and Results Act

The Government Performance and Results Act of 1993 (GPRA) requires all Federal programs to use performance indicators to measure their quality and effectiveness. GPRA further requires that the Department provide Annual Performance Plans to Congress that provide data on how all of the programs are performing with respect to the program performance indicators. Therefore, the Department submits an annual plan to Congress that provides the most recent data on the Department's five-year Strategic Plan, as well as the latest data on the performance of each program with respect to the program indicators.

The Transition to Teaching program has a set of performance objectives and indicators that appear in Part B in the application package. All grantees must collect data and report to the Department on their progress with respect to each of the performance indicators.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed rulemaking documents. However, in order to make timely grant awards in FY 2001, the Secretary has decided to issue these final regulations without first publishing proposed regulations for public comment. These regulations will apply to the FY 2001 grant competition only. The Secretary takes this action under section 437(d)(1) of the General Education Provisions Act. Should Congress fund the Transition to Teaching program in future years and provide sufficient funding to permit a subsequent grant competition, the Assistant Secretary will issue regulations to govern that competition only after first publishing a notice of proposed rulemaking and offering interested parties the opportunity to comment.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small LEAs, educational service agencies, nonprofit agencies and other organizations that choose to participate in projects the Department funds competitively under this program. However, the regulations would not have a significant economic impact on any of these entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act Considerations

The procedures and requirements contained in this notice relate to an application package that the Department has developed under the Transition to Teaching program. The public may obtain copies of these packages by calling or writing the individuals identified at the beginning of this notice as the Department's contact, or through the Department's website: *http://www.ed.gov/offices/OPE/heatqp/index.html*

As required by the Paperwork Reduction Act, OMB has approved the use of these application packages under the following OMB control number 1810–0635, expiration date April 30, 2004.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

(Catalog of Federal Domestic Assistance Number 84.350: Transition to Teaching program)

Dated: April 10, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary, Education.

[FR Doc. 01–9294 Filed 4–13–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.350]

Office of Elementary and Secondary Education; Transition to Teaching Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of Program: The program provides grants to support the recruitment, training and placement of talented individuals from other fields into teaching positions in K–12 classrooms and support them during their first years in the classroom. In particular, the program supports the recruitment, training, placement and support of two groups of nontraditional teaching candidates: (1) Mid-career professionals from various fields who possess strong subject-matter skills to become teachers, particularly in high-need fields such as mathematics, science, foreign languages, bilingual education, reading, and special education, and (2) recent college graduates with outstanding academic records and a baccalaureate degree in a field other than teaching.

Eligible Applicants: Local educational agencies, State educational agencies, educational service agencies, nonprofit agencies and organizations, including nonprofit organizations with expertise in teacher recruitment, and partnerships comprised of two or more of these entities.

Applications Available: April 16, 2001.

Deadline for Transmittal of Applications: June 15, 2001.

Deadline for Intergovernmental Review: August 14, 2001.

Estimated Available Funds: Approximately $31,000,000.

The Department has established separate funding categories for projects of different scope. These categories are (1) national/regional projects where placement of teachers would be in LEAs in more than one State, (2) statewide projects where placement of teachers would be statewide or in LEAs scattered across a particular State, and (3) local projects where placement of teachers would be in one LEA or in two or more LEAs located in close proximity to one another.

Estimated Range of Awards: National/regional projects—$750,000–$3,000,000; Statewide projects—$375,000–$1,500,000; Local projects—$112,000–$1,125,000.

Estimated Average Size of Awards: National/regional projects—$1,500,000; Statewide projects—$700,000; Local projects—$375,000.

Estimated Number of Awards: National/regional grants—5; Statewide grants—14; Local grants—35.

Maximum Award: We will reject any application that proposes a budget for the entire project period exceeding $3,000,000 for a National/regional project, $1,500,000 for a statewide project, or $1,125,000 for a local project. The Department may change the maximum amount through a notice published in the **Federal Register**. The Department otherwise is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limits: As explained in the application package, the application narrative is where applicants address the selection criteria (and the required application content) that reviewers use in evaluating their applications. Applicants must limit this section of their applications to the equivalent of no more than 50 pages.

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, 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).
- For charts, tables, and graphs, also use a font that is either 12-point or larger or no smaller than 10 pitch.

Reviewers will not read any pages of an application that—

- Exceed the page limit if one applies these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99. (b) The requirements for this program published in this edition of the **Federal Register**.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html* or 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 84.350.

Grant application packages can be accessed electronically at *http://www.ed.gov/GrantApps/*. However, because important information may be scrambled when downloading an electronic version of an application package, potential applicants may still wish to request an official copy of the package from ED Pubs.

FOR FURTHER INFORMATION CONTACT: Frances Yvonne Hicks, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E224, Washington, DC. 20202–6140. Telephone: (202) 260–0964. Inquiries also may be sent by e-mail to: *transitiontoteaching@ed.gov*, or by FAX to: (202) 205–5630. The Department intends to offer prospective applicants further information about the program and assistance in preparing applications at the following Internet site: *http://www.ed.gov/GrantApps/#84.350*.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Program Authority: 20 U.S.C. 6621, P.L. 106–497.

Dated: April 10, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–9295 Filed 4–13–01; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Monday,
April 16, 2001

Part IV

Federal Communication Commission

47 CFR Part 1

Assessment and Collection of Regulatory Fees for Fiscal Year 2001; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 01–76; FCC 01–97]

Assessment and Collection of Regulatory Fees for Fiscal Year 2001

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2001. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b) (2) and (b) (3), respectively, for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.

DATES: Comments are due on or before April 27, 2001, and reply comments are due on or before May 7, 2001.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director at (202) 418–0445 or Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION:

Adopted: March 19, 2001; *Released:* March 29, 2001.

By the Commission:

Table of Contents

I. Introduction

1. By this *Notice of Proposed Rulemaking*, the Commission begins a proceeding to revise its Schedule of Regulatory Fees to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required us to collect for Fiscal Year (FY) 2001.[1]

2. Congress has required that we collect $200,146,000 through regulatory fees to recover the costs of our competition, enforcement, spectrum management, and consumer information activities for FY 2001.[2] This amount is $14,392,000 or approximately 7.75% more than the amount that Congress designated for recovery through regulatory fees for FY 2000.[3] We are proposing to revise our fees in order to collect the amount that Congress has specified, as illustrated in a new fee schedule in Attachment D.

3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with section 159(b)(2). The current Schedule of Regulatory Fees is set forth in §§ 1.1152 through 1.1156 of the Commission's rules.[4]

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.[5] See Attachment G for a description of these activities. In our *FY 1994 Fee Order*,[6] we adopted the Schedule of Regulatory Fees that Congress established, and we prescribed rules to govern payment of the fees, as required by Congress.[7] Subsequently, we modified the fee schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. We are also amending the rules governing our regulatory fee program based upon our prior experience in administering the program.[8]

5. As noted, for FY 1994 we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b)(2) and (b)(3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.[9] Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees to reflect the amount that Congress requires us to recover through regulatory fees.[10]

6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are in the public interest, as well as issues that are reasonably related to the payer of the fee. These amendments permit us to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services * * *"[11]

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the cost of regulating various services that are subject to a fee, and for other purposes.[12] The Commission is in the process of planning a new cost accounting system, which we expect to be in place in FY 2002. For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, in FY 1997, we found that some fee categories received disproportionately high cost allocations. We adjusted for these high cost allocations by redistributing the costs, and maintained a 25% limit on the extent in which service fee categories can be increased. We believed that this 25% limit would enable cost-based service fees to be implemented more gradually over time. We thought that this methodology, which we continued to use for FY 1998, would enable us to develop a regulatory fees schedule that reflected our cost of regulation. Over time, as the cost of regulation increases or decreases, this methodology would enable us to revise

[1] 47 U.S.C. 159 (a).

[2] Public Law 106–553 and 47 U.S.C. 159(a)(2).

[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 2000*, 65 FR 44576 (2000).

[4] 47 CFR 1.1152 through 1.1156.

[5] 47 U.S.C. 159(a).

[6] 59 FR 30984 (1994).

[7] 47 U.S.C. 159(b), (f)(1).

[8] 47 CFR 1.1151 *et seq.*

[9] 47 U.S.C. 159(b)(2), (b)(3).

[10] 47 U.S.C. 159(b)(2).

[11] 47 U.S.C. 159(b)(3).

[12] 47 U.S.C. 159(i).

the fee schedule to reflect those services whose regulatory costs had changed.

8. However, we found that developing a regulatory fee structure based on available cost information sometimes did not permit us to recover the amount that Congress required us to collect. In some instances, the large increases in the cost of regulation did not normalize to an acceptable level. We concluded that it would be best to discontinue attempts to base the entire schedule on our available cost data. Instead, we chose to base the FY 1999 and FY 2000 fees on the basis of "Mandatory Adjustments" only. We have found no reason to deviate from this policy for FY 2001. However, we are proposing to apply the "Mandatory Adjustments" differently to better incorporate changes in payment units. As noted above, however, we expect to have a new cost accounting system in place in FY 2002. Finally, section 9(b)(4)(B) requires us to notify Congress of any permitted amendments 90 days before those amendments go into effect.[13]

III. Discussion

A. Summary of FY 2001 Fee Methodology

9. As noted above, Congress has required that the Commission recover $200,146,000 for FY 2001 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.[14]

10. In developing our proposed FY 2001 fee schedule, we first estimated the number of payment units[15] for FY 2001. Then we compared the FY 2000 revenue estimate amount to the $200,146,000 that Congress has required us to collect in FY 2001 and pro-rated the difference among all the existing fee categories. Finally, we divided the FY 2001 payment unit estimates into the pro-rated FY 2001 revenue estimates to determine the new FY 2001 fees. See Attachment C.

11. Once we established our tentative FY 2001 fees, we evaluated proposals made by Commission staff concerning "Permitted Amendments" to the Fee Schedule and to our collection procedures. We are *not* proposing to make any "Permitted Amendments." Collection procedure matters are discussed in paragraphs 17–24.

12. Finally, we have incorporated, as Attachment F, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 2001.[16] In the following paragraphs, we describe in greater detail our proposed methodology for establishing our FY 2001 regulatory fees.

B. Development of FY 2001 Fees

i. Adjustment of Payment Units

13. In calculating FY 2001 regulatory fees for each service, we adjusted the estimated payment units for each service because of substantial changes in payment units for many services since adopting our FY 2000 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure accuracy of these estimates. Attachment B summarizes how revised payment units were determined for each fee category.[17]

ii. Calculation of Revenue Requirements

14. We compared the sum of all estimated revenue requirements for FY 2000 to the amount that Congress has required us to collect for FY 2001 ($200,146,000), which is approximately 7.75% more total revenue than in FY 2000. We increased each FY 2000 fee revenue category estimate by 7.75% to provide a total FY 2001 revenue estimate of $200,146,000. Attachment C provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

iii. Recalculation of Fees

15. Once we determined the revenue requirement for each service and class of licensee, we divided the revenue requirement by the number of estimated payment units (and by the license term for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(2) of the Act. *See* Attachment C.

16. We examined the results of our calculations to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). Unless otherwise noted herein, nothing in this proceeding is intended to change any policies or procedures established or reaffirmed in the *FY 2000 Order* (65 FR 44576).

C. Procedures for Payment of Regulatory Fees

17. With one exception, we propose to retain the procedures that we have established for the payment of regulatory fees. *See* paragraphs 23 and 24. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." *See* 47 U.S.C. 159(f)(1). Consistent with section 9(f), we are again proposing to establish three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are: (1) "standard" fees, (2) "large" fees, and (3) "small" fees. Nothing in this section is new. However, it is provided for information and purposes of clarity.

i. Annual Payments of Standard Fees

18. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "standard fees" which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the *Report and Order* terminating this proceeding or by public notice in the **Federal Register** pursuant to authority delegated to the Managing Director.

ii. Installment Payments for Large Fees

19. While time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of $12,000 or more be eligible to make

[13] 47 U.S.C. 159(b)(4)(B).

[14] 47 U.S.C. 159(a).

[15] Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

[16] We also will incorporate a similar Attachment in the *FY 2001 Report and Order* concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees that will be adopted in the *FY 2001 Report and Order*.

[17] It is important to note also that Congress required a revenue increase in regulatory fee payments of approximately 7.75 percent in FY 2001, which will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increases from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

installment payments. Eligibility for installment payments will be based upon the amount of either a single regulatory fee payment or a combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. However, because of time constraints in collecting and recording the fees, it is unlikely that there will be sufficient time for installment payments. Therefore, regulatees that may be eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iii. Advance Payments of Small Fees

20. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of section 9(f)(2). We propose that advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers noted.[18] We are also proposing that payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** per authority delegated to the Managing Director.

iv. Minimum Fee Payment Liability

21. As we have in the past, we are proposing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from fee payment in FY 2001.

v. Standard Fee Calculations and Payment Dates

22. The time for payment of standard fees and any installment payments will be announced in our *Report and Order* terminating this proceeding or will be published in the **Federal Register** pursuant to authority delegated to the Managing Director. For licensees and permittees of Mass Media services, we propose that the responsibility for payment of regulatory fees normally rests with the holder of the permit or license on October 1, 2000. However, in instances where a Mass Media service license or authorization is *transferred or assigned after October 1, 2000*, and arrangements to make payment have not been made by the previous licensee, the fee is still due and we propose that the fee shall be paid by the licensee or holder of the authorization on the date that the fee payment is due. For licensees, permittees and holders of other authorizations in the Common Carrier and Cable Services whose fees are not based on a subscriber, unit, or circuit count, we are proposing that fees be paid for any authorization issued on or before *October 1, 2000*. Regulatory fees are due and payable by the holder of record of the license or permit of the service as of October 1, 2000. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date.

23. For regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits on *December 31, 2000*, will be used to calculate the fee payment.[19] Regulatory fees are due and payable by the holder of record of the license or permit of the service as of *December 31, 2000*. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after December 31, 2000, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due.

vi. Mandatory Use of FCC Registration Number (FRN)

24. In our pending proceeding on FCC Registration Numbers,[20] we are proposing to mandate the use of FRNs by anyone doing business with the agency, including those subject to the regulatory fee program. We propose to apply that requirement to the FY 2001 fee collection, and are incorporating by reference the record compiled in the FRN proceeding. Both fee filers, as well as those who are exempt from regulatory fees, will have to obtain an FRN.[21] Also, as noted in the FRN Notice of Proposed Rulemaking (NPRM), entities paying on behalf of others will be required to obtain and use the FRNs assigned to those entities. These proposals are subject to the outcome of the FRN Notice of Proposed Rulemaking.

25. In the FRN NPRM, we invited comment on how to treat submissions that do not contain an FRN once this requirement becomes mandatory. With certain limited exceptions, we generally proposed to reject such filings.[22] We invite comment on how we should handle regulatory fee filings that do not include an FRN. We tentatively conclude that in those situations we should notify the filer that the FRN requirement is mandatory and afford a *10-day grace period* in which the filer can obtain and provide the FRN. If after that time period the filer has not done so, we seek comment on whether a penalty can or should be imposed in these circumstances, and whether the 10-day grace period is a sufficient period of time for the filer to provide the FRN. Section 1.1164 of the Commission's rules provides for a 25% penalty for late or insufficient fee payments. We believe that it would be appropriate to extend this provision to

[18] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS), 218–219 MHz Service (if any applications should be filed), Rural Radio Service, and Amateur Vanity Call Signs.

[19] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 2000, rather than on a count as of December 31, 2000.

[20] Adoption of a Mandatory FCC Registration Number, MD Docket No. 00–205, FCC 00–421, 65 FR 78455 , December 15, 2000 (released December 1, 2000).

[21] FRN Notice of Proposed Rulemaking at paragraph 9.

[22] FRN Notice of Proposed Rulemaking at paragraph 23–26.

the situation where a regulatee files a fee without an FRN and does not cure the defect during the grace period. In these circumstances, we would regard the fee payment as being late for purposes of Section 1.1164, since it was not timely accompanied by an FRN enabling us to ensure fee sufficiency on a timely basis. We propose to revise the rule to reflect this approach.

D. Schedule of Regulatory Fees

26. The Commission's proposed Schedule of Regulatory Fees for FY 2001 is contained in Attachment D of this *NPRM*.

E. Revised Rules for Waivers, Reductions, and Deferrals of Application and Regulatory Fees

27. We also propose to amend §§ 1.1117(c) and 1.1166(a) of the Rules regarding the filing of requests for waivers, reductions and deferrals of both application (Section 8) and regulatory fees (Section 9). We propose to amend the rules to clarify that all such filings must be filed as separate pleadings, and each pleading must be clearly marked for the attention of the Managing Director. We hope the revised rules will eliminate the confusion regarding the proper filing procedures to be followed for such requests, as well as to facilitate prompt disposition.

F. Enforcement

28. As required in 47 U.S.C. 159(c), an additional charge shall be assessed as a penalty for late payment of any regulatory fee. A late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay your regulatory fees and/or any late penalty will subject you to additional provisions as set forth in the Debt Collection Improvement Act of 1996, as well as 47 CFR 1.1112.

IV. Procedural Matters

A. Comment Period and Procedures

29. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 27, 2001, and reply comments on or before May 7, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[23]

30. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. However, if multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by e-mail via the Internet. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

31. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554.

32. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Terry Johnson, Office of Managing Director, Federal Communications Commission, 445 12th Street, SW., 1–C807, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft ™ Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, MD Docket No. 01–76), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036.

33. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Center, Federal Communications Commission, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and on the Commission's Internet Home Page *http://www.fcc.gov*.

B. Ex Parte Rules

34. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.[24]

C. Initial Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act,[25] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *NPRM*, and must have a separate and distinct heading, designating the comments as responses to the IRFA. The Consumer Information Bureau, Reference Information Center, shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

D. Authority and Further Information

36. Authority for this proceeding is contained in sections 4 (i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended.[26] It is ordered that this *NPRM* is adopted. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

37. Further information about this proceeding may be obtained by contacting the Fees Hotline at (888) 225–5322.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.

Attachment A Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[27] the Commission

[23] *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

[24] 47 CFR 1.1203 and 1.1206(a).

[25] See 5 U.S.C. 603.

[26] 47 U.S.C. 154(i)–(j), 159, & 303(r).

[27] 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America

Continued

has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the present *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2001.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided in paragraph 32. The Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[28] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[29]

I. Need for, and Objectives of, the Proposed Rules

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees. For Fiscal Year 2001, we intend to collect regulatory fees in the amount of $200,146,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

II. Legal Basis

3. This action, including publication of proposed rules, is authorized under sections (4) (i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[30]

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[31] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[32] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[33] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[34] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[35] Nationwide, as of 1992, there were approximately 275,801 small organizations.[36] "Small governmental jurisdiction"[37] generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[38] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[39] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[40] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[41] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[42]

6. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[43] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[44] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[45] The Commission has determined that there are 67,700,000 subscribers in the United States.[46] Therefore, we estimate that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[47] Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals 1,450.[48] We do not request nor do we collect information concerning whether cable system operators are affiliated with entities

Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[28] 5 U.S.C. 603(a).

[29] *Id.*

[30] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[31] 5 U.S.C. 603(b)(3).

[32] *Id.* 601(6).

[33] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[34] Small Business Act, 15 U.S.C. 632 (1996).

[35] 5 U.S.C. 601(4).

[36] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[37] 47 CFR 1.1162.

[38] 5 U.S.C. 601(5).

[39] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[40] *Id.*

[41] 13 CFR 121.201, SIC code 4841.

[42] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[43] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[44] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[45] 47 U.S.C. 543(m)(2).

[46] *Annual Assessment of the Status on Competition in the Market for the Delivery of Video Programming*, CS Docket No. 00–132, Seventh Annual Report, FCC 01–1 (released January 8, 2001), Table C–1.

[47] *Id.* 76.1403(b).

[48] *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, DA–01–0158 (released January 24, 2001)

whose gross annual revenues exceed $250,000,000,[49] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. *Other Pay Services.* Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[50] multipoint distribution systems (MDS),[51] satellite master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).[52] According to data in the most recent report, there are 4,822 interstate service providers.[53] These providers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

10. We have included small incumbent local exchange carriers (LECs) [54] in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[55] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[56] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

11. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[57] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent local exchange carriers (ILECs) because they are not "independently owned and operated."[58] It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, if adopted.

12. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[59] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[60] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, if adopted.

13. *Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition for small LECs, competitive access providers (CAPS), interexchange carriers (IXCs), operator service providers (OSPs), payphone providers, or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[61] The most reliable source of information that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the Telecommunications Relay Service.[62] According to our most recent data, there are 1,395 LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 resellers.[63] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Therefore, we estimate that there are fewer than 1,395 small entity LECs or small incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 resellers that may be affected by the proposed rules, if adopted.

International Services

14. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the

[49] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.1403(b) of the Commission's rules. See 47 CFR 76.1403(d).

[50] Direct Broadcast Services (DBS) are discussed with the international services, *infra*.

[51] Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

[52] FCC, Common Carrier Bureau, Industry Analysis Division, *Carrier Locator: Interstate Service Providers*, Figure 1 (October 2000) (Carrier Locator). See also 47 CFR 64.601 et seq.

[53] FCC, *Carrier Locator* at Figure 1.

[54] See 47 U.S.C. 251 (h) (defining "incumbent local exchange carrier").

[55] U.S.C. 601(3).

[56] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996).

[57] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) (*1992 Census*).

[58] *See generally* 15 U.S.C. 632(a)(1).

[59] 1992 Census, supra, at Firm Size 1–123.

[60] 13 CFR 121.201, SIC code 4813.

[61] 13 CFR 121.210, SIC Code 4813.

[62] See 47 CFR 64.601 *et seq.*; *Carrier Locator* at Figure 1.

[63] *Carrier Locator* at Figure 1. The total for resellers includes both toll resellers and local resellers.

applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[64] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[65] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million.[66] The Census report does not provide more precise data.

15. *International Broadcast Stations.* Commission records show that there are 17 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. However, the Commission estimates that only five international high frequency broadcast stations are subject to regulatory fee payments.

16. *International Public Fixed Radio (Public and Control Stations).* There is one licensee in this service subject to payment of regulatory fees, and the licensee does not constitute a small business under the SBA definition.

17. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 2,784 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

18. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are approximately 2,784 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

19. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 492 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

20. *Mobile Satellite Earth Stations.* There are 15 licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

21. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

22. *Space Stations (Geostationary).* There are presently 66 Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

23. *Space Stations (Non-Geostationary).* There are presently six Non-Geostationary Space Station authorizations, of which only three systems are operational. We do not request nor collect annual revenue information, and are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

24. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."[67] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[68] Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

Mass Media Services

25. *Commercial Radio and Television Services.* The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.[69] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[70] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[71] Included in this industry are commercial, religious, educational, and other television stations.[72] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[73] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[74] There were 1,509 television stations operating in the nation in 1992.[75] That number has remained fairly constant as indicated by the approximately 1,663 operating television broadcasting stations in the nation as of September 30, 2000.[76] For 1992,[77] the number of

[64] An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

[65] 13 CFR 120.121, SIC code 4899.

[66] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[67] 13 CFR 120.121, SIC code 4841.

[68] 13 CFR 121.201, SIC code 4841.

[69] While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *NPRM* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *NPRM*, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. *See Report and Order in MM Docket No. 93–48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (Aug. 27, 1996), *citing* 5 U.S.C. 601(3).

[70] 13 CFR 121.201, SIC code 4833.

[71] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1*, Appendix A–9 (1995) *(1992 Census, Series UC92–S–1)*.

[72] *Id.; see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833) as: "Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials."

[73] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[74] *Id.*, SIC code 7812 (Motion Picture and Video Tape Production); SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[75] FCC News Release No. 31327 (Jan. 13, 1993); *1992 Census, Series UC92–S–1*, at Appendix A–9.

[76] FCC News Release, "Broadcast Station Totals as of September 30, 2000."

[77] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." See *1992 Census, Series UC92–S–1*, at III.

television stations that produced less than $10.0 million in revenue was 1,155 establishments.[78] Only commercial stations are subject to regulatory fees.

26. Additionally, the Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[79] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[80] Included in this industry are commercial, religious, educational, and other radio stations.[81] Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included.[82] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[83] The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992.[84] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[85] As of September 30, 2000, Commission records indicate that 12,717 radio stations were operating, of which 8,032 were FM stations.[86] Only commercial stations are subject to regulatory fees.

27. The rules may affect approximately 1,663 television stations, approximately 1,281 of which are considered small businesses.[87] The proposed rules will affect some 12,717 radio stations, approximately 12,209 of which are small businesses.[88] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,366 low power television stations (LPTV).[89] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Auxiliary, Special Broadcast and other program distribution services

28. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[90]

29. The Commission estimates that there are approximately 2,700 translators and boosters. The FCC does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[91]

30. *Multipoint Distribution Service (MDS).* This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[92] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[93] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[94] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.[95] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[96] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are approximately 2,000 MDS/MMDS/LMDS stations currently licensed. We conclude that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

Wireless and Commercial Mobile Services

31. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[97] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[98] Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services,

[78] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[79] 13 CFR 121.201, SIC code 4832.

[80] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[85] FCC News Release, No. 31327 (Jan. 13, 1993).

[86] FCC News Release, "Broadcast Station Totals as of September 30, 2000."

[87] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 2000 total of 1,663 TV stations to arrive at 1,281 stations categorized as small businesses.

[88] We use the 96% figure of radio station establishments with less than $5 million revenue from data presented in the year 2000 estimate (FCC News Release, September 30, 2000) and apply it to the 12,717 individual station count to arrive at 12,209 individual stations as small businesses.

[89] FCC News Release, "Broadcast Station Totals as of September 30, 2000."

[90] 13 CFR 121.201, SIC code 4832.

[91] 15 U.S.C. 632.

[92] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS).

[93] 47 CFR 1.2110(a)(1.

[94] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

[95] 47 U.S.C. 309(j).

[96] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. See Rand McNally *1992 Commercial Atlas and Marketing Guide*, 123rd Edition, pages 36–39.

[97] 13 CFR 121.201, SIC code 4812.

[98] *1992 Census, Series UC92–S–1*, at Table 5, SIC code 4812.

which are placed together in the data.[99] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 808 small cellular service carriers that may be affected by the proposed rules, if adopted.

32. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[100] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[101] If this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

33. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[102] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[103] The SBA has approved these definitions.[104] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[105] Two auctions of Phase II licenses have been conducted. In the first auction, nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: One of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[106]

34. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[107] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[108] Of the 104 licenses auctioned, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses.

35. *Private and Common Carrier Paging.* In the Paging Third Report and Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[109] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[110] The SBA has approved these definitions.[111] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000.[112] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent Telecommunications Industry Revenue data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[113] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by these proposals and policies, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

36. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an

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[99] *Trends in Telephone Service*, Table 19.3 (March 2000).

[100] 13 CFR 121.201, Standard Industrial Classification (SIC) code 4812.

[101] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[102] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paragraphs 291–295 (1997).

[103] 220 MHz Third Report and Order, 12 FCC Rcd at 11068–69, paragraph 291.

[104] *See* Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[105] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT98–36 (Wireless Telecommunications Bureau, October 23, 1998).

[106] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC–18–H, DA No. 99–229 (Wireless Telecom. Bur. Jan. 22, 1999).

[107] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, *Second Report and Order*, 65 FR 17599 (April 4, 2000).

[108] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98–36 (Wireless Telecommunications Bureau, October 23, 1998).

[109] *220 MHz Third Report and Order*, 62 FR 16004 (April 3, 1997), at paragraphs 291–295.

[110] *220 MHz Third Report and Order*, 62 FR 16004 (April 3, 1997), at paragraph 291.

[111] *See* Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (January 6, 1998).

[112] *See generally* Public Notice, "220 MHz Service Auction Closes, " Report No. WT 98–36 (Wireless Telecommunications Bureau (October 23, 1998).

[113] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

entity that has average gross revenues of less than $40 million in the three previous calendar years. [114] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. [115] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. [116] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. [117] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

37. *Narrowband PCS.* To date, two auctions of narrowband PCs licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of $40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the Narrowband PCS Second Report and Order. [118] A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. These definitions have been approved by the SBA. In the future, the Commission will auction 459 licenses to serve MTAs and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this IRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

38. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. [119] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). [120] We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. [121] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

39. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. [122] We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. [123] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

40. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. [124] The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 EA licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

41. The proposed fees in the NPRM apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these

[114] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, FCC 96–278, WT Docket No. 96–59 Sections 57–60 (released June 24, 1996), 61 FR 33859 (July 1, 1996); see also 47 CFR Section 24.720(b).

[115] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, FCC 96–278, WT Docket No. 96–59 Sections 60 (released June 24, 1996), 61 FR 33859 (July 1, 1996).

[116] *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581–84 (1994).

[117] FCC News, *Broadband* PCS, D, E and F Block Auction Closes, No. 71744 (released January 14, 1997).

[118] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92–100, Docket No. PP 93–253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 65 FR 35875 (June 6, 2000).

[119] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[120] BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[121] 13 CFR 121.201, SIC code 4812.

[122] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[123] 13 CFR 121.201, SIC code 4812.

[124] 47 CFR 90.814(b)(1).

providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

42. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

43. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

44. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs [125] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

45. *Amateur Radio Service.* We estimate that 8,000 applicants will apply for vanity call signs in FY 2000. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

46. *Aviation and Marine Radio Service.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. The applicable definition of small entity is the definition under the SBA rules for radiotelephone communications.[126]

47. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate that only 16,800 will be subject to FY 2000 regulatory fees.

48. *Fixed Microwave Services.* Microwave services include common carrier,[127] private-operational fixed,[128] and broadcast auxiliary radio services.[129] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will use the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons.[130] We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

49. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[131] There are a total of approximately 127,540 licensees within these services. Governmental entities [132] as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[133] All licensees in this category are exempt from the payment of regulatory fees.

50. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[134] Since the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

51. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[135] Presently, there are approximately 55 licensees in this

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[125] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at paragraph 116.

[126] 13 CFR 121.201, SIC code 4812.

[127] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[128] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[129] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[130] 13 CFR 121.201, SIC 4812.

[131] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

[132] 47 CFR 1.1162.

[133] 5 U.S.C. 601(5).

[134] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's Rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

[135] This service is governed by subpart 1 of part 22 of the Commission's Rules. *See* 47 CFR 22.1001 through 22.1037.

service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

52. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

53. *39 GHz Service.* The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[136] An additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[137] These regulations defining "small entity" in the context of 39 GHz auctions have been approved by the SBA. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

54. *Local Multipoint Distribution Service.* The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[138] An additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[139] These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

55. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 595 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[140] In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[141] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the above discussion regarding the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses, which would be affected by the rule changes we propose.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

56. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.[142] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (e.g., cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees

[136] See In the Matter of Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Band, Report and Order, 12 FCC Rcd 18600 (1997).

[137] *Id.*

[138] *See* Local Multipoint Distribution Service, Second Report and Order, 12 FCC Rcd 12545 (1997).

[139] *Id.*

[140] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP WT Docket No. 93–253, Fourth Report and Order, 59 FR 24947 (May 13, 1994).

[141] In the Matter of Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, Report and Order and Memorandum Opinion and Order, 64 FR 59656. (November 3, 1999).

[142] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

responsible for an entity's business records.

57. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

58. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment fee of 25 percent in addition to the required fee.[143] Until payment is received, no new or pending applications will be processed, and existing authorizations may be subject to rescission.[144] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[145] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the Debt Collection Improvement Act of 1996, Public Law 194–134. Appropriate enforcement measures, e.g., interest as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[146]

59. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.[147] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will accept a petition to defer payment along with a waiver or reduction request.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

60. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section IV of this IRFA, *supra*, we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have also created Attachment F, *infra*, which gives "Detailed Guidance on Who Must Pay Regulatory Fees." Because the collection of fees is statutory, our efforts at proposing alternatives are constrained and, throughout these annual fee proceedings, have been largely directed toward simplifying the instructions and necessary procedures for all filers. We invite comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

61. *The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 2000*, Public Law 106–553 requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2000.[148] We seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

62. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically. The methodology proposed in this *NPRM* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

63. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 142, *supra*, and Attachment F of the *NPRM*, *infra*.

VI. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

64. None.

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[143] 47 U.S.C. 1.1164(a).

[144] 47 U.S.C. 1.1164(c).

[145] Public Law 104–134, 110 Stat. 1321 (1996).

[146] 31 U.S.C. 7701(c)(2)(B).

[147] 47 U.S.C. 1.1166.

[148] 47 U.S.C. 159(a).

Attachment B

SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 2001

In order to calculate individual service fees for FY 2001, we adjusted FY 2000 payment units for each service to more accurately reflect expected FY 2001 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 2001 estimates with actual FY 2000 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2001 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2001 payment units are based on FY 2000 actual payment units, it does not necessarily mean that our FY 2001 projection is exactly the same number as FY 2000. It means that we have either rounded the FY 2001 number or adjusted it slightly to account for these variables.

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, 218-219 MHz[149], Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau estimates..
AM/FM Radio Stations	Based on estimates from Data World, Inc.
UHF/VHF Television Stations	Based on Mass Media Bureau estimates and actual FY 2000 payment units.
AM/FM/TV Construction Permits	Based on actual FY 2000 payment units.
LPTV, Translators and Boosters	Based on actual FY 2000 payment units.
Auxiliaries	Based on Wireless Telecommunications Bureau estimates.
MDS/MMDS	Based on Mass Media Bureau estimates.
Cable Antenna Relay Service (CARS)	Based on actual FY 2000 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telephone Service Providers	Based on actual FY 2000 interstate revenues associated with the Telecommunications Reporting Worksheet, adjusted to take into consideration FY 2001 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on International Bureau estimates.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on actual FY 2000 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on actual FY 2000 payment units.

[149] The Wireless Telecommunications Bureau's staff advises that they anticipate receiving only 25 applications for 218-219 MHz (formerly IVDS) in FY 2001.

Attachment C

CALCULATION OF FY 2001 REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee Category	FY 2001 Payment Units	Payment Years	FY 2000 Revenue Estimate	Pro-Rated FY 2001 Revenue Requirement**	Computed New FY 2001 Regulatory Fee	Rounded New FY 2001 Regulatory Fee	Expected FY 2001 Revenue
PLMRS (Exclusive Use)	5,500	10	239,408	257,962	9	5	275,000
PLMRS (Shared use)	58,000	10	1,934,808	2,084,756	4	5	2,900,000
Microwave	23,900	10	787,525	848,558	4	5	1,195,000
218-219 MHz (Formerly IVDS)	25	10	0	0	0	10	1,250
Marine (Ship)	5,500	10	427,444	460,571	8	10	550,000
GMRS	2,000	5	66,718	71,889	7	5	50,000
Aviation (Aircraft)	3,500	10	223,889	241,240	7	5	175,000
Marine (Coast)	1,300	10	50,886	54,830	4	5	65,000
Aviation (Ground)	1,700	5	59,367	63,968	8	10	85,000
Amateur Vanity Call Signs	10,000	10	112,000	120,680	1.21	1.20	120,000
AM Class A	76	1	135,000	145,463	1,914	1,925	146,300
AM Class B	1,620	1	1,674,750	1,804,543	1,114	1,115	1,806,300
AM Class C	998	1	576,290	620,952	622	620	618,760
AM Class D	2,086	1	1,880,940	2,026,713	998	975	2,033,850
FM Classes A, B1 & C3	2,080	1	3,857,200	4,156,133	1,998	2,000	4,160,000
FM Classes B, C, C1 & C2	3,039	1	4,790,625	5,161,898	1,699	1,700	5,166,300
AM Construction Permits	58	1	15,000	16,163	279	280	16,240
FM Construction Permits	300	1	257,455	277,408	925	925	277,500
Satellite TV	127	1	87,500	94,281	742	740	93,980
Satellite TV Construction Permit	4	1	1,780	1,918	479	480	1,920
VHF Markets 1-10	42	1	1,757,800	1,894,030	45,096	45,100	1,894,200
VHF Markets 11-25	59	1	1,796,850	1,936,106	32,815	32,825	1,936,675
VHF Markets 26-50	77	1	1,524,250	1,642,379	21,330	21,325	1,642,025
VHF Markets 51-100	115	1	1,466,250	1,579,884	13,738	13,750	1,581,250
VHF Remaining Markets	211	1	643,500	693,371	3,286	3,275	691,025
VHF Construction Permits	18	1	51,300	55,276	3,071	3,075	55,350
UHF Markets 1-10	75	1	1,055,250	1,137,032	15,160	15,150	1,136,250
UHF Markets 11-25	75	1	856,875	923,283	12,310	12,300	922,500
UHF Markets 26-50	110	1	721,650	777,578	7,069	7,075	778,250
UHF Markets 51-100	165	1	625,300	673,761	4,083	4,075	672,375
UHF Remaining Markets	175	1	187,450	201,977	1,154	1,150	201,250
UHF Construction Permits	70	1	260,400	280,581	4,008	4,000	280,000
Auxiliaries	27,000	1	261,701	281,983	10	10	270,000
International HF Broadcast	4	1	2,525	2,721	680	680	2,720
LPTV/Translators/Boosters	2,700	1	758,800	817,607	303	305	823,500
CARS	1,700	1	89,933	96,903	57	55	93,500
Cable Systems	67,700,000	1	31,027,233	33,431,844	0.49	0.49	33,431,844
Interstate Telephone Service Providers	70,686,000,000	1	86,670,419	93,387,376	0.00132	0.00132	93,387,376
CMRS Mobile Services (Cellular/Public Mobile)	90,000,000	1	25,433,429	27,404,520	0.30	0.30	27,404,520
CMRS Messaging Services	30,000,000	1	1,508,171	1,625,054	0.05	0.05	1,625,054
MDS/MMDS/LMDS	2,000	1	834,900	899,605	450	450	900,000
International Bearer Circuits	840,451	1	4,041,141	4,354,329	5	5	4,202,255
International Public Fixed	1	1	1,185	1,277	1,277	1,275	1,275
Earth Stations	2,784	1	468,825	505,159	181	180	501,120
Space Stations (Geostationary)	66	1	6,010,275	6,476,071	98,122	98,125	6,476,250
Space Stations (Non-geostationary)	6	1	525,750	566,496	94,416	94,425	566,550
****** Total Estimated Revenue to be Collected			185,759,747	200,156,127			201,214,514
****** Total Revenue Requirement				200,146,000			200,146,000
Difference				10,127			1,068,514

** 1.0775 factor applied

Attachment D

FY 2001 SCHEDULE OF REGULATORY FEES
(PROPOSED)

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	5
Microwave (per license) (47 CFR part 101)	5
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	10
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	5
General Mobile Radio Service (per license) (47 CFR part 95)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.20
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.30
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.05
Multipoint Distribution Services (Includes MMDS & LMDS)(per call sign) (47 CFR parts 21 and 101)	450
AM Radio Construction Permits	280
FM Radio Construction Permits	925
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	45,100
Markets 11-25	32,825
Markets 26-50	21,325
Markets 51-100	13,750
Remaining Markets	3,275
Construction Permits	3,075

Fee Category	Annual Regulatory Fee (U.S. $'s)
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	15,150
Markets 11-25	12,300
Markets 26-50	7,075
Markets 51-100	4,075
Remaining Markets	1,150
Construction Permits	4,000
Satellite Television Stations (All Markets)	740
Construction Permits - Satellite Television Stations	480
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	305
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	55
Cable Television Systems (per subscriber) (47 CFR part 76)	.49
Interstate Telephone Service Providers (per revenue dollar)	.00132
Earth Stations (47 CFR part 25)	180
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	98,125
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	94,425
International Bearer Circuits (per active 64KB circuit)	5
International Public Fixed (per call sign) (47 CFR part 23)	1,275
International (HF) Broadcast (47 CFR part 73)	680

RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	450	350	250	300	350	450
20,001 - 50,000	850	675	350	475	675	850
50.001 - 125,000	1,375	900	475	700	900	1,375
125,001 - 400,000	2,050	1,450	725	875	1,450	2,050
400,001 - 1,000,000	2,850	2,300	1,300	1,550	2,300	2,850
>1,000,000	4,550	3,750	1,900	2,400	3,750	4,550

Attachment E

COMPARISON BETWEEN FY 2000 & FY 2001 PROPOSED REGULATORY FEES

Fee Category	Annual Regulatory Fee FY 2000	NPRM Proposed Fee FY 2001	Annual Regulatory Fee FY 2001
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	13	5	
Microwave (per license) (47 CFR part 101)	13	5	
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	13	10	
Marine (Ship) (per station) (47 CFR part 80)	7	10	
Marine (Coast) (per license) (47 CFR part 80)	7	5	
General Mobile Radio Service (per license) (47 CFR part 95)	7	5	
PLMRS (Shared Use) (47 CFR part 90)	7	5	
Aviation (Aircraft) (per station) (47 CFR part 87)	7	5	
Aviation (Ground) (per license) (47 CFR part 87)	7	10	
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.40	1.20	
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.31	.30	
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.04	.05	
Multipoint Distribution Services (Includes MMDS and LMDS)(per call sign) (47 CFR part 21 and 101)	275	450	
AM Construction Permits	250	280	
FM Construction Permits	755	925	
TV (47 CFR part 73) VHF Commercial			
Markets 1-10	39,950	45,100	
Markets 11-25	33,275	32,825	
Markets 26-50	22,750	21,325	
Markets 51-100	12,750	13,750	
Remaining Markets	3,300	3,275	
Construction Permits	2,700	3,075	
TV (47 CFR part 73) UHF Commercial			

Fee Category	Annual Regulatory Fee FY 2000	NPRM Proposed Fee FY 2001	Annual Regulatory Fee FY 2001
Markets 1-10	15,075	15,150	
Markets 11-25	11,425	12,300	
Markets 26-50	7,075	7,075	
Markets 51-100	4,225	4,075	
Remaining Markets	1,150	1,150	
Construction Permits	2,800	4,000	
Satellite Television Stations (All Markets)	1,250	740	
Construction Permits – Satellite Television Stations	445	480	
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	280	305	
Broadcast Auxiliary (47 CFR part 74)	12	10	
CARS (47 CFR part 78)	53	55	
Earth Stations (47 CFR part 25)	175	180	
Cable Television Systems (per subscriber) (47 CFR part 76)	.47	.49	
Interstate Telephone Service Providers (per revenue dollar)	.00117	.00132	
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	94,650	98,125	
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	175,250	94,425	
International Bearer Circuits (per active 64KB circuit)	7	5	
International Public Fixed (per call sign) (47 CFR part 23)	395	1,275	
International (HF) Broadcast (47 CFR part 73)	505	680	

FY 2000 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	400	300	200	250	300	400
20,001 - 50,000	800	625	300	425	625	800
50.001 - 125,000	1,325	850	425	650	850	1,325
125,001 - 400,000	1,950	1,350	625	775	1,350	1,950
400,001 - 1,000,000	2,725	2,200	1,200	1,450	2,200	2,725
>1,000,000	4,375	3,575	1,725	2,225	3,575	4,375

FY 2001 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	450	350	250	300	350	450
20,001 - 50,000	850	675	350	475	675	850
50.001 - 125,000	1,375	900	475	700	900	1,375
125,001 - 400,000	2,050	1,450	725	875	1,450	2,050
400,001 - 1,000,000	2,850	2,300	1,300	1,550	2,300	2,850
>1,000,000	4,550	3,750	1,900	2,400	3,750	4,550

Attachment F; Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act,[150] as modified in the instant *NPRM*. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994 through 2000, and the services subject to the fee schedule. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission.[151]

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity is required to have on file with the Commission an IRS Determination Letter documenting that it is exempt from taxes under section 501 of the Internal Revenue Code or the

[150] 47 U.S.C. 159(g)

[151] 47 U.S.C. 159(b)(2), (3).

certification of a governmental authority attesting to its nonprofit status. In instances where the IRS Determination Letter or the letter of certification from a governmental authority attesting to its nonprofit status is not sufficiently current, the nonprofit entity may be asked to submit more current documentation. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees.[152] In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Land Mobile Radio Services (PLMRS) (Exclusive Use):* Regulatees in this category include those authorized under part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[153] For FY 2001, PLMRS licensees will pay a $5 annual regulatory fee per license, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license.[154] The total regulatory fee due is $50 for the ten-year term.

5. *Microwave Services:* These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 2001, Microwave licensees will pay a $5 annual regulatory fee per license, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 for the ten-year license term.

6. *218–219 MHz (Formerly Interactive Video Data Service (IVDS)):* The 218–219 MHz service is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's Rules. The 218–219 MHz service provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The 218–219 MHz service is offered on a private carrier basis. The Commission did not anticipate receiving any applications in the 218–219 MHz service during FY 2000. For FY 2001, we anticipate receiving 25 applications and propose that the annual regulatory fee for 218–219 MHz licensees be set at $10 per application. The total regulatory fee due would be $50 for the five-year license term.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. The Commission exercises that authority. Private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 2001, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $10 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $100 for the ten-year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 2001, licensees of Marine (Coast) Stations will pay a $5 annual regulatory fee per call sign, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 per call sign for the ten-year license term.

9. *Private Land Mobile Radio Services (PLMRS)(Shared Use):* These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's Rules. Services in this category provide one- or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 2001, licensees of services in this category will pay a $5 annual regulatory fee per call sign, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 for the ten-year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. The commission exercises that authority.

[152] 47 U.S.C. 159(b)(1)(A).

[153] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commerical Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[154] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 2000 is less than one-tenth of one percent and, therefore, is statistically insignificant.

Private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 2001, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $5 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 2001, licensees of Aviation (Ground) Stations will pay a $10 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $50 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's Rules. For FY 2001, GMRS licensees will pay a $5 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $25 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs:* This category covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. Applicants for Amateur Vanity Call-Signs will continue to pay a $1.40 annual regulatory fee per call sign, as prescribed in the FY 2000 fee schedule, payable for an entire ten-year license term at the time of application for a vanity call sign until the FY 2001 fee schedule becomes effective. The total regulatory fee due would be $14 per license for the ten-year license term.[155] For FY 2001, Amateur Vanity Call Sign applicants will pay a $1.20 annual regulatory fee per call sign, payable for an entire ten-year term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $12 per call sign for the ten-year license term.

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (*e.g.,* Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 27, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);[156] Broadband Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22); and Wireless Communications Service (part 27). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or telephone number), assigned to its customers, including resellers of its services. For FY 2001, the regulatory fee is $.30 per unit.

15. *Commercial Mobile Radio Services (CMRS) Messaging Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Private Paging and Radiotelephone Service), licensees formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging), licensees of Narrowband Personal Communications Service (PCS) (e.g., one-way and two-way paging), and 220–222 MHz Band and Interconnected Business Radio Service. In addition, this category includes small SMR systems authorized for use of less than 10 MHz of bandwidth. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 2001, the regulatory fee is $.05 per unit.

16. Finally, we are reiterating our definition of CMRS payment units to say that fees are assessable on each PCS or cellular telephone and each one-way or two-way pager capable of receiving or transmitting information, whether or not the unit is "active" on the "as-of" date for payment of these fees. The unit becomes "feeable" if the unit end user or assignee has possession of the unit and the unit is capable of transmitting or receiving voice or non-voice messages or data, and the unit is either owned or operated by the licensee of the CMRS system or a reseller, or the end user of a unit has a contractual agreement for the provision of a CMRS service from a CMRS system licensee or a CMRS service reseller. The responsible payer of the regulatory fee is the CMRS licensee. For example, John Doe purchases a pager and obtains a paging services contract from Paging Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Likewise, Cellular Licensee Y donates cellular phones to a high school and the high school either pays for or obtains free cellular service from Cellular Licensee Y. In this situation, Cellular Licensee Y is responsible for paying the applicable regulatory fees for these units.

2. Mass Media Services

17. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

[155] Section 9(h) exempts "amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)" from the requirement. However, section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

[156] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

a. Commercial Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's Rules.[157] We have combined class of station and city grade contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 2001 are as follows:

FY 2001 RADIO STATION REGULATORY FEES

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & - C3	FM Classes B, C, C1 & C2
<=20,000	450	350	250	300	350	450
20,001 - 50,000	850	675	350	475	675	850
50.001 - 125,000	1,375	900	475	700	900	1,375
125,001 - 400,000	2,050	1,450	725	875	1,450	2,050
400,001 - 1,000,000	2,850	2,300	1,300	1,550	2,300	2,850
>1,000,000	4,550	3,750	1,900	2,400	3,750	4,550

19. Licensees may determine the appropriate fee payment by referring to the FCC's internet world wide web site (http://www.fcc.gov) or by calling the FCC's National Call Center (1–888–225–5322). The same information may be included in the Public Notices mailed to each licensee for which we have a current address on file (Note: Non-receipt of a Public Notice does not relieve a licensee of its obligation to submit its regulatory fee payment).

b. Construction Permits—Commercial AM Radio

20. This category includes holders of permits to construct new Commercial AM Stations. For FY 2001, permittees will pay a fee of $280 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated group within which the station appears.

c. Construction Permits—Commercial FM Radio

21. This category includes holders of permits to construct new Commercial FM Stations. For FY 2001, permittees will pay a fee of $925 for each permit

[157] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated group within which the station appears.

d. Commercial Television Stations

22. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook,* Stations Volume No. 69, 2001 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1–10	$45,100
VHF Markets 11–25	32,825
VHF Markets 26–50	21,325
VHF Markets 51–100	13,750
VHF Remaining Markets	3,275
UHF Markets 1–10	15,150
UHF Markets 11–25	12,300
UHF Markets 26–50	7,075
UHF Markets 51–100.	4,075
UHF Remaining Markets	1,150

e. Commercial Television Satellite Stations

23. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of $740 annually. Those stations designated as Television Satellite Stations in the 2001 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

24. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 2001, VHF permittees will pay an annual regulatory fee of $3,075. This fee would no longer be applicable when an operating license is issued. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

25. This category includes holders of permits to construct new UHF Television Stations. For FY 2001, UHF Television permittees will pay an annual regulatory fee of $4,000. This fee would no longer be applicable when an operating license is issued. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 2001 is $480. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order.* Community based Translators that meet certain requirements will have their fees waived.[158] For FY 2001, licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $305 for each license held.

j. Broadcast Auxiliary Stations

28. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 2001, licensees of Commercial Auxiliary Stations will pay a $10 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), Local Multipoint Distribution (LMDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under parts 21 and 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 2001, MDS, LMDS, and MMDS stations will pay an annual regulatory fee of $450 per call sign.

3. Cable Services

a. Cable Television Systems

30. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 2001, Cable Systems will pay a regulatory fee of $.49 per subscriber.[159] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 2000. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.,* apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 *Report and Order,* Appendix B at paragraph 31.

b. Cable Antenna Relay Service

31. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 2001,

[158] See 10 FCC Rcd 12759, 12762 (1995).

[159] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at paragraph 100.

licensees will pay an annual regulatory fee of $55 per CARS license.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

32. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *supra*).

b. Interstate Telephone Service Providers

33. This category includes all providers of local and telephone services to end users. Covered services include the interstate and international portion of wireline local exchange service, local and long distance private line services for both voice and data, dedicated and network packet and packet-like services, long distance message telephone services, and other local and toll services. Providers of such services are referred to herein as "interstate telephone service providers".

Interstate service providers include CAP/CLECs, incumbent local exchange carriers (local telephone operating companies), Interexchange carriers (long distance telephone companies), local resellers, OSPs (operator service providers that enable customers to make away from home calls and to place calls with alternative billing arrangements), payphone service providers, pre-paid card, private service providers, satellite carriers that provide fixed local or message toll services, shared tenant service providers, toll resellers, and other local and other service providers.

To avoid imposing a double payment burden on resellers, we base the regulatory fee on end-user revenues. Interstate telephone service providers, including resellers, must submit fee payments based upon their proportionate share of interstate and international end-user revenues for local and toll services. We use the terms end-user revenues, local service and toll service, based on the methodology used for calculating contributions to the Universal Service support mechanisms.[160] Interstate telephone service providers do not pay the Common Carrier regulatory fee on revenue from the provision of intrastate local and toll services, wireless monthly and local message services, satellite toll services, carrier's carrier telecommunications services, customer premises equipment, Internet service and non-telecommunications services. For FY 2001, carriers must multiply their interstate and international revenue from subject local and toll services by the factor 0.00132 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

BILLING CODE 6712–01–U

[160] *See* 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Report and Order, FCC 99–175, CC Docket No. 98–171 (rel. July 14, 1999), 64 FR 41320 (Jul. 30, 1999) (Contributor Reporting Requirements Order).

Calendar 2000 revenue information (show amounts in whole dollars)		
1	Service provided by U.S. carriers that both originates and terminates in foreign points. Form 499-A Line 412 (e)	
2	Interstate end-user revenue from all telecommunications services. Form 499-A Line 420 (d)	
3	International end-user revenue from all telecommunications services except international-to-international. Form 499-A Line 420 (e)	
4	Total end-user Revenues (Sum of lines 1, 2 and 3) **Note**: also enter this number on Block (28A)- "FCC Code 1".	
5	End-user interstate mobile service monthly and activation charges. Form 499-A Line 409 (d)	
6	End-user international mobile service monthly and activation charges. Form 499-A Line 409 (e)	
7	End-user interstate mobile service message charges including roaming charges but excluding toll charges. Form 499-A Line 410 (d)	
8	End-user international mobile service message charges including roaming charges but excluding toll charges. Form 499-A Line 410 (e)	
9	End-user interstate satellite service. Form 499-A Line 416 (d)	
10	End-user international satellite service. Form 499-A Line 416 (e)	

11	Surcharges on mobile and satellite services identified as recovering universal service contributions and included in line 403 (d) or 403 (e) on your FCC Form 499. [Note: you may not include surcharges applied to local or toll services, nor any surcharges identified as intrastate surcharges.]	
12	Revenues from resellers that do not contribute to USF. Form 499-A Line 511 (b)	
13	Total excluded end-user revenues. (Sum lines 5 through 12.) **Note**: also enter this number on Block (29A)- "FCC Code 2".	
14	Total subject revenue. (Line 4 minus Line 13) **Note**: also enter this number on Block (25A)- "Quantity".	
15	Common carrier fee factor	.00132
16	2000 Regulatory Fee (Line 14 times Line 15)* **Note**: also enter this number on Block (27A)- "Total Fee"	
*	You are exempt from filing if the amount on line 16 is less than $10.	

5. International Services

a. Earth Stations

34. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C–Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C–Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's Rules. *Mobile Satellite Earth Stations,* operating pursuant to part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[161] *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas,* authorized or registered under part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 2000, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite For FY 2001, Transmit/Receive and Transmit-Only Earth Stations will pay a fee of $180 per authorization or registration *as well as a separate fee of $180 for each associated Hub Station.*

35. *Receive-only earth stations.* For FY 2001, there is no regulatory fee for receive-only earth stations.

b. Space Stations (Geostationary Orbit)

36. Geostationary Orbit (also referred to as Geosynchronous) Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under part 25 of the Commission's Rules to provide communications between satellites and

[161] Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 2001.

earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 2001, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of $98,125 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

c. Space Stations (Non-Geostationary Orbit)

37. Non-Geostationary Orbit Systems (such as Low Earth Orbit (LEO) Systems) are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 2001, entities authorized to operate Non-Geostationary Orbit Systems (NGSOs) will be assessed an annual regulatory fee of $94,425 per operational system in orbit. Payment is required for any NGSO System that has one or more operational satellites operational. In our FY 1997 *Report and Order* at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to section 25.120(d). We require payment of this fee following commencement of operations of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because section 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and conditions of the license) we previously clarified our definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

> Licensees of Non-Geostationary Satellite Systems (such as LEOs) are assessed a regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to §§ 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to § 25.120(d).

d. International Bearer Circuits

38. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See* FY 1994 *Report and Order* at 5367. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 kbps circuits, or equivalent circuits. Under this formulation, 64 kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 kbps circuit equivalent of larger bit stream circuits. For example, the 64 kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 kbps circuits. Analog circuits such as 3 and 4 kHz circuits used for international service are also included as 64 kbps circuits. However, circuits derived from 64 kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 kbps circuits. Such circuits are not subject to fees. Only the 64 kbps circuit from which they have been derived will be subject to payment of a fee. For FY 2001, the regulatory fee is $5 for each active 64 kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel size in MHz	No. of equivalent 64 kbps circuits
36	630
24	288
18	240

e. International Public Fixed

39. This fee category includes common carriers authorized under part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 2001, International Public Fixed Radio Service licensees will pay a $1,275 annual regulatory fee per call sign.

f. International (HF) Broadcast

40. This category covers International Broadcast Stations licensed under part 73 of the Commission's Rules to operate on frequencies in the 5,950 kHz to 26,100 kHz range to provide service to the general public in foreign countries. For FY 2001, International HF Broadcast Stations will pay an annual regulatory fee of $680 per station license.

Attachment G; Description of FCC Activities

Licensing: This activity includes the authorization or licensing of radio stations, telecommunications equipment and radio operators, as well as the authorization of common carrier and other services and facilities. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with licensing activities.

Competition: This activity includes formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses and allocation; and development of equipment standards. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with activities to promote competition.

Enforcement: This activity includes enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Consumer Information Services: This activity includes the publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with consumer information activities.

Spectrum Management: This activity includes management of the electromagnetic spectrum as mandated by the Communications Act of 1934, as amended. Spectrum management includes the structure and processes for allocating, allotting, assigning, and licensing this scarce resource to the private sector and state and local governments in a way that promotes competition while ensuring that the public interest is best served. In order to manage spectrum in both an efficient and equitable manner, the Commission prepares economic, technical and engineering studies, coordinates with federal agencies, and represents U. S. industry in international for a. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with spectrum management activities.

Attachment H; Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules.[162] Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in § 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.[163] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

[FR Doc. 01–9407 Filed 4–13–01; 8:45 am]

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[162] 47 CFR 73.150 and 73.152.

[163] 47 CFR 73.313.

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H.R. 132/P.L. 107–6

To designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the "Goro Hokama Post Office Building". (Apr. 12, 2001; 115 Stat. 8)

H.R. 395/P.L. 107–7

To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the "Ronald W. Reagan Post Office of West Melbourne, Florida". (Apr. 12, 2001; 115 Stat. 9)

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1200–End, 6 (6 Reserved)	(869–044–00006–7)	55.00	Jan. 1, 2001
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

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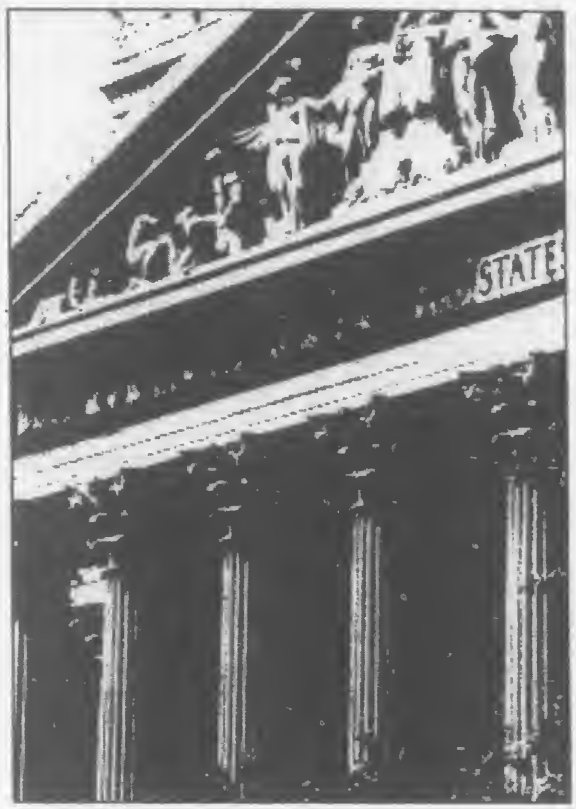

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