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Presidential Documents

Title 3—

The President

Proclamation 7505 of November 21, 2001

To Modify the Tariff-Rate Quota Applicable to Imports of Steel Wire Rod

By the President of the United States of America

A Proclamation

1. On February 16, 2000, pursuant to section 203 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2253), President Clinton issued Proclamation 7273, which imposed a tariff-rate quota (TRQ) on certain steel wire rod imports provided for in subheadings 7213.91, 7213.99, 7227.20 and 7227.90.60 of the Harmonized Tariff Schedule of the United States (HTS) for a period of 3 years plus 1 day. Proclamation 7273 did not allocate the in-quota quantity of the TRQ among supplier countries.

2. Pursuant to section 203(g) of the Trade Act (19 U.S.C. 2253(g)), in order to provide for the efficient and fair administration of the TRQ, I have determined that the in-quota quantity of the TRQ should be allocated among supplier countries in the manner set forth in the Annex to this proclamation.

3. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 203 and 604 of the Trade Act, do proclaim that:

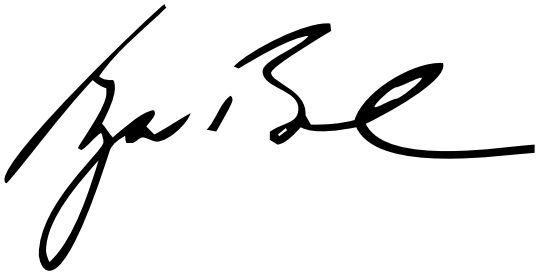
(1) In order to allocate the in-quota quantity of the TRQ on wire rod imports, subchapter III of chapter 99 of the HTS is modified as set forth in the Annex to this proclamation.

(2) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(3) Effective at the close of March 1, 2004, or such other date that is 1 year from the close of this relief, the U.S. note and tariff provisions established in the Annex of this proclamation shall be deleted from the HTS.

(4) The modifications to the HTS made by this proclamation and the Annex hereto shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, after the close of November 23, 2001, and shall continue in effect through the close of March 1, 2003, unless such actions are earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



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ANNEX

MODIFICATIONS TO SUBCHAPTER III OF CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after November 24, 2001, subchapter III of chapter 99 is hereby modified as follows:

1. The following new subdivision (i) is inserted at the end of U.S. note 9:

"(i) For purposes of subheadings 9903.72.09 through 9903.72.14, inclusive, the term "European Community" means Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom."

2. Subheading 9903.72.08 is modified by striking "November 30," and by inserting in lieu thereof "November 23,".

3. The article description of subheading 9903.72.09 is modified to read as follows, including the countries and allocations hereby inserted immediately below such article description:

"If entered during the period from November 24, 2001, through February 28, 2002, inclusive, (1) in an overall aggregate quantity not in excess of the remaining quantity, if any, from 1,462,018,923 kg after the total quantities entered under subheadings 9903.72.06 through 9903.72.08, inclusive, are subtracted therefrom, and (2) in the respective aggregate quantity of goods the product of a foreign country specified below as the listed percentage of such overall aggregate quantity remaining after the sum of the four enumerated quantities set forth below is subtracted from such overall aggregate quantity:

European Community	28.161%
Trinidad and Tobago	16.554%
Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan	12.616%
All other countries	42.669%"

4. The article description of subheading 9903.72.11 is modified to read as follows, including the countries and allocations hereby inserted immediately below such article description:

"If entered during the period from March 1, 2002, through May 31, 2002, inclusive, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no such goods the product of such country may be entered during the remainder of such period under this subheading:

European Community	104,987,486 kg
Trinidad and Tobago	61,716,789 kg
Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan	47,034,377 kg
All other countries	159,076,170 kg"

5. The article description of subheading 9903.72.12 is modified to read as follows, including the countries and allocations hereby inserted immediately below such article description:

"If entered during the period from June 1, 2002, through August 31, 2002, inclusive, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no such goods the product of such country may be entered during the remainder of such period under this subheading:

European Community	104,987,486 kg
Trinidad and Tobago	61,716,789 kg
Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan	47,034,377 kg
All other countries	159,076,170 kg"

6. The article description of subheading 9903.72.13 is modified to read as follows, including the countries and allocations hereby inserted immediately below such article description:

"If entered during the period from September 1, 2002, through November 30, 2002, inclusive, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no such goods the product of such country may be entered during the remainder of such period under this subheading:

European Community	104,987,486 kg
Trinidad and Tobago	61,716,789 kg
Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan	47,034,377 kg
All other countries	159,076,170 kg"

7. The article description of subheading 9903.72.14 is modified to read as follows, including the countries and allocations hereby inserted immediately below such article description:

"If entered during the period from December 1, 2002, through March 1, 2003, inclusive, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no such goods the product of such country may be entered during the remainder of such period under this subheading:

European Community	104,987,486 kg
Trinidad and Tobago	61,716,789 kg
Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan	47,034,377 kg
All other countries	159,076,170 kg"

[FR Doc. 01–29654
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Rules and Regulations

Federal Register

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Wednesday, November 28, 2001

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

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 274, and 277

RIN 0584–AC40

Food Stamp Program: Noncitizen Eligibility and Certification Provisions of Pub. L. 104–193, as Amended by Public Laws 104–208, 105–33 and 105–185 (Announcement of Effective Date)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the final rule published on November 21, 2000 at 65 FR 70133. That rule implemented several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and subsequent amendments to these provisions made by the Omnibus Consolidated Appropriations Act of 1996, the Balanced Budget Act of 1997, and the Agricultural Research, Extension, and Education Reform Act of 1998. That rule finalized provisions related to application processing, aliens, matching activities, standardized deductions, proration, and the Simplified Food Stamp Program. Several amendments in that rule contained information collection requirements that required the approval of the Office of Management and Budget (OMB) before they could become effective. These information collection requirements were approved by OMB on September 10, 2001.

DATES: *Effective Date:* The amendments to §§ 273.2(c)(2)(i), 273.2(e)(1), 273.2(e)(2)(i), 273.2(e)(2)(ii), 273.2(e)(3), 273.4(c)(3)(iv), 273.12(c)(3) and 273.12(f)(4) published at 65 FR 70133 (November 21, 2001) are effective September 10, 2001.

Implementation Dates:

1. State agencies must implement the following amendments no later than March 11, 2002 for all households newly applying for Program benefits. State agencies must convert current caseloads no later than the next recertification following the implementation date: § 273.2(c)(2)(i), § 273.2(e)(1), § 273.2(e)(2)(i), § 273.2(e)(2)(ii), § 273.2(e)(3), § 273.4(c)(3)(iv); and § 273.12(c)(3).

2. State agencies may implement § 273.12(f)(4) at their discretion at any time on or after September 10, 2001.

ADDRESSES: Questions may be sent to Patrick Waldron, Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Waldron at (703) 305–2495.

SUPPLEMENTARY INFORMATION:

Background

The final rule ''Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Public Law 104–193, as Amended by Public Laws 104–208, 105–33, and 105–185,'' provided that several amendments would not be effective until Office of Management and Budget (OMB) approval of an associated information collection burden. That rule further provided that the Food and Nutrition Service would publish a document in the **Federal Register** announcing the effective date of these amendments after approval of the information collection requirements by OMB. On September 10, 2001, OMB approved the associated information collection burden for these items under OMB control number 0584–0064. This approval will expire on September 30, 2004.

Dated: November 21, 2001.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 01–29563 Filed 11–27–01; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–28–AD; Amendment 39–12504; AD 2001–23–07]

RIN 2120–AA64

Airworthiness Directives; Reims Aviation S.A. Model F406 Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2001–23–07, which was published in the **Federal Register** on November 15, 2001 (66 FR 57364), and concerns certain Reims Model F406 airplanes. The FAA incorrectly referenced the AD number as ''AD 2001–01–07'' instead of ''AD 2001–23–07.'' This AD requires repetitive inspections of the canted rib upper cap in the center wing carry-through area for cracks, and, if cracks are found, immediate repair of the cracks or modification of this area depending on the extent of any cracks found. This AD also requires modifying the canted rib upper cap at a certain time period as terminating action for the repetitive inspections. This action corrects the AD to reflect the correct AD number.

EFFECTIVE DATE: The effective date of this AD remains January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Brian A. Hancock, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4143, facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On November 6, 2001, FAA issued AD 2001–01–07, Amendment 39–12504 (66 FR 57364, November 15, 2001), which applies to certain Reims Model F406 airplanes. This AD currently requires repetitive inspections of the canted rib upper cap in the center wing carry-through area for cracks, and, if cracks are found, immediate repair of the cracks or modification of this area depending on the extent of any cracks found. This AD also requires modifying the canted rib upper cap at a certain

time period as terminating action for the repetitive inspections.

Need for the Correction

We incorrectly referenced the AD number as ''AD 2001–01–07'' instead of ''AD 2001–23–07.'' If we did not correct the AD number, then the logbooks of the affected airplane would reference compliance with the wrong AD.

Correction of Publication

Accordingly, the publication of November 15, 2001 (66 FR 57364), of Amendment 39–12504; AD 2001–01–07, which was the subject of FR Doc. 01–28571, is corrected as follows:

§ 39.13 [Corrected]

On page 57364, under heading 14 CFR part 39, in the second column, the 22nd line from the bottom of the page; and on page 57366, in § 39.13, in the second column, the 1st line from the top of the page, correct ''2001–01–07'' to ''2001–23–07''.

Action is taken herein to correct these references in AD 2001–23–07 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains January 7, 2002.

Issued in Kansas City, Missouri, on November 15, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–29492 Filed 11–27–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30282; Amdt. No. 2081]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPs. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on November 23, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC number	Subject
11/02/01	OH	Urbana	Grimes Field	1/2000	VOR OR GPS-A, AMDT 5
11/07/01	NY	Farmingdale	Republic	1/2165	GPS Rwy 14, ORIG-A
11/07/01	NY	Farmingdale	Republic	1/2166	GPS Rwy 1, ORIG
11/07/01	NY	Farmingdale	Republic	1/2167	NDB Rwy 1, AMDT 14
11/07/01	NY	Farmingdale	Republic	1/2168	ILS Rwy 14, AMDT 7B
11/07/01	TX	Houston	William P. Hobby	1/2197	RNAV (GPS) Rwy 30L, ORIG-A
11/07/01	TX	Houston	William P. Hobby	1/2198	ILS Rwy 30L, AMDT 5A
11/07/01	LA	Ruston	Ruston Regional	1/2214	GPS Rwy 36, ORIG
11/07/01	LA	Ruston	Ruston Regional	1/2215	NDB Rwy 36, ORIG
11/07/01	LA	Ruston	Ruston Regional	1/2216	VOR/DME-A, ORIG-A
11/07/01	LA	Ruston	Rustion Regional	1/2217	GPS Rwy 18, AMDT 1
11/07/01	LA	Ruston	Ruston Regional	1/2218	NDB Rwy 18, ORIG-C
11/08/01	IN	Bloomington	Monroe County	1/2254	RNAV (GPS) Rwy 35, ORIG-A
11/09/01	WI	Appleton	Outagamie County Regional	1/2300	ILS Rwy 29, AMDT 2A
11/09/01	AR	Searcy	Searcy Muni	1/2307	GPS Rwy 19, AMDT 1B
11/09/01	NY	Rochester	Greater Rochester Intl	1/2312	RNAV (GPS) Rwy 22, ORIG
11/13/01	MN	St. Cloud	St. Cloud Regional	1/2391	VOR/DME Rwy 13, AMDT 8A
11/15/01	PA	Philadelphia	Philadelphia Intl	1/2471	GPS Rwy 27L, ORIG-A
11/15/01	WI	Oshkosh	Wittman Regional	1/2474	RNAV (GPS) Rwy 36, ORIG

[FR Doc. 01–29609 Filed 11–27–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30281; Amdt. No. 2080]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are

designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

—Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce. I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on November 23, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective December 27, 2001*

Atlanta, GA, The William B. Hartsfield Atlanta Intl, RNAV (GPS) RWY 8L, Orig
Atlanta, GA, The William B. Hartsfield Atlanta Intl, RNAV (GPS) RWY 8R, Orig
Atlanta, GA, The William B. Hartsfield Atlanta Intl, RNAV (GPS) RWY 9L, Orig
Atlanta, GA, The William B. Hartsfield Atlanta Intl, RNAV (GPS) RWY 9R, Orig
Atlanta, GA, The William B. Hartsfield Atlanta Intl, RNAV (GPS) RWY 26L, Orig
Atlanta, GA, The William B. Hartsfield Atlanta Intl, RNAV (GPS) RWY 26R, Orig
Atlanta, GA, The William B. Hartsfield Atlanta Intl, RNAV (GPS) RWY 27L, Orig
Atlanta, GA, The William B. Hartsfield Atlanta Intl, RNAV (GPS) RWY 27R, Orig
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 4L, Orig
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 4R, Orig

Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 9L, Orig
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 9R, Amdt 1
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) Y RWY 22L, Orig
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) Z RWY 22L, Orig
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) Y RWY 22R, Orig
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) Z RWY 22R, Orig
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) Y RWY 27L, Orig
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) Z RWY 27L, Orig
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 27R, Orig
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 32L, Orig
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 32R, Orig
Chicago, IL, Chicago-O'Hare Intl, GPS RWY 22R, Orig, CANCELLED
Elkton, MD, Cecil County, VOR/DME RWY 31, Orig
Elkton, MD, Cecil County, RNAV (GPS) RWY 31, Orig
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 8, Orig
Charleston, SC, Charleston AFB/Intl, RNAV (GPS) RWY 3, Orig
Charleston, SC, Charleston AFB/Intl, RNAV (GPS) RWY 15, Orig
Charleston, SC, Charleston AFB/Intl, RNAV (GPS) RWY 21, Orig
Charleston, SC, Charleston AFB/Intl, RNAV (GPS) RWY 33, Orig
Columbia, SC, Columbia Metropolitan, NDB RWY 11, Amdt 23
Columbia, SC, Columbia Metropolitan, RNAV (GPS) RWY 5, Orig
Columbia, SC, Columbia Metropolitan, RNAV (GPS) RWY 11, Orig
Columbia, SC, Columbia Metropolitan, RNAV (GPS) RWY 23, Orig
Columbia, SC, Columbia Metropolitan, RNAV (GPS) RWY 29, Orig
Columbia, SC, Columbia Metropolitan, GPS RWY 5, Orig-A, CANCELLED
Columbia, SC, Columbia Metropolitan, GPS RWY 23, Orig-B, CANCELLED
El Paso, TX, El Paso Intl, NDB RWY 22, Amdt 29
El Paso, TX, El Paso Intl, ILS RWY 22, Amdt 32
Logan, UT, Logan-Cache, RNAV (GPS) RWY 35, Orig
Logan, UT, Logan-Cache, GPS RWY 35, Orig, CANCELLED
Salt Lake City, UT, Salt Lake City Muni 2, GPS RWY 34, Orig, CANCELLED
Pullman-Moscow, ID, WA, Pullman-Moscow Regional, VOR RWY 5, Amdt 7
Pullman-Moscow, ID, WA, Pullman-Moscow Regional, RNAV (GPS) RWY 5, Orig

[FR Doc. 01–29608 Filed 11–27–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM02–2–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

November 21, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is based on the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 2001 through September 30, 2002 the fees in this document will become effective October 1, 2001 The fees will apply to fiscal year 2002 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Fannie Kingsberry, Financial Services Division, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 219–2885.

SUPPLEMENTARY INFORMATION:

Document Availability: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2).

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Office of the Executive Director and Chief Financial Officer.

Accordingly, the Commission, effective October 1, 2001, amends part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as follows:

PART 11—[AMENDED]

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

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. In part 11, Appendix A is revised to read as follows:

Appendix A To Part II—Fee Schedule for FY 2002

State	County	Rate per acre
Alabama	All Counties	$25.96
Arkansas	All Counties	19.48
Arizona	Apache, Cochise, Gila, Graham, La Paz, Mohave, Navajo, Pima, Yavapai, Yuma, Coconino North of Colorado River.	6.47
	Coconino South of Colorado River, Greenlee, Maricopa, Pinal, Santa Cruz.	25.96
California	Imperial, Inyo, Lassen, Modoc, Riverside, San Bernardino	12.98
	Siskiyou	19.48
	Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kern, Kings Lake, Madera, Mariposa, Mendicino, Merced, Mono, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, Santa Clara, Shasta, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare Kings, Tuolumne, Yolo, Yuba.	32.45
	Los Angeles, Marin, Monterey, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Ventura.	38.96
Colorado	Adams, Arapahoe, Bent, Cheyenne, Crowley, Elbert, El Paso, Huerfano, Kiowa, Kit Carson, Lincoln, Logan, Moffat, Montezuma, Morgan, Pueblo, Sedgewick, Washington, Weld, Yuma.	6.47
	Baca, Dolores, Garfield, Las Animas, Mesa, Montrose, Otero, Prowers, Rio Blanco, Routt, San Miguel.	12.98
	Alamosa, Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Costilla, Custer, Denver, Delta, Douglas, Eagle, Fremont, Gilpin, Grand, Gunnison, Hinsdale, Jackson, Jefferson, Lake, La Plata, Larimer, Mineral, Ouray, Park, Pitkin, Rio Grande, Saguache, San Juan, Summit, Teller.	25.96
Connecticut	All Counties	6.47
Florida	Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, Washington.	38.96
	All Other Counties	64.90
Georgia	All Counties	38.96
Idaho	Cassia, Gooding, Jerome, Lincoln, Minidoka, Oneida, Owyhee, Power, Twin Falls.	6.47
	Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Payette, Shoshone, Teton, Valley, Washington.	19.48
Illinois	All Counties	19.48
Indiana	All Counties	32.45
Kansas	Morton	12.98
	All Other Counties	6.47
Kentucky	All Counties	19.48
Louisiana	All Counties	38.96
Maine	All Counties	19.48
Michigan	Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Macking, Marquette, Menominee, Ontonagon, Schoolcraft.	19.48
	All Other Counties	25.96
Minnesota	All Counties	19.48
Mississippi	All Counties	25.96
Missouri	All Counties	19.48
Montana	Big Horn, Blaine, Carter, Cascade, Chouteau, Custer, Daniels, McCone, Meagher, Dawson, Fallon, Fergus, Garfield, Glacier, Golden Valley, Hill, Judith Basin, Liberty, Musselshell, Petroleum, Phillips, Pondera, Power River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Teton, Toole, Treasure, Valley, Wheatland, Wibaux.	6.47
	Yellowstone, Beaverhead, Broadwater, Carbon, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis & Clark, Lincoln, Madison, Mineral, Missoula, Park, Powell, Ravalli, Sanders, Silver Bow, Stillwater, Sweet Grass.	19.48
Nebraska	All Counties	6.47
Nevada	Churchill, Clark, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Washoe.	3.24
	White Pine, Carson City, Douglas, Story	32.45

State	County	Rate per acre
New Hampshire	All Counties	19.48
New Mexico	Chaves, Curry, De Baca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Luna, McKinley, Otero, Quay, Roosevelt, San Juan, Socorro, Torrence.	6.47
	Rio Arriba, Sandoual, Union	12.98
	Bernalillo, Catron, Cibola, Colfax, Lincoln, Los Alamos, Mora, San Miguel, Santa Fe, Sierra, Taos, Valencia.	25.96
New York	All Counties	25.96
North Carolina	All Counties	38.96
North Dakota	All Counties	6.47
Ohio	All Counties	25.96
Oklahoma	Beaver, Cimarron, Roger Mills, Texas	12.98
	Le Flore, McCurtain	19.48
	All Other Counties	6.47
Oregon	Harney Lake, Malheur, Baker	6.47
	Crook, Deschutes, Gillam, Grant, Jefferson, Klamath, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler.	12.98
	Coos, Curry, Douglas, Jackson, Josephine	19.48
	Benton, Clackamas, Clatsop, Columbia, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill.	25.96
	Fall River, Lawrence, Mead, Pennington, All Other Counties	6.47
Pennsylvania	All Counties	25.96
Puerto Rico	All	38.96
South Carolina	All Counties	38.96
South Dakota	Butte, Custer	19.48
Tennessee	All Counties	25.96
Texas	Culberson, El Paso, Hudspeth	6.47
	All Other Counties	38.96
Utah	Beaver, Box Elder, Carbon, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, San Juan, Tooele, Uintah, Wayne.	6.47
	Washington	12.98
	Cache, Daggett, Davis, Morgan, Piute, Rich, Salt Lake, Sanpete, Sevier, Summit, Utah, Wasatch, Weber.	19.48
Vermont	All Counties	25.96
Virginia	All Counties	25.96
Washington	Adams, Asotin, Benton, Chelan, Columbia, Douglas, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Spokane, Walla Walla, Whitman, Yakima.	12.48
	Ferry, Pend Oreille, Stevens	19.48
	Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom.	25.96
West Virginia	All Counties	25.96
Wisconsin	All Counties	19.48
Wyoming	Albany, Campbell, Carbon, Converse, Goshen, Hot Springs, Johnson, Laramie, Lincoln, Natrona, Niobrara, Platte, Sheridan, Sweetwater, Fremont, Sublette, Uinta.	6.47
	Washakie, Big Horn, Crook, Park, Teton, Weston	19.48
All Other Zone		6.24

[FR Doc. 01–29567 Filed 11–27–01; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7108–5]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Compass Industries Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the Compass Industries Landfill Superfund Site (Site), located in the Chandler Park area west of Tulsa, Tulsa County, Oklahoma, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Oklahoma, through the Oklahoma Department of Environmental Quality (ODEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final notice of deletion will be effective January 28, 2002 unless EPA receives adverse comments by December 28, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal**

Register informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Beverly Negri, Community Involvement Coordinator, U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8157 or 1–800–533–3508 (*negri.beverly@epa.gov*).

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Suite 12D13, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 a.m. to 4:30 p.m.; Tulsa City-County Library, 400 Civic Center, Tulsa, Oklahoma 74103, (918) 596–7977, Monday through Friday 9 a.m. to 9 p.m.; Friday and Saturday 9 a.m. to 5 p.m.; Sunday, September through mid-May 1 p.m. to 5 p.m.; Oklahoma Department of Environmental Quality, Contact: Eileen Hroch, 5th floor file room, 707 N. Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101, (405) 702–5100, Monday through Friday 8:30 a.m. to 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Katrina Coltrain, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8143 or 1–800–533–3508 (*coltrain.katrina@epa.gov*).

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
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V. Deletion Action

I. Introduction

The EPA Region 6 office is publishing this direct final notice of deletion of the Compass Industries Landfill Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in section 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective January 28, 2002 unless EPA receives adverse comments by December 28, 2001 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. The EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete published elsewhere in this issue of the **Federal Register** and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Compass Industries Landfill Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or,

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with ODEQ on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) ODEQ concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location

The Compass Industries Landfill Site is an abandoned landfill located in a former limestone quarry west of Tulsa, Oklahoma. The Site is situated directly west of the Chandler Park softball facility, which is owned by Tulsa County. Physically, the Site is situated on a bluff approximately one-quarter mile south and 200 feet above the

Arkansas River. The Site's topography slopes downward to the west and north. The majority of runoff flows through water gaps in the east-west ridge above Avery Drive. Runoff from precipitation, springs and seeps flow into the Arkansas River through a simple network of small streams.

Site History

The Site operated as a municipal landfill between 1972 and 1976, as a facility permitted by the Oklahoma State Department of Health (OSDH), now called ODEQ. The permit conditions did not allow the disposal of industrial waste at the Site; however, disposal of industrial waste was done counter to regulations and permit conditions. During the Site's operation as a limestone quarry, the operators of Compass Industries Landfill kept few records concerning the wastes which were disposed of in the landfill. The Site data indicated that disposal of waste was done in an irregular manner, making it difficult to ascertain where the wastes of concern were located.

During the 1970's several fires were reported at the landfill. The most recent fire burned out in late 1984. It had burned underground for several years, breaking through the top soil cover on occasion. In early 1983, citizen complaints of odors prompted air monitoring in the vicinity of the landfill by the EPA and the OSDH. The results obtained from this monitoring revealed the presence of some organics, but at levels that were considered non-hazardous.

In September 1983, the Compass Site was proposed for the NPL, and was listed in September 1984.

Remedial Investigation and Feasibility Study (RI/FS)

During the RI of the Compass Industries Landfill Site, samples were collected from soil, water, and air to determine if significant pollutant concentrations were present. Routes of offsite migration include surface runoff, ground water (by way of recharge to seeps and surface runoff), transported sediments, and air.

Analytical result of the samples collected from the Site identified 12 inorganic and 33 organic priority pollutants. The most common priority pollutants were base-neutral compounds. The concentrations were greatest in samples of waste collected from surface and test trench soils.

Ground water samples were collected from 19 monitoring wells during the RI. These include 18 samples collected from 14 shallow wells completed in the perched water table aquifer, and eight samples collected from five deep wells completed in the Layton Sandstone. Surface water runoff and sediment samples from drainage ways were collected around the perimeter of the landfill to determine if contaminated runoff and sediments were leaving the Site.

Ten seep samples were collected to determine if contaminants were being leached out of the landfill wastes and transported. Seepage occurs along the perimeter of the landfill near the contact between the Hogshooter formation and Coffeyville formation.

Air samples were collected by the EPA technical assistance team during trench excavation and waste sampling. These samples were collected immediately upwind, downwind, and within the test pit. In addition, air monitoring using an organic vapor analyzer (OVA) was performed at each trench during excavation.

Results

- Migration of contaminants in the ground water was being mitigated by attenuating mechanisms since much greater concentrations were measured in soil/sediment samples.
- Offsite migration of contaminants was limited to surface runoff and seeps. However, concentrations were greatly diminished at discharge points in comparison to onsite waste concentrations. Soil samples collected in the drainage ways were contaminated with inorganic priority pollutants. These contaminants did not pose a significant hazard, as they were expected to stay adsorbed on the soil.
- The shallow perched aquifer (Hogshooter Formation) containing water that had percolated through the waste was contaminated. The deeper aquifer (Layton Sandstone) was also contaminated, but to a lesser extent. This was due to its relative isolation from the shallow aquifer by a low permeability shale.
- Wastes sampled on the ground surface showed significant concentrations of both inorganic and organic priority pollutants. The surface waste samples were similar in composition to wastes sampled from trenches.
- The large spatial variation in compound concentration and types of compounds detected suggested that the location of disposal and the type of wastes disposed may have varied widely across the Site.
- Random soil samples from the Site showed significantly higher concentrations of priority pollutants than the background soil samples. However, this was not the case for all surficial soil samples, i.e., not all soils samples were polluted in the landfill.

Characterization of Risk

John Mathes and Associates completed an Endangerment Assessment study for the Site in August 1988, for OSDH. The Endangerment Assessment was the precursor of the current Risk Assessment, and prior to 1989 was prepared using the Endangerment Assessment Handbook (1985). Thus the methodology of the Compass Endangerment Assessment is different from the current Risk Assessment which is based on Risk Assessment Guidance for Superfund (1989).

The Endangerment Assessment study picked 15 chemicals as indicator chemicals from among the numerous chemicals detected at the Site. Selection of the final list of indicator chemicals was determined by the magnitude of the indicator scores and an evaluation of the chemical's environmental fate and transport characteristics.

The results of the Endangerment Assessment for the 15 indicator chemicals were as follows: (1) Ingestion of ground water was not considered a potential exposure pathway, because it was considered incomplete since nearby residents use city water; (2) ingestion or dermal absorption of surface water was determined not to pose a health hazard; and, (3) site soil represented the only contaminated environmental medium for which the exposure pathways were complete.

Record of Decision Findings

On September 29, 1987, EPA signed a Record of Decision (ROD) for the Site. The remedy was chosen in accordance with CERCLA and the NCP. The decision was based on the administrative record for this Site and the concurrence of the State of Oklahoma on the selected remedy. This alternative is protective and cost-effective, attains applicable or relevant and appropriate Federal and State standards, and utilizes permanent solutions and treatment technologies to the maximum extent practicable.

The Site was addressed as one operable unit. The principal concerns addressed at the Site were from surface soils contaminated with inorganic and organic priority pollutants. The major components of the selected remedy include:

- Resource Conservation and Recovery Act (RCRA) cap involving site grading, cap placement, diversion of surface water, and air emissions monitoring.

• Ground water will be treated at a later date if found to be necessary.

• Installation of security fences and signs to restrict access to the Site.

• Monitoring of the site for 30 years to ensure no significant offsite migration.

• Additional Remedial Action if significant migration of contaminants occurs.

Response Actions

In late March 1988, EPA issued a Unilateral Administrative Order (UAO) to seven potentially responsible parties (PRPs) to assume responsibility for remedial action (RA) at the Site.

The essential elements of the Remedial Action included subcontract award and mobilization, clearing and grubbing, grading, construction of the clay cap, placement of the liner, permanent vegetative cover, final inspection, and demobilization. Other work needed to meet the results called for in the ROD but not explicitly stated, were included in the Statement of Work (SOW) as follows:

(1) Installation of a gas vent system to relieve any gas buildup under the cap; (2) construction of a surface drainage system consisting of a swale which collects sheet flow from the cap and carries water to a point beyond the hazardous waste area to drain into natural runoff channels at the western end of the Site; and, (3) construction of a berm to close openings in the bluffs along the northern end of the Site to prevent runoff from the cap from following existing drainage washouts, which threaten the road and rail right-of-way below the Site.

The United States Army Corps of Engineers (USACE) provided oversight for EPA through an Interagency Agreement. The USACE maintained full time oversight of the construction activities and assured quality by independent testing and ensured compliance with specifications and design drawings.

Cleanup Standards

During the Remedial Construction, samples were taken and analyzed to ascertain that construction requirements established by the ROD and set forth in the Remedial Design (RD) were met. The results of the construction quality, ambient air monitoring, and personnel safety are found in the Quality Assurance Final Report. The report notes that the requirements of the ROD as defined in the RD were always equaled or exceeded. Some of the important results are summarized below:

• Specifications required that the clay be compacted to a minimum of 98% of maximum dry density and 1% above optimum moisture. Passing tests showed compaction to average 100.9% density and 2.6% above optimum moisture. All fill represented by failing tests were reworked to meet the specification requirements:

• The high density polyethylene (HDPE) used for the multiplayer cap was sampled for peel strength and seam strength. The average peel strength (extrusion) was 68.8 pounds per inch (ppi) against a design criteria of 38 ppi. The average seam strength (extrusion) was 84.1 ppi against a design requirement of 64 ppi.

• The average tensile strength at break for the HDPE liner was 4740 pounds per square inch (psi) against the design criteria of 4000 psi.

• A perimeter air monitoring system installed between the Site and Chandler Park baseball diamonds noted no noxious vapors leaving the Site during the construction.

Operation and Maintenance

A post closure Operation and Maintenance (O&M) plan was developed to ensure integrity, provide a performance demonstration, and verify long term success of the remedial action. The O&M plan specified the actions to be carried out during the post-closure period.

Environmental Monitoring: The scope of this program will include sampling and analysis of ground water, surface water, and sediment for parameters which could potentially pose a threat to human health and environment.

Seeps located on the bluffs on the northeast will be sampled to check for the presence of chemical contaminants from the perched aquifers. Post closure sampling of the seeps will be conducted to show that the RCRA cap has achieved the ROD requirements. There will be a minimum of five seep locations sampled, five surface water/sediment samples, and two background seep samples. The analytical results will be evaluated and compared to risk based requirements and background sampling data. Compliance will be based on analytical results not exceeding the monitoring concentrations listed in the O&M plan and based on risk of less than 10^{-6} (1 in 1,000,000).

Monitoring will be conducted every year on a quarterly basis. The analytical data will be evaluated semi-annually and an annual report provided to EPA and OSDH. After five years of quarterly monitoring the program will be reviewed and modified if necessary, based on the results of the annual report(s). The monitoring program is planned for a period of 30 years with 5-year periodic reviews. If any five-year review indicates that the Site poses a threat to the environment, then an onsite water treatment facility will be installed. The program can be discontinued after any five-year review, provided EPA and the parties conducting the program agree, in writing, that the data from the ground water indicates that the Site does not pose an environmental threat.

Performance Monitoring: This monitoring will verify that the main engineered elements are performing as designed. The main objective of the performance monitoring system is the early detection of trends that could indicate weaknesses developing in the containment system, so that corrective action could be taken before the integrity of the structure is compromised. The monitoring will consist of visual inspection during walkover, topographic surveys based on predetermined grid lines and aerial surveys. Repairs will be performed as required.

Five-Year Review

Consistent with section 121(c) of CERCLA and requirements of the OSWER Directive 9355.7–03B–P (''Comprehensive Five-Year Review Guidance'', June 2001), a five-year review is required at the Compass Site. The Directive requires EPA to conduct statutory five-year reviews at sites where, upon attainment of ROD cleanup levels, hazardous substances remaining within restricted areas onsite will not allow unlimited use of the entire site.

Since hazardous substances remain onsite, this Site is subject to five-year reviews to ensure the continued protectiveness of the remedy. Based on the five-year results, EPA will determine whether human health and the environment continues to be adequately protected by the implemented remedy.

5-Year Review—2000

The first five-year review was scheduled for completion in 1996; however, it was not completed until September 26, 2000. The review was held up due to the lack of a clear definition of the capped area. In spring of 1997, the cap was surveyed and defined by the legal metes and bound definition. The five-year review denoted no deficiencies; however, potential deficiencies were identified and include (1) continued mowing of the native grasses may result in a buildup of thatch; therefore, if mowing continues the site should be raked approximately every four years; (2) as the area returns

to native vegetation, woody plants with strong root systems may damage the liner system; therefore woody vegetation should be removed at least annually; (3) burrowing animals including mice, rats and snakes may also damage the liner system; therefore, continued periodic checks on the site should be maintained; and, (4) erosion of the RCRA cap continues to be a concern, and the site should be periodically inspected to ensure that the full 24 inches of the RCRA cap remains intact.

Because the remedial action is expected to be protective, the remedy for the site is expected to be protective of human health and the environment. Based upon the site inspection, the sampling results, the survey results and the remedial actions are performing well. The RCRA cap system has been well maintained and now is performing its function with minimal maintenance and movement. The ground water leaving the site, when present, has been substantially below the monitoring concentration, never having exceeded 10% of any level. The site appurtenant structures, including the fencing, the signs, and the vent pipes, are in sound condition with no signs of physical deterioration. All contaminants of concern appear to be fully controlled by the RCRA cap.

5-Year Review—2001

The second five-year review is in the process of being finalized. At this time, no major deficiencies have been noted. Several minor and potential deficiencies were identified during the inspection and include: (1) On an area along the northen slope, woody shrubs are clearly evident and must be removed; (2) riprap placed at the lower end of the swale during recent repairs did not completely cover all of the geotextile and additional rock is needed; and, (3) the settlement monuments which were scheduled to be surveyed during the 10th year will be surveyed as soon as practical. The change of primacy for O&M activities may delay completion of this activity.

Because the remedial action is expected to be protective, the remedy for the site is expected to be protective of human health and the environment. Based upon the site inspection and the sampling results, the remedial actions are performing well. All contaminants of concern appear to be fully controlled by the RCRA cap.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the State of Oklahoma, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective January 28, 2002 unless EPA receives adverse comments by December 28, 2001. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. The EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete published elsewhere in this issue of the **Federal Register** and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 8, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended under Oklahoma (''OK'') by removing the entry for ''Compass Industries (Avery Drive), Tulsa''.

[FR Doc. 01–29469 Filed 11–27–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG05

Endangered and Threatened Wildlife and Plants; Final Rule To List the Vermilion Darter as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine the vermilion darter (*Etheostoma chermocki*) to be endangered under the authority of the Endangered Species Act of 1973, as amended (Act). The current range of the vermilion darter is 11.6 kilometers (km) (7.2 miles (mi)) of the mainstem of Turkey Creek and the lower reaches of (0.8 km (0.5 mi) total) of Dry and Beaver Creeks where they intersect Turkey Creek. Turkey Creek is a tributary of the Locust Fork of the Black Warrior River, and is found in northeast Jefferson County, Alabama. Impoundments within the upper mainstem of Turkey Creek and its tributaries, along with water quality degradation, have altered the stream's dynamics and reduced the darter's range significantly. The surviving population is currently threatened by pollutants (*i.e.,* sediment, nutrients, pesticide and fertilizer runoff) that wash into the streams from the land surfaces. Since the vermilion darter has such a restricted range, it is also threatened by potential catastrophic events (*e.g.*, toxic chemical spill). This action extends the protection of the Act to the vermilion darter.

EFFECTIVE DATE: December 28, 2001.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Mississippi Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi, 39213.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Drennen at the above address, or telephone 601/321–1127; facsimile 601/965–4340.

SUPPLEMENTARY INFORMATION:

Background

Boschung *et al.* (1992) formally described the vermilion darter (*Etheostoma chermocki* (Teleostei: Percidae)) from the Black Warrior River drainage of Alabama. This fish is a medium-sized darter reaching about 7.1 centimeters (2.8 inches) total length

(length from tip of snout to longest portion of tail fin) (Boschung *et al.* 1992, Suttkus and Bailey 1993, Mettee *et al.* 1996). The vermilion darter belongs to the subgenus Ulocentra (''snub-nosed darters''), which includes fish that are slightly compressed laterally and have complete lateral lines, broadly connected gill membranes, a short head, and a small pronounced mouth. The vermilion darter is distinguished by extensive vermilion (reddish-orange) pigmentation on the lower sides and especially on the belly. Males have a bright red spot on the membrane between the first spines of the spinous dorsal (upper) fin. During breeding, the males have red blotches along the side of the body just above the midline (Boschung *et al.* 1992, Suttkus and Bailey 1993, and Metee *et al.* 1996). The female's red spots are smaller.

The Southeastern Fishes Council Technical Advisory Committee of the American Fisheries Society (Warren *et al.* 2000) listed the vermilion darter as endangered within the Tombigbee-Black Warrior river drainage. Currently, the vermilion darter is found only in the Turkey Creek drainage, a tributary of the Locust Fork of the Black Warrior River, Jefferson County, Alabama. The current range of the vermilion darter is 11.6 kilometers (km) (7.2 miles (mi)) of the mainstem of Turkey Creek and the lower reaches (0.8 km (0.5 mi) total) of Dry and Beaver Creeks where they intersect Turkey Creek. Extensive surveys in similar habitats have failed to locate this species outside its current drainage (Boschung *et al.* 1992, Blanco *et al.* 1995, Mettee 1996, Shepard *et al.* 1998, Blanco and Mayden 1999). The Turkey Creek drainage is primarily owned by private landowners; approximately 2.2 km (1.4 mi) of stream bank is owned by Jefferson County.

The historic population size of the vermilion darter within the Turkey Creek drainage is unknown. In the 1960s and 1970s, the vermilion darter was common at the Highway 79 bridge site, which roughly bisects the fish's current range, but by 1992 occurrences of the darter had become very rare at that site (Boschung *et al.* 1992; K. Marion, University of Alabama in Birmingham, pers. comm. 1998). Currently, the sparse populations of vermilion darters are isolated within certain areas of Turkey Creek, by both natural and manmade barriers, including a waterfall and several impoundments. Dispersal beyond the current range of this species is not likely (Blanco and Mayden 1997) because of these barriers and the decline in water quality by point source pollution, like industrial effluent and nonpoint-source pollution, pollution created from larger processes and not from one concentrated point source, like excess sediment from a construction site washing into a stream after a rain. Blanco and Mayden (1999) estimated the population size of darters, assuming they are uniformly distributed throughout their range, as between 1,847 and 3,238 individuals, based on the number of vermilion darters caught per fishing attempts and the amount of time spent sampling within the Turkey Creek mainstem and the tributaries of Dry and Beaver Creeks.

Habitat for the vermilion darter is similar to that of other snub-nosed darters found in small to medium-sized clear streams with gravel riffles and moderate currents (Kuehne and Barbour 1983, Etnier and Starnes 1993). Boschung *et al.* (1992) described the stream habitat for vermilion darters as 3 to 20 meters (m) (10 to 65 feet (ft)) wide, 0.01 to more than 0.5 m (0.03 to more than 1.64 ft) in depth, with pools of moderate current alternating with riffles of moderately swift current, and low water turbidity. Blanco and Mayden (1999) found this species primarily in areas dominated by fine gravel with some coarse gravel or cobble. This species is absent in habitats with only a bedrock bottom, but has been found on bedrock with sand and gravel. Vermilion darters have been found in habitats with consistent water velocity, usually at the head and foot of riffles and downstream of the run habitat (stream zones with faster water) where the water becomes deeper and slower. They are usually absent from the riffle proper (shallow, fast-flowing water upstream of the run) and the run proper (deeper, fast-flowing water) and are found in the transition zone between a run/riffle (fast water) and pool (slow water) (Blanco and Mayden 1999). This species is generally not found in deeper pools. Vermilion darters are associated with aquatic vegetation such as *Nasturtium officinale, Potamogeton* spp., *Ceratophyllum* spp., and *Myriophyllum* spp. (Boshung *et al.* 1992, Blanco *et al.* 1995).

The only documented spawning habitat for vermilion darters, near the confluence of Turkey Creek and the runoff from Tapawingo Springs, consists of a mixture of fine silt on small gravel interspersed with larger gravel, cobble, small boulders, aquatic vegetation, and occasional filamentous algae (Stiles, Samford University, Birmingham, Alabama, pers. comm. 1999). Clean rock surfaces, documented at this site, are necessary for egg laying (Stiles, pers. comm. 1999). There are also small sticks and limbs on the bottom substrate and within the water column (Stiles, pers. comm. 1999). Little is known about the life-history of the vermilion darter; however, most snubnose darters typically live 2 to 3 years and feed primarily on snails and aquatic insects (Carlander 1997).

Previous Federal Action

We have been monitoring the status of the species since the early 1990s and have funded several status surveys (Blanco *et al.* 1995, Blanco *et al.* 1996, and Blanco and Mayden 1997) and a Partners for Fish and Wildlife Project which included restoration of a portion of the bank of Turkey Creek.

We received a petition dated July 22, 1998, to emergency list the vermilion darter as endangered on July 23, 1998, from Robert Reid, Jr., of Birmingham, Alabama. On August 18, 1998, we received supplemental information on the species and a request to be copetitioner from Dr. Paul Blanchard of Samford University, Birmingham, Alabama. The petitioners stated that the vermilion darter was limited in range and imminently threatened with extinction. We found that the petition presented substantial information indicating that listing the species may be warranted, but that emergency listing was not warranted. We published a notice announcing our 90-day finding and initiation of the species' status review in the **Federal Register** on January 26, 1999 (64 FR 3913).

The Act requires that we issue a finding as to whether the petitioned action is warranted within 12 months of receipt of the petition. The 12 month-finding resulted in a proposal to list the vermilion darter as endangered which we published in the **Federal Register** on April 18, 2000 (65 FR 20792). On March 9, 2001, Biodiversity Legal Foundation and Wild Alabama filed a complaint challenging the alleged failure of the Service to list the vermilion darter as an endangered species under the Act [CV–01–G–0607–S, D.-AL]. This final rule is made in accordance with a judicially approved settlement agreement, that requires us to submit for publication in the **Federal Register** a final listing determination for the vermilion darter on or before November 19, 2001.

Summary of Comments and Recommendations

In the April 18, 2000, proposed rule (65 FR 20792) and associated notifications, we requested that all interested parties submit factual reports or information that might contribute to the development of this final rule. The comment period for the proposed rule was open from April 18 through June

19, 2000. We contacted appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties and requested that they comment. We published a legal notice in *The Birmingham News* on April 22, 2000, announcing the proposal and inviting comment. We received nine comment letters through regular mail and electronic mail (e-mail). Two of these were opposed and seven were in favor of the listing. The breakdown of the comments included two from the State of Alabama, one from Jefferson County, one from a business association, one from a non-profit environmental law firm, two from environmental groups, and two from academia. The Department of Conservation and Natural Resources for the State of Alabama supported the protection of the vermilion darter under the Act. We had no requests for a public hearing.

We updated the final rule to reflect comments and information we received during the comment period. We address opposing comments and other substantive comments concerning the rule below.

Issue 1. The current levels of environmental protections being utilized in residential construction and wastewater management are more than adequate to protect the darter.

Response. We took into consideration and incorporated into the rule the part of the comment concerning current wastewater treatment management practices as adequate to protect the darter. We overstated the negative influence of treated effluent on the vermilion darter in the proposed rule. We have reevaluated its influence on the survival of the species. Based on current information, we believe that current protection at the Turkey Creek Waste Water Treatment Plant (TCWWTP) is adequate and not a significant threat to the vermilion darter. At this time, there are no data to document a negative influence of the wastewater treatment plant on the vermilion darter.

However, no new information was presented concerning environmental protection at residential and industrial construction sites along Turkey Creek that would protect the vermilion darter. We do not believe that current measures are adequately protecting the vermilion darter. Specifically, sediment is the most abundant pollutant produced in the Mobile River Basin (Alabama Department of Environmental Management 1996). Potential sediment sources within the vermilion darter's habitat include essentially all activities that disturb the land surface such as construction and urbanization. Vermilion darter habitat within Turkey Creek has been noted to be brown-orange from sediment and completely turbid after heavy to even medium rainfalls (Blanchard pers. comm. 1998, Drennen 1999 pers. obs.). Blanchard *et al.* (1998) identified five specific nonpoint-source siltation sites that are impacting or have impacted the Turkey Creek watershed, all which affect the vermilion darter's habitat. The application of current State and Federal water quality regulations have not adequately protected the vermilion darter habitat from point- and nonpoint-source pollution (see Factor A, Summary of Factors Affecting the Species).

Issue 2. The current range of the vermilion darter is not adequately defined.

Response: The description of the range of the vermilion darter in this final rule reflects the scientific literature published by species experts. There has been no information submitted to us to indicate otherwise. The vermilion darter is found only in the Turkey Creek drainage, a tributary of the Locust Fork of the Black Warrior River, Jefferson County, Alabama. The current range of the vermilion darter is 11.6 kilometers (km) (7.2 miles (mi)) of the mainstem of Turkey Creek and the lower reaches of (0.8 km (0.5 mi) total) Dry and Beaver Creeks where they intersect Turkey Creek. Extensive surveys in similar habitats have failed to locate this species outside of this drainage (Boschung *et al.* 1992, Blanco *et al.* 1995, Mettee *et al.* 1996, Shepard *et al.* 1998, Blanco and Mayden 1999).

Issue 3: The Service's failure to designate critical habitat seems inconsistent with the purported urgency of the vermilion darter's listing.

Response: We believe it is more important at this time to provide the vermilion darter with the protections the Act affords to endangered species then to delay a final listing decision while developing a critical habitat proposal. We will designate critical habitat for this species, when resources are available and consistent with our listing priorities.

Issue 4: Scientific basis for listing is not adequately documented.

Response: We disagree. We thoroughly reviewed all scientific data available on this species in preparing the proposed rule. We contacted experts and sought and reviewed historic and recent publications and unpublished reports concerning the vermilion darter and the subgenus Ulocentra (''snub-nosed darters''). We based our opinion on the best scientific and commercial data available, as required by section 4(b)(1) of the Act. We have reviewed this information and any new information available since the date of the proposed rule in making this final listing decision.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we requested the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information in the proposed rule. The purpose of such review is to ensure that the listing decision is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

We requested three academicians who possess expertise on darter natural history and ecology to review the proposed rule and provide any relevant scientific data relating to taxonomy, distribution, or to the supporting biological data used in our analyses of the listing factors. All expressed their belief that the data supported protection of the vermilion darter under the Act. We have incorporated their comments into the final rule, as appropriate, and summarized their observations below.

One reviewer clarified the exact location of the reddish-orange pigmentation of the darter to the lower sides and especially on the belly. This same reviewer specified the upper population estimates of the vermilion darter (Blanco and Mayden 1999) at an estimated 3,300 individuals, based on drainage units and habitat types and being uniformly distributed within their range. In the discussion on habitats of the vermilion darters and water velocities, one reviewer commented that vermilion darters usually do not occur in fast water and are found at the head of riffles and are absent in the riffle proper (shallow, fast-flowing water downstream and adjacent to the riffle) and at the foot of the run.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we determined that the vermilion darter should be classified as an endangered species. We followed the procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) issued to implement the listing provisions of the Act. We may determine a species to be endangered or threatened due to one or more of the five factors described in

section 4(a)(1). These factors and their application to the vermilion darter (*Etheostoma chermocki* Boschung and Mayden 1992) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The primary threats to the vermilion darter within the Turkey Creek watershed are nonpoint-source pollution and alteration of flow regimes. Restricted and localized in range, the vermilion darter is vulnerable to human-induced impacts to its habitat, such as siltation (excess sediments suspended or deposited in a stream), nutrification (excessive nutrients present, such as nitrogen and phosphorus), and impoundments.

Excessive siltation renders the habitat unsuitable for feeding and reproduction of vermilion darters and associated fish species. Sediment has been shown to wear away and suffocate periphyton (organisms that live attached to objects underwater), disrupt aquatic insect communities, and negatively impact fish growth, physiology, behavior, reproduction, and survival (Waters 1995, Knight and Welch 2001). Sediment is the most abundant pollutant produced in the Mobile River Basin (Alabama Department of Environmental Management 1996). Potential sediment sources within a watershed include virtually all activities that disturb the land surface. Local land use practices, such as construction, urbanization, and silviculture, affect the amount of sedimentation and its impact to fish habitat. Turkey Creek has been noted to be brown-orange from sediment and completely turbid after heavy to even medium rainfalls (Blanchard pers. comm. 1998). Four major soil types occur within the Turkey Creek watershed (Gorgas, Leesburg, Montevallo, and Nauvoo); all are considered highly erodible due to the steep topography (R. Goode, Natural Resources Conservation Service, Birmingham, Alabama, pers. comm. 1998). Urbanization has contributed significantly to siltation within the Turkey Creek watershed. Turkey Creek watershed drains 22,149 hectares (54,731 acres) of Jefferson County, the most populous county in the State. Blanco (2001) believed that the greatest threat to the fauna of Turkey Creek was siltation from development projects. Blanchard *et al.* (1998) identified five specific nonpoint-source siltation sites that have impacted the Turkey Creek watershed, including a major road extension within 304 m (1,000 ft) of Turkey Creek and four sites affecting Beaver Creek, a major tributary to Turkey Creek (i.e., a bridge, road and sewer line construction, and a wood pallet plant).

Nutrification is a major problem in Turkey Creek. Water quality data for Turkey Creek taken between September 1996 and February 1997 upstream of the TCWWTP, located within the range of the darter, showed high values for conductivity (Blanco and Mayden 1999). Similarly, water quality data for Turkey Creek taken along Turkey Creek Road, also within the darter's range, in June 1997 indicated high values for conductivity (Shepard *et al.* 1998). High conductivity values are an indicator of hardness and alkalinity and may denote water nutrification (Hackney *et al.* 1992, Tennessee Valley Authority 1992). Domestic pollution (septic and grey water (run off)) and excessive use of fertilizers and pesticides on lawns and along roadsides result in the concentration of nutrients and toxic chemicals within watersheds such as Turkey Creek. Nutrification promotes heavy algal growth that covers and eliminates the clean rock or gravel habitats necessary for vermilion darter feeding and spawning. Shepard *et al.* (1998) noted a thin veneer of algae, and O'Neil and Shepard (2001) documented high turbidity, both indicating eutrophic conditions (increased levels of nitrogen and phosphorus) in Turkey Creek at the town of Morris, approximately 9.6 km (6.0 mi) downstream of the range of the darter. Blanco *et al.* (1995) also noted increased levels of filamentous algae in Dry Creek and above the Turkey Creek Falls, within the range of the darter. The vermilion darter habitat along Turkey Creek Road was given a poor general index of biological integrity score (a numerical evaluation of the biological health of a stream) in 1997 because of domestic pollution (Shepard *et al.* 1998). Historically, Turkey Creek, along with other tributaries to the Locust Fork of the Warrior River, have not met dissolved oxygen standards due primarily to inadequate flows necessary to assimilate treated wastewater discharges (Shepard *et al.* 1998).

In the proposed rule we believed the absence of vermilion darters in Turkey Creek, below the TCWWTP effluent pipe, was the result of a combination of marginal habitat, sedimentation, and possibly chlorinized effluent. However, investigations by TCWWTP biologists attributed a past fish kill to pesticide runoff into the creek from a close housing development (Swann 2000). In addition, Howell (1998, memo to James Wood, Jefferson County Barton Laboratories) collected a vermilion darter 106 m (350 ft) downstream of the TCWWTP and noted five adults and one juvenile vermilion darter below the weir of the effluent pipe.

Finally, the TCWWTP has been noted nationally for experiencing 5 or less exceptions to their discharge permit requirements in 1999 (Jefferson County, 2000 a). Current management has demonstrated careful monitoring of all effluent (wastewater outflows) into Turkey Creek (Drennen pers.obs. 2000) and does not appear to be a threat to the vermilion darter at this time. Specifically, chlorine sterilization of effluent was replaced with ultraviolet light sterilization. An abundance of unidentified fish species, including darters, were observed at the effluent pipe in July, 2000 (Drennen pers. obs.). Blanco (2001) was optimistic that recolonization of darters would occur in areas immediately below the effluent pipe.

There are six impoundments in Turkey and Dry Creeks (i.e., Turkey Creek Lakes, Shadow Lake, Strip-mine Lake, Innsbrook Lake, Pinson Valley High Pond, and Horse Ranch Pond) (Blanco and Mayden 1999). These impoundments serve as dispersal barriers, affect water quality by reducing water flow, altering temperature, and concentrating pollutants, and contribute to the isolation and separation of the vermilion darter populations (Blanco and Mayden 1999). Blanco and Mayden (1999) noted a 40 percent decline of vermilion darters collected between 1995 and 1998 at two sites directly affected by impoundments. Population density estimates, expressed as the number of vermilion darters caught per fishing attempts and vermilion darters caught per amount of time spent fishing, declined by approximately 42 percent and 71 percent, respectively (Blanco and Mayden 1997). However, since historical population information is unknown, Blanco and Mayden (1997) were unclear if the decline represented a long- or short-term decline.

Blanco and Mayden (1999) noted a 71 percent decline (8.2 km (5.1 mi)) in vermilion darter habitat within the species' current range. This loss of vermilion darter habitat occurred between 1995 and 1998 and appears to be associated with two impoundments, a housing development, and pond dredging along Turkey Creek and Dry Creek; and increased siltation due to road maintenance along Beaver Creek (Blanco *et al.* 1995, Blanco and Mayden 1997, Blanco and Mayden 1999).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* In general, small species of fish such as the vermilion darter, which are not utilized for either sport or bait purposes, are unknown to the general

public. However, listing the vermilion darter may make it more attractive to collectors through recognition of its rarity. Vermilion darters are found around shallow riffles and pools in specific portions of the Turkey Creek drainage. These areas are easily accessible from public roads or bridges. The darter is also sensitive to a variety of easily obtained chemicals and products. These factors would make vandalism virtually undetectable and uncontrollable. Collection for scientific and educational purposes is not currently identified as a threat, but it must be regulated based on this species' restricted range and deteriorating habitat.

C. *Disease or predation.* Disease or natural predators do not present any known threats to the vermilion darter. To the extent that disease or predation occurs, these factors become a more important consideration as the total population decreases in number.

D. *The inadequacy of existing regulatory mechanisms.* No environmental laws require persons to specifically consider the vermilion darter or ensure that a project will not jeopardize its continued existence. The vermilion darter has been designated an endangered species by Alabama and is protected under Alabama's Nongame Species Regulation 220–2-.92-.90ER, which protects the species from over-collecting. Application of current State and Federal water quality regulations have not adequately protected the vermilion darter habitat from point- and nonpoint-source pollution.

E. *Other natural or manmade factors affecting its continued existence.* The current range of the vermilion darter is restricted to localized sites within the mainstem of Turkey Creek and the lowermost reaches of Dry Creek and Beaver Creek, within the Turkey Creek drainage. Subsequently, genetic diversity has likely declined due to fragmentation, separation, and destruction of vermilion darter populations. Potential genetic variation and diversity within a species are essential for recovery, adaptation to environmental change, and long-term viability (capability to live, reproduce, and develop) (Noss and Cooperrider 1994, Harris 1984). The long-term viability of a species is founded on conservation of numerous interbreeding local populations throughout the range of the species (Harris 1984). Interbreeding populations of vermilion darters are becoming increasingly separated.

The limited distribution of the vermilion darter makes populations vulnerable to extirpation (elimination) from catastrophic events such as an accidental toxic chemical spill, heavy pesticide or contaminant runoff, increased siltation, vandalism, or changes in flow regimes. A major highway (State Highway 79) divides the watershed. Eastward (upstream), the watershed is experiencing rapid residential and business growth; to the west (downstream), there are numerous commercial, residential, and reclaimed strip-mining sites.

Jefferson County has proposed an acquisition plan to preserve 254 ha (630 ac) of the Turkey Creek watershed between Alabama Highway 79 and Disposal Plant Road (Jefferson County 2000b). This will assist in protecting the water quality of 2.9 km (1.8 mi) of the creek. Penny Springs has been acquired and current negotiations to acquire Tapawingo Springs and other surrounding lands by the Cahaba Land Trust will protect water quality of Turkey Creek at the darter's known spawning sites.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the vermilion darter in determining to make this rule final. Based on this evaluation, the most appropriate action is to list the vermilion darter as endangered. The Act defines an endangered species as one that is in danger of extinction throughout all, or a significant portion, of its range. A threatened species is one that is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. Endangered status is appropriate for the vermilion darter due to its occurrence as isolated small populations within a very limited range, segmented by barriers (i.e., impoundments). The escalation of nonpoint-source pollution from siltation and nutrification within the species' habitat further threatens this species' survival. Isolated population segments are also subject to declining genetic diversity, reducing their chances for long-term viability. The possibility for catastrophic events (e.g., discharges, toxic chemical spills) also poses a threat to the survival of the vermilion darter.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination by the Secretary 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 Act is no longer necessary.

Section 4(a)(3) of the Act and our implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(i) the species is threatened by taking or other human activity, and the identification of critical habitat can be expected to increase the degree of threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that the designation of critical habitat for this species would be prudent.

Due to the small number of populations, the vermilion darter is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that identification of critical habitat would increase threats to a species, if any benefits would result from the designation of critical habitat, then a prudent finding is warranted.

In the proposed rule, where we also determined critical habitat to be prudent, we stated that we would make a final critical habitat determination with the final listing determination for

the vermilion darter. However, our budget for listing activities is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Listing the vermilion darter without designation of critical habitat will allow us to concentrate our limited resources on other listing actions that must be addressed, while allowing us to invoke protections needed for the conservation of this species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designation when it is essential that such determinations be promptly published. We will prepare a critical habitat designation in the future at such time when our available resources and priorities allow.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal activities that could occur and impact the vermilion darter include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alteration, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction. Activities affecting water quality may also impact the vermilion darter and are subject to the U.S. Army Corps of Engineers' and the U.S. Environmental Protection Agency's regulations and permit requirements under the authority of the Clean Water Act and the National Pollutant Discharge Elimination System (NPDES). It has been our experience, however, that nearly all section 7 consultations have been resolved so that species are protected and project objectives are met.

Listing the vermilion darter provides for the development and implementation of a recovery plan for the species. This plan will bring together Federal, State, and regional agency efforts for conservation of the species. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. It will also describe the site-specific management actions necessary to achieve conservation and survival of the species.

Section 9 of the Act and its implementing regulations, found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any such conduct), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

Our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act if this species is listed. The intent of this policy is to increase public awareness as to the effects of the listing on future and ongoing activities within a species' range.

We believe, based on the best available information, that the following activities are unlikely to result in a violation of section 9:

(1) Existing discharges into waters supporting this species, which require Federal authorization or permits (*e.g.*, activities subject to sections 402, 404, and 405 of the Clean Water Act and discharges regulated under the NPDES), provided such discharges are in compliance with an incidental take statement and any reasonable and prudent measures issued pursuant to a consultation conducted in accordance with section 7 of the Act;

(2) Normal agricultural and silvicultural practices, including pesticide and herbicide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices;

(3) Development and construction activities designed and implemented pursuant to State and local water quality regulations and implemented using best management practices;

(4) Existing recreational activities such as swimming, wading, canoeing, and fishing; and

(5) Lawful commercial and sport fishing.

Activities that we believe could potentially result in the take of the vermilion darter, include, but are not limited to:

(1) The unauthorized collection or capture of this species;

(2) Unauthorized destruction or alteration of the species' habitat (*e.g.,* unpermitted instream dredging, channelization, and discharge of fill material);

(3) Violation of any discharge or water withdrawal permit having an effect on vermilion darter habitat;

(4) Illegal discharge or dumping of toxic chemicals or other pollutants into waters supporting the vermilion darter; and

(5) Use of pesticides and herbicides in violation of label restrictions within the species' watershed.

We will review other activities not identified above on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity when the vermilion darter is listed. We do not consider these lists to be exhaustive and provide them as information to the public.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of our Mississippi Field Office (see **ADDRESSES** section).

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances.

Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, or economic hardship. Requests for copies of the regulations and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Blvd., Atlanta, GA, 30345 (telephone 404/679–4176; facsimile 404/679–7081).

National Environmental Policy Act

We have determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

A complete list of all references cited in this document, as well as others, is available upon request from the Field Supervisor (see **ADDRESSES** section).

Author

The primary author of this document is Daniel J. Drennen (see **ADDRESSES** section) (601/321–1127).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following to the List of Endangered and Threatened Wildlife, in alphabetical order under FISHES, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*	*		*
Darter vermilion	*Etheostoma chermocki.*	U.S.A. (AL)	Entire	E	715	NA	NA
*	*	*	*	*	*		*

Dated: November 15, 2001.

Marshall P. Jones Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 01–29329 Filed 11–27–01; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register

Vol. 66, No. 229

Wednesday, November 28, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–37–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 205A, 205A–1, 205B, 212, 412, 412EP, and 412CF Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) for Bell Helicopter Textron, Inc. (BHTI) Model 205A, 205A–1, 205B, 212, 412, 412EP, and 412CF helicopters. The AD would require inspecting each affected tail rotor blade forward tip weight retention block (tip block) and the aft tip closure (tip closure) for adhesive bond voids and removing any tail rotor blade with an excessive void from service. The AD would also require modifying certain tail rotor blades by installing shear pins and tip closure rivets. This proposal is prompted by five occurrences of missing tip blocks or tip closures resulting in minor to substantial damage. The actions specified by the proposed AD are intended to prevent loss of a tip block or tip closure, loss of a tail rotor blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before January 28, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–37–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*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–37–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–37–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD for BHTI Model 205A, 205A–1, 205B, 212, 412, 412EP, and 412CF helicopters, with a tail rotor blade, part number (P/N) 212–010–750–009, –011, –105, –107, –109, or –111, having a serial number (S/N) prefix ATR or A3, or a S/N with a prefix A and a number less than or equal to 11529. The AD would require inspecting the tip block and the tip closure for adhesive bonding voids and removing any tail rotor blade with an excessive void from service. The AD would also require modifying certain tail rotor blades by installing shear pins and tip closure rivets in the tip area of affected tail rotor blades. This proposal is prompted by five occurrences of missing tip blocks and tip closures resulting in minor to substantial damage. This condition, if not corrected, could result in loss of the tip block or tip closure, loss of the tail rotor blade, and subsequent loss of control of the helicopter.

The FAA has reviewed BHTI Service Bulletins 205–00–80, 205B–00–34, 212–00–111, 412–00–106, and 412CF–00–13, all Revision A, all dated December 20, 2000. The service bulletins describe procedures for inspecting and modifying certain tail rotor blades and were issued as a result of an investigation of an in-flight loss of a tail rotor blade tip block, P/N 212–010–750–105. The investigation revealed that the countersunk screws retaining the tip block were installed incorrectly, resulting in inadequate tip block retention. Also, reports have been submitted about loss of the tail rotor tip closures possibly due to an inadequate adhesive bond in this area.

We have identified an unsafe condition that is likely to exist or develop on other BHTI Model 205A, 205A–1, 205B, 212, 412, 412EP, and 412CF helicopters of the same type design. Therefore, the proposed AD would require the following:

- Inspecting certain tail rotor blades' tip block and tip closure for voids.
- Removing any tail rotor blade that has a void in excess of specified limitations.
- Modifying certain tail rotor blades by installing shear pins.
- Modifying all affected S/N tail rotor blades by installing aft tip closure rivets.

The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 281 helicopters of U.S. registry would be affected by this proposed AD, that it

would take approximately 3 work hours per helicopter to inspect certain tail rotor blades and to install the shear pins and tip closure rivets, and that the average labor rate is $60 per work hour. Required parts would cost approximately $25 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $57,605.

The regulations proposed herein would 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 proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Bell Helicopter Textron, Inc.: Docket No. 2001–SW–37–AD.

Applicability: Model 205A, 205A–1, 205B, 212, 412, 412EP, and 412CF helicopters with a tail rotor blade, part number 212–010–750–009, –011, –105, –107, –109, or –111, having a serial number (S/N) prefix ATR or A3, or a S/N with a prefix A and a number less than or equal to 11529, 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 (d) 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: Within 100 hours time-in-service, unless accomplished previously.

To prevent loss of the forward tip weight retention block (tip block) or aft tip closure (tip closure), loss of the tail rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the tip block and tip closure for voids. Remove from service any tail rotor blade with a void in excess of that allowed by the Component Repair and Overhaul Manual limitations.

(b) Inspect the tip block attachment countersink screws in four locations to determine if the head of each countersunk screw is flush with the surface of the abrasion strip. The locations of these four screws are depicted on Figure 1 of Bell Helicopter Textron, Inc. Alert Service Bulletin 205–00–80, 205B–00–34, 212–00–111, 412–00–106, and 412CF–00–13, all Revision A, all dated December 20, 2000 (ASB). If any of these screws are set below the surface of the abrasion strip or are covered with filler material, install shear pins in accordance with the Accomplishment Instructions, Shear Pin Installation paragraphs, of the applicable ASB.

(c) Install the aft tip closure rivets on all affected tail rotor blades in accordance with the Accomplishment Instructions, Aft Tip Closure Rivet Installation paragraphs, of the applicable ASB.

(d) 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, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on November 20, 2001.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–29593 Filed 11–27–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–20–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (ECF) Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. This proposal would require replacing the tail rotor hub pitch change plate ''SNR'' bearing (bearing). This proposal is prompted by fatigue cracks found in the bearings. The actions specified by the proposed AD are intended to prevent seizure of the bearing, loss of tail rotor effectiveness, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before January 28, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–20–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.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–20–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–20–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS350 and AS355 series helicopters. The DGAC advises of cracks on some ECF Model AS350B3 bearings, which can lead to a malfunctioning of the tail rotor hub pitch change plate and loss of control of the helicopter. The same bearing may be used on all ECF Model AS350 and AS355 helicopters.

ECF has issued Telex Alert Nos. 01.00.46 for the Model AS355 and 01.00.48 for the Model AS350 helicopters, both dated February 22, 2001, which specify replacing the bearing, part number (P/N) 6010F234M16 (ECF P/N 704A33–651–190) to prevent the loss of tail rotor pitch change control. The DGAC classified these Telex Alerts as mandatory and issued AD Nos. 2001–073–061(A) and 2001–074–081(A), dated March 21, 2001, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to this bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

We have identified an unsafe condition that is likely to exist or develop on other ECF Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require replacing each bearing, P/N 6010F234M16 (ECF P/N 704A33–651–190), with an airworthy bearing as follows:

- For ECF Model AS350B3 and AS355N helicopters, replace each bearing that has 270 or more hours time-in-service (TIS) as of the effective date of the AD within 30 hours TIS. Replace each bearing that has less than 270 hours TIS as of the effective date of the AD before the bearing reaches 300 hours TIS. Thereafter, replace each bearing at intervals not to exceed 300 hours TIS.
- For all other ECF Model AS350 or AS355 helicopters, replace each bearing that has 1150 or more hours TIS as of the effective date of the AD within 50 hours TIS. Replace each bearing that has less than 1150 hours TIS as of the effective date of the AD before the bearing reaches 1200 hours TIS. Thereafter, replace each bearing at intervals not to exceed 1200 hours TIS.
- Transferring the bearing from one model to another is permissible by complying with the transfer rules described in the Master Servicing Recommendations Chapter 05.99.

The FAA estimates that 514 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per helicopter to replace the bearing, and that the average labor rate is $60 per work hour. Required parts would cost approximately $90. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $200,460.

The regulations proposed herein would 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 proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Eurocopter France: Docket No. 2001–SW–20–AD.

Applicability: Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters, with tail rotor hub pitch change plate ''SNR'' bearing (bearing) part number (P/N) 6010F234M16 (Eurocopter France P/N 704A33–651–190), 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 (d) 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 seizure of the bearing, loss of tail rotor effectiveness, and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model AS350B3 and AS355N helicopters, replace each bearing with an airworthy bearing as follows:

(1) Within 30 hours TIS for each bearing that has 270 or more hours time-in-service (TIS) as of the effective date of this AD.

(2) Before reaching 300 hours TIS for each bearing that has less than 270 hours TIS as of the effective date of this AD.

(3) Thereafter, replace each bearing at intervals not to exceed 300 hours TIS.

(b) For all other Model AS350 or AS355 helicopters, replace each bearing with an airworthy bearing as follows:

(1) Within 50 hours TIS for each bearing that has 1150 hours or more TIS as of the effective date of this AD.

(2) Before reaching 1200 hours TIS each bearing that has less than 1150 hours TIS as of the effective date of this AD.

(3) Thereafter, replace each bearing at intervals not to exceed 1200 hours TIS.

Note 2: Eurocopter France Alert Telex Nos. 01.00.46 and 01.00.48, both dated February 22, 2001, pertain to the subject of this AD.

(c) When transferring a bearing from one model helicopter to another (refer to the equipment log card), adhere to the transfer rules described in the applicable master servicing recommendations. Remove each bearing from service at or before the service life limits given in paragraph (a)(3) and paragraph (b)(3) of this AD.

Note 3: The Master Servicing Recommendations for the affected helicopters, Chapter 05.99, pertain to the subject of this AD.

(d) 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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. 2001–073–061(A) and 2001–074–081(A), both dated March 21, 2001.

Issued in Fort Worth, Texas, on November 20, 2001.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–29594 Filed 11–27–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–43–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 427 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 427 helicopters. This proposal would require modifying each auxiliary fin (fin) by relocating the upper tuning weights to a lower position. This proposal is prompted by several incidents of main rotor blades contacting the top of the fin. The upper tuning weights are located such that a main rotor contact with the fin may result in an upper tuning weight (weight) becoming loose. The actions specified by this proposed AD are intended to prevent loss of a weight, impact with a tail or main rotor blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before January 28, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–43–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.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–43–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–43–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 427 helicopters. Transport Canada advises of several ground incidents of main rotor blades contacting the top portion of a fin. Such incidents occurred on helicopters with an internal gross weight capability of 6,350 lbs. and the larger auxiliary fin assemblies.

BHTC has issued Alert Service Bulletin 427–01–1, dated April 19, 2001 (ASB), which specifies relocating the weights on the fins to a lower position.

Transport Canada classified this ASB as mandatory and issued AD No. CF–2001–25R1, dated August 22, 2001, as an interim measure to ensure the continued airworthiness of these helicopters in Canada. The contact between the main rotor blades and the top portion of a fin will be addressed by separate AD action.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

We have identified an unsafe condition that is likely to exist or develop on other BHTC Model 427 helicopters of the same type design registered in the United States. Therefore, the proposed AD would require modifying the fins, part number (P/N) 427–035–836–101 and 427–035–836–102, to relocate the weights, P/N 407–023–003–145. The actions would be required to be accomplished in accordance with the ASB described previously.

The FAA estimates that 22 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $134 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,228.

The regulations proposed herein would 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 proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Bell Helicopter Textron Canada: Docket No. 2001–SW–43–AD.

Applicability: Model 427 helicopters, serial numbers 56001, 56003, 56004, 56006 through 56024, with auxiliary fin assemblies, part number (P/N) 427–035–836–101 and –102, 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 (b) 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 within 60 days after the effective date of this AD, unless accomplished previously.

To prevent loss of an upper tuning weight (weight), P/N 407–023–003–145, impact with a tail or main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify the right and left auxiliary fins to relocate the weights in accordance with the Accomplishment Instructions, paragraphs 1 through 16, of Bell Helicopter Textron Canada Alert Service Bulletin 427–01–1, dated April 19, 2001.

(b) 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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2001–25R1, dated August 22, 2001.

Issued in Fort Worth, Texas, on November 20, 2001.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–29595 Filed 11–27–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–38–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN–2, BN–2A, BN–2B, and BN–2T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, and BN–2T series airplanes. This proposed AD would require you to repetitively inspect the inboard brackets of the elevator outboard hinge for loose rivets, structural damage, or cracks and replace any suspect bracket. The proposed AD would also require you to replace the hinge bracket at a certain time period if no discrepancies are found. This replacement includes modifying this area and installing modified brackets. This replacement allows you to increase the time period between inspections (reduce the number of repetitive inspections). This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are

intended to detect and correct inboard brackets of the elevator outboard hinge with loose rivets, structural damage, or cracks. Such conditions could cause the outboard elevator to become loose with a consequent reduction in elevator and airplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 3, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–38–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–38–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for United Kingdom, recently notified FAA that an unsafe condition may exist on BN–2, BN–2A, BN–2B, and BN–2T series airplanes. The United Kingdom CAA reports several instances where the inboard brackets of the elevator outboard hinge had loose rivets, structural damage, or cracks.

These inboard brackets of the elevator outboard hinge incorporate part number NB–31–0077.

What Are the Consequences if the Condition Is Not Corrected?

Loose rivets, structural damage, or cracks in the inboard brackets of the elevator outboard hinge, if not detected and corrected, could cause the outboard elevator to become loose with a consequent reduction in elevator and airplane control.

Is There Service Information That Applies to This Subject?

Pilatus Britten-Norman has issued BN Bulletin Number BN2/SB.259, Issue 1, dated July 1, 2000.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Part 1: Repetitively inspecting the inboard brackets of the elevator outboard hinge for loose rivets, structural damage, or cracks; and

—Part 2: Replacing the hinge bracket each time loose rivets, structural damage, or cracks are found during an inspection. This replacement includes modifying this area and installing modified brackets, part number NB–31–0901.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory and issued CAA AD Number 002–07–2000, not dated, in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the United Kingdom CAA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the United Kingdom CAA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on Pilatus Britten-Norman BN–2, BN–2A, BN–2B, and BN–2T series (all models as specified in the actual AD) airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes;

—The replacement/modification specified in the service bulletin should be incorporated to increase the time period between inspections (reduce the number of repetitive inspections); and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

The proposed AD would also require you to replace the hinge bracket at a certain time period if no discrepancies are found. This replacement includes modifying this area and installing modified brackets. This proposed AD would require you to repetitively inspect the inboard brackets of the elevator outboard hinge for loose rivets, structural damage, or cracks and replace any suspect bracket. The proposed AD would also require you to replace the hinge bracket at a certain time period if no discrepancies are found. This replacement includes modifying this area and installing modified brackets, part number NB–31–0901. This replacement allows you to increase the time period between inspections (reduce the number of repetitive inspections).

Are There Differences Between This Proposed AD, the Service Information, and the CAA AD?

This proposed AD would require you to replace/modify the hinge bracket at a certain time period if no discrepancies are found to increase the time period between inspections (reduce the number of repetitive inspections). BN Bulletin Number BN2/SB 259 and CAA AD Number 002–07–2000 do not specify this provision; they both specify this replacement/modification only if a suspect bracket is found during an inspection. This provision of incorporating the replacement/modification regardless of whether a suspect bracket is found is consistent with FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on our determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections.

The alternative to incorporating this replacement/modification would be to repetitively inspect this area every 100 hours time-in-service (TIS) for the life of the airplane instead of every 1,000 hours TIS.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 118 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S.operators
1 workhour at $60 per hour = $60	No parts necessary to accomplish the inspection	$60 per air plane.	$7,080

We estimate the following costs to accomplish the proposed replacement/modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S.operators
10 workhours at $60 per hour = $600	$240 per airplane	$840 per air-plane.	$99,120.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would 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 proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Britten-Norman Ltd.: Docket No. 2001–CE–38–AD

(a) *What airplanes are affected by this AD?* This AD affects Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, and BN–2T–4R airplanes, all constructor numbers, that are certificated in any category and do not have one of the following incorporated:

(1) BN Modification NB–M–1695. This modification is incorporated at production and includes different designs in the area of the inboard brackets of the elevator outboard hinge. This modification is not available as a field installation. The maintenance manual for these production airplanes specifies 1,000-hour time-in-service (TIS) interval repetitive inspections. Owners/operators of airplanes with this production modification should be accomplishing these inspections or an FAA-approved equivalent; or

(2) Reinforcing plates installed at manufacture. These plates were installed on Constructor Number C2298 of the Model BN–2B airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct inboard brackets of the elevator outboard hinge with loose rivets, structural damage, or cracks. Such conditions could cause the outboard elevator to become loose with a consequent reduction in elevator and airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For airplanes that do not have modified inboard brackets of the elevator outboard hinge installed (part number NB–31–0901 installed in accordance with Part 2 of the service bulletin), accomplish the following: (i) Repetitively inspect the inboard brackets of the elevator outboard hinge for loose rivets, structural damage, or cracks; (ii) Replace the inboard brackets of the elevator outboard hinge, which includes modifying this area and installing modified brackets, part number NB–31–0901; and (iii) Comply with paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.	Initially inspect within the next 100 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS until the replacement/modification required by paragraph (d)(1)(ii) of this AD is accomplished. Do the replacement initially within 1,000 hours TIS after the effective date of this AD or prior to further flight when any loose rivet, structural damage, or crack is found, whichever occurs first; and thereafter prior to further flight after any loose rivet, structural damage, or crack is found.	In accordance with BN Bulletin Number BN2/SB.259, Issue 1, dated July 1, 2000.
(2) For airplanes that have modified inboard brackets of the elevator outboard hinge installed (part number NB–31–0901 in accordance with Part 2 of the service bulletin), accomplish the following: (i) Repetitively inspect the inboard brackets of the elevator outboard hinge for loose rivet, structural damage, or cracks; and (ii) Replace the inboard brackets of the elevator outboard hinge, which includes modifying this area and installing modified brackets, part number NB–31–0901	Inspect within 1,000 hours TIS after incorporating the replacement/modification or within the 100 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,000 hours TIS. Accomplish the replacement/modification prior to further flight when any loose rivet, structural damage, or crack is found during any inspection required by this AD	In accordance with BN Bulletin Number BN2/SB.259, Issue 1, dated July 1, 2000.
(3) This AD does not apply to airplanes with one of the following incorporated: (i) BN Modification NB–M–1695. This modification is incorporated at production and includes different designs in the area of the inboard brackets of the elevator outboard hinge. This modification is not available as a field installation. The maintenance manual for these production airplanes specifies 1,000-hour TIS interval repetitive inspections. Owners/operators of airplanes with this production modification should be accomplishing these inspections or an FAA-approved equivalent; or (ii) Reinforcing plates installed at manufacture. These plates were installed on Constructor Number C2298 of the Model BN–2B airplanes	Not applicable	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, 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(e) 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in CAA AD Number 002–07–2000, not dated.

Issued in Kansas City, Missouri, on November 20, 2001.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–29596 Filed 11–27–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–233–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 727 series airplanes. This proposal would require a review of maintenance records or a one-time test to determine if elevator hinge support ribs on the trailing edge of the horizontal stabilizer are made from a certain material, and follow-on repetitive inspections for corrosion or cracking of the elevator hinge support ribs, if necessary. For airplanes with the affected ribs installed, this proposal would eventually require replacement of all affected ribs with new, improved ribs. This action is necessary to prevent cracking of the elevator hinge support ribs, which could lead to vibration of the airframe during flight and consequent damage to the elevator and horizontal stabilizer, potentially resulting in loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–233–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–233–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 the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2773; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–233–AD.'' The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–233–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports of cracking of elevator hinge support ribs on the trailing edge of the horizontal stabilizer on Boeing Model 727 series airplanes. Investigation revealed that the cracking is caused by stress corrosion. The affected elevator hinge support ribs are made from 7079–T6 material. Cracks on multiple ribs may continue to extend in length, until the stiffness of the elevator support is decreased. This condition, if not corrected, could result in vibration of the airframe during flight and consequent damage to the elevator and horizontal stabilizer, which could result in loss of controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 727–55A0091, dated August 16, 2001, which describes procedures for repetitive detailed visual inspections for corrosion or cracking of elevator hinge support ribs made from 7079–T6 material. The service bulletin specifies to contact Boeing for repair information.

Explanation of Applicability

The service bulletin divides affected airplanes into three groups. Group 1 airplanes were delivered with elevator hinge support ribs made from 7079–T6 material installed at all 14 elevator station locations. Group 2 airplanes were delivered with elevator hinge support ribs made from 7075–T73 material (a more stress corrosion-resistant material) installed at 12 elevator station locations, but with ribs made from 7079–T6 material installed at 2 elevator station locations. Group 3 airplanes were delivered with elevator hinge support ribs made from 7075–T73 material in all elevator station locations. However, airplanes in Groups 2 and 3 may have had ribs replaced after delivery with ribs made from 7079–T6 material. Thus we find that it is necessary for operators of all Boeing Model 727 series airplanes to perform an inspection to determine whether ribs made of 7079–T6 material are installed.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time review of maintenance records or a one-time electrical conductivity test of the elevator hinge support ribs, as applicable, to determine whether ribs made from 7079–T6 material are installed on the airplane. The proposed AD also would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below. Also, for airplanes with the affected ribs installed, the proposed AD would eventually require replacement of all 7079–T6 ribs with new, improved ribs.

Differences Between This Proposed AD and the Service Bulletin

This proposed AD differs from Boeing Alert Service Bulletin 727–55A0091 in the following ways:

- Though the effectivity summary in paragraph 1.A.1. of Boeing Service Bulletin 727–55A0091 identifies only Model 727–100 and –200 series airplanes as being subject to the service bulletin, we have determined that the proposed actions apply to all Model 727 series airplanes, including Model 727, 727–100C, 727–200F, and 727C series airplanes.
- The service bulletin does not specify a method for determining whether ribs made from 7079–T6 material are installed on the airplane. As described previously, the proposed AD would require a one-time review of maintenance records or a one-time electrical conductivity test of the elevator hinge support ribs, as applicable, to determine whether ribs made from 7079–T6 material are installed on the airplane. The electrical conductivity test, if accomplished, would be required to be accomplished according to Boeing Document D6–48875, Boeing 727 Non-Destructive Test Manual, Part 6, Section 51–00–00, Figure 20; and Boeing Process Specification BAC 5946, Table I, page 12.
- The service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions. However, this proposed AD would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.
- The service bulletin specifies that the next revision of the service bulletin will include compliance times and instructions for replacement of all ribs made from 7079–T6 material. However, this proposed AD would require accomplishment of the replacement of all ribs made from 7079–T6 material with new ribs within 48 months after the effective date of this AD, according to a method approved by the FAA. The decision to require such replacement is based upon our determination that, due to the criticality of the unsafe condition addressed in this proposed AD, it is not appropriate to wait until the airplane manufacturer revises its service bulletin to mandate the rib replacement. When the airplane manufacturer has prepared a revised service bulletin, and we have reviewed and approved it, we may consider further rulemaking to allow that service bulletin to be used as an acceptable method of compliance with this AD.

Cost Impact

There are approximately 1,383 airplanes of the affected design in the worldwide fleet. The FAA estimates that 915 airplanes of U.S. registry would be affected by this proposed AD.

The proposed AD offers two alternatives for compliance with the proposed requirement for an initial inspection to determine whether elevator hinge support ribs made from 7079–T6 material are installed. Estimates of the cost of these proposed actions are provided below.

It would take approximately 1 work hour per airplane to accomplish the proposed review of maintenance records, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed review is estimated to be $60 per airplane.

In lieu of the review of maintenance records (i.e., if the review of maintenance records is not sufficient to make a determination), the proposed inspection of the ribs to determine if they are made from 7079–T6 material would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to accomplish the repetitive detailed inspections, it would take approximately 13 work hours per airplane to accomplish this proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection would be $780 per airplane, per inspection cycle.

Should an operator be required to accomplish the replacement of the elevator hinge support ribs, it would take approximately 722 work hours per airplane to accomplish the proposed replacement of all ribs (on both the left- and right-hand sides of the airplane, excluding the time for gaining access and closing up), at an average labor rate of $60 per work hour. Required parts would cost approximately $70,000 per airplane. Based on these figures, the cost impact of the proposed replacement would be $113,320 per airplane.

Regulatory Impact

The regulations proposed herein would 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 proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Boeing: Docket 2001–NM–233–AD.

Applicability: All Model 727 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 (f) 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 cracking of the elevator hinge support ribs, which could lead to vibration of the airframe during flight and consequent damage to the elevators and horizontal stabilizer, potentially resulting in loss of controllability of the airplane, accomplish the following:

One-Time Inspection

(a) Within 180 days after the effective date of this AD, review the airplane's maintenance records to determine whether any elevator hinge support rib on the trailing edge of the horizontal stabilizer is made from 7079–T6 material; OR, if the material cannot be conclusively determined from the maintenance records, do a one-time electrical conductivity test of the elevator hinge support ribs to determine whether any are made from 7079–T6 material, according to Boeing Document D6–48875, Boeing 727 Non-Destructive Test Manual, Part 6, Section 51–00–00, Figure 20; and Boeing Process Specification BAC 5946, Table I, page 12.

(1) If no ribs are made from 7079–T6 material, no further action is required by this AD.

(2) If any ribs are made from 7079–T6 material, do paragraph (b) of this AD.

Follow-on Repetitive Inspections

(b) Within 180 days after the effective date of this AD, perform a detailed visual inspection for corrosion or cracking of all elevator hinge support ribs made from 7079–T6 material, according to Boeing Alert Service Bulletin 727–55A0091, including Appendix A, dated August 16, 2001. Thereafter, repeat this inspection every 180 days, until paragraph (d) of this AD has been done.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Repair

(c) If any corrosion or cracking is found during any inspection required by paragraph (b) of this AD: Before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Replacement

(d) For airplanes on which any ribs made from 7079–T6 material are found: Within 48 months after the effective date of this AD, replace all elevator hinge support ribs made from 7079–T6 material with new, improved ribs, according to a method approved by the Manager, Seattle ACO, or according to data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. Such replacement terminates the repetitive inspections required by paragraph (b) of this AD.

Spares

(e) After the effective date of this AD, no one may install an elevator hinge support rib made from 7079–T6 material on any airplane.

Alternative Methods of Compliance

(f) 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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

(g) 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.

Issued in Renton, Washington, on November 21, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–29597 Filed 11–27–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–203–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 727 series airplanes. This proposal would require repetitive inspections for cracking of the upper chord of the rear spar of the wing, and corrective action, if necessary. This action is necessary to find and fix such cracking, which could result in fuel

leaking through the cracks, reduced structural integrity of the wing, and separation of the wing from the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–203–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–203–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 the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–203–AD.'' The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–203–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that fatigue cracking has been found in the upper chord of the rear spar of the wing at approximately wing station (WS) 293 on several Boeing Model 727 series airplanes. In most cases, the cracking was discovered during inspections to determine the source of fuel leaks on the left wing of the airplane. All of the cracks were fully through the vertical flange of the chord, and several extended into the horizontal flange to the first row of fasteners that attach the skin of the wing to the chord. During routine visual inspections, this cracking would not be seen until it extends from under the flanges of the stiffener installed at WS 293. Cracking of the upper chord of the rear spar, if not corrected, could result in fuel leaking through the cracks, reduced structural integrity of the wing, and separation of the wing from the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–57–0184, dated August 16, 2001, which describes procedures for repetitive detailed visual and high frequency eddy current inspections for cracking of the upper chord of the rear spar at approximately WS 293. The detailed visual inspection also includes an inspection of the surface finish for damage or deterioration (discoloration, blistering, raised or rough areas), removal of the finish, if necessary, and blending of the area until smooth, if necessary. If any cracking is found, the service bulletin specifies to contact Boeing for repair instructions. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished according to a method approved by the FAA, or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the FAA to make such findings.

Operators also should note that, if any damage or deterioration, but no cracking, is found during the proposed inspection, the proposed AD would require removal of the finish, blending of the area until smooth, and reapplication of the finish. However, if the necessary blend-out is outside the limits specified in the Boeing 727 SRM, the proposed AD would require repair according to a method approved by the FAA or according to data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the FAA to make such findings.

Operators also should note that, although the effectivity summary in paragraph 1.A.1. of the referenced service bulletin identifies only Model 727–100 and –200 series airplanes as being subject to the actions specified in the service bulletin, we have determined that the proposed actions apply to all Model 727 series airplanes, including Model 727, 727–100C, 727–200F, and 727C series airplanes.

Cost Impact

There are approximately 1,375 airplanes of the affected design in the worldwide fleet. The FAA estimates that 912 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $656,640, or $720 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would 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 proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Boeing: Docket 2001–NM–203–AD.

Applicability: All Model 727 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 find and fix cracking of the upper chord of the rear spar of the wing, which could result in fuel leaking through the cracks, reduced structural integrity of the wing, and separation of the wing from the airplane, accomplish the following:

Repetitive Inspections

(a) Prior to the accumulation of 20,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever is later, do detailed visual and high frequency eddy current inspections for cracking of the upper chord of the rear spar of the wing, according to Boeing Service Bulletin 727–57–0184, dated August 16, 2001. The detailed visual inspection must include an inspection of the surface finish for damage or deterioration (discoloration, blistering, raised or rough areas), as described in the service bulletin. Repeat all inspections every 4,500 flight cycles.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Repairs

(b) If any cracking, damage, or deterioration is found during any inspection required by paragraph (a) of this AD: Before further flight, do paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) If any damage or deterioration but no cracking is found, remove the finish, blend the area smooth, and reapply the finish according to Boeing Service Bulletin 727–57–0184, dated August 16, 2001.

(i) If the blend-out is within the limits specified in Section 57–10–1 of the Boeing 727 Structural Repair Manual (SRM), no further action is required by this paragraph.

(ii) If the blend-out is outside the limits specified in Section 57–10–1 of the Boeing 727 SRM, before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(2) If any cracking is found, repair according to a method approved by the Manager, Seattle ACO, or according to data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference 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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Issued in Renton, Washington, on November 21, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–29598 Filed 11–27–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–35–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes, that currently requires repetitive inspections to detect cracking of the coveskin on the outboard leading edge slats, and corrective actions, if necessary. The existing AD also provides for an optional modification that significantly increases the repetitive inspection interval. This action would expand the applicability of this AD by mandating the currently required inspections, and corrective actions, if necessary, for additional airplanes. Also, for airplanes on which the optional modification has been accomplished, this action would require a new one-time inspection for undersized seal inserts in the spanwise bulb seals on certain slats, and replacement of seal assemblies with new assemblies, if necessary. These actions are necessary to detect and correct cracking or missing pieces of the coveskin, or undersized seal inserts installed in the spanwise bulb seals, on the outboard leading edge slats on the wings, which could result in skin separation or structural damage to the leading edge slats and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–35–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–35–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 the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–35–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–35–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 14, 2000, the FAA issued AD 2000–19–08, amendment 39–11909 (65 FR 57282, September 22, 2000), applicable to certain Boeing Model 777 series airplanes, to require repetitive detailed visual inspections to detect cracking of the coveskin on the outboard leading edge slats, and corrective actions, if necessary. That AD also provides for an optional modification that significantly increases the repetitive inspection interval. That action was prompted by findings of increased vibration of the coveskins due to air leaking and resonating within the cavity between the fixed leading edge and the coveskin; the vibration can result in fatigue cracking and high fatigue loads. The requirements of that AD are intended to detect and correct cracking and/or missing pieces of the coveskin on the outboard leading edge slats on the wings, which could result in skin separation or structural damage to the leading edge slats and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

In the preamble to AD 2000–19–08, the FAA indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered to revise the applicability of that AD to include additional airplanes. We now have determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination. Specifically, we have determined that the modification installed during production on Model 777 series airplanes with line number 266 and subsequent does not prevent the cracking of the coveskin on the outboard leading edge slats; it only improves the fatigue life of those parts. Therefore, we find it necessary to mandate that the inspections required by the existing AD be accomplished on all Boeing Model 777 series airplanes, including those manufactured in the future.

Also, since the issuance of AD 2000–19–08, we have received reports that certain kits supplied by the airplane manufacturer for the optional

modification described in that AD contained undersized seal inserts for slat numbers 4, 5, 10, and 11. The undersized seal inserts were made from raw material of an incorrect diameter. These undersized seal inserts would result in the slat being exposed to the same vibration of the coveskins, and the same consequent fatigue cracking and high fatigue loads, of an unmodified airplane. This condition, if not corrected, could result in skin separation or structural damage to the leading edge slats and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–57A0034, Revision 5, dated January 25, 2001. (AD 2000–19–08 refers to Boeing Alert Service Bulletin 777–57A0034, Revision 2, dated November 19, 1998; Revision 3, dated May 4, 2000; and Revision 4, dated July 20, 2000; as appropriate sources of service information for required actions.) The procedures in Revision 5 of the service bulletin are similar to those in prior issues of the service bulletin. However, the service bulletin differs from the prior issues in these ways:

- The effectivity listing of Revision 5 includes airplanes with line numbers 266 and subsequent. These airplanes are identified as ''Group 3'' airplanes in the service bulletin. As explained previously, these airplanes are subject to the same repetitive inspections as other Model 777 series airplanes.
- For airplanes on which the optional modification has been accomplished in accordance with Revision 3 or 4 of the service bulletin, Part 5 of Revision 5 of the service bulletin describes procedures for a new one-time inspection for undersized seal inserts installed in the spanwise bulb seals on slat numbers 4, 5, 10, and 11. If undersized seal inserts are installed, Revision 5 specifies replacement of seal assemblies with new seal assemblies.
- Related to the new inspection in Part 5 of the service bulletin, the procedures for the optional modification in Part 4 of the service bulletin have been revised to include an inspection of the seal inserts to determine if they are the correct size.

Explanation of Changes to Requirements of AD 2000–19–08

The applicability statement of AD 2000–19–08 identifies airplanes with line numbers 1 through 265 inclusive. However, Revision 5 of the service bulletin lists the airplane with line number 1 as a Group 3 airplane because that airplane was modified during production like the other airplanes in Group 3. Therefore, line number 1 is not affected by the requirements of paragraph (a) of this proposed AD.

Also, paragraph (b) of AD 2000–19–08 states, ''The corrective actions include stop drilling the crack and performing detailed visual inspections, slat adjustment checks, and replacement of the slats.'' A reference to repairing the crack was omitted from this description. Therefore, for clarification, the description of corrective actions in paragraph (b) of this AD has been revised to read, ''The corrective actions include stop drilling and repairing the crack * * *.''

Paragraph (b) of AD 2000–19–08 stated an incorrect issue date (April 4, 2000) for Boeing Alert Service Bulletin 777–57A0034, Revision 3, dated May 4, 2000. In the ''Restatement of Requirements of AD 2000–19–08'' included in this proposed AD, paragraph (b) has been revised to refer to the correct date.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–19–08 to continue to require repetitive detailed visual inspections to detect cracking of the coveskin on the outboard leading edge slats, and corrective actions, if necessary. The proposed AD also continues to provide for an optional modification that significantly increases the repetitive inspection interval. The proposed AD would expand the applicability of the existing AD by mandating the currently required inspections, and corrective actions, if necessary, for additional airplanes. Also, for airplanes on which the optional modification has been accomplished, the proposed AD would require a new one-time inspection for undersized seal inserts installed in the spanwise bulb seals on certain slats, and replacement of seal assemblies with new assemblies, if necessary. The actions would be required to be accomplished in accordance with Revision 5 of the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, while the service bulletin refers only to an ''inspection'' for undersized seal inserts, this proposed AD would require a ''detailed visual inspection.'' The FAA has determined that the procedures in the service bulletin should be described as a detailed visual inspection. Note 2 of this proposed AD defines this type of inspection.

The service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions. However, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 184 airplanes of the affected design in the worldwide fleet.

The detailed visual inspection for cracking specified in this proposed rule is currently required by AD 2000–19–08, which is applicable to approximately 81 airplanes of U.S. registry. Those inspections take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on the figures discussed above, the cost impact of the current requirements of that AD on U.S. operators is estimated to be $34,020, or $420 per airplane, per inspection cycle.

This proposed action would require accomplishment of the detailed visual inspection for cracking on approximately 33 additional airplanes of U.S. registry. Based on the figures discussed above, the new costs to U.S. operators that would be imposed by this AD are estimated to be $13,860.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to accomplish the proposed new one-time inspection for undersized seal inserts, it would take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this new inspection is estimated to be $120 per airplane.

Regulatory Impact

The regulations proposed herein would 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 proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 39–11909 (65 FR 57282, September 22, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–35–AD. Supersedes AD 2000–19–08, Amendment 39–11909.

Applicability: All Model 777 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 (h)(1) 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 detect and correct cracking or missing pieces of the coveskin, or undersized seal inserts installed in the spanwise bulb seals, on the outboard leading edge slats on the wings, which could result in skin separation or structural damage to the leading edge slats and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 2000–19–08

Inspection

(a) For airplanes having line numbers 2 through 265 inclusive: At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD, perform detailed visual inspections to detect cracking of the coveskin on the outboard leading edge slats of the left and right wings at slat numbers 1 through 6 inclusive, and 9 through 14 inclusive; in accordance with Boeing Alert Service Bulletin 777–57A0034, Revision 2, dated November 19, 1998; Revision 3, dated May 4, 2000; Revision 4, dated July 20, 2000, or Revision 5, dated January 25, 2001. Repeat the inspections thereafter at intervals not to exceed 100 flight cycles or 400 flight hours, whichever occurs first.

(1) For airplanes on which the repetitive inspections required by paragraph (a) of AD 99–04–19 HAVE been initiated prior to October 10, 2000 (the effective date of AD 2000–19–08, amendment 39–11909): Inspect at the earlier of the times specified by paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Within 350 flight cycles after the most recent inspection.

(ii) At the later of the times specified by paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this AD.

(A) Within 100 flight cycles or 400 flight hours, whichever occurs first, after the most recent inspection.

(B) Within 30 days after October 10, 2000.

(2) For airplanes on which the repetitive inspections required by paragraph (a) of AD 99–04–19 have NOT been initiated prior to October 10, 2000: Inspect at the earlier of the times specified by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 500 total flight cycles.

(ii) Prior to the accumulation of 2,000 total flight hours, or within 30 days after October 10, 2000, whichever occurs later.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Corrective Action

(b) If any cracking is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish all applicable corrective actions specified by and in accordance with Boeing Alert Service Bulletin 777–57A0034, Revision 2, dated November 19, 1998; Revision 3, dated May 4, 2000; Revision 4, dated July 20, 2000; or Revision 5, dated January 25, 2001. The corrective actions include stop drilling and repairing the crack and performing detailed visual inspections, slat adjustment checks, and replacement of the slats. Where the alert service bulletin specifies to contact Boeing for appropriate Action Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. After October 10, 2000, only Revision 4 or 5 of the alert service bulletin may be used.

Optional Modification

(c) Accomplishment of the actions specified by paragraphs (c)(1) and (c)(2) of this AD extends the repetitive inspection interval specified by paragraph (a) of this AD to 8,000 flight cycles.

(1) Install a seal insert into the spanwise bulb seals for the slats in accordance with Part 4 of Boeing Alert Service Bulletin 777–57A0034, Revision 3, dated May 4, 2000; Revision 4, dated July 20, 2000; or Revision 5, dated January 25, 2001.

(2) Within 750 days or 4,000 flight cycles, whichever occurs first, after installing the seal insert as specified by paragraph (c)(1) of this AD: Perform a detailed visual inspection of the interior structure of the coveskin at slat numbers 1 through 6 inclusive, and 9 through 14 inclusive, in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

New Requirements of This AD

Repetitive Inspections (Certain Airplanes)

(d) For airplanes having line numbers 1 and 266 and subsequent: Prior to the accumulation of 8,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracking of the coveskin on the outboard leading edge slats of the left and right wings at slat numbers 1 through 6 inclusive, and 9 through 14 inclusive; in accordance with Boeing Alert Service Bulletin 777–57A0034, Revision 5, dated January 25, 2001. Repeat the inspection thereafter at intervals not to exceed 8,000 flight cycles.

Corrective Action

(e) If any cracking is detected during any inspection required by paragraph (d) of this AD, prior to further flight, accomplish all applicable corrective actions specified by and in accordance with Boeing Alert Service Bulletin 777–57A0034, Revision 5, dated January 25, 2001. The corrective actions include stop drilling and repairing the crack and performing detailed visual inspections, slat adjustment checks, and replacement of the slats. Where the alert service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in

accordance with a method approved by the Manager, Seattle ACO. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

One-Time Inspection—Undersized Seal Inserts

(f) For airplanes on which the optional modification described in paragraph (c) of this AD was accomplished prior to the effective date of this AD in accordance with Part 4 of Boeing Alert Service Bulletin 777–57A0034, Revision 3, dated May 4, 2000; or Revision 4, dated July 20, 2000: Within 500 flight cycles after the effective date of this AD, do a one-time detailed visual inspection for undersized seal inserts installed in the spanwise bulb seals of slat numbers 4, 5, 10, and 11, in accordance with Part 5 of Boeing Alert Service Bulletin 777–57A0034, Revision 5, dated January 25, 2001.

Note 3: An inspection accomplished prior to the effective date of this AD in accordance with Boeing Telegraphic Message M–7200–00–02516, ''Incorrect Insert Part Numbers in SB 777–57A0034,'' dated October 13, 2000, is considered acceptable for compliance with paragraph (f) of this AD.

(1) For any seal insert of the correct size as specified in Revision 5 of the service bulletin: No further action is required by this paragraph.

(2) For any undersized seal insert as specified in Revision 5 of the service bulletin, or for any seal insert that cannot be conclusively determined to be of correct size: Prior to further flight, replace the existing seal assembly with a new seal assembly, in accordance with Revision 5 of the service bulletin.

Spares

(g) As of the effective date of this AD, no one may install a seal insert into the spanwise bulb seals of slat numbers 4, 5, 10, and 11, unless it is inspected in accordance with Part 4 of Boeing Alert Service Bulletin 777–57A0034, Revision 5, dated January 25, 2001, and found to be of correct size.

Alternative Methods of Compliance

(h)(1) 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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–04–19, amendment 39–11044, are approved as alternative methods of compliance with paragraph (b) of this AD.

(3) Alternative methods of compliance, approved previously in accordance with AD 2000–19–08, amendment 39–11909, are approved as alternative methods of compliance with corresponding requirements of this AD.

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

Special Flight Permits

(i) 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.

Issued in Renton, Washington, on November 21, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–29600 Filed 11–27–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Series Airplanes and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. This proposal would require modifying the engine start circuit. This action is necessary to prevent overheating of the soft start resistor of the engine start circuit, which could result in smoke and fumes in the cabin and consequent injury to passengers and crew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 28, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–186–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-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–186–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 the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to

Docket 2001–NM–186–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–186–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain BAe Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. The CAA advises that existing crew and maintenance procedures are inadequate because they have repeatedly failed to protect the soft start resistor of the engine start circuit from overheating in the event of component failures. In the worst cases, smoke and fumes have entered the cabin. This condition, if not corrected, could result in injury to passengers and crew.

Explanation of Relevant Service Information

BAE Systems has issued the modification service bulletins listed in the following table:

Model/series	Modification service bulletin	Revision	Date
BAe 146 and Avro 146–RJ	SB.80–18–50293A	Original	January 18, 2001
BAe 146 and Avro 146–RJ	SB.80–018–50293A	1	July 4, 2001
BAe 146 series 100	SB.80–019–50293B	Original	July 6, 2001
BAe 146 series 200	SB.80–020–50293C	Original	July 6, 2001

The service bulletins describe procedures for modifying the engine start circuit. The modification includes modifying the electrical busbar; installing new relays and a relay mounting assembly, terminal junction module, and change-over contactor; and installing and rerouting certain wire assemblies. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The CAA classified these service bulletins as mandatory and issued British airworthiness directive 003–01–2001 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed 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, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 65 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 18 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost for required parts would be approximately $7,300. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $544,700, or $8,380 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would 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 proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2001–NM–186–AD.

Applicability: Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category, that have been modified in accordance with BAE Systems Modification HCM00810A, HCM60031A, or HCM60033L.

Note 1: This AD applies to each airplane 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 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 (b) 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 overheating of the soft start resistor of the engine start circuit, which could result in smoke and fumes in the cabin and consequent injury to passengers and crew, accomplish the following:

Modification

(a) Within 2 years after the effective date of this AD, modify the engine start circuit (including modifying the electrical busbar; installing new relays and relay mounting assembly, terminal junction module, and change-over contactor; and installing and rerouting certain wire assemblies) as specified by paragraph (a)(1), (a)(2), or (a)(3), as applicable, of this AD.

(1) For Model BAe 146 and Avro 146–RJ series airplanes on which BAE Systems Modification HCM00810A has been incorporated: Do the modification in accordance with BAE Systems (Operations) Limited Modification Service Bulletin SB.80–18–50293A, dated January 18, 2001; or SB.80–018–50293A, Revision 1, dated July 4, 2001.

(2) For Model BAe 146 series 100 series airplanes on which BAE Systems Modification HCM60031A has been incorporated: Do the modification in accordance with BAE Systems (Operations) Limited Modification Service Bulletin SB.80–019–50293B, dated July 6, 2001.

(3) For Model BAe 146 series 200 airplanes on which BAE Systems Modification HCM60033L has been incorporated: Do the modification in accordance with BAE Systems (Operations) Limited Modification Service Bulletin SB.80–020–50293C, dated July 6, 2001.

Alternative Methods of Compliance

(b) 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, Transport Airplane Directorate, FAA. 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

(c) 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.

Note 3: The subject of this AD is addressed in British airworthiness directive 003–01–2001.

Issued in Renton, Washington, on November 21, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–29599 Filed 11–27–01; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 3, 51, 60, 63, 70, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745 and 763

[FRL–7109–1]

RIN 2025–AA07

Extension of Comment Period for the Proposed Establishment of Electronic Reporting; Electronic Records Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period and supplemental notice.

SUMMARY: The Environmental Protection Agency (EPA) is extending by 60 days the comment period on its proposed rule for establishment of electronic reporting and electronic records. On August 31, 2001, EPA proposed conditions under which EPA would allow submission of electronic documents and maintenance of electronic records to satisfy federal environmental reporting and recordkeeping requirements in EPA's regulations. The comment period is being extended by 60 days to provide the public with additional time to evaluate and comment upon the complex provisions of this proposed rule. As extended by this notice, the comment period will now close on January 28, 2002.

DATES: In order to be considered, written comments on the proposed electronic reporting and electronic records rule must be submitted on or before January 28, 2002. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) January 28, 2002.

ADDRESSES: Comments should be addressed to the United States Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, (Mail Code 2201A), Attn: Docket Number EC–2000–007, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Commenters are also requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand by January 28, 2002. No facsimiles (faxes) will be accepted. Public comments and supporting materials are available for viewing in the Enforcement and Compliance Docket and Information Center, located at 1200 Pennsylvania Avenue, NW, (Ariel Rios Building), 2nd Floor, Room 2213, Washington, DC 20460. The documents are available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 564–2614 or (202) 564–2119. The public may copy a maximum of 266 pages from any regulatory document at no cost. Additional copies cost $0.15 per page. The rule and some supporting materials are also available electronically on the Internet for public review, using a www browser type, at *http://www.epa.gov/.*

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: *docket.oeca@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. Comments in electronic format should also be identified by the docket number EC–2000–007. 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.

FOR FURTHER INFORMATION CONTACT: David Schwarz (2823), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 260–2710, schwarz.david@epa.gov, or Evi Huffer (2823), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 260–8791, huffer.evi@epa.gov.

SUPPLEMENTARY INFORMATION: On August 31, 2001 (66 FR 46162), EPA proposed a rule that would set forth the conditions under which EPA would prospectively allow submission of electronic documents and maintenance

of electronic records to satisfy federal environmental reporting and record-keeping requirements in EPA's regulations. As noted in the proposal (66 FR 46163), the rule would affect a broad spectrum of EPA programs (not merely those where specific amendments to the Code of Federal Regulations would be made). While the rule is voluntary because it does not require electronic reporting or record-keeping, for most programs regulated entities that currently maintain electronic records and who wish to continue to do so after the rule takes effect would be required to meet the record-keeping criteria in subpart D. As currently defined in the proposal, the term electronic record is broad in scope. Given the breadth and complexity of the rule, several commenters have requested additional time to evaluate and comment upon the proposed rule. EPA greatly values the input provided by the regulated community as well as the input from States that administer EPA programs. Accordingly, the comment period is being extended by 60 days to provide additional time to evaluate and comment upon the proposed rule. EPA particularly seeks comment on whether or not the record-keeping provisions in subpart D of the proposed rule should be withdrawn and addressed in a separate rulemaking. EPA also seeks comment on revisions to the record-keeping criteria or other provisions of the proposed rule that would make it easier for those in the regulated community who already maintain electronic records to continue to do so after the rule takes effect.

The comment period announced in the proposed rule notice was scheduled to end on November 29, 2001. Today's notice extends the comment period on the proposed electronic reporting and record-keeping rule by an additional 60 days. EPA encourages the interested public to submit their comments as soon as possible, although all comments received in accordance with this notice will be considered.

During the extended comment period, the Agency will conduct additional stakeholder outreach that will likely include additional public meetings. Meeting dates and locations will be announced through **Federal Register** notices in the upcoming weeks, as well as on EPA's web site at *www.epa.gov/cdx.*

Margaret N. Schneider,

Acting Assistant Administrator, Office of Environmental Information.

[FR Doc. 01–29551 Filed 11–27–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7108–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Compass Industries Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a notice of intent to delete the Compass Industries Landfill Superfund Site (Site), located in the Chandler Park area west of Tulsa, Tulsa County, Oklahoma, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Oklahoma, through the Oklahoma Department of Environmental Quality (ODEQ), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this intent to delete does not preclude future actions under Superfund.

In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Compass Industries Landfill Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by December 28, 2001.

ADDRESSES: Written comments should be addressed to: Beverly Negri, Community Involvement Coordinator, U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8157 or 1–800–533–3508 (*negri.beverly@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Katrina Coltrain, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8143 or 1–800–533–3508 (*coltrain.katrina@epa.gov*).

SUPPLEMENTARY INFORMATION: For additional information, see the Direct final notice of deletion which is located in the Rules section of this **Federal Register**.

Information Repositories

Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Suite 12D13, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 a.m. to 4:30 p.m.; Tulsa City-County Library, 400 Civic Center, Tulsa, Oklahoma, 74103, (918) 596–7977, Monday through Friday 9 a.m. to 9 p.m.; Friday and Saturday 9 a.m. to 5 p.m.; Sunday, September through mid-May 1 p.m. to 5 p.m.; Oklahoma Department of Environmental Quality, Contact: Eileen Hroch, 5th floor file room, 707 N. Robinson, P.O. Box 1677, Oklahoma City, Oklahoma, 73101, (405) 702–5100, Monday through Friday 8:30 a.m. to 3:30 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: November 8, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 01–29470 Filed 11–27–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 011120279–1279–01; I.D. 092401E]

RIN 0648–AP68

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is issuing a proposal to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to provide further protection for large whales, with an emphasis on North Atlantic right whales, through a program called Seasonal Area Management (SAM). This action is necessary due to the critical status of the North Atlantic right whale population. The intent of this action is to reduce interactions between North Atlantic right whales and fishing gear and to reduce serious injury and mortality of North Atlantic right whales due to entanglement in fishing gear.

DATES: Comments on this proposed rule must be postmarked or transmitted via facsimile by 5 p.m. Eastern Standard Time, on December 13, 2001. Comments transmitted via e-mail will not be accepted.

ADDRESSES: Send comments on this proposed rule to the Chief, Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930-2298. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries and progress reports on implementation of the ALWTRP may be obtained by writing to Gregg LaMontagne, NMFS/ Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Gregg LaMontagne, NMFS, Northeast Region, 978–281–9291 or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this proposed rule and the take reduction planning process can be downloaded from the ALWTRP web site at http://www.nero.nmfs.gov/whaletrp/. Copies of the most recent marine mammal Stock Assessment Reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at http://www.nmfs.noaa.gov/prot—res/mammals/sa—rep/sar.html. Information on disentanglement events is available on the web page of NMFS' whale disentanglement contractor, the Center for Coastal Studies, http://www.coastalstudies.org/.

Background

On June 14, 2001, NMFS issued four Biological Opinions (BOs) as the result of section 7 consultations on three Fishery Management Plans (FMPs) for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. The BOs concluded that the regulations implementing the three FMPs and lobster regulations are likely to jeopardize the continued existence of North Atlantic right whales. As a result of these jeopardy findings, the BOs provided a Reasonable and Prudent Alternative (RPA) with multiple management components.

The RPA

The BOs provide that the RPA will minimize interactions or overlap between North Atlantic right whales and fishing gear, with the goals of both reducing the total number of entanglements and eliminating serious injury or mortalities of North Atlantic right whales. The RPA identifies the fisheries effects that serve as the basis for the jeopardy determination as ''serious injury or mortality that may result from documented entanglements.'' Jeopardy is defined as engaging in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers or distribution of that species. An entanglement would not reasonably be expected to always result in a reduction in reproduction, numbers or distribution of North Atlantic right whales. However, entanglements that result in a serious injury or mortality of a North Atlantic right whale would result in a reduction in numbers of North Atlantic right whales and therefore would result in jeopardy. The gear modifications proposed for SAM areas address both the goal of reducing the total number of entanglements (through significant reductions in vertical line) and the goal of avoiding serious injury or mortality (through the incorporation of weak links in greater frequency and at reduced breaking strengths).

RPA Discussion of SAM

SAM is one component of the RPA contained in the BOs. The RPA provides that ''NMFS shall...effect annual restrictions to minimize interactions between fishing gear and North Atlantic right whales.'' Area restrictions that could be included in the management scheme as specified in the RPA include closing areas to fishing gear or restricting the areas to only modified gear that has been proven to prevent serious injury or mortality to North Atlantic right whales. It is important to note that the RPA did not require that NMFS must eliminate interactions between fishing gear and North Atlantic right whales through these annual restrictions but that NMFS must minimize the interaction. In addition, the RPA presented two management schemes for SAM-- closures or restrictions. The BOs provide that the Conservation Significance of the SAM component of the RPA is ''reducing the potential for interactions between North Atlantic right whales and fishing gear.'' The proposed gear restrictions for SAM reduce the potential for interactions to occur and also reduce the potential for interactions between North Atlantic right whales and fishing gear to result in serious injury or mortality. The RPA requires this management component to be implemented by a final rule no later than December 31, 2001. NMFS considered the two alternatives of closures or gear restrictions, and for the reasons articulated in this notice, identified gear restrictions as the proposed action. Comments on this proposed action will be considered in determining the course of action to be pursued in the final rule.

Background for this proposed rule is provided in an Advance Notice of Proposed Rulemaking (ANPR) (66 FR 50390, October 3, 2001), which described the SAM program in general terms and requested public comment. Fourteen sets of written comments on the ANPR were received during the comment period date established by the ANPR, which ended November 2, 2001. NMFS received written comment from fishermen, conservationists, and state managers.

Comments received from conservation groups generally supported the SAM concept and favored a proposed rule that would implement North Atlantic right whale protection consistent with the RPAs of the BOs. The conservation groups supported SAM areas where

predictable seasonal congregations occur, including Jeffrey's Ledge and portions of the Gulf of Maine and Georges Bank. Furthermore, conservation groups supported a prohibition on fixed gear unless the gear has been determined to be ''whale safe'' or low risk, as defined by the ALWTRT. Several conservation groups defined ''whale safe'' gear as gear with no chance of entanglement and low risk gear as gear for which it could be expected that any entanglements would be minor and chances of death or serious injury to whales would be highly unlikely.

NMFS is engaging in proposed and final rulemaking, which the commenters favored, as evidenced by this proposed rule. The SAM area proposed in this document extends from Cape Cod to the Hague Line and includes the northern edge of Georges Bank. Animals were not sighted on Jeffreys Ledge or other portions of the Gulf of Maine in all three years of survey data which was analyzed for the SAM area designation. Therefore, these areas were not included in the SAM areas and NMFS intends to manage these areas using another proposed management measure called Dynamic Area Management (DAM). In line with comments from conservation groups, this proposed rule would establish a SAM area and allow lobster trap and gillnet gear to be fished if that gear is low risk as defined at the June 2001 ALWTRT meeting, i.e., gear for which an entanglement would be highly unlikely to result in death or serious injury.

Several state agencies also commented in support of the SAM concept. In particular, the Commonwealth of Massachusetts and State of Maine both support SAM, but strongly recommended that NMFS consider gear modifications consistent with the recent settlement agreement between Massachusetts and environmental groups that sued the Commonwealth over its measures to protect North Atlantic right whales. Other comments received from fishermen and fishermen associations also supported gear modifications for SAM areas.

In response to comments from state fisheries agencies and fishermen, NMFS notes that this proposed rule identifies gear modifications that would allow lobster trap and gillnet gear to be fished in the SAM area while also protecting North Atlantic right whales from serious injury and mortality.

All comments received through November 2, 2001, will be considered in the final decision of this action and will be addressed in the SAM final rule.

Proposed SAM Program

NMFS proposes a SAM program to protect predictable annual congregations of North Atlantic right whales in the waters off Cape Cod and out to the Exclusive Economic Zone line (see figure 1). NMFS would define two areas, called SAM West and SAM East, in which gear restrictions for lobster trap and anchored gillnet gear would be required. These proposed requirements would be more stringent than, and in addition to, the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Northern Inshore Lobster Waters and Other Northeast Waters (gillnet area description). The time/area restrictions are based on the annual predictable presence of North Atlantic right whales as observed in aerial surveys from 1999-2001 (Merrick, et al. 2001). SAM West is proposed on an annual basis for the period March 1 - April 30. SAM East is proposed on an annual basis for the period May 1 - July 31. The dividing line between SAM West and SAM East is proposed at the 69° 24' west longitude line. See table 1 for the spatial and temporal definitions of the areas.

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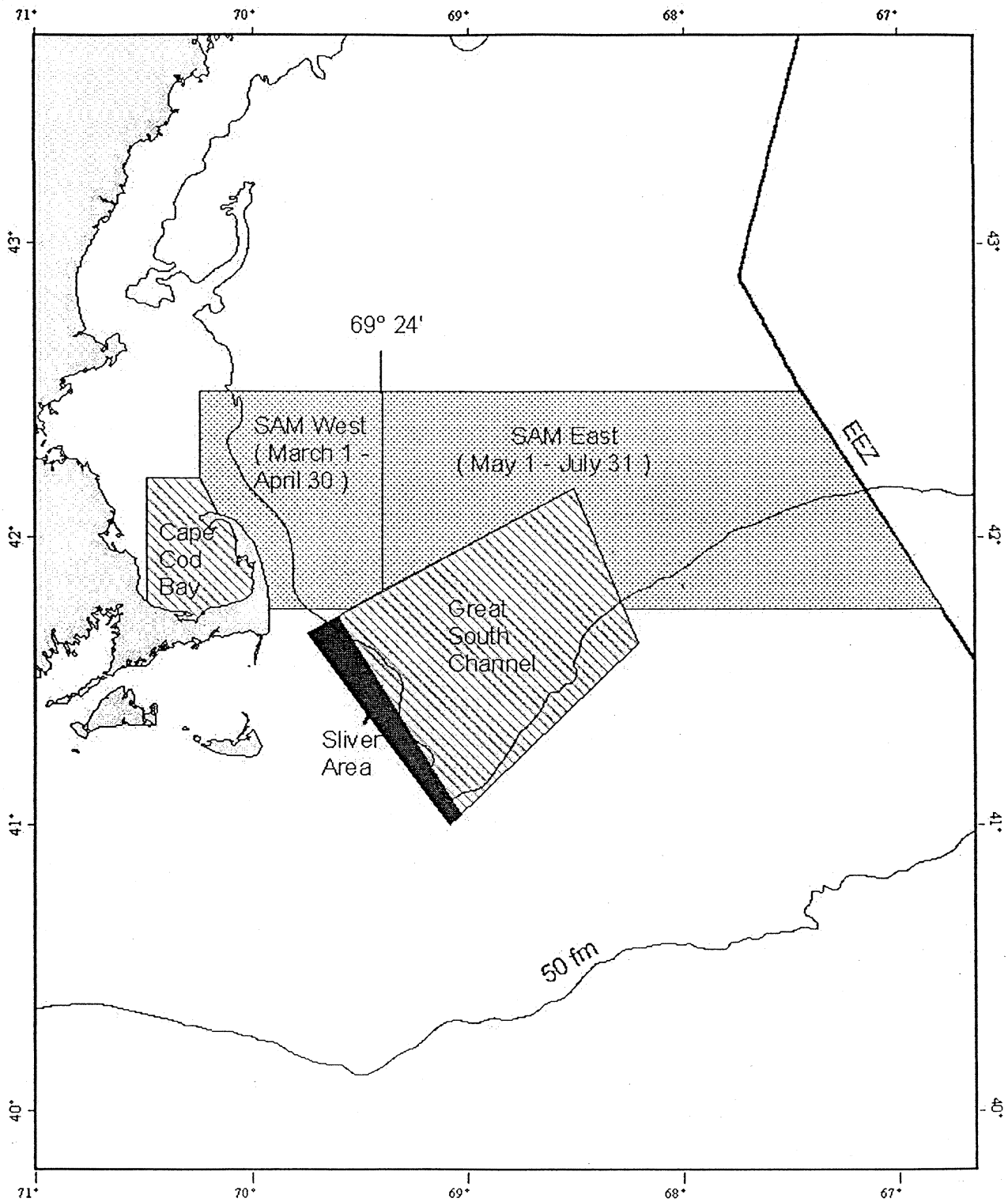
Figure 1 - Atlantic Large Whale Take Reduction Plan Seasonal Area Management (SAM)



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Interaction with other Restrictions

The proposed gear restrictions for the SAM areas would not preempt existing restrictions within Cape Cod Bay and the Great South Channel critical habitat for North Atlantic right whales. In addition, NMFS published a proposed rule that would provide clear authority to implement Dynamic Area Management (DAM) (66 FR 50160, October 2, 2001) which the BOs provide will be implemented as a final rule no later than December 31, 2001. DAM is designed to respond to unexpected aggregations of North Atlantic right whales outside of critical habitat and other regulated waters, such as the proposed SAM areas. The DAM program proposed would include short-term closure to lobster trap and gillnet fisheries. Because SAM areas would protect areas of known North Atlantic right whale aggregations, NMFS does not anticipate that DAM areas will be established within SAM areas. However, the DAM program, as proposed, allows NMFS to implement DAM within SAM areas if conditions warrant such action. NMFS anticipates that the DAM program could be necessary during the times and in the areas when SAM is not in effect. NMFS will consider comments received on the proposed rule on DAM as well as this proposed rule to further refine the relationship between DAM and SAM.

SAM Gear Restrictions

The proposed SAM rule would implement a management scheme that restricts fishing with lobster trap and gillnet gear within the SAM areas to only modified gear that has been proven to prevent serious injury or mortality to North Atlantic right whales. This is achieved through the following means: (1) Identifying and delineating areas of seasonal concentrations of North Atlantic right whales; (2) reducing the amount of lobster trap and gillnet gear in the water column; and (3) requiring gear modifications that minimize the potential for serious injury or mortality of North Atlantic right whales in SAM areas.

NMFS is proposing to implement the approach identified in the RPA of restricting areas to modified gear that has been proven to prevent serious injury or mortality to North Atlantic right whales (rather than closing these areas to fishing gear). The first question that must be answered is what is meant by ''proven.'' It is not feasible, in the typical scientific fashion, to conduct and evaluate experiments on North Atlantic right whale interactions with modified gear. NMFS cannot conduct laboratory or field trials on North Atlantic right whales to collect data. NMFS is able, however, to scrutinize past entanglements and learn from them ways to modify gear so that future serious entanglements do not occur. Since the issuance of the BOs, NMFS has conducted additional analysis of available data including that on the seasonal movement and congregations of right whales, previous entanglements, and the nature and position of gear in the water. Based on these analyses and our knowledge of North Atlantic right whale behavior, NMFS has identified gear modifications that are proven to prevent serious injury or mortality.

The first category of data that has been evaluated is past records of North Atlantic right whale entanglements that resulted in serious injury or mortalities to identify fishing gear that has been proven to result in serious injury or mortality. Utilizing entanglement data from 1999-2001, NMFS concluded that fishing line in the water column presents the highest entanglement risk from fishing gear to the North Atlantic right whale. NMFS examined these cases to determine the cause of the entanglement that resulted in serious injury or mortality and identified gear modifications that would prevent such injuries or mortalities in the future. These cases involved buoyline, floatline, endline and groundline. The proposed gear modifications include provisions to address each of these gear components that have been determined to be sources of entanglement.

Floating line has been identified as the source of North Atlantic right whale entanglement because the line is designed to float in the water column to avoid contact with the bottom of the ocean during lower tides. The slack in the floating line is identified as a source of North Atlantic right whale entanglement. NMFS determined that typical offshore lobster pot gear is configured with approximately 7,000 ft (2,134 m)of floating line. Video recording of typical lobster gear with floating groundline between traps revealed that the line forms large loops in the water column between traps. Similar video recording of neutrally buoyant line between traps revealed that it did not have the same vertical profile as floating line; rather, it was located on or near the bottom and was not available to North Atlantic right whales as an entanglement risk. To minimize interactions between fishing gear and North Atlantic right whales, the proposed SAM rule would prohibit floating line for all lobster pot and gillnet gear within the SAM areas during the times specified. By eliminating floating line and requiring sinking or neutrally buoyant line, approximately 85 percent of the line within the water column would be eliminated.

Based on recent cooperative research between the NMFS Gear Research Team and an offshore lobster industry representative, NMFS estimates that outfitting an offshore lobster vessel with neutrally buoyant line would require approximately 50 nautical miles (nm) (80.5 km)of line. A typical changeover estimate to neutrally buoyant line from floating line for the northern inshore lobster fishery in the SAM area is on the order of 5 nautical miles of line per vessel. Preliminary estimates for the SAM East area suggest that 10 offshore lobster vessels operate in the area with a limit of 1,800 traps per vessel. Forty five trawls of 40 traps each is the typical gear configuration for these 10 offshore lobster vessels. Each trawl uses up to 30 fathoms of groundline between each trap. The proposal to utilize neutrally buoyant and/or sinking line would remove as much as 600 nm (968 km) of floating line from the water column during the time when NMFS expects North Atlantic right whales to be in the area. A greater amount of floating line would be removed from the water column when one considers that the lobster and gillnet vessels in the SAM West area, as well as gillnet vessels in the SAM East area, would also be required to change over from floating to neutrally buoyant or sinking line.

Vertical line between the gear and the surface system is another source of entanglement. By allowing only a single buoy line per net string for gillnet gear and a single buoy line per trawl for lobster trap gear, the amount of vertical line in the water column is further reduced by 50 percent. It is not technologically feasible at this time to remove all vertical lines from the water column, since there has to be some way for fishermen to haul a line at the surface to bring up gear from the sea floor.

The 85-percent reduction in floating line and 50-percent reduction in vertical line are methods that prevent serious injury or mortality to North Atlantic right whales. If the line is not within the water column the threat of entanglements from these gear components is eliminated.

The measures proposed result in a significant reduction in the volume of line in the water column in SAM areas. However, line still remains at the one buoy line for both lobster and gillnet gear and in the panels of gillnet gear. The amount of line in the buoy line that is vertical in the water column would be

reduced significantly by the proposed prohibition on the use of floating line. To further reduce the risk posed by remaining vertical line, weak links at reduced breaking strengths are proposed as a requirement of the modified gear.

Past entanglements provide evidence that weak links are a critical measure to prevent serious injury or mortality of marine mammals. The proposed placement of the weak links is designed to provide key breaking points so that any North Atlantic right whale that does become entangled would be able to break free (by breaking a weak link) prior to any serious injury or mortality. For gillnet gear set in the SAM areas, each net panel would be required to have a total of 5 weak links with a maximum breaking strength of 1,100 lbs (498.9 kg). One floatline weak link would be required to be placed at the center of the net panel and two weak links would be placed as close as possible to each of the bridle ends of the net panel. The remaining two weak links would be placed in the center of each of the up and down lines at either end of each panel. In addition, all anchored gillnets are required to be securely anchored with the holding power of at least a 22 lb (9.9 kg) Danforth-style anchor at each end of the net string. Serious injuries and mortalities have occurred when North Atlantic right whales became wrapped in gear. When a North Atlantic right whale encounters gear that does not have weak links and is not properly anchored then any effort by the whale to free itself of the gear likely results in it becoming further and further wrapped up in the gear. Anchoring provides tension so that, when a whale encounters the anchored gear, sufficient tension is placed on the line, which is then likely to break at the weak links resulting in the whale either entirely breaking free of the gear or swimming away with a line or portion of gear rather than being wrapped in the gear. When the gear is attached to the whale in this manner, rather than being wrapped around the whale, it can be shed by the whale or may be removed through disentanglement efforts, and serious injury or mortality may be avoided.

In order to evaluate the effectiveness of weak links placed in the float line of gillnets, NMFS conducted investigations simulating an entanglement. NMFS placed strain on fifteen net strings that were anchored and twenty that were not anchored. Trials were run with both 600 lb (272.2 kg) and 1,100 lb (498.9 kg) weak links at three places on the floatline. When strain was applied to the gillnets with proper anchoring systems, the floatline weak line broke with very little net attached. This provides evidence that the weak links can be expected to break when encountering strain such as that placed on it by a marine mammal. The fact that the weak link broke quickly and cleanly provides evidence that an encounter between a North Atlantic right whale and gillnet gear with proper anchoring and the five proposed weak links would be highly unlikely to result in the serious injury or mortality of that North Atlantic right whale. It is also important to note that recently a float has been designed and developed that incorporates a weak link allowing fishermen to place weak links in gillnet gear much more easily.

A study was conducted in 1997 by the Department of Fisheries, University of Rhode Island, to estimate the tractive force for the North Atlantic Right Whale. Maximum propulsive force (forward moving burst force) estimates for the North Atlantic right whale ranged from 465 lbs (210.9 kg) for 13 foot (3.9 m) whales to 9,440 lb (4,281.9 kg) for 59 foot whales. Maximum estimates of tractive forces for right whales ranged from 135 lb (61.2 kg) for 13 foot (3.9 m) whales to 6,969 lb (3,161 kg) for 59 foot (17.9 m) whales. Data on objects towed by right whales during rescue operations was also analyzed to determine forces capable of being generated by right whales. During the disentanglement of a 43 foot (13.1 m), 38.6 ton right whale, the Center for Coastal Studies attempted to fatigue the whale by adding an 8 foot (2.4 m) sea anchor, 5 Norwegian balls, and an inflatable boat. A 42 foot (12.8 m) fishing vessel was also tied to the whale. The vessel and gear were towed by the whale for one hour at a speed of 9 knots. The total estimated drag on the whale during this operation ranged from 593 lb to 2,369 lb (268.9 kg to 1,074.6 kg). In addition, during the rescue the whale parted a rope with an estimated breaking strength of 400 lb (181.44 kg). The size of animals in the Bay of Fundy are likely to reflect the size of animals that pass through SAM. Seventy-seven animals observed and measured in the Bay of Fundy in 2000 and 2001 ranged in size between 25 to 50 feet (7.5 to 15 m). Of these seventy-seven animals, 86% were greater than 33 feet (10 m). Based on this information, it would appear that most right whales in the SAM area would be able to exert enough force on the 1,100 weak links to break them and thus become free of the gear.

In July 2001, a North Atlantic right whale was observed entangled in offshore lobster gear. The gear investigation determined that the entanglement was in the surface system (consisting of the buoy(s) and high flyer). Weak links were required in the portions of the gear where the entanglement occurred and, based on the gear remaining in the water and that was removed from the whale during disentanglement, it was determined that the weak link had functioned properly and had released the whale from the lobster pots. Based on the gear investigation, it was determined that the weak link allowed the North Atlantic right whale to break away from the majority of the offshore lobster gear, ending up with only a small piece of the line. The whale was completely disentangled by the Center for Coastal Studies without any serious injury or mortality. Based on weak link studies and reviews of gear configurations involved in entanglements, NMFS concludes that the additional weak links and lower breaking strengths in the surface system proposed in the SAM regulations would have likely allowed the North Atlantic right whale to free itself of all gear.

The concept of removing floating line from groundlines and buoy lines and the increased use of weak links was supported in discussions with the ALWTRT at its June 27-28, 2001 meeting and in public comments received on the SAM ANPR. The ALWTRT membership includes environmental interests, fishermen, gear experts, state and federal fisheries managers and large whale biologists who are considered experts in their respective fields. This group, as evidenced by the extensive development of additional gear modifications at the June 27-28, 2001, ALWTRT meeting, generally supports gear modifications as an element of SAM. NMFS believes that this proposed rule provides significant conservation benefits to North Atlantic right whales and that these measures, as a component of the RPA, remove jeopardy for the North Atlantic right whale.

Level II or Low Risk Gear is proposed as a requirement within a SAM area. A definition developed by a subgroup of the ALWTRT states that Level II or Low Risk Gear is gear for which any entanglement would be minor, meaning where death or serious injury is highly unlikely. NMFS is proposing that the gear listed below be required to fish in SAM areas during the specified times.

The information and analysis provided previously in this document demonstrates that the gear modifications proposed for SAM areas (including replacing floating line with neutrally buoyant line, additional weak links, reduced breaking strengths for weak

links and limits on the number of buoy lines) are proven to prevent serious injury or mortality to North Atlantic right whales. The proposed SAM measures would, therefore, implement the SAM portion of the RPA as described in the June 14, 2001, BOs.

Research and Monitoring Portion of the RPA

Some of the gear modifications that would be included as requirements for lobster and gillnet gear in the SAM area were contained in the RPA under the heading of ''Continue gear research and modifications.'' Specifically, this includes expanded research and testing on eliminating floating line in the anchor and buoy lines of gillnet gear and testing and evaluating the replacement of floating line in lobster gear with neutrally buoyant groundline. The testing and evaluation is identified within the RPA as being necessary to determine whether these measures are feasible. The rationale for including additional investigation in the RPA was to allow for further evaluation to determine the feasibility of adoption of these gear modifications. This research will expand and refine work previously completed and increase cost effectiveness. This investigation was not needed or intended to evaluate the effectiveness of these gear modifications in terms of their ability to minimize the risk to North Atlantic right whales either by reducing the potential for entanglement or by minimizing the potential for any entanglements to result in serious injury or mortality of North Atlantic right whales. While it may not be feasible to require these gear modifications on a broad scale, we have determined that it is appropriate to require their use in SAM areas because they have been proven effective at reducing entanglements and the severity of any entanglements that do occur and the higher costs and logistical barriers are justified due to the increased risk posed by the greater concentration of North Atlantic right whales observed in the SAM area on an annual basis. Fishermen on an individual basis will evaluate the costs of these gear modifications and make a decision whether to implement the required gear modifications, which allow them to fish within the SAM areas during the restricted times, not fish during these times, or fish in other areas during these times.

Consideration of Prohibiting Lobster Trap and Gillnet Gear from SAM Areas

NMFS considered the two alternative methods for SAM implementation provided in the RPA, which include closing areas to fishing gear or restricting the areas to only modified gear that has been proven to prevent serious injury or mortality to North Atlantic right whales. For the reasons specified above, the selection of the latter option is believed to be sufficiently protective of North Atlantic right whales and, in combination with other measures in the BO, remove jeopardy. The proposed gear modifications would both reduce the potential for interactions through a significant reduction in vertical line and reduce the potential for serious injury or mortality through the incorporation of additional weak links at reduced breaking strengths.

Initially, it may appear that the option of closing the SAM area to all fishing would offer greater relative protection to North Atlantic right whales. However, enacting a complete closure to lobster and gillnet gear within SAM areas could have the result of concentrating effort at the margins of the SAM areas. This is a well-known behavior in response to closed areas. It is important to note that the SAM area is an area where concentrations of North Atlantic right whales appear on a regular annual basis but it does not, and is not intended to include all areas where North Atlantic right whales occur in the Gulf of Maine during this time of year. Furthermore, North Atlantic right whales passing into and out of the SAM area closures would be at increased risk of serious injury or mortality because gear deployed outside of the SAM area closures would not have incorporated additional modifications to reduce the risk to right whales. It is also expected that fishermen who modify their gear to comply with the SAM gear restrictions would maintain those modifications in their gear when fishing outside of the SAM area. This would result in increased risk reduction in areas and at times not affected by SAM. However, NMFS is seeking public comment on both alternatives and, based on the comments received, reserves discretion to implement either of the two alternatives.

Lobster Trap and Anchored Gillnet Gear for use in Seasonal Area Management(SAM)areas for March 1 - July 31

The gear listed below under the lobster trap and gillnet headings is intended to describe the gear that meets or exceeds the definition of Level II or Low Risk Gear. Level II or Low Risk Gear, as described during the June 2001 ALWTRT meeting, is gear for which any entanglement would be minor, where death or serious injury is highly unlikely. These requirements are in addition to or, where specifically stated, replace the existing or most recently proposed ALWTRP requirements.

Level II or Low Risk Lobster Trap Gear for use in SAM areas would include all of the following characteristics:

(1) Groundlines and buoy lines must be made of either sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

(2) Fishermen operating in offshore lobster waters within a SAM area must utilize a weak link at all buoys with a maximum breaking strength of 1,500 lbs (680.4 kg) in place of the current proposed 2,000 lbs (907.2 kg) weak link at all the buoys. Each weak link must be placed as close to each individual buoy as operationally feasible (See figure 2);

(3) Fishermen operating in offshore lobster waters within a SAM area must utilize a weak link with a maximum breaking strength of 3,780 lbs (1,714 kg) between the surface system (all surface buoys, the high flyer, and associated lines) and the buoy line leading to the trawl on the ocean floor (See figure 2)(Note: This measure is also proposed for the entire offshore lobster waters area in a separate rulemaking in progress, 66 FR 49896, October 1, 2001); and

(4) Fishermen operating in the offshore and nearshore lobster waters within the SAM areas must utilize a single buoy line to mark each trawl. This line must be attached to the northern or western end of the trawl string depending on the direction of the set. Be advised, that these proposed requirements on the number of buoy lines supersede the provision requiring one radar reflector at each end of a trawl with more than three traps, found at 50 CFR 697.21.

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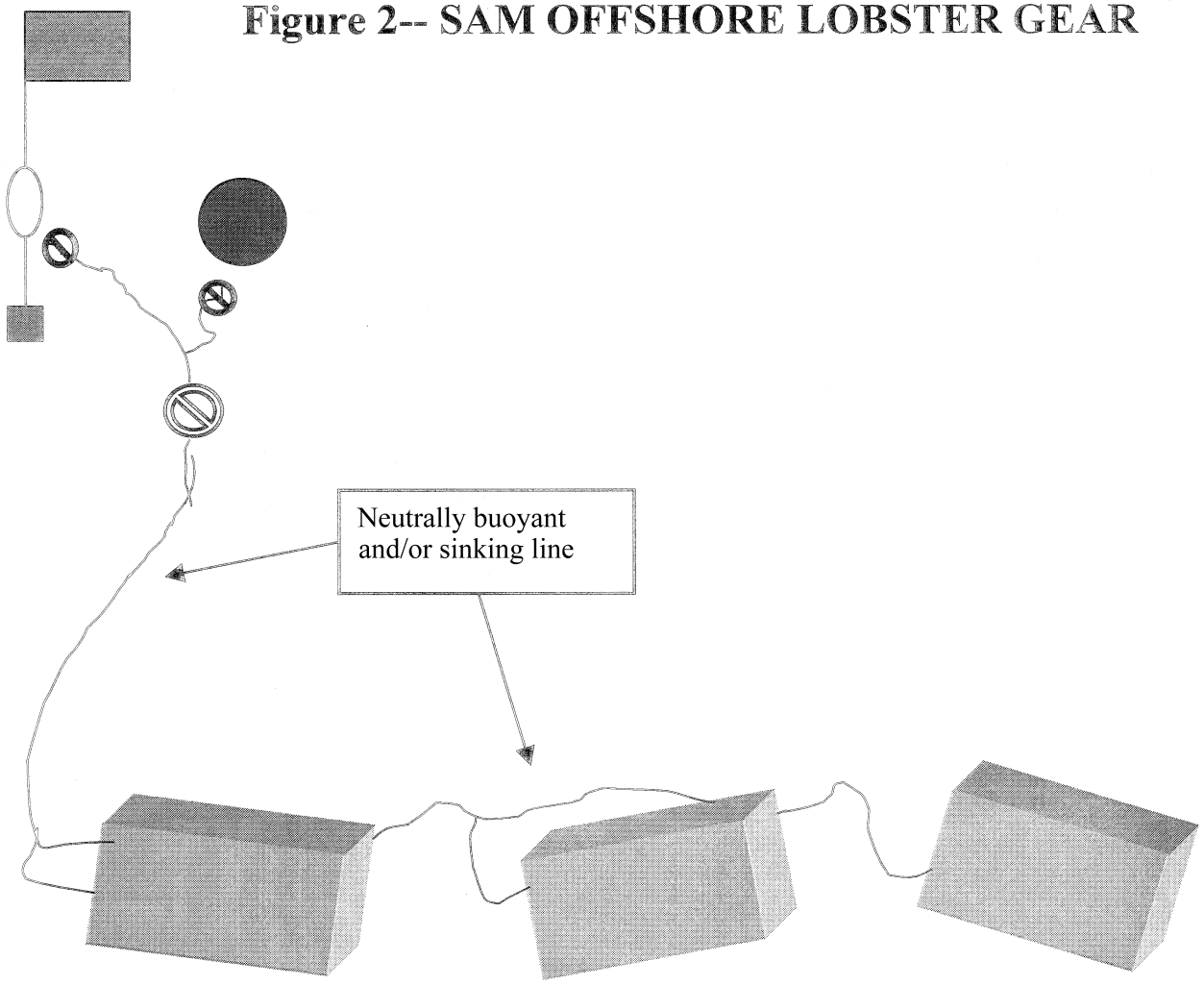
Figure 2-- SAM OFFSHORE LOBSTER GEAR

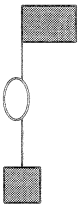


Key:

1500 lb required weak link

3780 lb required weak link

Buoy


High Flyer

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The single buoy line to mark each trawl is intended to further enhance the protection of endangered North Atlantic right whales. The two reflector requirement imposed under the American lobster regulations was designed to reduce gear conflicts. Given the critical juncture of North Atlantic right whale management, it is imperative that vessel operators understand the need to protect North Atlantic right whales while at the same time, respect the property of fellow fishers.

Level II or Low Risk Anchored Gillnet Gear for use in SAM areas would include all of the following characteristics:

(1) Groundlines, meaning the lines between the net bridle and the anchors, and buoy lines must be made of sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

(2) A weak link with a maximum breaking strength of 3,780 lbs (1,714 kg) must be installed between the surface system (all surface buoys, the high flyer, and associated lines) and the buoy line leading to the net panels (See figure 3);

(3) Each net panel must have a total of 5 weak links with a maximum breaking strength of 1,100 lbs (498.9 kg). Net panels are typically 50 fathoms in length, but the weak link requirements would apply to all variations in panel size. These weak links must include 3 floatline weak links. The placement of the weak links on the floatline must be at the center of the net panel and as close as possible to each of the bridle ends of the net panel. The remaining 2 weak links must be placed in the center of each of the up and down lines at the panel ends;

(4) Fishermen utilizing gillnets within the SAM areas must utilize no more than one buoy line per net string. This buoy line must be at the northern or western end of the gillnet string depending on the direction of the set; and

(5) All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lbs (9.9 kg) Danforth style anchor at each end of the net string.

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Figure 3 - SAM GILLNET GEAR

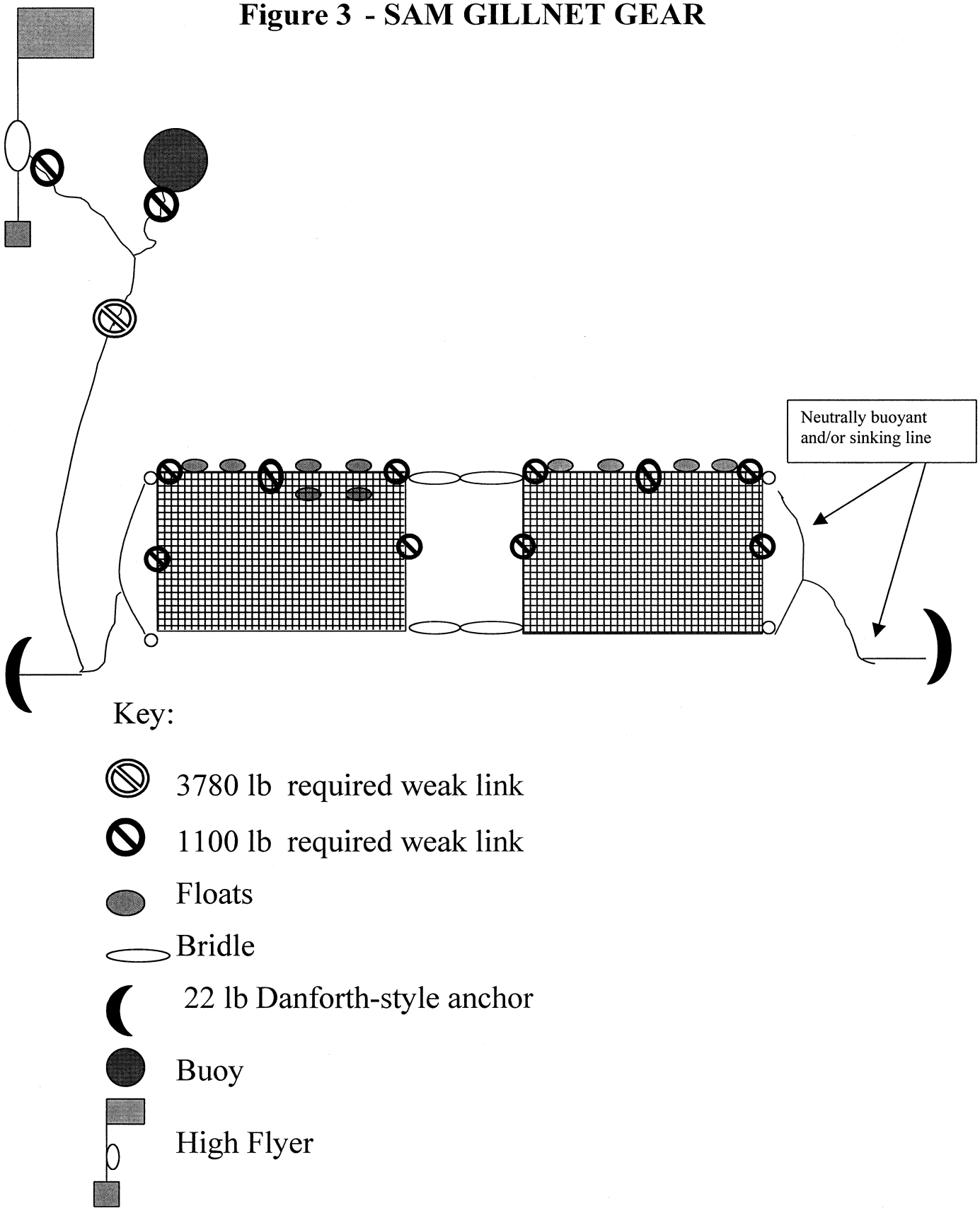

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TABLE 1: SEASONAL AREA MANAGEMENT AREAS SAM WEST POLYGON–IN EFFECT FROM MARCH 1– APRIL 30

Point	Latitude (North)	Longitude (West)	Comment
1	42° 04.8′	70° 10′	NE landfall of Cape Cod Bay(CCB) Critical Habitat (CH) at shoreline
2	42° 12′	70° 15′	NE corner CCB CH
3	42° 30′	70° 15′	NW Corner SAM West
4	42° 30′	69° 24′	NE Corner SAM West
5	41° 48.9′	69° 24′	NW side of Great South Channel CH
6	41° 45′	69° 33′	runs along GSC CH
7	41° 45′	69° 55.8′	SW landfall at Cape Cod
		.....	return along shoreline to point 1

SAM EAST POLYGON - IN EFFECT FROM MAY 1 - JULY 31

Point	Latitude (North)	Longtitude (West)	Comment
1	41° 48.9′	69° 24′	NW side of GSC CH
2	42° 30′	69° 24′	NW corner of SAM East
3	42° 30′	67 ° 27′	NE corner SAM East
4	41° 45′	66° 48′	SE corner SAM East
5	41° 45′	68° 17′	runs to great South Channel CH
6	42° 10′	68° 31′	runs along NE side of GSC CH
			Return along NW side of GSC CH to point #1

Classification

This proposed rule has been determined to be significant for the purposes of Executive Order 12866, because the proposal is controversial.

Though NMFS has not prepared an IRFA or an Regulatory Impact Review, preliminary data on the impact of this proposed rule, if adopted, is available. NMFS seeks comment on this data, as well as additional data to use in preparation of a final regulatory flexibility analysis. Under the worst case scenario, vessel operators will simply not convert their gear under the proposed action, and not fish during the SAM closure. Based on an economic analysis of 2000 right whale sightings data, total forgone industry revenues are estimated at $5.2M for the lobster and sink gillnet fishery under this worst case scenario. However, this proposed rule may mitigate these costs by allowing vessels to fish in the SAM area if they convert their gear as described within this document. Two outcomes are possible. First, the cost of gear conversion may be greater or equal to potential revenues in SAM. In this case they would choose to fish elsewhere or not fish at all, but total forgone revenue would not be expected to exceed $5.2M. A second possible outcome is that gear conversion costs would be less than potential revenues earned in SAM. In this case, vessel operators are likely to convert their gear. If it is assumed that their catch rates will be the same with the gear conversion, the cost of this option is the sum of the gear conversion costs which is expected to be less than $5.2M.

Section 608(a) of the Regulatory Flexibility Act (RFA) states that an agency may waive or delay completion of some or all of the requirements of section 603, if an emergency situation exists that makes compliance with the provisions of section 603 impracticable. NMFS has determined that an emergency situation exists that makes compliance with section 603 impracticable for the following reasons. The June 14, 2001, BOs on the four fisheries subject to this proposed action determined that the continued operation of those fisheries is likely to jeopardize the continued existence of the western North Atlantic right whale and established an extremely short time frame for conducting the ALWTRT meeting to help develop a SAM program and for conducting rulemaking to implement a SAM program designed to remove the likelihood of jeopardy. The RPA to the continued operation of the fisheries outlined in the BOs requires issuance of the final rule for SAM by December 31, 2001. Also, a court order was issued on October 3, 2001, in litigation pertaining to the implementation of the RPA. That court order required the agency to issue a proposed rule to implement SAM by November 23, thereby making it impracticable for the agency to complete the analysis required under section 603 prior to publication of the proposed rule.

References

Merrick, R.L.; Clapham,P.J.; Cole,T.V.N.; Gerrior,P.;Pace, R.M., III. 2001. Identification of seasonal area management Areas for North Atlantic right whale conservation. Northeast Fish. Sci. Cent. Ref. Doc. 01-14;18p. Available from: National Marine Fisheries Service, 166 Water St., Woods Hole, MA 02543-1026.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and record keeping requirements.

Dated: November 23, 2001.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.32, paragraph (g)(4) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g) * * *

(4) Seasonal Area Management (SAM) Program. All vessels deploying anchored gillnet or lobster trap gear may fish in the SAM Areas as described in paragraphs (g)(4)(i)(A) and (g)(4)(ii)(A) of this section, provided the vessel complies with the gear requirements

during the times specified in paragraphs (g)(4)(i)(B) and (g)(4)(ii)(B) of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(i) *SAM West.* (A) *Area.* SAM West consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM WEST

Point	N. Lat.	W. Long.
SAM1	42° 04.8′	70° 10′
SAM2	42° 12′	70° 15′
SAM3	42° 30′	70° 15′
SAM4	42° 30′	69° 24′
SAM5	41° 48.9′	69° 24′
SAM6	41° 45′	69° 33′
SAM7	41° 45′	69° 55.8′

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (g)(2) of this section, from March 1 through April 30, no person may fish with anchored gillnet or lobster gear unless that person's gear complies with the following gear characteristics:

(*1*) *Anchored gillnet gear.* (*i*) Ground line--All ground lines are made entirely of sinking or neutrally buoyant line.

(*ii*) Buoy weak links--All buoy lines are attached to the buoy with a weak link having a maximum breaking strength of up to 1,100 lb (498.9 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*iii*) Buoy line weak link--All buoy lines are attached to the buoy, high flyer, and buoy line leading to the net panels with a weak link having a maximum breaking strength of up to 3,780 lb (1,714.6 kg).

(*iv*) Net panel weak link--Each net panel must have a total of five weak links. The breaking strength of these weak links must not exceed 1,100 lb (498.9 kg). The weak link requirements apply to all variations in panel size. Three of the five weak links must be located on the floatline. One floatline weak link must be placed at the center of the net panel, and two weak links must be placed as close as possible to each of the bridle ends of the net panel. The remaining two of the five weak links must be placed in the center of each of the up and down lines at either end of each panel.

(*v*) Buoy line--No more than one buoy line per net string may be used, and it must be deployed at the northern or western end of the gillnet string depending on the direction of the set.

(*vi*) Gillnet anchor--All anchored gillnets, regardless of the number of net panels, must be securely anchored with a holding power of at least a 22 lb (9.9 kg) Danforth-style anchor at each end of the net string.

(*2*) *Lobster Trap gear.* (*i*) Sinking ground line--All ground lines must be made entirely of sinking or neutrally buoyant line.

(*ii*) Offshore Lobster buoy weak links--All buoy lines must be attached to the buoy with a weak link having a maximum breaking strength of up to 1,500 lb (680.4 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*iii*) Offshore Lobster buoy line weak link--All buoy lines must be attached to the buoy, high flyer, and buoy line leading to the lobster trap with a weak link having a maximum breaking strength of up to 3,780 lb (1,714.6 kg).

(*iv*) Buoy line--No more than one buoy line per trawl is allowed. The buoy line must be attached to the northern or western end of the trawl string depending on the direction of the set. These requirements supersede the requirements found at § 697.21, which require one radar reflector at each end of a trawl with more than three traps.

(ii) *SAM East.* (A) *Area.* SAM East consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM EAST

Point	N. Lat.	W. Long.
SAM5	41° 48.9′	69° 24′
SAM4	42° 30′	69° 24′
SAM8	42° 30′	67° 26′
SAM9	42° 30′	66° 50′
SAM10	41° 45′	66° 50′
SAM11	41° 45′	68° 17′
SAM12	42° 10′	68° 31′

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (g)(2) of this section, from May 1 through July 31, no person may fish with anchored gillnet or lobster gear unless that person's gear complies with the gear characteristics found at paragraph (g)(4)(i)(B) of this section.

[FR Doc. 01–29601 Filed 11–23–01; 4:38 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 111601C]

New England Fishery Management Council; Public Hearings

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

ACTION: Notification of public hearings; request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a series of public hearings to solicit comments on proposals to be included in the Deep-sea Red Crab Fishery Management Plan (FMP).

DATES: Written comments on the proposals will be accepted from November 30, 2001, through January 7, 2002. The public hearings will be held on December 14, 2001, and December 17, 2001. See **SUPPLEMENTARY INFORMATION** for specific locations and times.

ADDRESSES: To obtain copies of the public hearing document or to submit comments, contact Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Identify correspondence as ''Comments on Red Crab Management.'' Comments may also be sent via facsimile (fax) to (978) 465-3116. Comments will not be accepted if submitted via e-mail or the Internet. Hearings will be held in Massachusetts. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465-0492. For the specific locations of the public hearings, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, (978) 465-0492.

SUPPLEMENTARY INFORMATION: The Council proposes to take action to implement a management program for the deep-sea red crab (*Chaceon quinquedens*) fishery and to address the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996. The Council will consider comments from fishermen, interested parties, and the general public on the proposals and alternatives described in the public hearing document for the Red Crab FMP. Once

it has considered public comments, the Council will approve final management measures and prepare a submission package for NMFS. There will be an additional opportunity for public comment when the Notice of Availability for the Fishery Management Plan and the proposed rule for this action are published in the **Federal Register**.

Major elements of the proposals in this public hearing document include: (1) Management options that include restrictions on the retention of female crabs, possession limits, restrictions on the processing of red crabs at sea, limits on the number of traps employed by each vessel, gear restrictions, a prohibition on all non–trap/pot gear in the directed red crab fishery, and an allocation of a maximum number of days–at–sea (DAS) for all vessels authorized to participate in the directed red crab fishery; (2) development of a controlled access program for the directed red crab fishery that relies on documented landings of red crab prior to the red crab control date (March 1, 2000, 65 FR 11029); (3) identification of the management unit for red crab; (4) specification of the red crab fishing year; (5) specification of optimum yield (OY) from the fishery; (6) selection of a new overfishing definition for red crab; (7) designation of essential fish habitat (EFH) for each life history stage of the species; (8) permits and reporting will be required of all vessels and dealers participating in the red crab fishery; (9) development of a monitoring and adjustment mechanism for this plan including an annual specifications process and a framework adjustment process; (10) an incidental catch possession limit for all vessels not authorized to participate in the directed red crab fishery; and (11) additional measures which the Council may consider implementing at a future date. The Council will consider all comments received on these proposals from November 30, 2001, until the end of the comment period on January 7, 2002.

Public Hearing Dates

The dates, times, locations, and telephone numbers of the hearings are as follows:

Friday, December 14, 2001, 2:00 p.m.— Sawyer Free Library, 2 Dale Ave, Gloucester, MA 01930; telephone: (978) 281–9763; and

Monday, December 17, 2001, 3:00 p.m.— University of Massachusetts School of Marine Science and Technology (SMAST), 706 Rodney French Boulevard, New Bedford, MA 02744; telephone (508) 910–6353.

Special Accommodations

These hearings are 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: November 20, 2001.

Jonathan M. Kurland,

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

[FR Doc. 01–29602 Filed 11–27–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 229

Wednesday, November 28, 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

Forest Service

[3410–11]

Phase II Amendment of Black Hills National Forest Land and Resource Management Plan

AGENCY: USDA Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement disclosing the effects of amending the 1997 Revised Land and Resource Management Plan of the Black Hills National Forest located in Lawrence, Meade, Custer, Fall River, and Pennington Counties, South Dakota; Crook and Weston Counties, Wyoming.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) disclosing the effects of amending the Black Hills National Forest 1997 Revised Land and Resource Management Plan (1997 Revised Forest Plan). The 1997 Revised Forest Plan is being amended under the 1982 National System Land Resource Management Planning regulations.

This notice describes the specific portions of the 1997 Revised Forest Plan to be amended (''Phase II'' Forest plan amendment), initial environmental issues to be considered in the environmental impact statement, estimated dates for filing the environmental impact statement, information concerning public participation, and the names and addresses of the agency officials who can provide additional information.

DATES: Comments concerning the scope of the analysis should be received on or before January 28, 2002.

ADDRESSES: Send written comments to Black Hills National Forest, Phase II Amendment, USDA–FS–CAT, P.O. Box 7669, Missoula, MT 59807.

FOR FURTHER INFORMATION CONTACT: John Twiss, Forest Supervisor (605) 673–9200.

SUPPLEMENTARY INFORMATION: The Black Hills National Forest 1997 Revised Land and Resource Management Plan (1997 Revised Forest Plan) was approved on June 24, 1997. On October 12, 1999, Deputy Chief James A. Furnish signed a decision addressing several appeals of the 1997 Revised Forest Plan. The Deputy Chief affirmed most appeal points; however, he found that additional evaluation of the sufficiency of the plan in providing for the diversity of plant and animal communities and species viability was needed. In addition, the intent and scope of the Phase II amendment is to provide additional management direction to adequately provide for species diversity and viability. The baseline for analysis will be Alternative G, the selected alternative in the Record of Decision for the 1997 Revised Forest Plan.

Within the October 12, 1999 Deputy Chief decision, interim direction was provided to the Black Hills National Forest so that projects could continue during the time it takes to reanalyze the 1997 Revised Forest Plan. The amendment will also comply with stipulations in the Settlement Agreement for Civil Action No. 99–N–2173 (U.S. District Court for the District of Colorado, September 2000). The settlement agreement along with the appeal decision action plan noted the re-analysis of the 1997 Revised Forest Plan would consist of two phases. Phase I, non-significant Forest plan amendment, provides interim measures that preserves management options for species viability during the time period it takes to complete the re-evaluation of the 1997 Revised Forest Plan. Phase I have been completed, with the Decision Notice signed May 18, 2001 and legal notice of decision published in the Denver Post on June 15, 2001.

Phase II is anticipated to be a significant Forest plan amendment, accompanied by an EIS. The amendment will address the identified plan deficiencies in order to assure that viable populations of native and desired non-native species are maintained. This Notice of Intent initiates scoping for the Phase II amendment and associated EIS. Due to the complex nature of the analysis, the Phase II Amendment and Final Environmental Impact Statement (FEIS) will take between two and five years to complete. The FEIS is scheduled for release September 2004.

The Phase II amendment will focus on changed conditions or demands in relation to species viability and diversity. The amendment will fulfill the direction of the appeal decision of October 12, 1999 and be guided by that direction. Those sections of the Forest Plan which continue to be responsive to issues and demands, and which meet requirements for resource protection will not be amended. As appropriate, the amendment will include:

1. New or revised goals and objectives protecting habitat to sustain species viability and diversity. The management indicator species will be reviewed to ensure appropriate species are included. The amendment may include forest-wide standards and guidelines for wildlife and plant species to ensure compliance with requirements of the National Forest Management Act (NFMA), and its implementing regulations and agency policy.

2. New or revised monitoring requirements. Specifically the Forest will review current management direction and revise its protocols (if necessary) for surveying, monitoring and evaluating Management Indicator Species (MIS) in compliance with requirements of the National Forest Management Act (NFMA), and its implementing regulations and agency policy. The Forest will evaluate the viability of MIS within the planning area; and establish specific goals and objectives for the management of MIS, sensitive species and/or their habitat.

3. New Management Area designations. The Forest will assess candidate areas for research natural areas and will designate appropriate areas. Future management of areas that have experienced recent large fires will also be reviewed.

4. Review Forest outputs and services. This amendment will include a review and/or recalculation of the allowable timber sale quantity and other Forest outputs based on new direction pertaining to MIS viability and diversity. Models including Forest Vegetation Simulator (FVS), Habitat Capability (HABCAP), and spatial analysis will be re-run with updated information. Updates to the HABCAP models pertaining to deer and elk will

occur to incorporate research data. New models may be used.

Preliminary Issues: The following preliminary issues were identified:

1. Economic and social effects on local communities (counties and municipalities) and dependent industries. This includes, but is not limited to, the effects on recreation users, primary and secondary timber producers and grazing permittees.

2. Effects on forest health and the ability of the Forest to manage insect and disease outbreaks.

3. Effects on the Forest's ability to reduce fire risks within the Forest boundary and prevent catastrophic wildfire.

Decision to be Made: The Rocky Mountain Regional Forester will decide whether or not to make changes to Forest plan management direction, and if so, in what manner. The environmental effects of proposed changes will be documented in an EIS.

Responsible Official: The responsible official for approving the Forest Plan amendment is the Rocky Mountain Regional Forester, Rocky Mountain Region, USDA Forest Service, 11177 West 8th Avenue, P.O. Box 25127, Lakewood, Colorado 80225 (express delivery address: 740 Simms St., Golden, CO 80401–4720). The decision will be documented in a Record of Decision. The Forest Supervisor, Black Hills National Forest, is delegated the responsibility for preparing the amendment.

Public Involvement: Federal, state and local agencies, Native American tribes, individuals and organizations are invited to submit comments relevant to this Phase II amendment of the Black Hills National Forest Land and Resource Management Plan. The Forest is working with the States of South Dakota and Wyoming to finalize agreements that will formalize cooperating agency status, which both States requested. Both States will share their status with their respective contiguous county commissions and conservation districts. The Forest will consult with Native American tribes on a government-to-government basis.

Issue identification has begun, using the October 12, 1999 Appeal Decision, a recent court settlement agreement, and other internal and external discussions with interested parties as a starting point. Public involvement efforts will continue throughout the amendment process, in accordance with direction in the National Environmental Policy Act (NEPA).

Public involvement in the Forest Plan amendment process will be sought by: (1) Sending newsletters and requests for comment to agencies, organizations and individuals, (2) holding open houses in local communities and (3) other formal and informal methods of involving the public. Dates, locations, and times for the open houses will be announced in local news media and in Forest newsletters. Written comments should be sent to: Black Hills National Forest, Phase II Amendment, USDA–FS–CAT, P.O. Box 7669, Missoula, MT 59807.

Comments that will be most effective are those that: (a) Identify necessary modifications to the existing Forest Plan direction; (b) are helpful in developing or evaluating alternatives; (c) provide additional information to improve or modify our analysis; or (d) identify factual corrections.

Estimated Dates for Release and Review of the EIS: The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 2003. At that time EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register.** The comment period of the Draft EIS will be 90 days from the date the EPA publishes the Notice of Availability in the **Federal Register.** It is important that those interested in the management of this area participate at that time.

The Final Environmental Impact Statement, Record of Decision, and Forest Plan amendment are scheduled to be completed by September 2004.

The Reviewers Obligation to Comment: Comments received from the initial scoping efforts, including this publication, will be used in the preparation of the draft environmental impact statement. The following paragraphs pertain to the future release of the draft environmental impact statement.

The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can adequately consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 21, 2001.

John C. Twiss,

Forest Supervisor, Black Hills National Forest.

[FR Doc. 01–29548 Filed 11–27–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Reports and Guidance Documents; Availability etc.

Withdrawal of the Pacific Northwest Regional Guide and transfer of some decisions therein to the following National Forests' Land and Resource Management Plans: Colville National Forest, Gifford Pinchot National Forest, Mt. Baker-Snoqualmie National Forest, Okanogan National Forest, Olympic National Forest, Wenatchee National Forest, Deschutes National Forest, Fremont National Forest, Malheur National Forest, Mt. Hood National Forest, Ochoco National Forest, Rogue River National Forest, Siskiyou National Forest, Siuslaw National Forest, Umatilla National Forest, Umpqua National Forest, Wallowa-Whitman National Forest, Willamette National Forest, and Winema National Forest.

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The intended effect of this action is to comply with 36 CFR Part 219 section 219.35(e) which directs that within 1 year of November 9, 2000, the

Regional Forester must withdraw the Regional Guide. When a Regional Guide is withdrawn, the Regional Forester must identify the decisions in the Regional Guide that are to be transferred to a regional supplement of the Forest Service directive system (36 CFR 200.4) or to one or more plans and give notice in the **Federal Register** of these actions.

DATES: This action will be effective the date of this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Alan J. Horton, Policy Planner, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208. Phone: (503) 233–2690.

SUPPLEMENTARY INFORMATION: This action withdraws the Pacific Northwest Regional Guide and transfers some decisions therein to the Land and Resource Management Plans (LRMPs) for the National Forests in the Pacific Northwest Region. Specifically, this action transfers from the Regional Guide to LRMPs the management standards and guidelines for maximum harvest size limits (a requirement of the National Forest Management Act) and the management standards and guidelines for harvest utilization. Management standards and guidelines for maximum harvest size limits are titled ''Size and Dispersal of Openings and State of Vegetation'' in the Regional Guide, page 3–7. Management standards and guidelines for harvest utilization are entitled ''Standard and Guideline 4–2'' and ''Table 3–6, Utilization Standards'' under ''Management Intensity and Utilization Standards'' in the Regional Guide, page 3–9. The following Regional Guide decisions are hereby transferred to the LRMPs in the Pacific Northwest Region:

Size and Dispersal of Openings and State of Vegetation

Standard and Guideline 2–1

Forest openings created by the application of even-aged harvest cutting methods shall be limited to a maximum size of 60 acres in the Douglas-fir type of the coastal Douglas-fir zone and to a maximum size of 40 acres for all other forest types in the Pacific Northwest Region. Exceptions are permitted for natural catastrophic events (such as fires, windstorms, or insect and disease attacks) or on an individual basis after a 60-day public notice period and review by the Regional Forester. In addition, the limits may be exceeded by as much as 50 percent without necessitating review by the Regional Forester or 60 days public notice when exceeding the limit will produce a more desirable combination of net public benefits and when any one of the following four criteria is met.

1. When a larger created opening will enable the use of an economically feasible logging system that will lessen the disturbance to soil, water, fish, riparian resources, or residual vegetation. Such lessening is to be achieved by reducing landing or road construction away from unstable soil, or by reducing soil and vegetation disturbance caused by dragging logs.
2. When created openings cannot be centered around groups of trees infected with dwarf mistletoe or root rot and therefore need to be expanded to include these trees in order to avoid infection of susceptible adjacent conifers.
3. When visual quality objectives require openings to be shaped and blended to fit the landform.
4. When larger openings are needed to achieve regeneration objectives in harvest areas being cut by the shelterwood method and where destruction of the newly created stand would occur as a result of delayed removal of shelter trees. This exception applies only to existing shelterwood units and to shelterwood units under contract prior to approval of the Forest Plan.

Standard and Guideline 2–2

Created openings will be separated by blocks of land that generally are not classed as created openings and that contain one or more logical harvest units. These areas shall be large enough and contain a stand structure appropriate to meet resource requirements of the Forest Plan. Resource requirements may include wildlife habitat, watershed, landscape management, and others. Contiguous harvest units (concerning or otherwise touching) are not precluded, but must be considered as a single opening which must be created within requirements for size, exception procedures, and justification.

The total area of created openings contiguous to 30-acre or larger natural openings should normally not exceed one-third the size of the natural openings (regardless of size) unless adequate vegetation along the edge can be developed or retained in sufficient density to protect wildlife and visual management objectives. The determination of adequate vegetation will be made by an appropriate interdisciplinary team.

Standard and Guideline 2–3

A harvested area of commercial forest land will no longer be considered a created opening for silvicultural purposes when stocking surveys, carried out in accordance with Regional instructions, indicate prescribed tree stocking that is at least 4½ feet high and free to grow. When other resource management considerations (such as wildlife habitat, watershed needs, or visual requirements) prevail, a created opening will no longer be considered an opening when the vegetation in it meets a particular management objective stated in the Forest Plan. For example, the objectives for a specified big-game winter range might require trees to be 20 feet tall before the adjacent stand may be harvested. In other instances, entry may be made sooner to meet specific resource or management requirements.

Standard and Guideline 4–2

Separate utilization standards are to be used in determining harvest levels for the first decade and future decades to the planning horizon. The standards displayed in the following table shall apply to all Forests, except where individual market areas or specific products present opportunities for standards specifying utilization of a higher proportion of the tree resource. In these Forests, planning will not be limited to the stated Regional utilization standards.

TABLE 3–6.—UTILIZATION STANDARDS

Type Tree	Minimum d.b.h.[1] (Inches)	Minimum Top d.i.b.[2] (Inches)
First Decade		
Existing Mature Trees, Except Lodgepole Pine (first and future decades)	9	6
Existing Commercial Thinning Size Trees and Lodgepole Pine	7	4

TABLE 3–6.—UTILIZATION STANDARDS—Continued

Type Tree	Minimum d.b.h.[1] (Inches)	Minimum Top d.i.b.[2] (Inches)
Future Decades		
All Species, Except Surviving Stands of First Decade Existing Mature	7	4

[1] d.b.h.—diameter at breast height
[2] d.i.b.—diameter inside bark

Dated: November 21, 2001.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 01–29549 Filed 11–27–01; 8:45 am]

BILLING CODE 3410–11–M

U.S. COMMISSION ON CIVIL RIGHTS

Hearing on Education Accountability

AGENCY: Commission on Civil Rights.

ACTION: Notice of hearing.

SUMMARY: Notice is hereby given pursuant to the provisions of the Civil Rights Commission Amendments Act of 1994, section 3, Pub. L. 103–419, 108 Stat. 4338, as amended, and 45 CFR section 702.3, that a public documents production hearing before the U.S. Commission on Civil Rights will take place on Friday, January 11, 2002, beginning at 9:30 a.m., in the Monroe Room, at the Washington Hilton Hotel, 1919 Connecticut Avenue, NW., Washington, DC 20009. The purpose of the hearing is to collect information within the jurisdiction of the Commission, under 45 CFR section 702.2, related particularly to state efforts to institute standards-based education systems, and the review of educational accountability methods and associated statistics and consequences.

The Commission is authorized to hold hearings and to issue subpoenas for the production of documents and the attendance of witnesses pursuant to 45 CFR section 701.2(c). The Commission is an independent bipartisan, factfinding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

Hearing impaired persons who will attend the hearing and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division at (202) 376–8105 (TDD (202) 376–8116), at least five (5) working days before the scheduled date of the hearing.

FOR FURTHER INFORMATION CONTACT: Les Jin, Staff Director (202) 376–7700.

Dated: November 20, 2001.

Michael L. Foreman,

Acting Deputy General Counsel.

[FR Doc. 01–29508 Filed 11–27–01; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Thursday, December 13, 2001. The Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Report from the Judges' Panel; Status of the Baldrige Program; presentations on Baldrige Program Partnerships, Workforce Excellence Network, Baldrige Not-For-Profit Eligibility Category, Baldrige Regional Conferences, Issue Sheets, 2002 Hoshin—Increase Number of Baldrige Applicants; and Recommendations to the NIST Director.

DATES: The meeting will convene December 13, 2001, at 8:30 a.m. and adjourn at 3:30 p.m. on December 13, 2001.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Bldg., Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: November 19, 2001.

Karen H. Brown,

Deputy Director.

[FR Doc. 01–29561 Filed 11–27–01; 8:45 am]

BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

November 21, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bangladesh and exported during the period January 1, 2002 through December 31, 2002 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, a previously restrained category has been modified and its limit has been revised, and another category has been eliminated. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2002 period. Certain 2002 limits have been reduced for carryforward applied to the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 21, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	693,346 dozen.
331pt. [1]	163,017 dozen pairs.
334	211,525 dozen.
335	379,792 dozen.
336/636	679,647 dozen.
338/339	1,968,866 dozen.
340/640	4,450,745 dozen.
341	3,687,040 dozen.
342/642	637,915 dozen.
347/348	3,318,335 dozen.
351/651	1,013,141 dozen.
352/652	15,115,024 dozen.
363	37,764,024 numbers
369–S [2]	2,531,350 kilograms.
634	740,026 dozen.
635	479,449 dozen.
638/639	2,496,883 dozen.
641	1,543,866 dozen.
645/646	586,365 dozen.
647/648	2,087,004 dozen.

[1] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[2] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated November 15, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29504 Filed 11–27–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on December 10 and 11, 2001 at the Institute for Defense Analyses, Alexandria, VA.

The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons sustainment, security and use control.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended, Title 5, U.S.C. App. II, (1988)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. section 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: November 21, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department Defense.

[FR Doc. 01–29564 Filed 11–27–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 28, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy

Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notice, as amended, published in there entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–200 TAPC

SYSTEM NAME:

Classification, Reclassification, Utilization of Soldiers (February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0614–200 TAPC'.

SYSTEM NAME:

Delete entry and replace with 'Classification and Reclassification of Soldiers'.

SYSTEM LOCATION:

Delete entry and replace with 'U.S. Total Army Total Personnel Command, Reclassification Management Branch, 2461 Eisenhower Avenue, Alexandria, VA 22331–0400.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Active duty Army, Army National Guard and U.S. Army Reserve enlisted members on active duty'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'Personnel Actions Request, Enlisted Records Brief, MOS and Medical retention board documents and other related documents.' Delete from entry 'evaluation test data, Enlistee Evaluation Report data'.

* * * * *

STORAGE:

Add to entry 'and electronic storage media'.

RETRIEVABILITY:

Add 'Social Security Number'.

RETENTION AND DISPOSAL:

Delete entry and replace with 'MOS classification board proceeding documents and related information maintain for 2 years then destroy'.

* * * * *

RECORD SOURCE CATEGORIES:

Add to entry 'automated personnel systems'.

* * * * *

A0614–200 TAPC

SYSTEM NAME:

Classification and Reclassification of Soldiers.

SYSTEM LOCATION:

U.S. Total Army Total Personnel Command, Reclassification Management Branch, 2461 Eisenhower Avenue, Alexandria, VA 22331–0400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Army, Army National Guard and U.S. Army Reserve enlisted members on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, Social Security Number, grade, military occupational specialty (MOS), additional information substantiating the soldier's or Army's request for exception to or interpretation of regulatory guidance for the classification, reclassification or utilization of soldiers, Personnel Actions Request, Enlisted Records Brief, MOS and Medical retention board documents and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 614–200, Enlisted Assignments and Utilization Management; and E.O. 9397 (SSN).

PURPOSE(S):

To perform the objective of maintaining a balance of authorization versus requirements by military occupational specialty within each career management field.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's Social Security Number and surname.

SAFEGUARDS:

Records are accessed only by designated officials having official need therefore in the performance of official duties. Records are kept in file cabinets in locked rooms. Building housing records are protected by security guards.

RETENTION AND DISPOSAL:

MOS classification board proceeding documents and related information maintain for 2 years then destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Total Army Personnel Command, Reclassification Management Branch, 2461 Eisenhower Avenue, Alexandria, VA 22331–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, Total Army Personnel Command, Public Affairs Office, Freedom of Information Act and Privacy Act, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, Total Army Personnel Command, Public Affairs Office, Freedom of Information Act and Privacy Act, 200 Stovall Street, Alexandria, VA 22332–0400

Individual should provide the full name, Social Security Number, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army personnel records and reports, and automated personnel systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–29565 Filed 11–27–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 28, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen—F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management 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 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.

Dated: November 21, 2001.

John Tressler,

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

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Criteria for Distribution of the $225 Million FY 2001 Appropriation For School Improvement.

Frequency: One time.

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

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 832.

Abstract: To receive funds provided for school improvement in the FY 2001 appropriation, a State must submit information on the use of FY 2000 school improvement funds including (1) the names of the districts and schools that received FY 2000 funds and the allocation they received, (2) a description of the interventions that districts and schools have used to increase student achievement, (3) the number of students who transferred out of low-performing schools in districts receiving the FY 2000 school improvement funds as a result of the transfer requirement in the statute, and (4) the number of school districts receiving school improvement funds that subsequently met the State's adequate yearly progress targets.

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, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her internet address *Kathy.Axt@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. 01–29503 Filed 11–27–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Oakland Operations Office; Financial Assistance Solicitation No. DE–PS03–02SF22467 and Program Announcement LAB–NE–2002–1, Nuclear Energy Research Initiative

AGENCY: Office of Nuclear Energy, Science and Technology (NE), Oakland Operations Office, Department of Energy (DOE).

ACTION: Notice of solicitation for financial assistance.

SUMMARY: The U. S. Department of Energy, Oakland Operations Office intends to issue a Solicitation and a Program Announcement on or about November 20, 2001, seeking applications/proposals for innovative scientific and engineering research and development in the field of nuclear energy as part of the Nuclear Energy Research Initiative (NERI). NERI is designed to support promising research to address the principal technical and scientific obstacles to future use of nuclear power in the U.S.

FOR FURTHER INFORMATION CONTACT: Denise Berry, Contract Specialist, Financial Assistance Center, U. S. Department of Energy, 1301 Clay Street, 700N, Oakland, California 94612–5208; telephone (510) 637–1873.

SUPPLEMENTARY INFORMATION: This Solicitation is intended for applications from U.S. universities or other institutions of higher learning, industry, non-profit and R&D organizations and collaborations among organizations, including those in which DOE national laboratories are participating, but not as the lead organization. A separate Program Announcement is being issued simultaneously for proposals in which a DOE national laboratory participates as the sole or performing lead organization.

The fields of research include: (1) Advanced Nuclear Energy Systems; (2) Fuel Recycling Technologies; (3) Advanced Nuclear Fuel and (4) Fundamental Science.

Up to a total of $10 million of Government Fiscal Year 2002 Federal funds are expected to be available for awards under this Solicitation and the complementary Program Announcement to DOE national laboratories. Typical funding of individual awards is expected to be in the range of $200,000 to $450,000 per year. Collaborative research projects involving two or more organizations may receive larger awards, where merited. The period of performance for individual projects is expected to be one to three years.

The Nuclear Energy Research Initiative will be conducted under the authority of the Energy and Water Development Appropriations Act of 2002, Public Law 107–66; the Catalog of Federal Domestic Assistance (CFDA) Number 81.121; and the applicable DOE Financial Assistance Regulations at 10 CFR part 600.

There have been changes made to the submittal procedures for applications/proposals responding to the NERI Solicitation and Program Announcement for Fiscal Year 2002.

These solicitations were formerly posted on the NERI website. The NERI Solicitation and Program Announcement for Fiscal Year 2002 will be available on the Industry Interactive Procurement System (IIPS), which can be accessed at IIPS homepage at: *http://e-center.doe.gov.*

Completed applications and field work proposals are required to be submitted as an Adobe PDF file via IIPS in accordance with the IIPS User Guide. The Guide can be obtained by going to the IIPS Homepage at: *http://e-center.doe.gov* and then clicking on the ''Help'' button. Individuals who have the authority to enter their institution into a legally binding contract/agreement and intend to submit proposals/applications via the IIPS system must register and receive confirmation that they are registered prior to being able to submit an application/proposal on the IIPS system. Once an applicant is registered with IIPS, a signature on the IIPS is the typed name of the applicant in Block 18 of the SF 424. Questions regarding the operation of IIPS may be submitted via e-mail to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or via phone at (800) 683–0751. *The only acceptable mode of application transmission is through IIPS.* Applications submitted through the U.S. Postal Service, facsimile, telegraphically, courier companies, or hand-delivered hard copies will be considered non-responsive.

Issued in Oakland, California, on November 20, 2001.

R. Arlene Coleman,

Contracting Officer.

[FR Doc. 01–29580 Filed 11–27–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–23–000]

Columbia Gas Transmission Corporation; Notice of Application

November 21, 2001.

Take notice that on November 13, 2001, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP02–23–000 a request pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon by sale to Columbia Natural Resources, Inc. (CNR) certain natural gas facilities located in Upshur and Randolph Counties, West Virginia, and the service provided through such facilities. In addition, Columbia requests that the Commission find the abandoned facilities to be gathering and therefore exempt from the Commission's jurisdiction, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call (202)208–2222 for assistance).

Columbia states that as a result of Order Nos. 436 and 636, it has experienced a shift from primarily a merchant function to that of transporter. As a result, Columbia states that it is taking steps to redefine its pipeline system. Columbia further states that the facilities to be sold to CNR are not an integral part of its transmission system and that the long-term needs of its customers are best served through a divestiture of the non-core facilities.

Columbia states that on October 1, 2001, Columbia and CNR signed a letter of intent and acceptance of proposal to purchase. Columbia further states that such letter provides for the sale of the Alexander system which consists of 10.08 miles of 3-inch-diameter to 26-inch-diameter pipelines, and the Alexander and Sugar Run Compressor Stations which consist of two 540 horsepower units and one 600 horsepower unit, respectively. It is stated that the price of the facilities to be sold to CNR will be at net depreciated book cost at the time of the sale.

Columbia states that it does not propose the abandonment of service to customers other than those currently served directly from the facilities. Also, Columbia states that CNR has agreed to assume Columbia's service obligations to those customers. Columbia further states that although the Commission requires pipeline companies to make a tariff filing, pursuant to NGA section 4, within 30 days prior to the effective date of the transfer of gathering facilities to another party, Columbia requests waiver of this requirement. Instead, in the interest of efficiency and expediency, Columbia requests that the Commission accept the information provided within the application and in Exhibit Z–2 (List of Contracts to be Terminated) as its notice to terminate service pursuant to section 4 of the NGA.

Any questions regarding the application should be directed to Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 127, Charleston, West Virginia 22030–0146 at (304) 357–2359.

There are two ways to become involved in the Commission's review of this abandonment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this abandonment should, on or before December 12, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this abandonment. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the abandonment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this abandonment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying abandonment will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–29572 Filed 11–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–76–000, CP01–77–000, RP01–217–000, and CP01–156–000 (not consolidated)]

Cove Point LNG Limited Partnership; Notice to Parties

November 21, 2001.

This is to advise the parties in this proceeding that they may have access to non-public documents filed in or otherwise created for this proceeding (e.g., the transcript from the November 16, 2001 non-public conference), provided they sign the attached non-disclosure agreement. (Persons who are not parties to this proceeding must seek release under the Commission's Freedom of Information Act regulations in part 388 of Title 18 of the Code of Federal Regulations.) Requests should be submitted to the Secretary of the Commission in writing, specifying the exact document(s) sought and attaching a signed copy of the agreement. Any questions about the administration of the agreement should be directed to Jack Kendall, 202–208–0847.

David P. Boergers,

Secretary.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–76–000, CP01–77–000, RP01–217–000, and CP01–156–000 (not consolidated)]

Cove Point LNG Limited Partnership; Non-Disclosure Agreement

I hereby agree that I will not disclose the non-public material I have requested in this proceeding (specified below) to anyone other than, as appropriate, my client, my supervisor(s), or anyone else whom I represent or to whom I report. That person(s) in turn may not disclose the information to anyone. I understand that the contents of the non-public material, any notes or other memoranda, or any other form of information that copies or discloses this material shall not be disclosed to anyone other than as noted. I further understand that I shall use this material only in connection with this proceeding. I acknowledge that a violation of this agreement constitutes a violation of the Commission's directive at 97 FERC ¶61,181 (2001) that certain material in this proceeding be treated as privileged.

Specification of Material Requested: _____

By: _____

Date: _____

(Print Name) _____

Title: _____

Representing: _____

Mailing Address: _____

Telephone Number: _____

Email Address: _____

Date of Intervention: _____

[FR Doc. 01–29570 Filed 11–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–26–000]

El Paso Natural Gas Company; Notice of Application

November 21, 2001.

Take notice that on November 15, 2001, El Paso Natural Gas Company (El Paso), a Delaware corporation, P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP02–26–000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the Federal Energy Regulatory Commission's Regulations (Commission), for permission and approval to abandon by removal certain existing pipeline facilities and for a certificate of public convenience and necessity authorizing El Paso to replace and relocate certain pipeline facilities located in Pima County, Arizona. El Paso states that it requests expeditious authorization for the proposed relocation, replacement and abandonment no later than February 15, 2002 in order to coordinate construction with the Arizona Department of Transportation (ADOT) construction schedule anticipated to begin by March 31, 2002, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

El Paso states that the City of Tucson, Arizona, is currently experiencing rapid commercial and residential development which has resulted in increased encroachment on El Paso's pipeline facilities. Recently, El Paso was notified by ADOT of their intent to completely renovate the Interstate-10/Interstate-19 highway interchange (I–10/I–19 Project). The I–10/I–19 Project is crossed by El Paso's existing 10–3/4'' O.D. Tucson-Phoenix Lone (Line No. 1007). As a result of the pending encroachment resulting from the I–10/I–19 Project, El Paso must relocate, replace and abandon by removal a segment of Line No. 1007 affected by this public works project.

El Paso states that this type of project would normally be accomplished under its blanket certificate authorization, issued in Docket No. CP82–435–000, as a ''miscellaneous rearrangement'' of facilities under Section 157.208(a) of the Commission's Regulations. However, El Paso states that in March 2000, the Arizona State Historical Preservation Office (SHPO) determined that Line No. 1007 was eligible for historic designation under Section 106 of the National Historic Preservation Act. Consequently, El Paso cannot obtain the necessary ''No Effect'' determination required from the SHPO under the Commission's Regulations for projects undertaken pursuant to El Paso's blanket certificate authorization. El Paso states that in order for it to undertake the project proposed herein, the SHPO has determined that a programmatic agreement (PA) is required. The PA, according to El Paso, is designed to

specifically address the protocols to be used for any project disturbing historically eligible segments of Line No. 1007 and that such protocols would include the documentation, photography, and any research that will record the historical aspects of Line No. 1007. Based upon the circumstances surrounding the instant project (*i.e.*, lack of any other regulatory options and having an active natural gas pipeline operating in the construction zone), El Paso states that it is seeking case-specific Section 7 authorization under the NGA.

El Paso states that the cost of abandonment by removal, relocation and replacement of facilities is approximately $277,000. El Paso states it will continue to charge its existing Part 284 rates for transportation and will not propose to collect the cost of the relocation, replacement and abandonment of a segment of Line No. 1007 until El Paso files its next general system-wide rate filing scheduled for January 1, 2006.

Any questions regarding this application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs Department, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, at (719) 520–3788.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 12, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–29573 Filed 11–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–176–001]

Georgia Strait Crossing Pipeline LP; Notice of Amendment

November 21, 2001.

Take notice that on October 11, 2001, Georgia Strait Crossing Pipeline LP (GSX–US), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP01–176–001, an amendment to its April 24, 2001 application for a certificate of public convenience and necessity filed in Docket No. CP01–176–000. With this amendment, GSX–US is requesting authorization to construct and operate a new interstate natural gas transmission system consisting of approximately 47 miles of pipeline, the Cherry Point Compressor Station and other related facilities in the state of Washington, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

GSX–US states that it has amended its original application to reflect: (i) Minor route variations that add about ½ mile of pipeline to the project, along with the relocation/resizing of the site for the proposed Cherry Point Compressor Station; (ii) selection of a more efficient compressor package that will result in increased system design capacity and lowered recourse reservation rates; and (iii) the relocation of an onshore delivery tap and addition of a offshore delivery tap to facilitate potential future delivery interconnects.

Any questions concerning this application may be directed to Gary Kotter, Manager, Certificates, GSX Pipeline, L.L.C., P.O. Box 58900, Salt Lake City, Utah 84158, call (801) 584–7117.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party

to the proceedings for this project should, on or before December 12, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–29571 Filed 11–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–24–000]

Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Brazos Electric Power Cooperative, Inc.; Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc., Complainants, v. West Texas Utilities Company, Respondent; Notice of Complaint

November 21, 2001.

Take notice that on November 20, 2001, Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Brazos Electric Power Cooperative, Inc. Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc. filed a Complaint against West Texas Utilities Company (WTU), alleging violations of WTU's Wholesale Power Choice Tariff, TR–1 Tariff, and the Commission's Fuel Adjustment Clause Regulations, 18 CFR 35.14. The Complainants have requested fast track processing.

WTU has been served with a copy of the Complaint.

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 December 10, 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. Answers to the complaint shall also be due on or before December 10, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–29574 Filed 11–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7019–050 Georgia]

Eastern Hydroelectric Corporation; Notice of Availability of Final Environmental Assessment

November 21, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license amendment for the East Juliette Hydroelectric Project, located on the Ocmulgee River in Monroe County, Georgia, and has prepared a Final Environmental Assessment (FEA) for the proposed license amendment. No federal lands or Indian reservations are occupied by project works or are located within the project boundary.

The FEA contains the staff's analysis of the potential environmental impacts of the proposed amendment and concludes that the proposed action, with staff recommended measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review at the Commission's Public Reference Room, located at 888 First Street NE., Washington, DC 20426, or by calling (202) 208–1371. The FEA may be viewed on the web at *http://www.ferc.gov* using the RIMS link and selecting ''Dockets'' (call (202) 208–2222 for assistance).

For further information contact Jarrad Kosa, FERC Project Coordinator, at (202) 219–2831.

David P. Boergers,

Secretary.

[FR Doc. 01–29568 Filed 11–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2634]

Great Northern Paper, Inc.; Notice of Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

November 21, 2001.

On September 24, 2001, the Federal Energy Regulatory Commission (Commission) issued a notice for the Storage Project (FERC No. 2634–007) proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement (PA) for managing properties included in or eligible for inclusion in the National Register of Historic Places. The Storage project is located in Piscataquis and Somerset Counties in Maine. Great Northern Paper, Inc. is the licensee.

Rule 2010 of the Commission's rules of practice and procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established. The following changes in the existing restricted service list are noted.

Delete ''Richard H. Hamilton, Chief, Penobscot Indian Nation, 6 River Road; Indian Island, Old Town, Maine 04468'' and replace with ''Barry Dana, Chief, Penobscot Indian Nation, River Road; Indian Island, Old Town, Maine 04468''.

Delete ''Jim Harriman, U.S. Bureau of Indian Affairs, Eastern Area Office, M.S. 260–VASQ, 3701 Fairfax Drive, Arlington, Virginia 22203–1700'' and replace with ''Franklin Keel, Bureau of Indian Affairs, Eastern Regional Office, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214''.

Add ''Kevin R. Mendik, National Park Service, Northeast Field Office, 15 State Street, Boston, Massachusetts 02109''.

Add ''Land and Water Associates, 9 Union Street, Hallowell, Maine 04347''.

Add '' M. Kirstin Rohrer, Office of the Solicitor, MS–6456, 1849 C St., NW, Washington, DC 20240''.

Add ''Judith M. Stolfo, Office of the Regional Solicitor, One Gateway Center, Suite 612, Newton, Massachusetts 02458–02802''.

As a result of these changes, the revise final restricted service list for purposes of commenting on the PA, for Project No. P–2634 is as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW, Washington, DC 20004.

Earle G. Shettleworth, Jr., State Historic Preservation Officer, Maine Historic Preservation Commission, 55 Capitol Street, 65 State House Station, Augusta, Maine 04333.

Brian R. Stetson, Manager of Environmental Affairs, Great Northern Paper, Inc., Engineering and Research Building, 1 Katahdin Ave., Millinocket, Maine 04462–1373.

Gregory W. Sample, Drummond Woodsum & MacMahon, 245 Commercial Street, P.O. Box 9781, Portland, Maine 04104–5081.

Land and Water Associates, 9 Union Street, Hallowell, Maine 04347.

M. Kirstin Rohrer, Office of the Solicitor, MS–6456, 1849 C St., NW, Washington, DC 20240.

Judith M. Stolfo, Office of the Regional Solicitor, One Gateway Center, Suite 612, Newton, Massachusetts 02458–02802.

Barry Dana, Chief, Penobscot Indian Nation, River Road; Indian Island, Old Town, Maine 04468.

Franklin Keel, Bureau of Indian Affairs, Eastern Regional Office, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–29569 Filed 11–27–01; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7109–5]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in *Pharmaceutical Research and Manufacturers of America v. United States Environmental Protection Agency,* No. 99–1537 (D.C. Circuit). This case concerns the National Emission Standard for Hazardous Air Pollutants (''NESHAP'') for Publicly Owned Treatment Works (''POTW''), 40 CFR subpart VVV. The proposed settlement agreement was lodged with the United States Court of Appeals for the District of Columbia Circuit on November 16, 2001.

DATES: Written comments on the proposed settlement agreements must be received by December 28, 2001.

ADDRESSES: Written comments should be sent to Timothy D. Backstrom, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A copy of the proposed settlement agreement is available from Phyllis J. Cochran, (202) 564–5566. A copy of the proposed settlement agreement was also lodged in the case with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on November 16, 2001.

SUPPLEMENTARY INFORMATION: EPA promulgated the National Emission Standard for Hazardous Air Pollutants (''NESHAP'') for Publicly Owned Treatment Works (''POTW''), 40 CFR subpart VVV, on October 26, 1999, 64 FR 57579. Pharmaceutical Research and Manufacturers of America (''PhRMA'') then petitioned for judicial review of this standard in the DC Court of Appeals.

The POTW MACT standard included separate maximum available control technology (''MACT'') requirements for ''industrial POTWs,'' which accept wastewater for treatment from sources like the pharmaceutical manufacturers who are subject to other MACT standards. The POTW standard also included a provision stating that industrial POTWs which accept wastewater from major sources for treatment are also considered to be major sources, which was intended to assure that such POTWs would be subject to direct enforcement. PhRMA challenged this provision based on concern that POTWs which thereby become major sources could be subject to additional requirements like permitting and might therefore decline to accept wastewater from PhRMA members.

The settlement agreement addresses the PhRMA concerns by proposing to rescind the applicability provision that classifies industrial POTWs which accept wastewater from major sources as major sources. The original objective of assuring that MACT requirements will be directly enforceable for industrial

POTWs will be achieved instead by extending MACT requirements for industrial POTWs to area sources. These area sources are among those already listed for regulation under the urban toxic strategy required by CAA section 112(k)(3). EPA will also propose to exempt industrial POTW treatment plants which are area sources of HAP from the permit requirements in Clean Air Act section 502(a), because all applicable wastewater treatment requirements will be otherwise determined in the permit issued to the discharger.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreements from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the settlement agreement will then be executed by the parties.

Dated: November 20, 2001.

Alan W. Eckert,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 01–29554 Filed 11–27–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00328; FRL–6813–3]

Technical Workshop for the Voluntary Children's Chemical Evaluation Program (VCCEP); Notice of a Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA and the American Chemistry Council are jointly sponsoring a workshop to present information on planning and conducting exposure assessments and characterizing and reporting exposure assessment results for the Voluntary Children's Chemical Evaluation Program (VCCEP). The workshop will consist of a series of presentations by representatives of EPA and the chemical industry. Discussion topics will include tiered approaches for children's exposure assessment, resources and models for conducting exposure assessments, examples of exposure assessment with emphasis on children's exposure assessment, summarizing and presenting exposure assessment results, and the role of peer consultation in the VCCEP. After the presentation of each topic, individual opinions of invited technical experts, interested stakeholders, and other persons in attendance will be solicited. The workshop will be of interest to companies and consortia who have signed up for the Voluntary Children's Chemical Evaluation Program (VCCEP) as well as to those who may want to voluntarily submit exposure assessment results. There is no charge for attending this workshop.

DATES: The workshop will commence at 9 a.m. on Tuesday, December 11, 2001, and end at noon on Thursday, December 13, 2001.

ADDRESSES: The workshop will be held at the Hyatt Hotel-Dulles Airport, 2300 Dulles Corner Boulevard, Herndon, VA 20171–3400.

FOR FURTHER INFORMATION CONTACT: For technical information related to the workshop for presenting chemical exposure assessment results contact: Patrick Kennedy, Economics, Exposure and Technology Division (7406), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–8529; e-mail: *kennedy.patrick@epa.gov*.

For questions regarding registration and logistics contact: EPA's contractor, Eastern Research Group, Inc., (ERG). To ensure that all interested parties can be accommodated, please preregister by calling ERG's conference registration line at (781) 674–7374 or fax a registration request to (781) 674–2906. You may also send an e-mail registration request to ERG at *meetings@erg.com*. Prior to the workshop, registrants will be sent an agenda and a logistical fact sheet.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of special interest to those chemical manufacturers, importers, and processors who produce or use chemical substances that are covered by the Toxic Substances Control Act (TSCA), individuals or groups concerned with chemical testing and children's health, and animal welfare groups. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Purpose of the Meeting

The purpose of this workshop is to present and discuss technical information which may assist sponsors of chemicals in the VCCEP in planning, conducting, characterizing, and reporting exposure assessments. To facilitate the discussion at the workshop, EPA and invited speakers will present examples of exposure assessment for scenarios involving children and prospective parents. Additional examples will be given to illustrate the principles of consistency, transparency, completeness, and quality in characterizing and reporting of summary exposure assessment information. Papers, presentations, and examples presented at the workshop will be provided to attendees; selected EPA presentations and examples will be made available via the EPA Internet Site at *http://www.epa.gov/opptintr/chemrtk* following the workshop.

To enable the discussion, EPA has invited technical experts from industry, non-governmental organizations, and government agencies, including EPA, to discuss the presentations on exposure assessment in a roundtable format. The invited participants were selected to provide a balanced representation of stakeholder interests. Presentations by EPA and invited speakers will be followed by roundtable discussion by the invited participants. Opportunity for public comment from anyone who wishes to provide oral remarks will be provided at the conclusion of the roundtable discussion. Oral comments from the public may be limited to 5 minutes per individual to allow all those who wish to comment the opportunity to speak. Written comments may also be submitted to EPA via fax transmission to ERG at (781) 674–2906 until 1 week prior to the meeting or may be included with an evaluation of the meeting. EPA is not asking participants in the workshop to reach agreement or provide any collective recommendations on the summaries for presenting exposure assessment results. EPA's intent is to transfer technical information and the individual perspective of invited participants based upon their unique backgrounds and experiences. Accordingly, EPA does not intend to organize this workshop as an

advisory committee as defined in the Federal Advisory Committee Act, 5 U.S.C. App.

List of Subjects

Environmental protection.

Dated: November 15,2001.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 01–29555 Filed 11–27–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34249; FRL–6813–9]

Organophosphate Pesticides; Availability of Azinphos-Methyl and Phosmet Interim Risk Management Decision Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the interim risk management decision documents for azinphos-methyl and phosmet. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit comments on the azinphos-methyl and phosmet interim risk management decision documents. These decision documents have been developed as part of the public participation process that EPA and U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: Comments, identified by docket control number OPP–34131D for azinphos-methyl and by docket control number OPP–34173C for phosmet must be received by EPA on or before January 28, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify the docket control number OPP–34131D for azinphos-methyl and the docket control number OPP–34173C for phosmet in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For information on azinphos-methyl contact*: Veronique LaCapra, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–1525; e-mail address: lacapra.veronique@epa.gov.

For information on phosmet contact: Diane Isbell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8154; e-mail address: isbell.diane@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the azinphos-methyl and/or the phosmet interim risk management decision documents and submitting comments on azinphos-methyl and/or phosmet, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically*. You may obtain electronic copies of this document and other related documents from the EPA Internet home page at *http://www.epa.gov/*. To access this document, on the home page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the home page for the Office of Pesticide Programs (OPP) at *http://www.epa.gov/pesticides/op/*.

B. *In person*. The Agency has established an official record for this action identified by docket control number OPP–34131D for azinphos-methyl and by docket control number OPP–34173C for phosmet. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch (PIRIB) telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34131D for azinphos-methyl and/or docket control number OPP–34173C for phosmet in the subject line on the first page of your response.

1. *By mail*. Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. Submit electronic comments by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the

use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34131D for azinphos-methyl and/or docket control number OPP–34173C for phosmet. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

IV. What Action is EPA Taking in this Notice?

EPA has assessed the risks of azinphos-methyl and phosmet and has reached an interim risk management decision for these organophosphate pesticides. For azinphos-methyl, 28 crop uses are being canceled, 7 crop uses are being phased-out over 4 years, and 8 crop uses will be allowed to continue as ''time-limited'' registrations for another 4 years. Prior to the expiration of the 4-year period, EPA will conduct a comprehensive review of these 8 crop uses, based on the latest scientific information, to determine if they should continue; the crops with time-limited registrations include: Apples/crabapples, blueberries, brussels sprouts, caneberries, pears, pine seed orchards, sweet cherries, and the use of azinphos-methyl by nurseries for quarantine requirement. The crop uses being phased out in 4 years include those for: Almonds, cotton, cranberries, peaches, pistachios, tart cherries, and walnuts.

For the 28 crop uses being canceled for azinphos-methyl, there will be no phase-out period since there are viable alternatives. Seven crops are being allowed to continue for 4 years to facilitate transition to viable alternatives. Also, the Agency will allow a time-limited registration for 4 years for 8 specific uses of azinphos-methyl.

For phosmet, 3 uses are being voluntarily canceled, 9 crops are being authorized for use under specific terms for 5 years, and 33 crops are being approved for continued use. The new measures on phosmet are being implemented under an agreement with the registrant. The 3 voluntary cancellations include use on: Domestic pets, household ornamentals, and household fruit trees. A group of 9 crops will be authorized for use for 5 years under specific terms: Apples, apricots, blueberries, crabapples, grapes, nectarines, peaches, pears, and plums/dried plums.

To enhance protection of agricultural workers from azinphos-methyl and phosmet during the phase-out and time-limited registration periods, a variety of stringent new precautions are being implemented to reduce exposure, including longer periods before a worker can enter a treated area, limiting the number of applications, and prohibiting aerial application for almost all azinphos-methyl uses.

Provided that risk mitigation measures are adopted, azinphos-methyl and phosmet fit into their own risk cup; their individual, aggregate risks are within acceptable levels.

EPA has been evaluating azinphos-methyl and phosmet as part of the Agency's ongoing process to individually review the organophosphate pesticides and take necessary risk reduction measures as required under the FQPA and FIFRA.

The interim risk management decision documents for azinphos-methyl and phosmet were developed as part of the organophosphate pesticide pilot public participation process, which increases transparency and maximizes stakeholder involvement in EPA's development of risk assessments and risk management decisions. The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. EPA worked extensively with affected parties to reach the decisions presented in the interim risk management decision document for azinphos-methyl and phosmet.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit written comments on the interim risk management decision document for azinphos-methyl and/or phosmet. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in any later notice and comment processes. Comments submitted will become part of the Agency record for azinphos-methyl and phosmet.

The preliminary risk assessments for azinphos-methyl were released to the public on August 12, 1998 (63 FR 43175) (FRL–6024–3) through a notice published in the **Federal Register**. The revised risk assessments for azinphos-methyl were released to the public on May 19, 1999 (64 FR 27258) (FRL–6082–3) through a notice published in the **Federal Register**.

The preliminary risk assessments for phosmet were released to the public on January 15, 1999 (64 FR 2644) (FRL–6056–9) through a notice published in the **Federal Register**. The revised risk assessments for phosmet were released

to the public on March 20, 2000 (65 FR 14967) (FRL–6499–2) through a notice published in the **Federal Register**.

The phosmet partial interim reregistration eligibility decision document and the benefits assessments for azinphos-methyl and phosmet were released to the public on September 13, 2001 (66 FR 47657) (FRL–6802–7) through a notice published in the **Federal Register**.

EPA's next step under FQPA is to consider the cumulative risks of the organophosphate pesticides, which share a common mechanism of toxicity. The interim risk management decision documents on azinphos-methyl and phosmet cannot be considered final until this consideration of organophosphate cumulative risks is complete.

When the cumulative risks of the organophosphate pesticides have been considered, EPA will issue its final tolerance reassessment decision for azinphos-methyl and phosmet and further risk mitigation measures may be needed.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: November 20, 2001.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–29558 Filed 11–27–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34168B; FRL–6812–3]

Organophosphate Pesticide; Availability of Interim Risk Management Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the interim risk management decision document for an organophosphate pesticide, pirimiphos-methyl. This decision document has been developed as part of the public participation process that EPA and the United States Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: The interim risk management decision document is available in the OPP docket under docket control number OPP–34168B.

FOR FURTHER INFORMATION CONTACT: Lorilyn Montford, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8170; e-mail address: montford.lorilyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the interim risk management decision document for pirimiphos-methyl, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/*. On the home page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. In addition, copies of the pesticide interim risk management decision documents released to the public may also be accessed at *http://www.epa.gov/pesticides/reregistration/status.htm.*

2. *In person.* The Agency has established an official record for this action under docket control numbers OPP–34168B. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. What Action is the Agency Taking?

EPA has assessed the risks of pirimiphos-methyl and reached an Interim Reregistration Eligibility Decision (IRED) for this organophosphate pesticide. Provided that risk mitigation measures are adopted, pirimiphos-methyl fits into its own risk cup; its individual aggregate risks are within acceptable levels. Pirimiphos-methyl is used primarily on stored corn, sorghum grain, and seed, in cattle ear tags and for the fogging treatment of iris bulbs. Pirimiphos-methyl residues in food alone do not pose risk concerns. With mitigation reducing worker exposure to pirimiphos-methyl by requiring closed mixing and loading systems for admixture grain and seed treatment, and requiring additional personal protective equipment for workers, risk will not be of concern. Pirimiphos-methyl ecological risks are also below the Agency's level of concern.

The interim risk management decision documents for pirimiphos-methyl were made available through the organophosphate pesticide pilot public participation process, which increases transparency and maximizes stakeholder involvement in EPA's development of risk assessments and risk management decisions. The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began

implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation.

EPA worked extensively with affected parties to reach the decisions presented in the interim risk management decision documents, which conclude the pilot public participation process for pirimiphos-methyl. As part of the pilot public participation process, numerous opportunities for public comment were offered as these interim risk management decision documents were being developed. The pirimiphos-methyl interim risk management decision documents therefore are issued in final, without a formal public comment period. The docket remains open, however, and any comments submitted in the future will be placed in the public docket.

The risk assessments for pirimiphos-methyl were released to the public through a notice published in the **Federal Register** of January 8, 1999 (64 FR 1199) (FRL–6055–9), and March 29, 2000 (65 FR 16592) (FRL–6551–5).

EPA's next step under FQPA is to complete a cumulative risk assessment and risk management decision for the organophosphate pesticides, which share a common mechanism of toxicity. The interim risk management decision documents on pirimiphos-methyl cannot be considered final until this cumulative assessment is complete.

When the cumulative risk assessment for the organophosphate pesticides has been completed, EPA will issue its final tolerance reassessment decision(s) for pirimiphos-methyl and further risk mitigation measures may be needed.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: November 16, 2001.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–29559 Filed 11–27–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66297; FRL–6810–1]

Acephate; Receipt of Requests For Amendments to Delete Uses and to Voluntarily Cancel Certain Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by certain acephate registrants to amend their registrations for products containing O,S-dimethyl acetylphosphoramidothioate, or acephate, to terminate certain uses and voluntarily cancel certain acephate product registrations. The requests to cancel certain uses from the registrations will reduce residential risks which exceed the Agency's level of concern. EPA will decide whether to approve the requests after consideration of public comment.

DATES: Comments on the requested amendments to delete uses and cancel product registrations must be submitted to the contact person at the address provided under **FOR FURTHER INFORMATION CONTACT** by December 28, 2001.

FOR FURTHER INFORMATION CONTACT: By mail: Kimberly Nesci Lowe, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8059; e-mail address: *Lowe.kimberly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/*. To access this document, on the home page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

II. Acephate Registrant Requests to Amend Registrations

A. Background Information

Acephate is an organophosphate insecticide registered to control certain insect pests on a variety of field, fruit, and vegetable crops; in food handling establishments; on ornamental plants both in greenhouses and outdoors; and on turfgrass sites, including residential lawns, golf courses, sod farms, and industrial sites. Acephate is also registered for use in and around the home to control common household insect pests.

Annual domestic use is approximately 4 to 5 million pounds of acephate active ingredient per year. The vast majority of acephate usage is on agricultural and commercial ornamental plant use sites. Use in and around the home is a small fraction of total acephate usage. Acephate use in the home and on lawns is apparently somewhat self-limiting due to the pesticide's objectionable odor.

During development of the Interim Reregistration Eligibility Decision (IRED), EPA identified risk concerns for residents, including children, who contact treated surfaces in homes following indoor application. EPA also identified a risk of concern for young children playing on treated lawns. In order to address these concerns prior to completion of the IRED, Valent USA Corporation (Valent) and the other technical registrants notified EPA of their intent to formally request amendment of their registrations to delete these uses.

EPA will soon release the IRED, which further describes the risks associated with acephate uses in and around the home. The IRED also outlines EPA's other risk concerns and risk management measures adopted in the IRED to address them.

B. Request for Voluntary Cancellation of Certain Uses and Product Registrations

To reduce the risk posed to residents in treated homes and lawns, EPA discussed the matter with all technical acephate registrants and ultimately obtained general agreement on the merits of dropping certain uses. Accordingly, Valent and the other registrants of technical grade acephate products requested the voluntary deletion of the key uses and certain product registrations. End use product registrants also indicated a willingness to drop the same uses.

On October 15, 2001, Valent, the primary technical registrant supporting the reregistration of acephate, submitted a written request to EPA seeking to

amend its manufacturing and end use registrations for acephate. Specifically, Valent requested that EPA amend all of its registered products to delete the use of acephate on residential indoor and turfgrass sites (except golf courses, sod farms, and spot or mound treatment for harvester and fire ant control). The use deletions request involves seven FIFRA section 3 registrations held by Valent. Valent also requested the voluntary cancellation of one section 3 manufacturing use registration and eight Special Local Need registrations under FIFRA section 24(c). The cancellations were conditioned on EPA granting certain existing stock provisions. Valent also requested that EPA waive any applicable 180–day comment period for EPA action on its requests.

During October 2001, nearly identical use deletion requests were received from the other three technical registrants: Drexel Chemical Company, United Phosphorus, Inc., and Micro Flo Company LLC. Furthermore, the remaining end use product registrants made similar use deletion requests, including Whitmire Micro-Gen Research Labs, The Scotts Company, and Pursell Technologies, Inc.

For the purposes of these proposed use deletions, the Agency is using the definition at 40 CFR 152.3(u) for the ''residential use'' part of the site description. Residential indoor sites refers to all ''residential use'' sites that are indoors. Also, the ''turfgrass'' use deletion refers to any turfgrass use site, unless the specific turf use site or pest is excepted as described in this notice.Thus, turfgrass use directions on revised labeling would be limited to golf course, sod farm, and spot or mound treatment for harvester or fire ant control.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be amended to delete one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that EPA provide a 30–day comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless: (1) The registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrants have requested that EPA waive the 180–day comment period. In light of this request, EPA is granting the request to waive the 180–day comment period.

Table 1 specifies the time frame for the use deletions and proposed existing stocks provision for manufacturing use products, as requested by the technical registrants. In addition to conditions specified in Table 1, registrants may continue formulating acephate products from manufacturing use products labeled with deleted uses into end use products labeled exclusively for non-deleted uses, provided the other time frames in Table 1 are followed. Such formulation may continue until registrant supplies are exhausted.

TABLE 1.—MANUFACTURING USE PRODUCTS: TIME FRAME FOR USE DELETIONS AND PROPOSED EXISTING STOCKS PROVISION

Product Registration Number	Date of Use Deletion Request	Effective Date of Use Deletions	Last Date for Use of Existing Stocks to Formulate End Use Products with Deleted Uses		Last Date for Sale and Distribution of Existing Stocks by the Registrant
			Indoor Residential	Turfgrass[1]	
19713-410	10-16-01	12-31-01	12-31-01	10-31-02	12-31-01
51036-246	10-03-01	12-31-01	12-31-01	10-31-02	12-31-01
59639-41	10-15-01	12-31-01	12-31-01	10-31-02	12-31-01
70506-3	10-15-01	12-31-01	12-31-01	10-31-02	12-31-01

[1]Except products labeled for turfgrass on golf courses, sod farms, and/or spot or mound treatment for harvester and fire ant control (unless otherwise specified).

Table 2 specifies the time frame for the use deletions and proposed existing stocks provision for affected end use products, as requested by end use registrants. The conditions described in this table pertain to the end use registrants of acephate. (N/A in Tables 2 and 3 means ''not applicable.'')

TABLE 2.—END USE PRODUCTS: TIME FRAME FOR USE DELETIONS AND PROPOSED EXISTING STOCKS PROVISION

Product Registration Number	Date of Use Deletion Request	Effective Date of Use Deletions		Last Date for Sale and Distribution of Existing Stocks by the Registrant
		Indoor Residential	Turfgrass[1]	
239-2406	10-17-01	N/A	10-31-02	12-31-02
239-2436	10-19-01	N/A	10-31-02[2]	12-31-02
239-2440	10-17-01	12-31-01	N/A	12-31-02
239-2461	10-17-01	N/A	10-31-02[2]	12-31-02
239-2632	10-17-01	N/A	10-31-02	12-31-02
499-373	10-15-01	12-31-01	N/A	12-31-02
19713-495	10-16-01	12-31-01	N/A	12-31-02
19713-497	10-16-01	N/A	10-31-02	12-31-02

TABLE 2.—END USE PRODUCTS: TIME FRAME FOR USE DELETIONS AND PROPOSED EXISTING STOCKS PROVISION—Continued

Product Registration Number	Date of Use Deletion Request	Effective Date of Use Deletions		Last Date for Sale and Distribution of Existing Stocks by the Registrant
		Indoor Residential	Turfgrass[1]	
51036-236	10-03-01	N/A	10-31-02	12-31-02
51036-252	10-03-01	N/A	10-31-02	12-31-02
51036-237	10-03-01	12-31-01	N/A	12-31-02
51036-337	10-03-01	N/A	10-31-02	12-31-02
59639-26	10-15-01	N/A	10-31-02	12-31-02
59639-28	10-15-01	N/A	10-31-02	12-31-02
59639-31	10-15-01	12-31-01	N/A	12-31-02
59639-33	10-15-01	N/A	10-31-02	12-31-02
59639-87	10-15-01	N/A	10-31-02	12-31-02
59639-91	10-15-01	N/A	10-31-02	12-31-02
70506-1	10-15-01	N/A	10-31-02[2]	12-31-02
73614-1	10-17-01	N/A	10-31-02	12-31-02

[1]Except products labeled for turfgrass on golf courses, sod farms, and/or spot or mound treatment for harvester and fire ant control (unless otherwise specified).
[2]Exception for harvester ant control on turfgrass does not apply.

As previously mentioned, this notice also announces receipt by the Agency on October 15, 2001, of a request from Valent USA Corporation, 1333 N. California Blvd., Ste. 600, Walnut Creek, CA 94596 to cancel nine acephate products registered under section 3 or 24(c) of FIFRA. These registrations are listed in the following Table 3. Canceled products containing deleted uses will be subject to the same time frames and proposed existing stocks provisions given for manufacturing use products and end use products listed in Tables 1 and 2, respectively.

TABLE 3.—ACEPHATE REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Product Registration Number	Product Name	Parent Section 3 Registration Number
59639-42	Valent Orthene MFG	N/A
AL960001	Pinpoint 15 Granular	59639-87
FL890016	Orthene Turf, Tree and Ornamental Spray	59639-26
FL960007	Pinpoint 15 Granular	59639-87
GA970002	Pinpoint 15 Granular	59639-87
LA950011	Pinpoint 15 Granular	59639-87
MS960016	Pinpoint 15 Granular	59639-87
SC960001	Pinpoint 15 Granular	59639-87
TX960011	Pinpoint 15 Granular	59639-87

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before December 28, 2001. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill

any applicable unsatisfied data requirements.

V. Proposed Existing Stocks Provision

Pursuant to section 6(f) of FIFRA, EPA proposes to grant the requests for voluntary amendment and cancellation during the appropriate time frames identified in Tables 1 and 2. For purposes of the cancellation order that the Agency proposes to issue at the close of the comment period for this announcement, the term ''existing stocks'' will be defined, pursuant to EPA's Existing Stocks Policy published in the **Federal Register** of June 26, 1991 (56 FR 29362), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation. Any distribution, sale, or use of existing stocks after the effective date of the cancellation order that the Agency intends to issue that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

A. Distribution, Sale, and Use of Products with Deleted Uses by Registrants

If the requested use deletions are approved, the distribution, sale, or use of such stocks by the registrants of acephate products will not be lawful under FIFRA after the sale, distribution, and use dates listed in Tables 1 and 2, except for the purposes of returns and relabeling, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

B. Distribution, Sale, and Use of Products with Deleted Uses by Persons Other than Registrants

If the requested use deletions are approved, retailers, distributors, and end-users may sell, distribute, or use end-use products with previously approved labeling which have been released for shipment until such supplies are exhausted, as presented in Table 2.

C. Distribution, Sale, and Use of Canceled Products

If the requested voluntary product cancellations are approved, the effective date of cancellation will be the date of the cancellation order, which is projected to be December 31, 2001. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received by the Agency. In this case, registrants will also be subject to the time frames and proposed existing stocks provisions for products with deleted uses described above, as appropriate. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 13, 2001.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–29556 Filed 11–27–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34240; FRL–6811–8]

Amendment to the Rodenticide Cluster and Zinc Phosphide Reregistration Eligibility Decision (RED) Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The August 1998, Reregistration Eligibility Decision (RED) documents issued for the rodenticide cluster (brodifacoum, bromadiolone, bromethalin, chlorophacinone, diphacinone, and pival) and zinc phosphide outlined requirements to lessen the probability and severity of exposure to children. The RED established short-term risk mitigation including the incorporation of a bittering agent and an indicator dye in formulations to reduce accidental exposures to children and pets. In addition, the RED established the Rodenticide Stakeholder Workgroup (RSW) to develop long-term risk mitigation measures. On February 5, 2001, after extensive discussions, meetings, and recommendations from the RSW, the Agency came to a mutual agreement with the rodenticide registrants to rescind the bittering agent and indicator dye requirements from the RED. This decision, which amends the Rodenticide Cluster and Zinc Phosphide RED, is summarized below.

DATES: Comments, identified by docket control number OPP–34240, must be received on or before December 28, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative, that you identify docket control number OPP–34240 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: John Pates, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8195; fax number: (703) 308–7042; e-mail address: pates.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to companies that formulate rodenticides for use by certified personnel and the general public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/*. To access this document, on the home page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents. You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. In addition, related information can be accessed at: *http://www.epa.gov/pesticides*.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34240. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are

physically located in the docket, as well as, the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative, that you identify docket control number OPP–34240, in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34240. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

In August 1998, EPA issued two reregistration eligibility decision (RED) documents on seven rodenticide active ingredients. The Rodenticide Cluster RED included brodifacoum, bromadiolone, bromethalin, chlorophacinone, diphacinone, and pival. One stand-alone RED covered the active ingredient zinc phosphide. As a group, the seven active ingredients are registered for rodent control in both agricultural and residential settings. In these decision documents, EPA found the seven rodenticides eligible for reregistration, provided certain modifications were made to the terms and conditions of registration and use. The REDs proposed registration modifications and risk mitigation measures aimed at minimizing the potential risk to wildlife, non-target animals and humans, particularly children. Some of these modifications related to the finding that the use of these compounds in the residential setting was responsible for a disproportionate number of exposures to children (<6 years old). Over a 2–year period, the American Association of Poison Control Centers (AAPCC) collected data on over 18,000 exposures cases involving such young children.

Initial concerns centered around exposure to children in the residential setting. The Agency, recognizing the important public health benefits of rodenticides, pursued ways of minimizing potential exposure to children. In order to mitigate the risk from the use of rodenticides and maintain the benefits, the Agency developed a two-phased approach. Phase one centered on short-term risk mitigation measures, namely, the incorporation of a bittering agent and indicator dye in rodenticide formulations. Another requirement for registrants was to submit to the Agency annual reports on incidents of exposure. It was perceived that this information would enable the Agency to determine whether the imposed risk mitigation measures were reducing exposures to humans, particularly children. Phase two involved formation of a stakeholder group (the RSW) whose task was to find technologies or other measures to preclude such incidents from occurring in the future.

The RSW was formed in 1999 as a subcommittee under the federally-chartered advisory body, the Pesticide Program Dialogue Committee (PPDC), and met 5 times over an 8–month period in 1999. In forming the RSW, EPA's goal was to generate a stakeholder process that would explore creative ways of improving the management and/or regulation of rodenticides labeled for use in the home. The RSW was to consider evidence of the problem and develop potential measures to reduce exposures involving young children while being mindful of the following factors: Public health benefits of rodenticides; avoiding the creation or aggravation of other human health ''hazards'' equity among those who bear the cost and regulatory burden; and considering the overall economy and efficacy of the recommendations.

The Rodenticide Cluster and Zinc Phosphide REDs concluded that the rodenticide bait would not be eligible

for reregistration without including an indicator dye and bittering agent into the formulations of all rodenticide baits. These indicator dyes were expected to show whether a child had come into contact with the bait by leaving a stain on a child's mouth or hands. By staining the hands, mouth, etc., of an exposed child, EPA believed that such an indicator dye would confirm whether a child ingested or handled any rodenticide bait. The recommendation of the RSW was to drop this requirement from the RED due to the lack of suitable dye. Other issues of concern included: (1) There are no data on indicator dyes as an adequate marker; (2) the dye's effect on the overall efficacy of the product; (3) potential cost of new efficacy testing; (4) distinguishing between stains on a child from food products and stains from indicator dyes; (5) finding a dye that was temporary; and (6) contending with inevitable property damage resulting from contacted surfaces. Some members of the RSW felt that if technology was available, indicator dyes might have merit in managing potential exposure cases. Additional research and development, however, is needed before implementing such a requirement.

The REDs also concluded that a bittering agent be incorporated into the formulations of all rodenticide baits with the intention of minimizing the amount of bait accidentally ingested. In theory, a bittering agent would prevent a child from taking more than one mouthful, thereby possibly limiting the magnitude and severity of the exposure. The RSW recommended dropping the bittering agents as a mandatory requirement. Rodents have the ability to taste bittering agents raising the potential for bait acceptance problems. RSW members associated with urban rat control programs strongly believed that bittering agents adversely affect the efficacy of rodenticide baits. Another point of contention was EPA's reluctance to allow registrants of products containing bittering agents to make representations on the labeling about the bittering agent as a safety feature. Federal regulations prohibit making safety claims on pesticide labeling. (See 40 CFR 156.10(a)(5)(ix)). Also, inclusion of the bittering agent does not make the bait less toxic nor does it provide absolute protection for children.

While the RSW recommended dropping indicator dyes and bittering agents as mandatory requirements, members also recommended that EPA allow industry to retain the option of including such ingredients in rodenticide bait products on a voluntary basis.

Therefore, based on the findings presented to the PPDC by the RSW, EPA has determined that the rodenticide bait products are eligible for reregistration without indicator dyes and bittering agents. Although indicator dyes and bittering agents may not be necessary in all cases, EPA supports voluntary incorporation of these ingredients in rodenticide formulations.

B. Next Steps

EPA plans to move forward with a series of steps to implement the other recommendations of the RSW. These include modifying label language for rodenticide products, examining the potential value of reducing the amount of bait per placement to reduce a child's potential maximum exposure, considering the development of a website with educational and safety information for consumers, and improving the collection and quality of data on exposures. Additionally, as discussed in the 1998 Rodenticide Cluster RED, EPA is evaluating the comparative risk of secondary poisoning to birds and nontarget mammals associated with rodenticide products. Included in this comparative ecological risk assessment are three second-generation anticoagulants, three first-generation anticoagulants, and three non-anticoagulants. Through the findings of this comparative risk analysis, EPA hopes to bring forth a better understanding of the major differences in the potential risks of these compounds and their overall implications to birds and non-target mammals as well as develop any necessary risk mitigation measures that may be warranted to address these risks.

EPA has received comments and recommendations from stakeholders regarding label improvement. The Agency is in the process of reviewing these recommendations and expects to propose a strategy for label improvements within the next several months. EPA is also considering efficacy and other information to determine the feasibility of reducing the maximum quantity of bait per placement, and is also considering the content and presentation of consumer safety information that might be appropriate for a rodenticide website. The Agency has also obtained funds to purchase annual poisoning incident data directly from the American Association of Poison Control Centers (AAPCC). EPA will review these and other data, such as those submitted to the Agency under FIFRA section 6(a)(2), to explore the underlying causes of exposures, as well as, the adequacy of actions taken to reduce both the frequency and severity of incidents. The Agency will continue to monitor incident data in an effort to maintain awareness of reported exposures and to reduce the overall number of exposures to children.

Finally, the Agency plans to amend the 1998 RED to address the findings of the comparative ecological risk assessment, which is now near completion. EPA plans to use a public participation process to ensure transparency and stakeholder involvement in the development of the risk assessment and risk management documents and decisions. This will parallel the process currently in use for tolerance reassessment and reregistration of other pesticides, and will involve an error-only review by the registrants and federal agencies, public comment on the risk assessment and risk characterization, and public comment on EPA's risk-reduction proposal prior to EPA's final risk management decision. This process is expected to be completed in FY–2002.

Registrants are reminded that the date of publication of this **Federal Register** Notice will start the 8–month timetable for data submission as required per the Product Data Call-In (PDCI). Other time frames will also be imposed as required per the Generic Data Call-In as set forth in the Rodenticide Cluster RED; both of which had been temporarily put on hold, due to the RSW process.

C. What is the Agency's Authority for this Action?

EPA's legal authority for the RED documents issued for the rodenticide cluster (brodifacoum, bromadiolone, bromethalin, chlorophacinone, diphacinone, and pival) and zinc phosphide comes from section 4(g)(2)(A) of FIFRA. Section 4(g)(2)(A) directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products, and either reregistering products or taking ''other appropriate regulatory action.''

List of Subjects

Environmental protection.

Dated: November 13, 2001.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–29557 Filed 11–27–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00732; FRL–6792–8]

Pesticide Science Policy: Guidance for Performing Aggregate Exposure and Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA announces the availability of the revised version of the pesticide science policy document entitled ''Guidance for Performing Aggregate Exposure and Risk Assessments.'' This notice is one in a series concerning science policy documents related to the implementation of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

FOR FURTHER INFORMATION CONTACT: Beth Doyle, Environmental Protection Agency (7503C), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–2722; fax number: (703) 305–0871; e-mail address: doyle.elizabeth@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

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

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, the science policy documents, and certain other related documents that might be available from the Office of Pesticide Programs' home page at *http://www.epa.gov/pesticides.* On the Office of Pesticide Programs' home page select ''FQPA'' and then look up the entry for this document under ''Science Policies.'' You can also go directly to the listings at the EPA home page at *http://www.epa.gov.* On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry to this document under ''**Federal Register**—Environmental Documents.'' You can go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr.*

2. *Fax-on-demand.* You may request a faxed copy of the science policy documents, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6087 for the document entitled ''Guidance for Performing Aggregate Exposure and Risk Assessments.'' You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00732. In addition, the documents referenced in the framework notice, which published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), under docket control number OPP–00557, are considered as part of the official record for this action under docket control number OPP–00732 even though not placed in the official record. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background Information

On August 3, 1996, FQPA was signed into law. The FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and FFDCA. Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure and strengthened health protections for infants and children from pesticide risks.

Thereafter, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that meet the new FFDCA standard, but that could be revisited if additional information became available or as the science evolved. In addition, the Agency seeks independent review and public participation, generally through presentation of the science policy issues to the FIFRA Scientific Advisory Panel, a group of independent, outside experts who provide peer review and scientific advice to OPP.

During 1998 and 1999, EPA and the U.S. Department of Agriculture (USDA) established a second subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC) to address FFDCA issues and implementation. TRAC comprised more than 50 representatives of affected user, producer, consumer, public health, environmental, states, and other interested groups. The TRAC met from May 27, 1998, through April 29, 1999.

In order to continue the constructive discussions about FFDCA, EPA and USDA have established, under the auspices of NACEPT, the Committee to Advise on Reassessment and Transition (CARAT). The CARAT provides a forum for a broad spectrum of stakeholders to consult with and advise the Agency and the Secretary of Agriculture on pest and pesticide management transition issues related to the tolerance reassessment process. The CARAT is intended to further the valuable work initiated by the FSAC and TRAC toward the use of sound science and greater transparency in regulatory decisionmaking, increased stakeholder participation, and

reasonable transition strategies that reduce risks without jeopardizing American agriculture and farm communities.

As a result of the 1998 and 1999 TRAC process, EPA decided that the implementation process and related policies would benefit from providing notice and comment on major science policy issues. The TRAC identified nine science policy areas it believed were key to implementation of tolerance reassessment. EPA agreed to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In a notice published in the **Federal Register** of October 29, 1998 (63 FR 58038), EPA described its intended approach. Since then, EPA has been issuing a series of draft documents concerning the nine science policy issues. This notice announces the availability of the revised science policy document concerning aggregate exposure and risk assessment.

III. Summary of ''Guidance for Performing Aggregate Exposure and Risk Assessments''

EPA is responsible for regulating pesticide residues in food under the FFDCA. In 1996, Congress passed the FQPA which amended FFDCA. The FQPA amendments to the FFDCA directed EPA to consider ''aggregate exposure'' in its decisionmaking. Aggregate exposure and risk assessment involve the analysis of exposure to a single chemical by multiple pathways and routes of exposure. The pathways of exposure considered in this guidance document include the potential for pesticide residues in food and drinking water, as well as residues from pesticide use in residential, non-occupational environments. The pathway of exposure refers to how human behavioral patterns potentially interact with pesticides in the environment. All potential, relevant routes of exposure are analyzed within an aggregate exposure assessment. These include the oral, dermal (absorption), and inhalation routes of exposure. Thus, OPP was required by the FQPA amendments to modify its exposure and risk assessment methods to consider that pesticide chemicals may enter the body through various pathways (through food, drinking water, and residential uses) and routes (ingestion, dermal, and inhalation).

In response to the FQPA mandates to consider aggregate exposure, OPP implemented HED SOP 97.2 Interim Guidance for Conducting Aggregate Exposure and Risk Assessments (November 26, 1997) (Stasikowski, 1997a) (Interim Guidance) in 1996 for assessing aggregate exposure and risk. This guidance uses a mix of data as point estimates and data in a distributional form. According to the interim guidance, most frequently the ''high-end'' or ''upper bound'' point estimates from the drinking water and residential exposure pathways are added to an estimate of food ingestion exposure from food (for acute exposures, the 99.9th percentile on the distribution of daily exposures). The aggregate guidance presented in this document supports a different approach. This guidance expands upon the interim guidance to include the way in which aggregate exposure and risk assessment may be performed when ''ideal'' data, methods and tools are available.

The current guidance document discusses the interim guidance methods, but emphasizes an expanded approach which looks beyond the interim guidance to encompass the use of distributional data for all pathways of exposure when data are available. A distributional data analysis (as opposed to a point estimate approach) is preferred because this tool allows an aggregate exposure assessor to more fully evaluate exposure and resulting risk across the entire population, not just the exposure of a single, high-end individual. The expanded guidance encourages assessment techniques which, using a combination of data, models, and reasonable judgements, represent each potentially exposed ''individual'' in the population over calendar time. A baseline requirement of this approach is that the exposure parameters associated with each hypothetical individual must be coherent, consistent, and logical. This means the hypothetical individual's temporal exposure characteristics, spatial exposure characteristics, and demographic and behavioral exposure characteristics should be consistent and reasonable for each type of individual, for each day in the assessment, over all days in the assessment. The use of distributional data sets which comprise the aggregate exposures to many individuals in the population of interest and the principle that the individual's aggregate exposure be consistent in temporal, spatial and demographic characteristics are two central components to this expanded aggregate exposure and risk guidance document. Using this approach OPP and others in the risk assessment community can move toward using a distribution of total aggregate exposures to many types of individuals potentially exposed in a population of interest.

A version of the aggregate guidance was presented to the FIFRA Scientific Advisory Panel (SAP) in February of 1999. SAP member comments were incorporated into the guidance document where appropriate. On November 10, 1999, the availability of the draft ''Guidance for Performing Aggregate Exposure and Risk Assessment'' (Aggregate Guidance) was published in the **Federal Register** (64 FR 61343) (FRL–6388–8), and public comments were requested on the overall content of the document as well as seven specific questions. Based in part on the comments received, this science policy paper was revised and is now being issued in its revised format. In addition, OPP has prepared a separate Response–to–Comment document which specifically addresses comments received.

This revised document is organized to present an overview of aggregate exposure and risk assessment highlighting revised and expanded concepts. Section I describes the regulatory background of aggregate assessment, gives a brief introduction to the scope and organization of the document, and provides a review of some of the key terms and definitions in this document. Section II of the document provides a description of current practices and data sources utilized in conducting aggregate exposure analysis, including an explanation of the combination of probabilistic (food pathway only at this time) and deterministic types of exposure assessments. Section III provides a general framework and set of key concepts for the refinements put forth in the Aggregate Guidance. Pathway-specific considerations based upon the revised guidance are for performing aggregate exposure and risk assessment, expanding upon the Interim Guidance for Conducting Aggregate Exposure and Risk Assessment. Following this section, there are recommendations for future data and research needs (Section V) as well as an acknowledgment of the limitations in conducting aggregate exposure assessments (Section VI). The last section of the document, Section VII, describes approaches to model validation and verification, an important part of evaluating aggregate exposure and risk assessments, as assumptions embedded in any model and/or method and uncertainties and variability in the input data can be significant to the outcome of the assessment.

The current guidance document is one of a series of documents that OPP is issuing with specific emphasis on

addressing new facets of the risk assessment process as required by FQPA. In particular, the current document relies heavily on the Exposure Factors Handbook (USEPA, 1997b), the Residential SOPs (USEPA, 1997a), the Interim Guidance (Stasikowski, 1997a) and Guidance for Submission of Probabilistic Human Health Exposure Assessments to the Office of Pesticide Programs (USEPA, 1998c). These earlier documents provide substantial background to the information provided.

IV. Policies Not Rules

The policy document discussed in this notice is intended to provide guidance to EPA personnel and decisionmakers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should not be applied.

List of Subjects

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

Dated: November 16, 2001.

Susan B. Hazen,

Assistant, Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 01–29386 Filed 11–27–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2514]

Petition for Reconsideration of Action in Rulemaking Proceeding

November 20, 2001.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by December 13, 2001. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Table of Allotments for FM Broadcast Stations (MM Docket No. 00–169, RM –9953).

Number of Petitions Filed: 1.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–29575 Filed 11–27–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011782.

Title: COSCON/HJS/SEN Slot Allocation & Sailing Agreement.

Parties: COSCO Container Lines Company, Ltd., Hanjin Shipping Co., Ltd., Senator Lines GMBH.

Synopsis: The proposed agreement authorizes the parties to charter container space to and from each other and rationalize port calls and sailings in the trade between ports in Asia, including China, Hong Kong, Taiwan, Korea, and Japan, and the U.S. Pacific coast.

Dated: November 23, 2001.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 01–29589 Filed 11–27–01; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on Thursday, January 31, 2002 and Friday, February 1, 2002 from 8 a.m. to 5 p.m. The meeting will take place at the Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001. The meeting will be entirely open to the public.

The purpose of this meeting will be to discuss what lessons can be learned from the events surrounding September 11, 2001 regarding the safety and the availability of the nation's blood supply.

Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business January 17, 2002. In addition, anyone planning to comment on either item is encouraged to contact the Executive Secretary at her/his earliest convenience.

FOR FURTHER INFORMATION CONTACT: Stephen D. Nightingale, MD, Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 200 Independence Ave., SW., Room 736–E, Washington, DC 20201. Phone (202) 690–5558, FAX (202) 260–9372, e-mail *StephenDNightingale@osophs.dhhs.gov.*

Dated: November 21, 2001.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 01–29604 Filed 11–27–01; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–12]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Adolescents At Risk for HIV: Planning for a Community-Level Intervention—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). The purpose of this request is to obtain approval to conduct a formative research study to understand the prevalence of HIV prevention and drug use behaviors and their influences among adolescent children of women who use crack. Adolescent children of parents who use crack experience a range of individual and environmental risk factors that increase their susceptibility to HIV due to their parents' drug and sexual risk behaviors and resource-poor environments. Despite the multiple risk factors, these adolescents often do not receive community-level HIV prevention services that promote their healthy development into young adults.

The goals of the study are to identify individual, parent, peer, school, and community influences on HIV prevention and risk behaviors of adolescent children of crack users in an urban North Carolina community and to develop a community-level HIV prevention intervention plan targeting these adolescents. The objectives of the study are to (a) conduct adolescent interviews and observations of their neighborhoods; (b) to conduct maternal interviews; (c) to administer mailed teacher questionnaires; and (d) to interview community providers.

The sample will be drawn from mothers participating in an HIV prevention intervention tailored to African-American women reporting current crack use. To be eligible for the proposed study, women must (1) be mothers; (b) report that they have at least one child between 12 and 17 years old who is currently living in the same household; (c) provide written consent for their adolescent child(ren) to participate in this study; and (d) provide written consent to gather information from their child(ren)'s teacher about his/her behavior and school performance. Mothers will be asked about their drug use and risk behaviors, parenting, and their adolescents' behaviors and school performance. Adolescents will be asked about their current drug use, abstinence and/or sexual experience, behaviors, school performance, HIV/AIDS-related beliefs, and other perceived influences from family, school, and peers. During individual interviews, adolescent participants will be asked for the name of the teacher with whom they spend the most time at school. These teachers will be invited to complete a mailed questionnaire about the target adolescents' behavior and school performance, as well as a brief survey about school-level HIV prevention resources and barriers, and perceptions of student substance abuse and health behaviors. Maternal, adolescent, and teacher questions will be drawn from the Achenbach behavior rating system and other youth surveys (e.g., the National Household Survey on Drug Abuse) with national comparison data. Community providers from local organizations that provide formal and informal services to adolescents will be interviewed to assess current services, resources, utilization, accessibility, and barriers to care. Community observations will also be conducted in settings identified by adolescents as places and neighborhoods they frequent to identify geographic information that may serve to mobilize community resources toward an HIV prevention intervention.

The data will be summarized to understand the prevalence of HIV prevention and drug use behaviors and their influences within the study sample of adolescent children of mothers who use crack. Together, these data will be presented at a planning meeting with key community providers near the close of the study. The purpose of this meeting will be to facilitate community-level collaboration and to develop a community intervention plan to prevent HIV among high-risk adolescent children of crack users.

There is no cost to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average response/burden (in hours)	Total burden (in hours)
Mothers	154	1	75/60	192.5
Adolescents	154	1	75/60	192.5
Teachers	154	1	30/60	77
Community Providers	20	1	75/60	25
Total				487

Dated: November 23, 2001.

Julie Fishman,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control, and Prevention.

[FR Doc. 01–29620 Filed 11–27–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0435]

International Conference on Harmonisation; Draft Guidance on Electronic Common Technical Document Specification; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Electronic Common Technical Document Specification'' (eCTD). The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance defines the means for industry-to-agency transfer of regulatory information that will facilitate the creation, review, life cycle

management, and archiving of the electronic submission. The draft guidance is intended to assist industry in transferring electronically their marketing applications for human drug and biological products to a regulatory authority.

DATES: Submit written or electronic comments on the draft guidance by February 26, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373, or Gregory V. Brolund, Center for Drug Evaluation and Research (HFD–070), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3516.

Regarding the ICH: Janet J. Showalter, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices regulation (GGP) (21 CFR 10.115), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency has changed its procedure for publishing ICH guidances. As of April 2000, we no longer include the text of ICH guidances in the **Federal Register**. Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance will be placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). Draft guidances are left in the original ICH format. The final guidance is reformatted to conform to the GGP style before publication.

In June 2001, the ICH Steering Committee agreed that a draft guidance entitled ''Electronic Common Technical Document Specification'' should be made available for public comment and testing. The draft guidance is the product of the Multidisciplinary Group 2 (M2) Expert Working Group (EWG) of the ICH. Comments about this draft guidance will be considered by FDA and the M2 EWG and another draft will be published for comment (Step 2).

The draft guidance provides guidance on industry-to-agency electronic transfer of marketing applications for human drug and biological products. The draft guidance defines the means for industry-to-agency transfer of regulatory information that will facilitate the creation, review, life cycle management, and archiving of the electronic submission. The draft guidance is intended to assist industry in transferring their marketing applications for human drug and biological products to a regulatory authority.

This draft guidance, when finalized, will represent the agency's current thinking on ''Electronic Common Technical Document Specification.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (addresses above) written or electronic comments on the draft guidance by February 26, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/m2/ or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: October 30, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–29511 Filed 11–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0488]

Draft Guidance for Industry on Food-Effect Bioavailability and Fed Bioequivalence Studies: Study Design, Data Analysis, and Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Food-Effect Bioavailability and Fed Bioequivalence Studies: Study Design, Data Analysis, and Labeling.'' The draft guidance is intended for sponsors planning to conduct food-effect bioavailability (BA) and fed bioequivalence (BE) studies for oral immediate-release and modified-release dosage forms as part of investigational new drug applications (INDs), new drug applications (NDAs), abbreviated new drug applications (ANDAs), and supplements to these applications. The draft guidance provides recommendations for study design, data analysis, and product labeling, and also indicates when food-effect BA and fed BE studies should be performed.

DATES: Submit written or electronic comments on the draft guidance by January 28, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lesko, Center for Drug Evaluation and Research (HFD–850), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5690.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Food-Effect Bioavailability and Fed Bioequivalence Studies: Study Design, Data Analysis, and Labeling.'' This draft guidance is a revision of an October 1997 draft guidance entitled ''Food-Effect Bioavailability and Bioequivalence Studies.''

Food can delay gastric emptying, stimulate bile flow, change gastrointestinal (GI) pH, and increase splanchnic blood flow, thereby altering the BA of a drug product. Food can also change luminal metabolism of a drug substance and can physically or chemically interact with a dosage form or a drug substance to alter BA. Changes in BA can sometimes call for dosage adjustments or specific dosing instructions in relation to administration with meals. The physiological changes incurred due to food intake can influence the demonstration of BE between test and reference products.

Several study design variables may have an impact on the outcome of a food-effect BA or fed BE study. This draft guidance provides general information on study design and data analysis to assess the magnitude of food impact on the BA and BE of a drug product and indicates how this information can be appropriately addressed in the labeling. In addition, the draft guidance makes recommendations on when food-effect BA and fed BE should be performed.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on food-effect bioavailability and fed bioequivalence studies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: November 15, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–29510 Filed 11–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Disadvantaged Assistance Tracking and Outcome Report (OMB No. 0915–0233)—Revision

The Health Careers Opportunity Program (HCOP) and the Centers of Excellence (COE) Program (sections 740 and 739 of the Public Health Service (PHS) Act, respectively) provide opportunities for under-represented

minorities and disadvantaged individuals to enter and graduate from health professions schools. The Disadvantaged Assistance Tracking and Outcome Report (DATOR), is used to track program participants throughout the health professions pipeline into the health care workforce. This request includes minor revisions to the previously approved data collection instrument that will address a number of data collection, data entry, as well as analytical problems encountered by the respondents.

The DATOR, to be completed annually by HCOP AND COE grantees, includes basic data on students participants (name, social security number, gender, race/ethnicity; targeted health professions, their status in the educational pipeline from pre-professional through professional training; financial assistance received through the grants funded under sections 739 and 740 of the PHS Act in the form of stipends, fellowships or per diem; and their employment or practice setting following their entry into the health care work force).

The proposed reporting instrument is not expected to add significantly to the grantees reporting burden. This reporting instrument complements the grantees internal automated reporting mechanisms of using name and social security number in tracking students. The reporting burden includes the total time, effort, and financial resources expended to maintain, retain and provide the information including: (1) Reviewing instructions; (2) downloading and utilizing technology for the purposes of collecting, validating, and processing the data; and (3) transmitting electronically, or otherwise disclosing the information. Estimates of annualized burden are as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Dator	150	1	5.5	825

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 20, 2001.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 01–29513 Filed 11–27–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on July 5, 2001, through September 28, 2001.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written

information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation, Office of Special Programs, 5600 Fishers Lane, Room 8-A46, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Philip Erickson on behalf of Philip J. Erickson, Roaring Spring, Pennsylvania, Court of Federal Claims Number 01–0389V
2. Rebekah Smothers on behalf of Kienan Freeman, Tallahassee, Florida, Court of Federal Claims Number 01–0390V
3. Tammy Mahaffey, Newark, Oklahoma, Court of Federal Claims Number 01–0392V
4. Michael Doherty on behalf of Drew Doherty, Boston, Massachusetts, Court of Federal Claims Number 01–0393V
5. Jacqueline Wright on behalf of Jared Wright, Boston, Massachusetts, Court of Federal Claims Number 01–0394V
6. Kristal Flagg on behalf of Lance Flagg, Boston, Massachusetts, Court of Federal Claims Number 01–0395V
7. Ellen Shatz-Feldman, Las Vegas, Nevada, Court of Federal Claims Number 01–0399V
8. Sandy Rusk on behalf of Olivia Rusk, Fishers, Indiana, Court of Federal Claims Number 01–0403V
9. Patricia Johnson on behalf of Alicia Johnson, New York, New York, Court of Federal Claims Number 01–0405V
10. Yousuf Qureshi, Boston, Massachusetts, Court of Federal Claims Number 01–0406V
11. Anita and Joseph Weakland on behalf of Joseph M. Weakland, Bangler, Pennsylvania, Court of Federal Claims Number 01–0407V
12. Jan DeGrandchamp, Frazier Park, California, Court of Federal Claims Number 01–0413V
13. Roseanne Borrero, Rockledge, Florida, Court of Federal Claims Number 01–0417V
14. Ernestine Ventura on behalf of Adam Ventura, Boston, Massachusetts, Court of Federal Claims Number 01–0420V
15. Holly Clifford on behalf of Gregory Clifford, Deceased, Boston, Massachusetts, Court of Federal Claims Number 01–0424V
16. Kristie Thacker on behalf of Gabriel Faith Thacker, Deceased, Hazlehursat, Mississippi, Court of Federal Claims Number 01–0435V
17. Lisa and Robert Devore on behalf of Ryan Austin Devore, Louisville, Kentucky, Court of Federal Claims Number 01–0436V
18. Susan J. Haggerty on behalf of Joseph C. Haggerty, Jr., Union, New Jersey, Court of Federal Claims Number 01–0438V
19. Jeffrey Greco, Brooklyn, New York, Court of Federal Claims Number 01–0450V
20. Kim and Paul Garrett on behalf of Weslie Julia Annie Garrett, Houston, Texas, Court of Federal Claims Number 01–0452V
21. Raymond Gallup on behalf of Eric Gallup, Parsippany, New Jersey, Court of Federal Claims Number 01–0453V
22. Pamela Gard on behalf of Mitchell Gard, Muncie, Indiana, Court of Federal Claims Number 01–0458V
23. Joseph Hegarty on behalf of Joseph Michael Hegarty, Deceased, Reisterstown, Maryland, Court of Federal Claims Number 01–0463V
24. Barbara Potolicchio, South Weymouth, Massachusetts, Court of Federal Claims Number 01–0464V
25. Jennifer Hernandez on behalf of Micaela Hernandez, Deceased, Mesa, Arizona, Court of Federal Claims Number 01–0466V
26. Donna and Rick Kay on behalf of Rachel Kay, Vienna, Virginia, Court of Federal Claims Number 01–0467V
27. Karen Peachee, Boston, Massachusetts, Court of Federal Claims Number 01–0475V
28. Melony Eisenhower on behalf of Michael L. Bowes, Jr., Mill Hall, Pennsylvania, Court of Federal Claims Number 01–0481V
29. Barbara Cunningham and Phillip Young on behalf of April Young, Lee's Summit, Missouri, Court of Federal Claims Number 01–0483V
30. Sarah Freedman on behalf of Chana Freedman, Monticello, New York, Court of Federal Claims Number 01–0485V
31. Jill Haga on behalf of Michaela Haga, Vienna, Virginia, Court of Federal Claims Number 01–0491V
32. Pamela Coleman on behalf of John Coleman, Jr., Little Rock, Arkansas, Court of Federal Claims Number 01–0496V
33. Tambra Harris, Vienna, Virginia, Court of Federal Claims Number 01–0499V
34. Albert Asker on behalf of Benjamin Logan Asker, Vienna, Virginia, Court of Federal Claims Number 01–0500V
35. Kelly Knoke on behalf of Alice Svetic, Vienna, Virginia, Court of Federal Claims Number 01–0501V
36. Tiffany Drost, Vienna, Virginia, Court of Federal Claims Number 01–0502V
37. Diane Paliscak on behalf of Anthony Paliscak, Vienna, Virginia, Court of Federal Claims Number 01–0503V
38. Jeanne and John Gensch on behalf of Patrick Gensch, Vienna, Virginia, Court of Federal Claims Number 01–0504V
39. Sherry Wied on behalf of David Wied, Vienna, Virginia, Court of Federal Claims Number 01–0505V
40. Dawn and Jeff Partyka on behalf of Jacob Partyka, Vienna, Virginia, Court of Federal Claims Number 01–0506V
41. Jodi Miller on behalf of Richard Kjolberg, Jr., Duluth, Minnesota, Court of Federal Claims Number 01–0512V
42. Jennifer and James Hall on behalf of Emmallen Grace Hall, Deceased, Morristown, Tennessee, Court of Federal Claims Number 01–0514V
43. Priscilla Smith on behalf of Victoria Danielle Ellrod, Wildomar, California, Court of Federal Claims Number 01–0523V
44. Christina DeLong, Reading, Pennsylvania, Court of Federal Claims Number 01–0528V
45. Ronald Gura, Boston, Massachusetts, Court of Federal Claims Number 01–0531V
46. Rodney Boone on behalf of Rodney Emerson Boone, III, Lafayette, California, Court of Federal Claims Number 01–0532V
47. Paul Shirley, Boston, Massachusetts, Court of Federal Claims Number 01–0537V
48. Teressa and Anthony Richardson on behalf of Jenyssa Richardson, New York, New York, Court of Federal Claims Number 01–0545V
49. Randy Tucker, Shoshoni, Wyoming, Court of Federal Claims Number 01–0547V
50. Diana Hall on behalf of Marcellous Hall, Boston, Massachusetts, Court of Federal Claims Number 01–0554V
51. Lisa Visco on behalf of James Visco, Boston, Massachusetts, Court of Federal Claims Number 01–0555V

52. Susan Berry, Boston, Massachusetts, Court of Federal Claims Number 01–0556V

Dated: November 21, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–29512 Filed 11–27–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Availability of Funds for Loan Repayment Program for Repayment of Health Professions Educational Loans

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: The Administration's budget request for fiscal year (FY) 2002 includes $11,923,500 for the Indian Health Service (IHS) Loan Repayment Program (LRP) for health professions educational loans (undergraduate and graduate) in return for full-time clinical service in Indian health programs. It is anticipated that $11,923,500 will be available to support approximately 298 competing awards averaging $40,000 per award.

This program announcement is subject to the appropriation of funds. This notice is being published early to coincide with the recruitment activity of the IHS, which competes with other Government and private health management organizations to employ qualified health professionals. Funds must be expended by September 30 of the fiscal year. This program is authorized by section 108 of the Indian Health Care Improvement Act (IHCIA) as amended, 25 U.S.C. 1601 et seq. The IHS invites potential applicants to request an application for participation in the LRP.

DATES: Applications for the FY 2002 LRP will be accepted and evaluated monthly beginning January 18, 2002, and will continue to be accepted each month thereafter until all funds are exhausted. Subsequent monthly deadline dates are scheduled for Friday of the second full week of each month. Notice of awards will be mailed on the last working day of each month.

Applicants selected for participation in the FY 2002 program cycle will be expected to begin their service period no later than September 30, 2002.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date. (Applicants should 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 are *not* acceptable as proof of timely mailing.)

Applications received after the monthly closing date will be held for consideration in the next monthly funding cycle. Applicants who do not receive funding by September 30, 2002, will be notified in writing.

Form to be Used for Application: Applications must be submitted on the form entitled ''Application for the Indian Health Service Loan Repayment Program,'' identified with the Office of Management and Budget approval number of OMB #0917–0014 (expires 12/31/02).

ADDRESSES: Application materials may be obtained by calling or writing to the address below. In addition, completed applications should be returned to: IHS Loan Repayment Program, 12300 Twinbrook Parkway—Suite 100, Rockville, Maryland 20852, PH: 301/443–3396 [between 8:00 a.m. and 5:00 p.m. (EST) Monday through Friday, except Federal holidays].

FOR FURTHER INFORMATION CONTACT: Please address inquiries to Ms. Jacqueline K. Santiago, Chief, IHS Loan Repayment Program, Twinbrook Metro Plaza—Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852, PH: 301/443–3396 [between 8:00 a.m. to 5:00 p.m. (EST) Monday through Friday, except Federal holidays].

SUPPLEMENTARY INFORMATION: Section 108 of the IHCIA, as amended by Public Laws 100–713 and 102–573, authorizes the IHS LRP and provides in pertinent part as follows:

> The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the ''Loan Repayment Program'') in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

Section 4(n) of the IHCIA, as amended by the Indian Health Care Improvement Technical Corrections Act of 1996, Pub. L. 104–313, provides that:

> ''Health Profession'' means allopathic medicine, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, an allied health profession, or any other health profession.

For the purposes of this program, the term ''Indian health program'' is defined in section 108(a)(2)(A), as follows:

* * * any health program or facility funded, in whole or in part, by the IHS for the benefit of Indians and administered:

a. directly by the Service;

b. by any Indian tribe or tribal or Indian organization pursuant to a contract under:

(1) The Indian Self-Determination Act: or

(2) Section 23 of the Act of April 30, 1908 (25 U.S.C. 47), popularly known as the Buy Indian Act; or

(3) by an urban Indian organization pursuant to Title V of this act.

Applicants may sign contractual agreements with the Secretary for 2 years. The IHS will repay all, or a portion of the applicant's health profession educational loans (undergraduate and graduate) for tuition expenses and reasonable educational, and living expenses in amounts up to $20,000 per year for each year of contracted service. Payments will be made annually to the participant for the purpose of repaying his/her outstanding health profession educational loans. Payment of health profession education loans will be made to the participant within 120 days, from the date the contract becomes effective.

The Secretary must approve the contract before the disbursement of loan repayments can be made to the participant. Participants will be required to fulfill their contract service agreements through full-time clinical practice at an Indian health program site determined by the Secretary. Loan repayment sites are characterized by physical, cultural, and professional isolation, and have histories of frequent staff turnover. All Indian health program sites are annually prioritized within the Agency by discipline, based on need or vacancy.

All health professions will receive up to $20,000 per year for the length of their contract. Where the amount of the LRP award may result in an increase in Federal income tax liability, the IHS will pay an additional 20 percent of the participant's total loan repayments to the Internal Revenue Service for the increased tax liability.

Pursuant to section 108(b), to be eligible to participant in the LRP, an individual must:

(1) A. Be enrolled:

(i) In a course of study or program in an accredited institution, as determined by the Secretary, within any State and

be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

(ii) In an approved graduate training program in a health profession; or

B. Have a degree in a health profession and a license to practice; and

(2) A. Be eligible for, or hold an appointment as a Commissioned Officer in the Regular or Reserve Corps of the Public Health Service (PHS); or

B. Be eligible for selection for civilian service in the Regular or Reserve Corps of the (PHS); or

C. Meet the professional standards for civil service employment in the IHS; or

D. Be employed in an Indian health program without service obligation; and

(3) Submit to the Secretary an application for a contract to the Loan Repayment Program.

All applicants must sign and submit to the Secretary, a written contract agreeing to accept repayment of educational loans and to serve for the applicable period of obligated service in a priority site as determined by the Secretary, and submit a signed affidavit attesting to the fact that they have been informed of the relative merits of the U.S. PHS Commissioned Corps and the Civil Service as employment options.

Once the applicant is approved for participation in the LRP, the applicant will receive confirmation of his/her loan repayment award and the duty site at which he/she will serve his/her loan repayment obligation.

The IHS has identified the positions in each Indian health program for which there is a need or vacancy and ranked those positions in order of priority by developing discipline-specific prioritized lists of sites. Ranking criteria for these sites include the following:

- Historically critical shortages caused by frequent staff turnover;
- Current unmatched vacancies in a Health Profession Discipline;
- Projected vacancies in a Health Profession Discipline;
- Ensuring that the staffing needs of Indian health programs administered by an Indian Tribe or Tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and
- Giving priority to vacancies in Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached LRP contracts entered into under this section.
- Consistent with this priority ranking, in determining applications to be approved and contracts to accept, the IHS will give priority to applications made by American Indians and Alaska Natives and to individuals recruited through the efforts of Indian tribes or tribal or Indian organizations.
- Funds appropriated for the LRP in FY 2002 will be distributed among the health professions as follows: allopathic/osteopathic practitioners will receive 27 percent, registered nurses 20 percent, mental health professionals 10 percent, dentists 12 percent, pharmacists 10 percent, optometrists 5 percent, physician assistant/advanced practice nurses 6 percent, podiatrists 4 percent, physical therapists 2 percent, other professions 4 percent. This requirement does not apply if the number of applicants from these groups, respectively, is not sufficient to meet the requirement.
- The IHS will give priority in funding among health professionals to physicians in the following priority specialties: anesthesiology, emergency room medicine, general surgery, obstetrics/gynecology, ophthalmology, orthopedic surgery, otolaryngology/otorhinolaryngology, psychiatry, radiology and dentistry. Funding for these priority specialities is within the 27 percent established for allopathic/osteopathic practitioners.

Applicants whose applications were complete by September 30, 2001, but did not receive funding and want to complete for the next FY 2002 award cycle will receive a site score equal to either the score calculated for their site in the FY they applied or the new FY site score, whichever is higher.

The following factors are equal in weight when applied, and are applied when all other criteria are equal and a selection must be made between applicants.

One or all of the following factors may be applicable to an applicant, and the applicant who has the most of these factors, all other criteria being equal, would be selected.

- An applicant's length of current employment in the IHS, Tribal, or urban program.
- Availability for service earlier than other applicants (first come, first served); and
- Date the individual's application was received.

Any individual who enters this program and satifactorily completes his or her obligated period of service may apply to extend his/her contract on a year-by-year basis, as determined by the IHS. Participants extending their contracts will receive up to the maximum amount of $20,000 per year plus an additional 20 percent for Federal Withholding. Participants who were awarded loan repayment contracts prior to FY 2000 will be awarded extensions up to the amount of $30,000 a year and 31 percent in tax subsidy if funds are available, and will not exceed the total of the individual's outstanding eligible health profession educational loans.

Any individual who owes an obligation for health professional service to the Federal Government, a State, or other entity is not eligible for the LRP unless the obligation will be completely satisfied before they begin service under this program.

The IHS Area Offices and Service Units are authorized to provide additional funding to make awards to applicants in the LRP, but must be in compliance with any limits in the appropriation and section 108 of the Indian Health Care Improvement Act not to exceed the amount authorized in the IHS appropriation (up to $22,000,000 for FY 2002).

Should an IHS Area Office contribute to the LRP, those funds will be used for only those sites located in that Area. Those sites will retain their relative ranking from the national site-ranking list. For example, the Albuquerque Area Office identifies supplemental monies for dentists. Only the dental positions within the Albuquerque Area will be funded with the supplemental monies consistent with the national ranking and site index within that Area.

Should an IHS Service Unit contribute to the LRP, those funds will be used for only those sites located in that Service Unit. Those sites will retain their relative ranking from the national site-ranking list. For example, Chinle Service Unit identifies supplemental monies for pharmacists. The Chinle Service Unit consists of two facilities, namely the Chinle Comprehensive Health Care Facility and the Tsaile PHS Indian Health Center. The national ranking will be used for the Chinle Comprehensive Health Care Facility (Score = 44) and the Tasile PHS Indian Health Center (Score = 40). With a score of 46, the Tsaile PHS Indian Health Center would receive priority over the Chinle Comprehensive Health Care Facility.

This program is not subject to review under Executive Order 12372.

The Catalog of Federal Domestic Assistance number is 93.164.

Dated: November 16, 2001.

Michael H. Trujillo,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 01–29566 Filed 11–27–01; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Assessment of the Use of Special Funding for Research on Type 1 Diabetes Provided by the Balanced Budget Act of 1997 and the FY 2001 Consolidated Appropriations Act

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Assessment of the Use of Special Funding for Research on Type 1 Diabetes Provided by the Balanced Budget Act of 1997 and the FY 2001 Consolidated Appropriations Act. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This survey will be one source of input into a statutorily mandated assessment and report to the Congress on special funding for research on type 1 diabetes provided by the Balanced Budget Act of 1997, Pub. L. 105–33, and the FY 2001 Consolidated Appropriations Act, Pub. L. 106–554. These Acts provided $390 million in special funds to the Department of Health and Human Services (HHS) for research aimed at understanding, treating and preventing type 1 diabetes and its complications. The Secretary of HHS subsequently designated to NIDDK the lead responsibility in the Department for developing a process for allocation of these funds. The primary objective of the survey is to gain information, via a brief questionnaire, from NIH research grantees, who were the primary recipients of these special funds, concerning their views on the impact of the type 1 diabetes research funding with respect to: (1) Advancing scientific accomplishments involving innovative, clinically relevant, and multidisciplinary research on type 1 diabetes; (2) developing resources or reagents useful for type 1 diabetes research; and (3) increasing the number and quality of type 1 diabetes investigators. The responses will provide valuable information concerning how the funds have facilitated research as intended by these Acts of Congress. The results will also help determine how research progress from these special congressional initiatives fits within the continuum of diabetes research, and how these funds have contributed to the field of type 1 diabetes research and NIH efforts to combat this challenging health problem. Information from this study will aid in evaluation of the process by which the research goals for use of the special type 1 diabetes funds have been developed and are being pursued. Responses from this survey will contribute to a statutorily mandated report, due to Congress on January 1, 2003, evaluating the process and efforts under this program and assessing research initiatives funded by these Acts of Congress. *Frequency of Response:* The initial survey will require a one time response; though, respondents may be contacted again in the event of future congressionally mandated reports on the use of the special type 1 diabetes research funds. *Affected Public:* Research scientists who received the special funds about which Congress has mandated in law the requirements for an evaluation report. *Type of Respondents:* Laboratory and clinical investigators who have received support from the special type 1 diabetes funds provided under the laws previously cited. The annual reporting burden is as follows: *Estimated Number of Respondents:* 300; *Estimated Number of Responses per Respondent:* 1 (Respondents will be given one questionnaire containing an estimated fifteen questions.); *Average Burden Hours Per Response:* 1; and *Estimated Total Annual Burden Hours Requested:* 300. The annualized total cost to respondents is estimated at: $15,000. It is expected that the respondents will be contacted via email and that their responses will be collected through an Internet-accessible questionnaire. These measures will reduce the burden on the respondents and the overall costs of administering the study. Because different types of awards have been made with the special type 1 diabetes funds, the questionnaire may be tailored such that respondents will only be asked to answer a subset of questions that pertain to their particular type of award(s). No respondent will be asked to answer more than a total of fifteen questions, at least one-third of which will be answered with a ''yes'' or ''no'' or a one-word response. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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; (2) 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; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Michelle A. Cissell, AAAS/NIH Science Policy Fellow, Office of Scientific Program and Policy Analysis, NIDDK, NIH Building 31, Room 9A05, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 496–6623 or E-mail your request, including your address to: <*cissellm@extra.niddk.nih.gov*>.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: October 24, 2001.

Lynell Nelson,

Project Clearance Liaison, National Institute of Diabetes and Digestive and Kidney Diseases.

[FR Doc. 01–29540 Filed 11–24–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; HIV Vaccine Awareness Study—Americans' Attitudes

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Allergy and Infectious Diseases (NIAID), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: HIV Vaccine Awareness Study—Americans' Attitudes. *Types of Information Collection Request:* New. *Need and Use of Information Collection:* NIH/NIAID/DAIDS is in the process of planning a campaign to inform Americans about HIV preventive vaccine research. As part of planning, it is necessary to establish a baseline of Americans' levels of knowledge and attitudes with respect to HIV preventive vaccine research; to determine what information is required by communities to address the mistrust, myths, and misinformation about HIV vaccine research; and to identify how and what information should be provided to communities to promote more positive attitudes toward HIV vaccine research. Findings will help inform initial campaign decisions and serve to evaluate the effectiveness of the campaign's efforts. *Frequency of Response:* One time. *Affected Public:* Individuals or households. *Type of Respondents:* Random samples of adults, including those considered at-risk for HIV and members of their social networks. The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Adults	1,500	1	.0833	125
At-risk groups	2,400	1	.25	600
Members of social networks	300	1	.0833	25
Total	4,200		.1786	750

The annualized cost to respondents is estimated at $7,500. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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; (2) 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; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Thomas LaSalvia, Associate Director for Scientific Information and Program Planning, DAIDS, NIAID, NIH, 6700–B Rockledge Drive, MSC 7620, Room 4143, Bethesda, MD 20892–7620, or call non-toll free (301) 496–0545, or E-mail your request, including your address to *tl38r@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: November 15, 2001.

Cyndie Cotter,

National Institute of Allergy and Infectious Diseases Project Clearance Liaison, National Institutes of Health.

[FR Doc. 01–29543 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Loan Repayment and Scholarship; Submission for OMB Review; Comment Request; National Institutes of Health Loan Repayment Programs

SUMMARY: Under the provision of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 20, 2001, pages 43590 to 43591 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: National Institutes of Health Loan Repayment Programs. *Type of Information Collection Request:* Revision of a currently approved collection (OMB No. 0925–0361, expiration date 11/30/01). *Form Numbers:* NIH 2674–1, NIH 2674–2, NIH 2674–3, NIH 2674–4, NIH 2674–5, NIH 2674–6, NIH 2674–7, NIH 2674–8, NIH 2674–9, NIH 2674–10, NIH 2674–11, and NIH 2674–12. *Need and Use of Information Collection:* The NIH makes available financial assistance, in the form of educational loan repayment, to M.D., Ph.D., Pharm.D., D.D.S., D.M.D., D.P.M., D.C., and N.D. degree holders, or the equivalent, who perform clinical, biomedical, contraception and infertility, biobehavioral, minority health disparities, or other health disparities research for a minimum of 2 years (3 years for the General Research LRP). For intramural LRPs, the qualifying research must be performed in NIH intramural laboratories. For extramural LRPs, the qualifying research may be performed as NIH extramural grantees, as employees or affiliates of the National Institute of Child Health and Human Development extramural sites, or as employees or affiliates of other public or private research institutions.

The AIDS Research Loan Repayment Program (AIDS–LRP) is authorized by section 487A of the Public Health Service (PHS) Act (42 U.S.C. 288–1); the Contraception and Infertility LRP (CIR–LRP) is authorized by section 487B of the PHS Act (42 U.S.C. 288–2); the General Research LRP (GR–LRP) is authorized by section 487C of the PHS Act (42 U.S.C. 288–3); the Clinical Research LRP for Individuals from Disadvantaged Backgrounds (CR–LRP) is authorized by section 487E (42 U.S.C. 288–5). The Consolidated Appropriations Act of 2001 (Pub. L. 106–554) amended section 487E of the PHS Act to allow expansion of the

existing CR–LRP to include health professionals who are not employees of the NIH. The expanded program is known as the Extramural Clinical Research LRP for Individuals from Disadvantaged Backgrounds (ECR–LRP); the LRP for Minority Health Disparities Research (HDR–LRP) is authorized by section 485G of the PHS Act (43 U.S.C. 287c–33); the LRP Regarding Clinical Researchers (LRP–CR) is authorized by section 487F (42 U.S.C. 288–5a); and the Pediatric Research LRP (PR–LRP) is authorized by section 487F (42 U.S.C. 288–6).

The loan repayment programs provide for the repayment of up to $35,000 a year of the principal and interest of the educational loan debt of qualified health professionals who agree to conduct qualifying research for each year of obligated service. Applicants must have total qualifying educational debt equal to or in excess of 20 percent of their annual salary or compensation on the expected date of program eligibility. The information proposed for collection will be used to determine an applicant's eligibility for participation in the program. *Frequency of Response:* Initial application and annual renewal application. *Affected Public:* Applicants, financial institutions, research institutions, recommenders. *Type of Respondents:* Physicians, other scientific or medical personnel, and institutional representatives. The annual reporting burden for the intramural programs (AIDS–LRP, CR–LRP, and GR–LRP) is as follows:

Type of respondents	Number of respondents	Frequency of response	Average hours per response	Annual hour burden
Applicants	75	1.0	11.52	864.00
Recommenders	225	1.0	0.50	112.50
Financial Institutions	375	1.0	0.33	123.86
Totals	675			1,100.25

The annual reporting burden for the extramural programs (CIR–LRP, ECR–LRP, HDR–LRP, LRP–CR and PR–LRP) is as follows:

Type of respondents	Number of respondents	Frequency of response	Average hours per response	Annual hour burden
Applicants	670	1.0	12.20	8,174
Recommenders	2,010	1.0	0.50	1,005
Advisors/Supervisors	670	1.0	1.50	1,005
Research Institutions	670	1.0	0.33	221
Financial Institutions	3,350	1.0	0.33	1,106
Totals	7,370			11,511

The annualized cost to respondents is estimated at $361,193. There are no capital costs, operating costs, or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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; (2) 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; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. Additional information on the proposed project or a copy of the data collection plans and instruments may be obtained by calling or writing: Marc S. Horowitz, J.D., Director, Office of Loan Repayment and Scholarship, National Institutes of Health, 2 Center Drive, Room 2E30, Bethesda, Maryland 20892–0230 or call non-toll-free (301) 402–5666 or e-mail your request, including your address, to *lrp@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: November 19, 2001.

Yvonne T. Maddox,

Acting Deputy Director, National Institutes of Health.

[FR Doc. 01–29541 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: PEGylation of Cyanovirin-N for Use in Treating Infectious Diseases

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice of opportunities for cooperative research and development.

SUMMARY: An opportunity is available for a Cooperative Research and Development Agreement (CRADA) for the purpose of collaborating with the National Cancer Institute (NCI), Center for Cancer Research (CCR), Molecular Targets Drug Discovery Program (MTDDP), on further research and development of the use of poly[ethylene glycol] (PEG) conjugates of the antiviral protein, cyanovirin-N (CV–N) and antiviral homologs thereof. Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710, as amended; and Executive Order 12591 of April 10, 1987), the National Cancer Institute (NCI) of the National Institutes

of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks a Cooperative Research and Development Agreement (CRADA) with a pharmaceutical or biotechnology company for collaborative creation, research and development of poly[ethylene glycol] (PEG) conjugates of the antiviral protein, cyanovirin-N (CV–N) and antiviral homologs thereof. More specifically, a commercial partner is sought for collaborative R&D of PEG–CV–N conjugates for non-retroviral fields of use. Examples of non-retroviruses of interest include influenza viruses A&B, measles virus, human herpesvirus 6 (HHV–6) and related viruses. Any CRADA for the biomedical use of this technology will be considered. The CRADA would have an expected duration of one (1) to five (5) years. The goals of the CRADA include the rapid publication of research results and timely commercialization of products, diagnostics and treatments that result from the research. The CRADA Collaborator will have an option to elect a non-exclusive or exclusive commercialization license to subject inventions arising under the CRADA and which are subject of the CRADA Research Plan.

DATES: Inquiries regarding CRADA proposals and scientific matters may be forwarded at any time. Confidential CRADA proposals, preferably two pages or less, must be submitted to the NCI within 30 days from date of this publication. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to Dr. Bjarne Gabrielsen, Technology Transfer Branch, National Cancer Institute-Frederick, Fairview Center, Room 502, Frederick, MD 21701 (phone: 301–846–5465, fax: 301–846–6820).

Scientific inquiries should be directed to: Michael Boyd, M.D./ Ph.D., Chief, Molecular Targets Drug Discovery Program, Bldg 1052, National Cancer Institute, Frederick, MD 21702 (phone 301–846–5391; FAX 301–846–6919; e-mail: *boyd@dtpax2.ncifcrf.gov*).

SUPPLEMENTARY INFORMATION:

Technology Available

DHHS scientists within the MTDDP have extensive experience with the chemistry and biology of CV–N and related antiviral proteins. More specifically, MTDDP has expertise and technology for protein chemistry, protein mutagenesis and bioengineering and antiviral evaluations pertinent to this proposed collaboration. Whereas MTDDP is currently engaged in a CRADA collaboration on HIV fields of use of PEG–CV–N's, the new collaboration proposed herein will focus on non-retroviruses, including but not limited to influenza viruses types A&B, measles virus, human herpesvirus 6 (HHV–6), and related viruses.

Technology Sought

Accordingly, DHHS now seeks collaborative arrangements for the construction and antiviral research and development of PEG–CV–N conjugates against non-retroviruses. The successful Collaborator should possess experience in the following areas at a minimum: pegylation (PEG) chemistry, biology and pharmacology of PEG-protein conjugates, preclinical and clinical development expertise for pegylated proteins as therapeutic and/or preventative agents, preferably against viral diseases. For collaborations with the commercial sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide equitable distribution of intellectual property rights developed under the CRADA. CRADA aims will include rapid publication of research results as well as development of the technology toward commercialization. The role of the National Cancer Institute-Molecular Targets Drug Discovery Program (MTDDB) in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with pertinent available reagents for investigation/evaluation.
3. Planning research studies and interpreting research results.
4. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing technical expertise and/or financial support (e.g. facilities, personnel and expertise) for CRADA-related research as outlined in the CRADA Research Plan.
4. Accomplishing objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
5. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.
6. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.
7. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.
8. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
9. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern patent rights to CRADA inventions.

Dated: November 7, 2001.

Kathleen Sybert,

Chief, Technology Transfer Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 01–29545 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Advisory Committee to the Director, NIH.

The entire meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting. In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. upon entering the building.

Name of Committee: Advisory Committee to the Director, NIH.

Date: December 6, 2001.

Time: 9:00 a.m.–4:00 p.m.

Agenda: The topics proposed for discussion include but are not limited to: (1) Implementation of the Policy for Use of Human Embryonic Pluripotent Stem Cells; (2) NIH Response to Exceptional Situations; (3) Further Discussion and Decision on Extramural Construction Report; and (4) Presentation on the President's Information Technology Advisory Council (PITAC).

Place: National Institutes of Health, 31 Center Drive, Building 31, Conference Room 10, Bethesda, Maryland 20892.

Contact: Ms. Janice C. Ramsden, Special Assistant to the Acting Director, NIH, National Institutes of Health, Building 1, Room 333, Bethesda, Maryland 20892, *jr52h@nih.gov,* Telephone: (301) 496–0959.

Dated: November 15, 2001.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29531 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

State-of-the-Science Conference on Management of Clinically Inapparent Adrenal Mass (Incidentaloma)

Notice is hereby given of the National Institutes of Health (NIH) State-of-the-Science Conference on ''Management of the Clinically Inapparent Adrenal Mass (Incidentaloma)'' to be held February 4 to 6, 2002, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8:30 a.m. on February 4 and 5 and at 9:00 a.m. on February 6 and will be open to the public.

Adrenal gland masses occur in at least 3 percent of persons over age 50. Although most cause no symptoms or health problems, a small proportion can lead to serious diseases, and approximately one out of every 4,000 adrenal masses is cancerous. Physicians discover many adrenal masses inadvertently, while testing or treating patients for other conditions. These clinically inapparent masses are commonly known as incidentalomas.

Incidentalomas raise challenging questions for physicians and their patients, including what, if any, surgical or nonsurgical treatment is the best approach. The appropriate management of incidentalomas promises to be an increasingly common challenge for our aging society.

Over the past several years, new information about the epidemiology, biology, screening, treatment, and follow-up of adrenal tumors has become available. This conference will explore and assess the current scientific knowledge regarding adrenal incidentalomas so that health care providers and the general public can make informed decisions about this important public health issue.

During the first day and a half of the conference, experts will present the latest research findings on clinically inapparent adrenal masses to an independent non-Federal panel. After weighing all of the scientific evidence, the panel will draft a statement that will address the following key questions:

- What are the causes, prevalence, and natural history of clinically inapparent adrenal masses?
- Based on available scientific evidence, what is the appropriate evaluation of a clinically inapparent adrenal mass?
- What criteria should guide the decision on surgical versus nonsurgical management of these masses?
- If surgery is indicated, what is the appropriate procedure?
- What is the appropriate follow-up for patients for each management approach?
- What additional research is needed to guide practice?

On the final day of the conference, the panel chair will read the panel's draft statement in public, at which time members of the public are invited to offer comments on the draft.

The National Institute of Child Health and Human Development and the NIH Office of Medical Applications of Research (OMAR) are the primary sponsors of this meeting. The National Cancer Institute will cosponsor the meeting.

Advance information about the conference and conference registration materials may be obtained from Prospect Associates of Silver Spring, Maryland, by calling 301–592–3320 or by sending e-mail to *adrenalmass@prospectassoc.com.* Prospect Associates' address is 10720 Columbia Pike, Suite 500, Silver Spring, Maryland 20901–4437. A conference agenda and registration information are also available on the NIH Consensus Program Web site at *http://consensus.nih.gov.*

Please Note: Organizations that wish to make 5-minute presentations on the conference topic should contact Elsa Bray of NIH/OMAR by telephone (301–496–4999) or e-mail (*elsabray@nih.gov*) no later than January 14, 2002. The NIH has recently instituted new security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. Conference attendees may want to leave extra bags or personal materials at their hotel to minimize the time needed for inspection. For more information about the new security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorssecurity.htm.*

Dated: November 19, 2001.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 01–29542 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Letter RFA CA 02–502.

Date: December 12, 2001.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, Room 4013, 6130 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sherwood Githens, Ph.D, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 19, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29518 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Complementary and Alternative Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: November 21, 2001.[1]

Open: 12:08 p.m. to 12:15 p.m.

Agenda: Opening Remarks by the Director, NCCAM.

Place: National Institutes of Health, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Room 200, Bethesda, MD 20892, (Telephone Conference Call).

Closed: 12:15 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Room 200, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jane F. Kinsel, National Center for Complementary Medicine, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 5B38, Bethesda, MD 20892, (301) 435–5042, *kinselj@mail.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's homepage *nccam.nih.gov/nccam/an/advisory/index.html*, where an agenda and any additional information for the meeting will be posted when available.

Dated: November 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29533 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

[1] Editorial Note: This document was received at the Office of the Federal Register on November 21, 2001.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: November 28–29, 2001.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.

Contact Person: Linda W. Engel, M.S., Special Assistant to the Director, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Suite 200, MSC 5475, Bethesda, MD 20892, (301) 496–1944, *engell@od.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: November 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29536 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: December 7, 2001.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate contract proposals.

Place: NCCAM/Office of Scientific Review, 6707 Democracy Blvd, Ste. 106, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martin H. Goldrosen, Ph.D., Chief, Office of Scientific Review, National Center for Complementary, and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd, Ste. 106, Bethesda, MD 20892–5475, (301) 451–6331, *goldrosm@mail.nih.gov.*

Dated: November 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29537 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Child Health and Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: December 7, 2001.

Open: 8 a.m. to 12 p.m.

Agenda: For the review of intramural Research Programs and Scientific presentations.

Place: Building 31, Conference Room 2A48, Bethesda, MD 20892.

Closed: 1:00 p.m. to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Building 31, Conference Room 2A48, Bethesda, MD 20892.

Contact person: Owen M. Rennert, MD, Scientific Director, National Institute of Child Health and Human Development, 9000 Rockville Pike, Building 31, Room 2A50, Bethesda, MD 20892, (301) 496–2133, *rennerto@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nichd.nih.gov/about/bsd/htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 19, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29517 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: December 2–3, 2001.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Houston Marriott Medical Center, 6580 Fanin Street, Houston, TX 77030.

Contact Person: Michael A. Sesma, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, Natcher Building, Room 1AS19H, 45 Center Drive, Bethesda, MD 20892, (301) 594–2048, *sesmam@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 19, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29519 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Maternal and Child Health Research Subcommittee.

Date: December 12, 2001.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gopal M. Bhatnagar, Phd., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 19, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29520 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Project.

Date: December 18, 2001.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, The Chevy Chase Pavilion, 4300 Military Road NW., Wisconsin at Western Avenue, Washington, DC 20015.

Contact Person: Mark R. Green, Ph.D, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Suite 3158, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1431.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: November 19, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29521 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: January 17, 2002.

Time: 1:30 pm to 6 pm.

Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601, 301–435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 19, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29522 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: January 16–17, 2002.

Time: 7:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Pickwick Hotel and Suites, 1023 20th Street South, Birmingham, AL 35294.

Contact Person: William E. Elzinga, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 747, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: November 19, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29523 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: December 13, 2001.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 2 Democracy Plaza, 6707 Democracy Boulevard, Room 757, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Connaughton, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 757, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797, connaughtonj@extra.niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 19, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29524 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: December 6, 2001.

Time: 8 a.m. to 5:45 p.m.

Agenda: RAC will discuss data management activities related to human gene transfer clinical trials; the development of the national gene transfer database; a proposed response to reported appearance of neoplasms after vascular growth gene transfer; and detection of adeno-associated virus vector sequence in research participant semen.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Amy P. Patterson, MD, Acting Executive Secretary, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9838.

Information is also available on the Institute's/Center's home page: www4.od.nih.gov/oba/, where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 15, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29525 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of K23 Grant Applications.

Date: December 4, 2001.

Time: 11 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Planning Grants for Molecular Epidemiology in the Environmental Genome, Project (R21s).

Date: December 11–12, 2001.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Contact Person: Brenda K. Weis, Ph.D., Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD/EC–30, Research Triangle Park, NC 27709, 919/541–4964.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grants (R13s).

Date: December 11, 2001.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, 79 T.W. Alexander Dr., Bldg. 4401, Room 3167, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K Bass, Ph.D., Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: November 15, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29527 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: January 17, 2002.

Closed: 8:30 a.m. to 10:45 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 12:30 PM to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, (301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: January 17, 2002.

Closed: 8:30 a.m. to 10:45 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Open: 12:30 p.m. to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, (301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: January 17, 2002.

Closed: 8:30 a.m. to 10:45 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: 12:30 p.m. to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, (301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: January 17, 2002.

Open: 10:45 AM to 12 p.m.

Agenda: The meeting of the full Council will be open to the public for general discussion, and program presentations.

Place: Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 12 p.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, (301–496–7291.

Information is also available on the Institute's/Center home page: *www.niaid.nih.gov/facts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 15, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29528 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: December 3, 2001.

Time: 11 am to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd. 5th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marita Hopmann, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5E01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 15, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29529 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: December 7, 2001.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., 5th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 15, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29530 Filed 11–22–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, 3 P50 GM 38529–14S1—Moody, Frank; Univ of Texas Health Science, Center.

Date: November 26, 2001.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Arthur L. Zachary, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13H, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29534 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 29, 2001.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard E. Weise, Ph.D., Scientific Review Administrator, National Institute of Mental Health, DEA, National Institutes of Health, 6001 Executive Blvd., Room 6140, MSC 9606, Bethesda, MD 20892–9606, 301–443–1340, *rweise@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 3, 2001.

Time: 3 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, Ph.D., Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 7, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, Washington, DC 20007.

Contact Person: Joel Sherrill, Ph.D, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102, *jsherril@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 7, 2001.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, Washington, DC 20007.

Contact Person: Martha Ann Carey, Ph.D, R.N., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29535 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, October 3, 2001, 1:00 p.m. to October 3, 2001, 3:00 PM, NIEHS-East Campus, 79 T W Alexander Dr., Bldg. 4401, Rm EC–122, Research Triangle Park, NC, 27709 which was published in the **Federal Register** on August 30, 2001, FR 66: 45861.

This telephone conference meeting will now be held on December 3, 2001 at 1:00 pm and Dr. Linda Bass will be the Scientific Review Administrator. The meeting is closed to the public.

Dated: November 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29538 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: PubMed Central National Advisory Committee.

Date: January 14, 2002.

Time: 8:30 a.m. to 4 p.m.

Agenda: Review and Analysis of Systems.

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

Information is also available on the Institute's/Center's home page: *www.pubmedcentral.nih.gov/about/nac/html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 15, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29532 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Developmental Toxicology Exploratory Research Grants (R21s).

Date: December 13–14, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Contact Person: Ethel B. Jackson, DDS, Chief, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–7846, *jackson4@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: November 15, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29526 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 26, 2001.[1]

Time: 4 p.m. to 5 p.m..

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, Ph.D., JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27, 2001.

Time: 3 p.m. to 4:30 p.m..

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gloria B. Levin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, *leving@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27, 2001.

Time: 4 p.m. to 5 p.m..

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael Micklin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 30, 2001.

Time: 1 p.m. to 3 p.m..

Agenda: To review and evaluate grant applications.

[1] Editorial Note: This document was received at the Office of the Federal Register on November 21, 2001.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael R. Schaefer, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2205, MSC 7890, Bethesda, MD 20892, (301) 435–2477, *schaefem@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 3, 2001.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey W. Elias, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 4–5, 2001.

Time: 8:30 AM to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Cheryl M. Corsaro, Ph.D., Scientific Review Administrator, Genome Study Section, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 4, 2001.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Lyster, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892, (301) 435–1256.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 4, 2001.

Time: 12:45 p.m. to 2:45 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Harold M. Davidson, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776, *davidsoh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 6, 2001.

Time: 12:15 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 7, 2001.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Harold M. Davidson, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776, *davidsoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 10, 2001.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gillian Einstein, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20817, (301) 435–4433, *einsteig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 10, 2001.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, Ph.D., Scientific Review Administrator, Center of Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 11, 2001.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gordon L. Johnson, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 2001.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Lyster, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892, (301) 435–1256.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 16, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29539 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Human Derived Monocyte Attracting Purified Peptide Products for Treating Human Infections and Neoplasms in a Human Body

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in the U.S. Patent Applications and Issued Patents listed below to AlleCure Corporation, having a place of business in Chatsworth, California. The patent rights of these inventions have been assigned to the United States of America.

- USPA 07/330,446 filed March 30, 1989 and entitled ''Human Derived Monocyte Attracting Purified Peptide Products Useful in a Method of Treating Infections and Neoplasms in a Human Body and the Cloning of Full Length cDNA Thereof''
- USPA 07/686,264 filed April 15, 1991 now USPN 6,090,795 issued July 18, 2000

• USPA 08/449,552 filed May 24, 1995 now USPN 5,532,144 issued July 2, 1996

• USPA 08/466,288 filed June 6, 1995 now USPN 5,714,578 issued February 3, 1998

• PCT/US90/00040 filed January 2, 1990

The prospective exclusive license territory will be worldwide and the field of use may be limited to the treatment of asthma, restenosis, hepatitis B and cancer.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before January 28, 2002 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comment and other materials relating to the contemplated exclusive license should be directed to: Percy S. Pan, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone 301–496–7736 x256; Facsimile 301–402–0220; E-mail *panp@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The invention relates to a human derived purified peptide product that exhibits monocytic chemotactic activity (MCA). A method of preparing the peptide is disclosed as well as a method of treating neoplasms and infections by administering the peptides. A pharmaceutical composition of the peptide is also claimed. The peptide may be useful in the treatment of various disorders including autoimmune disease, chronic inflammatory diseases, and cancer. This peptide, also known as MCP–1, is a b chemokine. Chemokines are multipotent cytokines that localize and enhance inflammation by inducting chemotaxis and activation of different types of inflammatory cells. This peptide is a chemotactic factor for monocytes. It stimulates histamine release and regulates cytokine production in monocytes.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 15, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–29544 Filed 11–27–01; 8:45 am]

BILLING CODE 4140–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–434]

U.S.-Chile Free Trade Agreement: Potential Economywide and Selected Sectoral Effects

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and invitation for written submissions.

EFFECTIVE DATE: November 23, 2001.

SUMMARY: Following receipt of a request on November 13, 2001, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–434, *U.S.-Chile Free Trade Agreement: Potential Economywide and Selected Sectoral Effects,* under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

As requested by USTR, the Commission's report on the investigation will include:

• A concise description of the Chilean economy, patterns of trade with the United States and other major trade partners, and the tariff and investment relationship between the United States and Chile.

• A quantitative analysis of the likely trade and economywide economic impacts of a United States-Chile FTA by sector.

• A supplementary qualitative analysis of the impact of a U.S.-Chile FTA on product sectors to be identified by USTR.

• A discussion of potential trade and economic effects of the elimination of barriers to trade in services under a U.S.-Chile FTA.

The Commission plans to submit its report on January 17, 2002. USTR indicated that portions of the report will be classified as ''Confidential.''

FOR FURTHER INFORMATION CONTACT: Information may be obtained from James Stamps, Project Leader, Office of Economics (202–205–3227) or, for industry-specific information, from Dennis Rapkins, Deputy Project Leader, Office of Industries, (202–205–3406), U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Written Submissions: The Commission does not plan to hold a public hearing in connection with this investigation. However, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on December 12, 2001. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

List of Subjects: Chile, tariffs, trade, imports, and exports.

By order of the Commission.

Issued: November 23, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–29588 Filed 11–27–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Microsoft Corporation; Revised Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a revised proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the *District of Columbia in United States of American* v. *Microsoft Corporation*, Civil Action No. 98–1232. On May 18, the United States filed a Complaint alleging that Microsoft, the world's largest supplier of computer software for personal computers, restrained competition in violation of sections 1 and 2 of the Sherman Act, 15 U.S.C. 1–2. Following a 7-day trial in late 1998 and early 1999, the United States District Court found that Microsoft had violated both sections 1 and 2 of the Sherman Act. On appeal, the United States Court of Appeals for the District of Columbia unanimously affirmed portions of the district court's finding and conclusion that Microsoft illegally maintained its operating system monopoly in violation of section 2 of the Sherman Act, but reversed and remanded other portions of the district court's determinations. Specifically, the court of appeals reversed the district court's determination that Microsoft violated section 2 by illegally attempting to monopolize the Internet browser market and remanded the district court's determination that Microsoft violated section 1 of the Sherman Act by unlawfully tying its browser to its operating system. The court of appeals also vacated the district court's remedial order, including its order that Microsoft be split into separate operating systems and applications businesses, and remanded the case to a new district court judge for further proceedings. Following intensive mediation efforts, the United States and Microsoft subsequently reached the agreement embodied in the revised proposed Final Judgment, which would impose injunctive relief to enjoin continuance and prevent recurrence of the violations of the Sherman Act by Microsoft that were upheld by the court of appeals.

The revised proposed Final Judgment, filed November 6, 2001, will stop recurrence of Microsoft's unlawful conduct, prevent recurrence of similar conduct in the future and restore competitive conditions in the personal computer operating system market by, among other things, prohibiting actions by Microsoft to prevent computer manufacturers and others from developing, distributing or featuring middlewear products that are threats to Microsoft's operating system monopoly; creating the opportunity for independent software vendors to develop products that will be competitive with Microsoft's middleware products; requiring Microsoft to disclose interfaces in order to ensure that competing middlewear and server software can interoperate with Microsoft's operating systems; ensuring full compliance with the revised proposed Final Judgment; and providing for swift resolution of technical disputes. Copies of the Complaint, revised proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC at Antitrust Documents Group, 325 7th Street NW., Ste. 215 North, Washington, DC 20530 (please call 202–514–2481, for appointments only), on the Department of Justice web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20002.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Renata Hesse, Trial Attorney, Suite 1200, Antitrust Division, Department of Justice, 601 D Street NW, Washington, DC 20530; (facsimile) 202–616–9937 or 202–307–1545; or e-mail *microsoft.atr@usdoc.gov.* While comments may also be sent by regular mail, in light of recent events affecting the delivery of all types of mail to the Department of Justice, including U.S. Postal Service and other commercial delivery services, and current uncertainties concerning when the timely delivery of this mail may resume, the Department strongly encourages, whenever possible, that comments be submitted via email or facsimile.

Constance K. Robinson,
Director of Operations & Merger Enforcement.

United States District Court for the District of Columbia

United States of America, Plaintiff, vs. Microsoft Corporation, Defendant

[Civil Action No. 98–1232 (CKK)]

State of New York ex rel. Attorney General Eliot Spitzer, et al., Plaintiffs, vs. Microsoft Corporation, Defendant

[Civil Action No. 98–1233 (CKK)]

Next Court Deadline: November 6, 2001, Status Conference.

Stipulation

Plaintiffs United States of America (''United States'') and the States of New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina and Wisconsin and Defendant Microsoft Corporation (''Microsoft''), by and through their respective attorneys, having agreed to the entry of this Stipulation, it is hereby stipulated and agreed that:

1. A Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the revised proposed Final Judgment by serving notice thereof on Microsoft and by filing that notice with the Court.

2. Unless otherwise provided in the revised proposed Final Judgment, Microsoft shall begin complying with the revised proposed Final Judgment as it was in full force and effect starting on December 16, 2001. Subject to the foregoing, Microsoft agrees to be bound by the provisions of the revised proposed Final Judgment pending its entry by the Court. If the United States withdraws its consent, or if (a) the revised proposed Final Judgment is not entered pursuant to the terms of the Stipulation, (b) the time has expired for all appeals of any Court ruling declining to enter the revised proposed Final Judgment, and (c) the Court has not otherwise ordered continued compliance with the terms and provisions of the revised proposed Final Judgment, then all of the parties shall be released from all further obligations under this Stipulation, and the making of this Stipulation shall be without

prejudice to any party in this or any other proceeding.

3. Pursuant to 15 U.S.C. 16(g), within ten (10) days of the submission of the revised proposed Final Judgment, Microsoft will file with the Court a description of any and all written or oral communications by or on behalf of Microsoft, or other person, with any officer or employee of the United States concerning or relevant to the revised proposed Final Judgment, except that any such communications made by counsel of record alone with the Attorney General or the employees of the United States Department of Justice alone shall be excluded from this requirement.

4. Pursuant to 15 U.S.C. 16(b), on or before November 16, 2001, the United States will file with the Court a Competitive Impact Statement explaining the terms of the revised proposed Final Judgment. The United States will publish the revised proposed Final Judgment and Competitive Impact Statement in the **Federal Register**.

5. The United States will publish a notice informing the public of the revised proposed Final Judgment and public comment period in the *Washington Post* and the *San Jose Mercury News,* for seven days over a period of two weeks commencing no later than November 15, 2001.

6. Members of the public may submit written comments about the revised proposed Final Judgment to a designated official of the Antitrust Division of the United States Department of Justice for a period of 60 days after publication of the revised proposed Final Judgment and Competitive Impact Statement in the **Federal Register**.

7. Within 30 days after the close of the 60-day public comment period, the United States will file with the Court and publish in the **Federal Register** any comments it receives and its response to those comments.

8. Once the aforementioned procedures have been complied with, the United States will file with the Court a certification of compliance with the requirements of 15 U.S.C. 16, and a Motion for Entry of Revised Proposed Final Judgment, unless it withdraws its consent to entry of the revised proposed Final Judgment pursuant to paragraph 2, above. At any time thereafter, and at the conclusion of any further proceedings ordered by the court pursuant to 15 U.S.C. 16(f), the Court may then enter the revised proposed Final Judgment, provided that the Court determines that entry of the revised proposed Final Judgment will serve the public interest.

Dated this 6th day of November, 2001.

For Plaintiff the United States of America:

Charles A. James (Bar No. 292201),
Assistant Attorney General, Antitrust Division, United States Department of Justice, 901 Pennsylvania Avenue, NW., Washington, DC 20530, (202) 514–2401.

For Plaintiffs the States of New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina and Wisconsin:

Eliot Spitzer,
Attorney General of New York, 120 Broadway, New York, New York 10271, (212) 416–8282.

For Defendant Microsoft Corporation:

John L. Warden (Bar No. 222083),
Sullivan & Cromwell, 125 Broad Street, New York, New York 10004, (212) 558–4000.

Revised Proposed Final Judgment

Whereas, plaintiffs United States of America (''United States'') and the States of New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina and Wisconsin and defendant Microsoft Corporation (''Microsoft''), by their respective attorneys, have consented to the entry of this Final Judgment;

And Whereas, this Final Judgment does not constitute any admission by any party regarding any issue of fact or law;

And Whereas, Microsoft agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now Therefore, upon remand from the United States Court of Appeals for the District of Columbia Circuit, and upon the consent of the aforementioned parties, it is hereby

Ordered, Adjudged, and Decreed:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the person of Microsoft.

II. Applicability

This Final Judgment applies to Microsoft and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

III. Prohibited Conduct

A. Microsoft shall not retaliate against an OEM by altering Microsoft's commercial relations with that OEM, or by withholding newly introduced forms of non-monetary Consideration (including but not limited to new versions of existing forms of non-monetary Consideration) from that OEM, because it is known to Microsoft that the OEM is or is contemplating:

1. Developing, distributing, promoting, using, selling, or licensing any software that competes with Microsoft Platform Software or any product or service that distributes or promotes any Non-Microsoft Middleware;

2. Shipping a Personal Computer that (a) includes both a Windows Operating System Product and a non-Microsoft Operating System, or (b) will boot with more than one Operating System; or

3. Exercising any of the options or alternatives provided for under this Final Judgment.

Nothing in this provision shall prohibit Microsoft from enforcing any provision of any license with any OEM or any intellectual property right that is not inconsistent with this Final Judgment. Microsoft shall not terminate a Covered OEM's license for a Windows Operating System Product without having first given the Covered OEM written notice of the reasons for the proposed termination and not less than thirty days' opportunity to cure. Notwithstanding the foregoing, Microsoft shall have no obligation to provide such a termination notice and opportunity to cure to any Covered OEM that has received two or more such notices during the term of its Windows Operating System Product license.

Nothing in this provision shall prohibit Microsoft from providing Consideration to any OEM with respect to any Microsoft product or service where that Consideration is commensurate with the absolute level or amount of that OEM's development, distribution, promotion, or licensing of that Microsoft product or service.

B. Microsoft's provision of Windows Operating System Products to Covered OEMs shall be pursuant to uniform license agreements with uniform terms and conditions. Without limiting the foregoing, Microsoft shall charge each Covered OEM the applicable royalty for Windows Operating System Products as set forth on a schedule, to be established by Microsoft and published on a web site accessible to the Plaintiffs and all Covered OEMs, that provides for uniform royalties for Windows Operating System Products, except that:

1. The schedule may specify different royalties for different language versions;

2. The schedule may specify reasonable volume discounts based upon the actual volume of licenses of any Windows Operating System Product or any group of such products; and

3. The schedule may include market development allowances, programs, or other discounts in connection with Windows Operating System Products, provided that:

a. Such discounts are offered and available uniformly to all Covered OEMs, except that Microsoft may establish one uniform discount schedule for the ten largest Covered OEMs and a second uniform discount schedule for the eleventh through twentieth largest Covered OEMs, where the size of the OEM is measured by volume of licenses;

b. Such discounts are based on objective, verifiable criteria that shall be applied and enforced on a uniform basis for all Covered ;s, and

c. Such discounts or their award shall not be based on or impose any criterion or requirement that is otherwise inconsistent with any portion of this Final Judgment.

C. Microsoft shall not restrict by agreement any OEM licensee from exercising any of the following options or alternatives:

1. Installing, and displaying icons, shortcuts, or menu entries for, any Non-Microsoft Middleware or any product or service (including but not limited to IAP products or services) that distributes, uses, promotes, or supports any Non-Microsoft Middleware, on the desktop or Start menu, or anywhere else in a Windows Operating System Product where a list of icons, shortcuts, or menu entries for applications are generally displayed, except that Microsoft may restrict an OEM from displaying icons, shortcuts and menu entries for any product in any list of such icons, shortcuts, or menu entries specified in the Windows documentation as being limited to products that provide particular types of functionality, provided that the restrictions are non-discriminatory with respect to non-Microsoft and Microsoft products.

2. Distributing or promoting Non-Microsoft Middleware by installing and displaying on the desktop shortcuts of any size or shape so long as such shortcuts do not impair the functionality of the user interface.

3. Launching automatically, at the conclusion of the initial boot sequence or subsequent boot sequences, or upon connections to or disconnections from the Internet, any Non-Microsoft Middleware if a Microsoft Middleware Product that provides similar functionality would otherwise be launched automatically at that time, provided that any such Non-Microsoft Middlware displays on the desktop no user interface or a user interface of similar size and shape to the user interface displayed by the corresponding Microsoft Middleware Product.

4. Offering users the option of launching other Operating Systems from the Basic Input/Output System or a non-Microsoft boot-loader or similar program that launches prior to the start of the Windows Operating System Product.

5. Presenting in the initial boot sequence its own IAP offer provided that the OEM complies with reasonable technical specifications established by Microsoft, including a requirement that the end user be returned to the initial boot sequence upon the conclusion of any such offer.

6. Exercising any of the options provided in Section III.H of this Final Judgment.

D. Starting at the earlier of the release of Service Pack I for Windows XP or 12 months after the submission of this Final Judgment to the Court, Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the sole purpose of interoperating with a Windows Operating System Product, via the Microsoft Developer Network (''MSDN'') or similar mechanisms, the APIs and related Documentation that are used by Microsoft Middlware to interoperate with a Windows Operating System Product. In the case of a new major version of Microsoft Middleware, the disclosures required by this Section III.D shall occur no later than the last major beta test release of that Microsoft Middleware. In the case of a new version of a Windows Operating System Product, the obligations imposed by this Section III.D shall occur in a Timely Manner.

E. Starting nine months after the submission of this proposed Final Judgment to the Court, Microsoft shall make available for use by third parties, for the sole purpose of interoperating with a Windows Operating System Product, on reasonable and non-discriminatory terms (consistent with Section III.I), any Communications Protocol that is, on or after the date this Final Judgment is submitted to the Court, (i) implemented in a Windows Operating System Product installed on a client computer, and (ii) used to interoperate natively (i.e., without the addition of software code to the client operating system product) with a Microsoft server operating system product.

F. 1. Microsoft shall not retaliate against any ISV or IHV because of that ISV's or IHV's:

a. Developing, using, distributing, promoting or supporting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software, or

b. Exercising any of the options or alternatives provided for under this Final Judgment.

2. Microsoft shall not enter into any agreement relating to a Windows Operating System Product that conditions the grant of any Consideration on an ISV's refraining from developing, using, distributing, or promoting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software, except that Microsoft may enter into agreements that place limitations on an ISV's development, use, distribution or promotion of any such software if those limitations are reasonably necessary to and of reasonable scope and duration in relation to a bona fide contractual obligation of the ISV to use, distribute or promote any Microsoft software or to develop software for, or in conjunction with, Microsoft.

3. Nothing in this section shall prohibit Microsoft from enforcing any provision of any agreement with any ISV or IHV, or any intellectual property right, that is not inconsistent with this Final Judgment.

G. Microsoft shall not enter into any agreement with:

1. Any IAP, ICP, ISV, IHV or OEM that grants Consideration on the condition that such entity distributes, promotes, uses, or supports, exclusively or in a fixed percentage, any Microsoft Platform Software, except that Microsoft may enter into agreements in which such an entity agrees to distribute, promote, use or support Microsoft Platform Software in a fixed percentage whenever Microsoft in good faith obtains a representation that it is commercially practicable for the entity to provide equal or greater distribution, promotion, use or support for software that competes with Microsoft Platform Software, or

2. Any IAP or ICP that grants placement on the desktop or elsewhere in any Windows Operating System Product to that IAP or ICP on the condition that the IAP or ICP refrain from distributing, promoting or using any software that competes with Microsoft Middleware.

Nothing in this section shall prohibit Microsoft from entering into (a) any bona fide joint venture or (b) any joint development or joint services arrangement with any ISV, IHV, IAP, ICP, or OEM for a new product, technology or service, or any material value-add to an existing product, technology or service, in which both Microsoft and the ISV, IHV, IAP, ICP, or OEM contribute significant developer or other resources, that prohibits such entity from competing with the object of

the joint venture or other arrangement for a reasonable period of time.

This Section does not apply to any agreements in which Microsoft licenses intellectual property in from a third party.

H. Starting at the earlier of the release of Service Pack 1 for Windows XP or 12 months after the submission of this Final Judgment to the Court, Microsoft shall:

1. Allow end users (via a mechanism readily accessible from the desktop or Start menu such as an Add/Remove icon) and OEMs (via standard preinstallation kits) to enable or remove access to each Microsoft Middleware Product or Non-Microsoft Middleware Product by (a) displaying or removing icons, shortcuts, or menu entries on the desktop or Start menu, or anywhere else in a Windows Operating System Product where a list of icons, shortcuts, or menu entries for applications are generally displayed, except that Microsoft may restrict the display of icons, shortcuts, or menu entries for any product in any list of such icons, shortcuts, or menu entries specified in the Windows documentation as being limited to products that provide particular types of functionality, provided that the restrictions are non-discriminatory with respect to non-Microsoft and Microsoft products; and (b) enabling or disabling automatic invocations pursuant to section III.C.3 of this Final Judgment that are used to launch Non-Microsoft Middleware Products or Microsoft Middleware Products. The mechanism shall offer the end user a separate and unbiased choice with respect to enabling or removing access (as described in this subsection III.H.1) and altering default invocations (as described in the following subsection III.H.2) with regard to each such Microsoft Middleware Product or Non-Microsoft Middleware Product and may offer the end-user a separate and unbiased choice of enabling or removing access and altering default configurations as to all Microsoft Middleware Products as a group or all Non-Microsoft Middleware Products as a group.

2. Allow end users (via a mechanism readily available from the desktop or Start menu), OEMs (via standard OEM preinstallation kits), and Non-Microsoft Middleware Products (via a mechanism which may, at Microsoft's option, require confirmation from the end user) to designate a Non-Microsoft Middleware Product to be invoked in place of that Microsoft Middleware Product (or vice versa) in any case where the Windows Operating System Product would otherwise launch the Microsoft Middleware Product in a separate Top-Level Window and display either (i) all of the user interface elements or (ii) the Trademark of the Microsoft Middleware Product.

3. Ensure that a Windows Operating System Product does not (a) automatically alter an OEM's configuration of icons, shortcuts or menu entries installed or displayed by the OEM pursuant to section III.C of this Final Judgment without first seeking confirmation from the user and (b) seek such confirmation from the end user for an automatic (as opposed to user-initiated) alteration of the OEM's configuration until 14 days after the initial boot up of a new Personal Computer. Microsoft shall not alter the manner in which a Windows Operating System Product automatically alters an OEM's configuration of icons, shortcuts or menu entries other than in a new version of a Windows Operating System Product.

Notwithstanding the foregoing Section III.H.2, the Windows Operating System Product may invoke a Microsoft Middleware product in any instance in which:

1. That Microsoft Middleware Product would be invoked solely for use in interoperating with a server maintained by Microsoft (outside the context of general Web browsing), or

2. That designated Non-Microsoft Middleware Product fails to implement a reasonable technical requirement (e.g., a requirement to be able to host a particular Active X control) that is necessary for valid technical reasons to supply the end user with functionality consistent with a Windows Operating System Product, provided that the technical reasons are described in a reasonably prompt manner to any ISV that requests them.

Microsoft's obligations under this section III.H as to any new Windows Operating System Product shall be determined based on the Microsoft Middleware Products which exist seven months prior to the last beta test version (i.e., the one immediately preceding the first release candidate) of that Windows Operating System Product.

I. Microsoft shall offer to license to ISVs, IHVs, IAPs, ICPs, and OEMs any intellectual property rights owned or licensable by Microsoft that are required to exercise any of the options or alternatives expressly provided to them under this Final Judgment, provided that:

1. All terms, including royalties or other payment of monetary consideration, are reasonable and non-discriminatory;

2. The scope of any such license (and the intellectual property rights licensed thereunder) need be no broader than is necessary to ensure that an ISV, IHV, IAP, ICP or OEM is able to exercise the options or alternatives expressly provided under this Final Judgment (e.g., an ISV's, IHV's, IAP's, ICP's and OEM's option to promote Non-Microsoft Middleware shall not confer any rights to any Microsoft intellectual property rights infringed by that Non-Microsoft Middleware);

3. An ISV's, IHV's, IAP's, ICP's or OEM's rights may be conditioned on its not assigning, transferring or sublicensing its rights under any license granted under this provision;

4. The terms of any license granted under this section are in all respects consistent with the express terms of this Final Judgment; and

5. An ISV, IHV, IAP, ICP, or OEM may be required to grant to Microsoft on reasonable and nondiscriminatory terms a license to any intellectual property rights it may have relating to the exercise of their options or alternatives provided by this Final Judgment; the scope of such license shall be no broader than is necessary to insure that Microsoft can provide such options or alternatives.

Beyond the express terms of any license granted by Microsoft pursuant to this section, this Final Judgment does not, directly or by implication, estoppel or otherwise, confer any rights, licenses, covenants or immunities with regard to any Microsoft intellectual property to anyone.

J. No provision of this Final Judgment shall:

1. Require Microsoft to document, disclose or license to third parties: (a) Portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria; or (b) and API, interface or other information related to any Microsoft product it lawfully directed not to do so by a governmental agency of competent jurisdiction.

2. Prevent Microsoft from conditioning any license of any API, Documentation or Communications Protocol related to anti-piracy systems, anti-virus technologies, license enforcement mechanisms, authentication/authorization security, or third party intellectual property protection mechanisms of any Microsoft

product to any person or entity on the requirement that the licensee: (a) Has no history of software counterfeiting or privacy or willful violation of intellectual property rights, (b) has a reasonable business need for the API, Documentation or Communications Protocol for a planned or shipping product, (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, (d) agrees to submit, at its own expense, any computer program using such APIs, Documentation or Communication Protocols to third-party verification, approved by Microsoft, to test for and ensure verification and compliance with Microsoft specifications for use of the API or interface, which specifications shall be related to proper operation and integrity of the systems and mechanisms identified in this paragraph.

IV. Compliance and Enforcement Procedures

A. Enforcement Authority

1. The Plaintiffs shall have exclusive responsibility for enforcing this Final Judgment. Without in any way limiting the sovereign enforcement authority of each of the plaintiff States, the plaintiff States shall form a committee to coordinate their enforcement of this Final Judgment. A plaintiff State shall take no action to enforce this Final Judgment without first consulting with the United States and with the plaintiff States' enforcement committee.

2. To determine and enforce compliance with this Final Judgment, duly authorized representatives of the United States and the plaintiff States, on reasonable notice to Microsoft and subject to any lawful privilege, shall be permitted the following:

a. Access during normal office hours to inspect any and all source code, books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Microsoft, which may have counsel present, regarding any matters contained in this Final Judgment.

b. Subject to the reasonable convenience of Microsoft and without restraint or interference from it, to interview, informally or on the record, officers, employees, or agents of Microsoft, who may have counsel present, regarding any matters contained in this Final Judgment.

c. Upon written request of the United States or a duly designated representative of a plaintiff State, on reasonable notice given to Microsoft, Microsoft shall submit such written reports under oath as requested regarding any matters contained in this Final Judgment. Individual plaintiff States will consult with the plaintiff States' enforcement committee to minimize the duplication and burden of the exercise of the foregoing powers, where practicable.

3. The Plaintiffs shall not disclose any information or documents obtained from Microsoft under this Final Judgment except for the purpose of securing compliance with this Final Judgment, in a legal proceeding to which one or more of the Plaintiffs is a party, or as otherwise required by law; provided that the relevant Plaintiff(s) must provide ten days' advance notice to Microsoft before disclosing in any legal proceeding (other than a grand jury proceeding) to which Microsoft is not a party any information or documents provided by Microsoft pursuant to this Final Judgment which Microsoft has identified in writing as material as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure.

4. The Plaintiffs shall have the authority to seek such orders as are necessary from the Court to enforce this Final Judgment, provided, however, that the Plaintiffs shall afford Microsoft a reasonable opportunity to cure alleged violations of sections III.C, III.D, III.E and III.H, provided further that any action by Microsoft to cure any such violation shall not be a defense to enforcement with respect to any knowing, willful or systematic violations.

B. Appointment of a Technical Committee

1. Within 30 days of entry of this Final Judgment, the parties shall create and recommend to the Court for its appointment a three-person Technical Committee (''TC'') to assist in enforcement of and compliance with this Final Judgment.

2. The TC members shall be experts in software design and programming. No TC member shall have a conflict of interest that could prevent him or her from performing his or her duties under this Final Judgment in a fair and unbiased manner. Without limitation to the foregoing, no TC member (absent the agreement of both parties):

a. Shall have been employed in any capacity by Microsoft or any competitor to Microsoft within the past year, nor shall she or he be so employed during his or her term on the TC;

b. Shall have been retained as a consulting or testifying expert by any person in this action or in any other action adverse to or on behalf of Microsoft; or

c. Shall perform any other work for Microsoft or any competitor of Microsoft for two years after the expiration of the term of his or her service on the TC.

3. Within 7 days of entry of this Final Judgment, the Plaintiffs as a group and Microsoft shall each select one member of the TC, and those two members shall then select the third member. The selection and approval process shall proceed as follows.

a. As soon as practicable after submission of this Final Judgment to the Court, the Plaintiffs as a group and Microsoft shall each identify to the other the individual it proposes to select as its designee to the TC. The Plaintiffs and Microsoft shall not object to each other's selection on any ground other than failure to satisfy the requirements of section IV.B.2 above. Any such objection shall be made within ten business days of the receipt of notification of selection.

b. The Plaintiffs shall apply to the Court for appointment of the persons selected by the Plaintiffs and Microsoft pursuant to section IV.B.3.a above. Any objections to the eligibility of a selected person that the parties have failed to resolve between themselves shall be decided by the Court based solely on the requirements stated in section IV.B.2 above.

c. As soon as practical after their appointment by the Court, the two members of the TC selected by the Plaintiffs and Microsoft (the ''Standing Committee Members'') shall identify to the Plaintiffs and Microsoft the person that they in turn propose to select as the third member of the TC. The Plaintiffs and Microsoft shall not object to this selection on any grounds other than failure to satisfy the requirements of section IV.B.2 above. Any such objection shall be made within ten business days of the receipt of notification of the selection and shall be served on the other party as well as on the Standing Committee Members.

d. The Plaintiffs shall apply to the Court for appointment of the person selected by the Standing Committee Members. If the Standing Committee Members cannot agree on a third member of the TC, the third member shall be appointed by the Court. Any objection by Microsoft or the Plaintiffs to the eligibility of the person selected by the Standing Committee Members which the parties have failed to resolve among themselves shall also be decided by the Court based on the requirements stated in section IV.B.2 above.

4. Each TC member shall serve for an initial term of 30 months. At the end of

a TC member's initial 30-month term, the party that originally selected him or her may, in its sole discretion, either request re-appointment by the Court to a second 30-month term or replace the TC member in the same manner as provided for in section IV.B.3.a above. In the case of the third member of the TC, that member shall be re-appointed or replaced in the manner provided in section IV.B.3.c above.

5. If the United States determines that a member of the TC has failed to act diligently and consistently with the purposes of this Final Judgment, or if a member of the TC resigns, or for any other reason ceases to serve in his or her capacity as a member of the TC, the person or persons that originally selected the TC member shall select a replacement member in the same manner as provided for in section IV.B.3.

6. Promptly after appointment of the TC by the Court, the United States shall enter into a Technical Committee services agreement (''TC Services Agreement'') with each TC member that grants the rights, powers and authorities necessary to permit the TC to perform its duties under this Final Judgment. Microsoft shall indemnify each TC member and hold him or her harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the TC's duties, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the TC member. The TC Services Agreements shall include the following.

a. The TC members shall serve, without bond or other security, at the cost and expense of Microsoft on such terms and conditions as the Plaintiffs approve, including the payment of reasonable fees and expenses.

b. The TC Services Agreement shall provide that each member of the TC shall comply with the limitations provided for in section IV.B.2 above.

7. Microsoft shall provide the TC with a permanent office, telephone, and other office support facilities at Microsoft's corporate campus in Redmond, Washington. Microsoft shall also, upon reasonable advance notice from the TC, provide the TC with reasonable access to available office space, telephone, and other office support facilities at any other Microsoft facility identified by the TC.

8. The TC shall have the following powers and duties:

a. The TC shall have the power and authority to monitor Microsoft's compliance with its obligations under this final judgment.

b. The TC may, on reasonable notice to Microsoft:

(i) Interview, either informally or on the record, any Microsoft personnel, who may have counsel present; any such interview to be subject to the reasonable convenience of such personnel and without restraint or interference by Microsoft;

(ii) Inspect and copy any document in the possession, custody or control of Microsoft personnel;

(iii) Obtain reasonable access to any systems or equipment to which Microsoft personnel have access;

(iv) Obtain access to, and inspect, any physical facility, building or other premises to which Microsoft personnel have access; and

(v) Require Microsoft personnel to provide compilations of documents, data and other information, and to submit reports to the TC containing such material, in such form as the TC may reasonably direct.

c. The TC shall have access to Microsoft's source code, subject to the terms of Microsoft's standard source code Confidentiality Agreement, as approved by the Plaintiffs and to be agreed to by the TC members pursuant to section IV.B.9 below, and by any staff or consultants who may have access to the source code. The TC may study, interrogate and interact with the source code in order to perform its functions and duties, including the handling of complaints and other inquiries from non-parties.

d. The TC shall receive complaints from the Compliance Officer, third parties or the Plaintiffs and handle them in the manner specified in section IV.D below.

e. The TC shall report in writing to the Plaintiffs every six months until expiration of this Final Judgment the actions it has undertaken in performing its duties pursuant to this Final Judgment, including the identification of each business practice reviewed and any recommendations made by the TC.

f. Regardless of when reports are due, when the TC has reason to believe that there may have been a failure by Microsoft to comply with any term of this Final Judgment, the TC shall immediately notify the Plaintiffs in writing setting forth the relevant details.

g. TC members may communicate with non-parties about how their complaints or inquiries might be resolved with Microsoft, so long as the confidentiality of information obtained from Microsoft is maintained.

h. The TC may hire at the cost and expense of Microsoft, with prior notice to Microsoft and subject to approval by the Plaintiffs, such staff or consultants (all of whom must met the qualifications of section IV.B.2) as are reasonably necessary for the TC to carry out its duties and responsibilities under this Final Judgment. The compensation of any person retained by the TC shall be based on reasonable and customary terms commensurate with the individual's experience and responsibilities.

i. The TC shall account for all reasonable expenses incurred, including agreed upon fees for the TC members' services, subject to the approval of the Plaintiffs. Microsoft may, on application to the Court, object to the reasonableness of any such fees or other expenses. On any such application: (a) The burden shall be on Microsoft to demonstrate unreasonableness; and (b) the TC member(s) shall be entitled to recover all costs incurred on such application (including reasonable attorney's fees and costs), regardless of the Court's disposition of such application, unless the Court shall expressly find that the TC's opposition to the application was without substantial justification.

9. Each TC member, and any consultants or staff hired by the TC, shall sign a confidentiality agreement prohibiting disclosure of any information obtained in the court of performing his or her duties as a member of the TC or as a person assisting the TC to anyone other than Microsoft, the Plaintiffs, or the Court. All information gathered by the TC in connection with this Final Judgment and any report and recommendations prepared by the TC shall be trated as Highly Confidential under the Protective Order in this case, and shall not be disclosed to any person other than Microsoft and the Plaintiffs except as allowed by the Protective Order entered in the Action or by the further order of this Court.

10. No member of the TC shall make any public statements relating to the TC's activities.

C. Appointment of a Microsoft Internal Compliance Officer

1. Microsoft shall designate, within 30 days of entry of this Final Judgment, an internal Compliance Officer who shall be an employee of Microsoft with responsibility for administering Microsoft's antitrust compliance program and helping to ensure compliance with this Final Judgment.

2. The Compliance Officer shall supervise the review of Microsoft's activities to ensure that they comply with this Final Judgment. He or she may

be assisted by other employees of Microsoft.

3. The Compliance Officer shall be responsible for performing the following activities:

a. Within 30 days after entry of this Final Judgment, distributing a copy of the Final Judgment to all officers and directors of Microsoft;

b. Promptly distributing a copy of this Final Judgment to any person who succeeds to a position described in section IV.C.3. a above;

c. Ensuring that those persons designated in section IV.C.3.a above are annually briefed on the meaning and requirements of this Final Judgment and the U.S. antitrust laws and advising them that Microsoft's legal advisors are available to confer with them regarding any question concerning compliance with this Final Judgment or under the U.S. antitrust laws;

d. Obtaining from each person designated in section IV.C.3.a above an annual written certification that he or she: (i) Has read and agrees to abide by the terms of this Final Judgment; and (ii) has been advised and understands that his or her failure to comply with this Final Judgment may result in a finding of contempt of court;

e. Maintaining a record of all persons to whom a copy of this Final Judgment has been distributed and from whom the certification described in section IV.C.3.d above has been obtained;

f. Establishing and maintaining the website provided for in section IV.D.3.b below.

g. Receiving complaints from third parties, the TC and the Plaintiffs concerning Microsoft's compliance with this Final Judgment and following the appropriate procedures set forth in section IV.D below; and

h. Maintaining a record of all complaints received and action taken by Microsoft with respect to each such complaint.

D. Voluntary Dispute Resolution

1. Third parties may submit complaints concerning Microsoft's compliance with this Final Judgment to the Plaintiffs, the TC or the Compliance Officer.

2. In order to enhance the ability of the Plaintiffs to enforce compliance with this Final Judgment, and to advance the parties' joint interest and the public interest in prompt resolution of issues and disputes, the parties have agreed that the TC and the Compliance Officer shall have the following additional responsibilities.

3. Submissions to the Compliance Officer.

a. Third parties, the TC, or the Plaintiffs in their discretion may submit to the Compliance Officer any complaints concerning Microsoft's compliance with this Final Judgment. Without in any way limiting its authority to take any other action to enforce this Final Judgment, the Plaintiffs may submit complaints related to sections III.C, III.D, III.E and III.H to the Compliance Officer whenever doing so would be consistent with the public interest.

b. To facilitate the communication of complaints and inquiries by third parties, the Compliance Officer shall place on Microsoft's Internet web site, in a manner acceptable to the Plaintiffs, the procedures for submitting complaints. To encourage whenever possible the informal resolution of complaints and inquiries, the web site shall provide a mechanism for communicating complaints and inquiries to the Compliance Officer.

c. Microsoft shall have 30 days after receiving a complaint to attempt to resolve it or reject it, and will then promptly advise the TC of the nature of the complaint and its disposition.

4. Submissions to the TC.

a. The Compliance Officer, third parties or the Plaintiffs in their discretion may submit to the TC any complaints concerning Microsoft's compliance with this Final Judgment.

b. The TC shall investigate complaints received and will consult with the Plaintiffs regarding its investigation. At least once during its investigation, and more often when it may help resolve complaints informally, the TC shall meet with the Compliance Officer to allow Microsoft to respond to the substance of the complaint and to determine whether the compliant can be resolved without further proceedings.

c. If the TC concludes that a complaint is meritorious, it shall advise Microsoft and the Plaintiffs of its conclusion and its proposal for cure.

d. No work product, findings or recommendations by the TC may be admitted in any enforcement proceeding before the Court for any purpose, and no member of the TC shall testify by deposition, in court or before any other tribunal regarding any matter related to this Final Judgment.

e. The TC may preserve the anonymity of any third party complaint where it deems it appropriate to do so upon the request of the Plaintiffs or the third party, or in its discretion.

V. Termination

A. Unless this Court grants an extension, this Final Judgment will expire on the fifth anniversary of the date it is entered by the Court.

B. In any enforcement proceeding in which the Court has found that Microsoft has engaged in a pattern of willful and systematic violations, the Plaintiffs may apply to the Court for a one-time extension of this Final Judgment of up to two years, together with such other relief as the Court may deem appropriate.

VI. Definitions

A. ''Application Programming Interfaces (APIs)'' means the interfaces, including any associated callback interfaces, that Microsoft Middleware running on a Windows Operating System Product uses to call upon that Windows Operating System Product in order to obtain any services from that Windows Operating System Product.

B. ''Communications Protocol'' means the set of rules for information exchange to accomplish predefined tasks between a Windows Operating System Product and a server operating system product connected via a network, including, but not limited to, a local area network, a wide area network or the Internet. These rules govern the format, semantics, timing, sequencing, and error control of messages exchanged over a network.

C. ''Consideration'' means any monetary payment or the provision of preferential licensing terms; technical, marketing, and sales support; enabling programs; product information; information about future plans; developer support; hardware or software certification or approval; or permission to display trademarks, icons or logos.

D. ''Covered OEMs'' means the 20 OEMs with the highest worldwide volume of licenses of Windows Operating System Products reported to Microsoft in Microsoft's fiscal year preceding the effective date of the Final Judgment. The OEMs that fall within this definition of Covered OEMs shall be recomputed by Microsoft as soon as practicable after the close of each of Microsoft's fiscal years.

E. ''Documentation'' means all information regarding the identification and means of using APIs that a person of orindary skill in the art requires to make effective use of those APIs. Such information shall be of the sort and to the level of specificity, precision and detail that Microsoft customarily provides for APIs it documents in the Microsoft Developer Network (''MSDN'').

F. ''IAP'' means an Internet access provider that provides consumers with a connection to the Internet, with or without its own proprietary content.

G. ''ICP'' means an Internet content provider that provides content to users of the Internet by maintaining Web sites.

H. ''IHV'' means an independent hardware vendor that develops hardware to be included in or used with a Personal Computer running a Windows Operating System Product.

I. ''ISV'' means an entity other than Microsoft that is engaged in the development or marketing of software products.

J. ''Microsoft Middleware'' means software code that

1. Microsoft distributes separately from a Windows Operating System Product to update that Windows Operating System Product;

2. Is Trademarked;

3. Provides the same or substantially similar functionality as a Microsoft Middleware Product; and

4. Includes at least the software code that controls most or all of the user interface elements of that Microsoft Middleware.

Software code described as part of, and distributed separately to update, a Microsoft Middleware Product shall not be deemed Microsoft Middleware unless identified as a new major version of that Microsoft Middleware Product. A major version shall be identified by a whole number or by a number with just a single digit to the right of the decimal point.

K. ''Microsoft Middleware Product'' means

1. The functionality provided by Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, Outlook Express and their successors in a Windows Operating System Product, and

2. For any functionality that is first licensed, distributed or sold by Microsoft after the entry of this Final Judgment and that is part of any Windows Operating System Product.

a. Internet browsers email client software, networked audio/video client software, instant message software or

b. Functionality provided by Microsoft software that—

i. Is, or in the year preceding the commercial release of any new Windows Operating System Product was, distributed separately by Microsoft (or by an entity acquired by Microsoft) from a Windows Operating System Product;

ii. Is similar to the functionality provided by a Non-Microsoft Middleware Product; and

iii. Is Trademarked.

Functionality that Microsoft describes or markets as being part of a Microsoft Middleware Product (such as a service pack, upgrade, or bug fix for Internet Explorer), or that is a version of a Microsoft Middleware Product (such as Internet Explorer 5.5), shall be considered to be part of that Microsoft Middleware Product.

L. ''Microsoft Platform Software'' means (i) a Windows Operating System Product and/or (ii) a Microsoft Middleware Product.

M. ''Non-Microsoft Middleware'' means a non-Microsoft software product running on a Windows Operating System Product that exposes a range of functionality to ISVs through published APIs, and that could, if ported to or made interoperable with, a non-Microsoft Operating System, thereby make it easier for applications that rely in whole or in part on the functionality supplied by that software product to be ported to or run on that non-Microsoft Operating System.

N. ''Non-Microsoft Middleware Product'' means a non-Microsoft software product running on a Windows Operating System Product (i) that exposes a range of functionality to ISVs through published APIs, and that could, if ported to or made interoperable with, a non-Microsoft Operating System, thereby make it easier for applications that rely in whole or in part on the functionality supplied by that software product to be ported to or run on that non-Microsoft Operating System, and (ii) of which at least one million copies were distributed in the United States within the previous year.

O. ''OEM'' means an original equipment manufacturer or Personal Computers that is a licensee of a Windows Operating System Product.

P. ''Operating System'' means the software code that, *inter alia,* (i) controls the allocation and usage of hardware resources (such as the microprocessor and various peripheral devices) of a Personal Computer, (ii) provides a platform for developing applications by exposing functionality to ISVs through APIs, and (iii) supplies a user interface that enables users to access functionality of the operating system and in which they can run applications.

Q. ''Personal Computer'' means any computer configured so that its primary purpose is for use by one person at a time, that uses a video display and keyboard (whether or not that video display and keyboard is included) and that contains an Intel x86 compatible (or successor) microprocessor. Servers, television set top boxes, handheld computers, game consoles, telephones, pagers, and personal digital assistants are examples of products that are not Personal Computers within the meaning of this definition.

R. ''Timely Manner'' means at the time Microsoft first releases a beta test version of a Windows Operating System Product that is distributed to 150,000 or more beta testers.

S. ''Top-Level Window'' means a window displayed by a Windows Operating System Product that (a) has its own window controls, such as move, resize, close, minimize, and maximize, (b) can contain sub-windows, and (c) contains user interface elements under the control of at least one independent process.

T. ''Trademarked'' means distributed in commerce and identified as distributed by a name other than Microsoft® or Windows® that Microsoft has claimed as a trademark or service mark by (i) marking the name with trademark notices, such as ® or ™, in connection with a product distributed in the United States; (ii) filing an application for trademark protection for the name in the United States Patent and Trademark Office; or (iii) asserting the name as a trademark in the United States in a demand letter or lawsuit. Any product distributed under descriptive or generic terms or a name comprised of the Microsoft® or Windows® trademarks together with descriptive or generic terms shall not be Trademarked as that term is used in this Final Judgment. Microsoft hereby disclaims any trademark rights in such descriptive or generic terms apart from the Microsoft® or Windows® trademarks, and hereby abandons any such rights that it may acquire in the future.

U. ''Windows Operating System Product'' means the software code (as opposed to source code) distributed commercially by Microsoft for use with Personal Computers as Windows 2000 Professional, Windows XP Home, Windows XP Professional, and successors to the foregoing, including the Personal Computer versions of the products currently code named ''Longhorn'' and ''Blackcomb'' and their successors, including upgrades, bug fixes, service packs, etc. The software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion.

VII. Further Elements

Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling either of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce

compliance, and to punish violations of its provisions.

VIII. Third Party Rights

Nothing in this Final Judgment is intended to confer upon any other persons any rights or remedies of any nature whatsoever hereunder or by reason of this Final Judgment.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Microsoft Corporation, Defendant

[Civil Action No. 98–1232 (CKK)]

State of New York ex. rel., Attorney General Eliot Spitzer, et al., Plaintiffs, v. Microsoft Corporation, Defendant

[Civil Action No. 98–1233 (CKK)]

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), the United States files this Competitive Impact Statement relating to the revised proposed Final Judgment (''Proposed Final Judgment'') submitted on November 6, 2001 for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On May 18, 1998, the United States filed a civil antitrust Complaint alleging that Microsoft Corporation (''Microsoft''), the world's largest supplier of computer software for personal computers, restrained competition in violation of sections 1 and 2 of the Sherman Act, 15 U.S.C. 1–2. The case was tried in the United States District Court for the District of Columbia, which found that Microsoft violated both sections 1 and 2 of the Sherman Act. Microsoft appealed to the United States Court of Appeals for the District of Columbia, and the Court of Appeals affirmed in part and reversed in part the decision of the District Court, and vacated the Final Judgment that had been entered by the District Court. After the case was remanded to District Court for further proceedings, the parties reached the agreement that is embodied in the Proposed Final Judgment. The Proposed Final Judgment will provide a prompt, certain and effective remedy for consumers by imposing injunctive relief to halt continuance and prevent recurrence of the violations of the Sherman Act by Microsoft that were upheld by the Court of Appeals and restore competitive conditions to the market. Entry of the Proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce its provisions and to punish violations thereof.

II. Overview of Relief

The Court of Appeals upheld the conclusion that Microsoft had engaged in a variety of exclusionary acts designed to protect its operating system monopoly from the threat posed by a type of platform software known as ''middleware,'' in violation of section 2 of the Sherman Act. Specifically, the Court determined that, in response to the middleware threat, Microsoft: (1) Undertook a variety of restrictions on personal computer Original Equipment Manufacturers (''OEMs''); (2) integrated its Web browser into Windows in a non-removable way while excluding rivals; (3) engaged in restrictive and exclusionary dealings with Internet Access Providers, Independent Software Vendors and Apple Computer; and (4) attempted to mislead and threaten software developers in order to contain and subvert Java middleware technologies that threatened Microsoft's operating system monopoly.

The relief contained in the proposed Final Judgment provides prompt, certain and effective remedies for consumers. The requirements and prohibitions will eliminate Microsoft's illegal practices, prevent recurrence of the same or similar practices, and restore the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings. The provisions benefit consumers by: [1]

- Ensuring that computer manufacturers have contractual and economic freedom to make decisions about distributing and supporting non-Microsoft middleware products without fear of coercion or retaliation by Microsoft, by broadly prohibiting retaliation against a computer manufacturer that supports or distributes alternative middleware or operating systems.
- Further ensuring computer manufacturers' freedom to make middleware decisions by requiring that Microsoft provide uniform licensing terms to the 20 largest and most competitively significant computer manufacturers.
- Ensuring that computer manufacturers have the freedom to configure the personal computers they sell to feature and promote non-Microsoft middleware, and ensuring that developers of these alternatives to Microsoft products are able to feature those products on personal computers, by prohibiting Microsoft from restricting computer manufacturers' ability to install and feature non-Microsoft middleware and competing operating systems in a variety of ways on the desktop and elsewhere.
- Ensuring that computer manufacturers have the freedom to offer, and consumers the freedom to use, non-Microsoft middleware, by requiring Microsoft to provide the ability for computer manufacturers and consumers to customize, without interference or reversal, their personal computers as to the middleware they install, use and feature, and by requiring Microsoft to allow them also to designate non-Microsoft middleware to be invoked automatically in place of Microsoft middleware.
- Ensuring that Microsoft cannot thwart the purposes of the remedies in the Proposed Final Judgment by withholding or providing only in discriminatory fashion necessary intellectual property licenses, by requiring Microsoft to offer necessary related licenses for the intellectual property that it is required to disclose.
- Creating the opportunity for software developers and other computer industry participants to develop new middleware products that compete directly with Microsoft by requiring Microsoft to disclose all of the interfaces and related technical information that Microsoft's middleware uses to interoperate with the Windows operating system.
- Preventing Microsoft from incorporating into the Windows operating system features or functionality with which only its own servers can interoperate by requiring Microsoft to disclose the communications protocols that are necessary for software located on a computer server to interoperate with the Windows operating system.
- Ensuring that software and hardware developers are free to develop, distribute, or write to software that competes with Microsoft middleware or operating system software without adverse action by Microsoft, by prohibiting Microsoft from retaliating against developers or conditioning consideration on a developer refraining from developing, distributing or writing to software that competes with Microsoft platform software.
- Depriving Microsoft of the means with which to retaliate against, or induce the hindering of the development of, competing products by prohibiting Microsoft from entering into agreements that require parties to exclusively, or in a fixed percentage, promote Microsoft middleware or operating system products.

The requirements and prohibitions in the Proposed Final Judgment are supported by strong enforcement

provisions, including the power to seek criminal and civil contempt sanctions and other relief in the event of a violation, and the imposition of three full-time, on-site, independent enforcement monitors. The Proposed Final Judgment also provides that, in an enforcement proceeding in which Microsoft has been found to have engaged in willful and systematic violations, the Court may order that the five-year term may be extended by up to two years, in addition to any other relief the Court deems appropriate.

III. Description of the Practices Giving Rise to the Alleged Violation

A. Background of the Proceedings

1. Proceedings in the District Court

On the same day that the United States filed its Complaint against Microsoft, 20 states and the District of Columbia (one state later withdrew and another later reached a separate settlement) filed a similar, although not identical, complaint. The District Court consolidated the cases at Microsoft's request. The Complaint alleged that Microsoft unlawfully maintained its monopoly in the market for operating systems designed to run on Intel-compatible personal computers by engaging in a series of exclusionary, anticompetitive and predatory acts in violation of section 2 of the Sherman Act. The Complaint also asserted that Microsoft unlawfully attempted to monopolize the market for Web browsers in violation of section 2 of the Sherman Act, and that certain actions taken by Microsoft as part of its campaign to protect its operating system monopoly power, such as tying its Web browser, Internet Explorer, to its operating system and entering into exclusive dealing arrangements, constituted unreasonable restraints on competition in violation of section 1 of the Sherman Act.

After extensive discovery, on October 19, 1998, the Court began a 78-day trial that ended on June 24, 1999. The Court heard testimony from 26 witnesses and admitted depositions of 79 other witnesses and 2,733 exhibits. On November 5, 1999, the Court entered its Findings of Fact. United States. v. Microsoft Corp., 84 F. Supp.2d 9 (D.D.C. 1999). On April 3, 2000, after the parties had engaged in four months of intensive but ultimately unsuccessful mediation efforts before Judge Richard Posner, the Court entered its Conclusions of Law. United States v. Microsoft Corp., 87 F. Supp.2d 30 (D.D.C. 2000).

The District Court held that Microsoft engaged in a series of illegal anticompetitive acts to protect and maintain its personal computer operating system monopoly, in violation of section 2 of the Sherman Act and analogous state laws. The Court also concluded that Microsoft violated Section 2 by attempting to monopolize the market for Web browsers and section 1 by tying its browser to its Windows operating system. The Court ruled that Microsoft's exclusive dealing arrangements did not separately violate Section 1. The Court then proceeded to consider a remedy for Microsoft's antitrust violations, and on June 7, 2000, issued this Final Judgment, which imposed a remedy that included a break-up of Microsoft into separate operating system and applications businesses, along with interim conduct provisions. United States v. Microsoft Corp., 97 F. Supp. 2d 59 (D.D.C. 2000).

2. Proceedings in the Court of Appeals

Microsoft appealed the District Court's decision. On June 28, 2001, the Court of Appeals, sitting en banc, unanimously affirmed in part, reversed in part and remanded in part the District Court judgment. Specifically, the Court affirmed the District Court's finding and conclusion that Microsoft had illegally maintained its operating system monopoly in violation of Section 2. United States v. Microsoft Corp., 253 F.3d 34 (D.C. Cir. 2001). The Court upheld the District Court's finding of monopoly power in the market for Intel-compatible personal computer operating systems. With certain exceptions, the Court agreed with the District Court's findings and conclusions that Microsoft had engaged in a variety of exclusionary acts designed to protect its operating system monopoly from the threat posed by a particular type of software known as ''middleware.'' Specifically, the Court upheld the conclusion that, in response to the middleware threat, Microsoft undertook a variety of restrictions on OEMs; integrated Internet Explorer into Windows in a non-removable way while excluding rivals; engaged in restrictive and exclusionary dealings with Internet Access Providers, Independent Software Vendors, and Apple Computer; and attempted to mislead and threaten software developers in order to contain and subvert so-called ''Java'' middleware technologies that threatened Microsoft's operating system monopoly. Each of these actions, which served to maintain the Windows monopoly, violated section 2 of the Sherman Act.

The Court reversed and remanded the Section 1 tying claim for reconsideration under the more rigorous rule of reason standard. It also reversed the District Court's determination that Microsoft had attempted to monopolize the Web browser market in violation of Section 2. In light of its finding that an evidentiary hearing on remedy was necessary and the fact that the District Court's Final Judgment may have rested on liability determinations that did not survive appellate review, the Court of Appeals vacated the Final Judgment and remanded the case to the District Court for new remedy proceedings. Finally, the Court of Appeals disqualified the trial judge retroactively to the date of entry of the Final Judgment based on violations of 28 U.S.C. 455(a).

3. Proceedings in the District Court Upon Remand

Upon remand, the District Court ordered the parties to confer and file a Joint Status Report, identifying the issues that remained on remand and the measures to be taken to reach resolution, and proposing a schedule. As part of that process, Plaintiffs advised Microsoft that they did not intend to pursue further proceedings on remand regarding their Section 1 tying claim and did not intend to pursue on remand the restructuring of Microsoft into separate operating system and applications businesses that had previously been ordered by the District Court. Plaintiffs took these steps after careful consideration of the Court of Appeals' decision and its likely impact on prospective remedies, in an effort to obtain prompt, effective and certain relief for consumers.

Subsequently, the District Court ordered the parties into a period of intensive settlement and mediation discussions to attempt to reach a fair resolution, commencing on September 28, 2001, and expiring on November 2, 2001. During that period, the parties expended every effort to comply with the Court's order and, after extensive negotiations, the United States, nine of the States (New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina, and Wisconsin), and Microsoft were able to reach agreement upon a Proposed Final Judgment that would achieve a prompt, certain and effective remedy for consumers by imposing injunctive relief to enjoin continuance and prevent recurrence of the violations of the Sherman Act by Microsoft that were upheld by the Court of Appeals, and restore the competitive conditions prevailing prior to Microsoft's unlawful conduct. The Proposed Final Judgment was filed on November 6, 2001.[2]

B. Factual Background

1. Microsoft's Operating System Monopoly

Personal computers consist, *inter alia,* of central processing components (a microprocessor and main memory), software, and data storage (*e.g.*, a hard disk). The software on a personal computer largely consists of an operating system and applications designed to accomplish specific tasks, such as word processing. The operating system controls the allocation and use of computer resources and serves as a ''platform'' for applications by exposing interfaces (application programming interfaces, or APIs) that applications invoke to perform crucial tasks such as displaying text on a screen.

Microsoft has monopoly power in the market for Intel-compatible personal computer operating systems and undertook an extensive campaign of exclusionary acts to maintain its operating system monopoly. The relevant market for evaluating Microsoft's monopoly power is the licensing of all Intel-compatible personal computer operating systems worldwide. Intel-compatible personal computers are designed to function with Intel's 80x86 and successor families of microprocessors (or compatible microprocessors). Operating systems designed for Intel-compatible personal computers do not run on other personal computers, and operating systems designed for other personal computers do not run on Intel-compatible personal computers. Moreover, consumers are very reluctant to substitute away from Intel-compatible personal computers (for any reason, including an increase in operating system prices) because to do so would entail incurring substantial costs and would not result in a satisfactory substitute. Thus, a monopolist of operating systems for Intel-compatible personal computers can set and maintain the price of a license substantially above that which would be charged in a competitive market without losing so many customers as to make the action unprofitable.

2. The Applications Barrier to Entry

The operating system serves principally two functions: it enables the computer's hardware to operate and it serves as a platform for applications programs, such as word-processing and spreadsheets. The latter function is the source of an ''applications barrier to entry'' that protects Microsoft's monopoly power in the operating system market: users do not want to invest in an operating system until it is clear that the system will support generations of applications that will meet their needs, and developers do not want to invest in writing or quickly porting (*i.e.,* adapting) applications for an operating system until it is clear that there will be a sizeable and stable market for it. This self-reinforcing cycle is sometimes referred to as a ''network effect,'' a phenomenon by which the attractiveness of a product increases with the number of people using it.

The ubiquity of the Windows operating system thus induces developers to create vastly more applications for Windows than for other operating systems. The availability of a rich array of applications in turn attracts consumers to Windows. A competing operating system will not attract large numbers of users unless those users believe that there is and will continue to be a sufficient and timely array of applications available for use on that operating system. Software developers, however, have little incentive to write applications for an operating system without a large number of users.

3. Combating the Middleware Threats

The formidable applications entry barrier may be eroded through platform software known as ''middleware.'' A middleware program is not an operating system; rather, it is platform software that runs on top of an operating system—*i.e.*, uses operating system interfaces to take advantage of the operating system's code and functionality—and simultaneously exposes its own APIs so that applications can run on the middleware itself. An application written to rely exclusively on a middleware program's APIs could run on all operating systems on which that middleware runs. Because such middleware also runs on Windows, application developers would not be required to sacrifice Windows compatibility if they chose to write applications for a middleware platform. Applications developers would thus have incentives to write for widely used middleware, and users would not be reluctant to choose a non-Windows operating system for fear that it would run an insufficient array of applications.

Middleware's potential to erode the applications barrier to entry thus poses a threat to Microsoft's ability to maintain its operating system monopoly. Recognizing this threat, Microsoft engaged in an extensive pattern of conduct designed to eliminate the threat posed by middleware. To protect its operating system monopoly, Microsoft focused on two incarnations of middleware that, working together, had the potential to weaken the applications barrier severely without the assistance of any other middleware: Netscape's Web browser and Sun Microsystems' implementation of the Java technologies.

a. *Microsoft's Campaign To Eliminate the Netscape Threat.* In December 1994, Netscape first marketed a Web browser called Navigator. Within months, Navigator was the preeminent Web browser. Microsoft became deeply concerned that Netscape was moving its business in a direction that could diminish the applications barrier to entry and thus decided to eliminate the threat that Navigator would become a viable alternative platform for applications. Microsoft first tried to reach an agreement with Netscape in June 1995, pursuant to which Netscape would have stopped efforts to develop Navigator into ''platform-level'' (*i.e.,* API-exposing) browsing software for the Windows 95 operating system that was to be released later that summer; in return, Microsoft proposed to refrain from competing with Netscape in developing browsers for other operating systems.

Microsoft warned Netscape that timely access to critical technical information about Windows APIs—information that Netscape needed to make its browser run well on Windows 95—depended on its acquiescence. Had Netscape acquiesced in Microsoft's proposal, it would have become all but impossible for Navigator or any other browser rival to pose a platform threat to Windows.

Netscape did not accept Microsoft's proposal, and in response, Microsoft withheld from Netscape crucial Windows-related technical information that it routinely provided to others, and delayed the provision of necessary APIs, so that Netscape was excluded from most of the 1995 holiday selling season. Moreover, once it became clear to senior executives at Microsoft that Netscape would not abandon its efforts to develop Navigator into a platform, Microsoft focused its efforts on ensuring that few developers would write their applications to rely on the APIs that Navigator exposed.

Microsoft understood that software developers would only write to the APIs exposed by Navigator in numbers large enough to threaten the applications barrier if they believed that Navigator would emerge as the standard software employed to browse the Web. If Microsoft could demonstrate that Netscape would not become the standard and that Microsoft's browser, Internet Explorer, would meet or exceed Netscape's browser usage share, developers would continue to focus

their efforts on the Windows platform. Therefore, to protect the applications barrier to entry, Microsoft embarked on a multifaceted campaign to maximize Internet Explorer's share of usage and to minimize Navigator's.

Decision-makers at Microsoft worried that simply developing its own attractive browser product, providing it to consumers free of charge, and promoting it vigorously would not divert enough browser usage from Navigator to neutralize Navigator as a platform. Thus, rather than confine itself to improving and promoting Internet Explorer as a competitor to Navigator, Microsoft decided to constrict Netscape's access to the two distribution channels that led most efficiently to browser usage: installation by OEMs on new personal computers and distribution by Internet Access Providers (''IAPs''). Users rarely switched from whatever browsing software was placed most readily at their disposal, which was usually the browsing software installed on their computer by the OEM or supplied by their IAP when they signed up for Internet service. Microsoft thus sought to ensure that, to as great an extent as possible, OEMs and IAPs bundled and promoted Internet Explorer to the exclusion of Navigator.

Microsoft largely succeeded in exiling Navigator from the crucial OEM distribution channel. By January 1998, Microsoft executive Joachim Kempin was able to report to CEO Bill Gates that Navigator was being shipped through only 4 of the 60 OEM distribution sub-channels, and even then most often in a position much less likely to lead to usage than would Internet Explorer's position. By early 1999, Navigator was present on the desktop of only a tiny percentage of the personal computers that OEMs shipped.

Similarly, Microsoft's IAP channel restrictions significantly hampered Netscape's ability to distribute Navigator: they caused Internet Explorer's usage share to surge; they caused Navigator's usage share to plummet; they raised Netscape's own costs; and they sealed off a major portion of the IAP channel from the prospect of recapture by Navigator.

To help ensure that developers would not view Navigator as truly cross-platform middleware, Microsoft also pressured Apple to make Navigator less readily accessible on Apple personal computers. As leverage to obtain Apple's compliance, Microsoft threatened to cancel development of its ''Office for Macintosh'' software, which, as Microsoft recognized, was critical to Apple's business. Microsoft required Apple to make Internet Explorer its default browser and restricted Apple's freedom to feature and promote non-Microsoft browsing software, in order to protect the applications barrier to entry.

As part of its effort to hamper distribution of Navigator and to discourage the development of software that used non-Microsoft technology, Microsoft also targeted Independent Software Vendors (''ISVs''). Microsoft contractually required ISVs to use Internet Explorer-specific technologies in return for timely and commercially necessary technical information about Windows, and precluded important ISVs from distributing Navigator with their products.

Microsoft's actions succeeded in eliminating the threat that the Navigator browser posed to Microsoft's operating system monopoly. Foreclosed from effectively using the OEM and IAP distribution channels by Microsoft's exclusionary conduct, Navigator was relegated to more costly and significantly less effective modes of distribution. The adverse business effects of these restrictions also deterred Netscape from undertaking technical innovations in Navigator that might have attracted consumers and revenues.

Because of its reduced access to efficient distribution channels, Navigator's share of browser use fell precipitously. Even though Navigator's installed base of users increased during the browser war, the population of browser users expanded so quickly that Navigator's usage share fell dramatically even as its installed base grew. Navigator lost its ability to become the standard software for browsing the Web because Microsoft had successfully—and illegally—excluded Navigator from that status.

b. *Microsoft's Efforts To Extinguish Java.* Microsoft also feared another middleware technology, Sun Microsystems' Java. Java software presented a means for overcoming the applications barrier to entry by enabling developers to write programs that could be ported to different operating systems with relative ease. Microsoft was concerned about Java because a key to maintaining and reinforcing the applications barrier to entry has been preserving the difficulty of porting applications from Windows to other platforms, and vice versa.

Java software has four elements: a programming language; a set of ''class libraries,'' which are Java programs that expose APIs on which developers writing in Java can rely; a compiler that translates the code written by the developer into Java ''bytecode''; and ''Java Virtual Machines'' (''JVMs''), programs that translate the Java bytecode into instructions comprehensible to the underlying system. The Java class libraries and JVM together form the ''Java runtime environment.'' If a software program relies only on APIs exposed by the Java Class libraries, it will run on any personal computer system carrying a Java runtime environment, no matter what operating system is on the computer. Therefore, Java applications require porting only to the extent that those applications rely directly on the APIs exposed by a particular operating system.

In May 1995, Netscape announced that it would include a Sun-compliant Windows JVM with every copy of Navigator, thereby creating the possibility that Sun's Java implementation would achieve the necessary ubiquity on Windows to pose a threat to the applications barrier to entry. Microsoft's determination to cripple cross-platform Java was an important reason for its concern about Navigator. Microsoft thus took, numerous steps to interfere with the development, distribution, and use of cross-platform Java. Those steps included: (1) Pressuring third parties not to support cross-platform Java; (2) seeking to extinguish the Java threat through technological means that maximized the difficulty with which applications written in Java could be ported from Windows to other platforms, and vice versa; and (3) other anticompetitive steps to discourage developers from creating Java applications compatible with non-Microsoft JVMs.

Through its actions against Navigator and Java, Microsoft retarded, and perhaps extinguished altogether, the process by which these two middleware technologies could have facilitated the introduction of competition into the market for Intel-compatible personal computer operating systems.

4. Summary of Effects of Microsoft's Anticompetitive Conduct

The Court of Appeals affirmed that, through its anticompetitive conduct, Microsoft has unlawfully protected and maintained its operating system monopoly in violation of section 2 of the Sherman Act.

IV. Explanation of the Proposed Final Judgment

The Proposed Final Judgment seeks to eliminate Microsoft's illegal practices, to prevent recurrence of the same or similar practices and to restore the competitive threat that middleware products posed prior to Microsoft's

unlawful conduct. As discussed in further detail below, it seeks to achieve these goals by prohibiting Microsoft from engaging in specified activities, by requiring Microsoft to undertake certain other specified activities, by establishing a three-person independent Technical Committee (''TC'') to assist in enforcement and compliance, and by requiring Microsoft to establish an internal antitrust compliance program. The Proposed Final Judgment applies to Microsoft's conduct nationwide.

A. Scope of the Proposed Final Judgment

A number of the definitions contained in the Proposed Final Judgment are essential to understanding the proper construction of the scope of the requirements and restrictions contained in the Proposed Final Judgment.

''Microsoft Middleware,'' a defined term, is the concept that triggers Microsoft's obligations, including those relating to Microsoft's licensing and disclosure obligations under sections III.D. and III.E., in this Proposed Final Judgment. Microsoft Middleware means software code that is distributed separately from a Windows Operating System Product to update that Windows Operating System Product, is Trademarked (as that term is defined in the Proposed Final Judgment), provides the same or substantially similar functionality as a Microsoft Middleware Product and, at a minimum, includes the software code that controls most or all of the user interface elements of the Microsoft Middleware. Microsoft typically develops and distributes a ''redistributable'' associated with Microsoft Middleware Products. For instance, Microsoft offers a redistributable of Internet Explorer 6, which is a set of software code that is distributed separately under the Internet Explorer trademark and has the same functionality as Internet Explorer in Windows XP. This block of software code is the Microsoft Middleware that corresponds to the Internet Explore Microsoft Middleware Product. If such a redistributable exists, as they currently do for most Microsoft Middleware Products, then the redistributable is Microsoft Middleware. The primary purpose of the fourth requirement, that the Microsoft Middleware include at least the code that controls most or all of the user interface, is to ensure that the definition captures situations where no such redistributable exists, or where Microsoft chooses to divide up the software code that would otherwise have been a redistributable and to distribute that code not in one block but in various smaller blocks. In such cases, even though the first three requirements would be met, there could be uncertainty as to which of the smaller blocks of code constitute the Microsoft Middleware, particularly if some of the blocks are characterized by Microsoft as operating system updates. The fourth requirement sets a minimum functional requirement that in no case (regardless of the size of, or manner of, distributing the code) shall the software code constituting Microsoft Middleware be less than that which controls most, or all of, the user interface elements of that Microsoft Middleware.

Software code distributed to update a Microsoft Middleware Product, such as an update to Internet Explorer, is Microsoft Middleware if it is a new ''major version'' of that Product: *e.g.*, if it is identified by a new name or a new version number that consists of a whole number (*e.g.*, ''7.0'') or a number with a single digit to the right of the decimal place (*e.g.*, ''7.1''). This requirement is intended to focus the definition on code updates that provide commercially meaningful new or improved functionality, rather than simple bug fixes or patches, and uses Microsoft's current, regular versioning practices to differentiate minor fixes from more significant new versions.

''Microsoft Middleware Product,'' a defined term, is a concept critical to, among other things, identifying software to which user access and defaults must be made removable in favor of competing software pursuant to section III.H. Microsoft Middleware Product is broad; it covers not only a variety of existing products, but also sets forth an objective test for products not yet in existence that may become covered by the definition in the future. Existing products within this definition are those that include the functionality provided to users by a number of identified Microsoft products: Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, and Outlook Express. The definition includes not only the functionality provided by these products, but also functionality provided by any successors to these products distributed by Microsoft. A future product would also be a Microsoft Middleware Product if it is first licensed, distributed or sold by Microsoft after entry of the Proposed Final Judgment as part of a Windows Operating System Product, and provides functionality similar to Internet browsers, email client software, networked audio/video client software, and instant messaging software. Thus, for example, future real time communications software that provides functionality similar to instant messaging software would be included, whether that software provides instant messaging via text, audio, and/or video. Alternately, future products would be encompassed within this definition if, in the year preceding commercial release of a new Windows Operating System Product, they are distributed separately from Windows, provide functionality similar to a Non-Microsoft Middleware Product, and are Trademarked.

To be distributed separately from a Windows Operating System Product means that the software code is distributed separately from the original installation on a Personal Computer in any channel. Examples of channels include retail, separate installation by OEMs, downloads, inclusion with third-party software products, mass-mailings, and the Windows Update facility. Any software received in any of these channels after the original installation of a Windows Operating System Product is distributed separately from that Product. Software can be considered to be both part of a Windows Operating System Product and distributed separately from that Product.

''Non-Microsoft Middleware Product,'' a defined term, is the concept used, among other places, to identify software that may be installed in lieu of a Microsoft Middleware Product, as provided in Section III.H. Generally speaking, ''Non-Microsoft Middleware'' is third-party software that, similar to the browser, has the potential to create a competitive threat to Microsoft's Windows monopoly by lowering the applications barrier to entry. A Non-Microsoft Middleware Product is any software that both meets the definition of Non-Microsoft Middleware and has at least one million copies distributed in the United States within the previous year. This requirement of a minimal amount of actual distribution of such products is intended to avoid Microsoft's affirmative obligations—including the API disclosure required by Section III.D. and the creation of the mechanisms required by Section III.H.—being triggered by minor, or even nonexistent, products that have not established a competitive potential in the market and that might even be unknown to Microsoft development personnel.

''Non-Microsoft Middleware'' is any software: (I) Not licensed, distributed or sold by Microsoft; (ii) that is capable of running on a Windows Operating System Product; (iii) that itself provides APIs that can be invoked by ISVs to obtain a range of functionality; and (iv) that, if ported to or made to work with

a non-Microsoft Operating System, could make it easier for software applications that invoke its functionality to be ported to or run on such non-Microsoft Operating Systems.

It was important to provide some limitations on these and other, related definitions, because not all software that exposes APIs would qualify as ''middleware'' with competitive significance for purposes of this case. While it is critical that meaningful, future middleware products be captured by the Proposed Final Judgment, such products may not always be readily identifiable as such. Without limitations on the definition, any software developer would be able to claim that any software product was middleware and thereby insist on exercising options and alternatives provided by the Proposed Final Judgment. The limits in the definitions ensure that the provisions of the Proposal Final Judgment apply to products that can credibly be said to pose, alone or in combination with other products, nascent threats to the applications barrier to entry.

The definition of ''Trademarked'' is designed to ensure that the Microsoft Middleware and the Microsoft Middleware Products that Microsoft distributes (either for free or for sale) to the market as commercial products are covered by the Proposed Final Judgment. The definition of Trademarked in all respects applies equally to both trademarks and service marks.

The definition has two categories. The first category covers products distributed in commerce under distinctive names or logos other than by the Microsoft® or the Windows® names by themselves. In order for such products to be Trademarked within the meaning of this definition, Microsoft must claim the name under which the product is distributed, or by which the product is identified, as a trademark or service mark in one of the following ways: (1) By marking the name with trademark notices in connection with a product distributed in the United States; (2) by filing an application for trademark protection for the name in the United States Patent and Trademark Office; or (3) by asserting the name as a trademark in the United States in a demand letter or lawsuit. As long as Microsoft makes a claim in one of these three ways, for any name other than Microsoft® or Windows® by itself, the definition is satisfied. For example, products distributed in commerce under, or identified by, the Windows Media® name are covered.

The second category covers products distributed in commerce under generic or descriptive terms or generic or descriptive terms in combination with either the Microsoft® or the Windows® name, where such terms of combinations of terms do not meet any of the three requirements for being claimed as a trademark or service mark outlined in connection with the first category. Microsoft expressly disclaims all rights in, and abandons any rights it may acquire in the future to, such generic or descriptive terms or combinations of generic or descriptive terms with either the Microsoft® or the Windows® name. Products falling within this second category are neither Microsoft Middleware nor Microsoft Middleware Products. The second category does not exempt from coverage as Trademarked any product distributed in commerce under, or identified by, marks that consist of any combination of generic or descriptive terms and a distinctive logo or other stylized presentation. For example, the mark MEDIA, although a generic term, would not fall within the second category if it were presented as a part of a distinctive logo or another stylized presentation because the mark itself would not be either generic or descriptive.

The portion of this definition relating to Microsoft's disclaimer of certain trademarks or service marks and its abandonment of any rights to such trademarks or service marks in the future is designed to ensure that, to the extent that Microsoft distributes a product in commerce under generic or descriptive terms or generic or descriptive terms in combination with either the Microsoft® or the Windows® name and claims on that basis that such product does not fall within the definition of Microsoft Middleware or Microsoft Middleware Product, it must forever disclaim and abandon any rights to the name under which any such product is distributed in commerce.

''Windows Operating System Product'' means the software commercially distributed by Microsoft for use with Personal Computers under the names Windows 2000 Professional, Windows XP Home and Professional, and successors to these products. In general terms, it refers to Microsoft's line of ''desktop'' operating systems, as opposed to its server or other operating systems. Windows Operating System Product applies to software marketed under the listed names and anything marketed as their successors, regardless of how that software code is distributed, whether the software code is installed all at once or in pieces, or whether different license(s) apply.

While the software code that comprises a Windows Operating System Product is determined by Microsoft's packaging decisions (*i.e.*, by what it chooses to ship as ''Windows''), software code that is part of a Windows Operating System Product can also meet the requirements of other definitions, such as those for Microsoft Middleware and Microsoft Middleware Product. For example, Internet Explorer is both part of a Windows Operating System Product and a Microsoft Middleware Product.

B. Prohibited Conduct and Anticipated Effects of the Proposed Final Judgment

Appropriate injunctive relief in an antitrust case should: (1) End the unlawful conduct; (2) ''avoid a recurrence of the violation'' and others like it; and (3) undo its anticompetitive consequences. See Nat'l Soc'y of Prof'l Eng'rs v. United States, 435 U.S. 679, 697 (1978); United States v. E.I. du Pont de Nemours & Co., 366 U.S. 316, 326 (1961); Int'l Salt Co. v. United States, 332 U.S. 392, 401 (1947); United States v. Microsoft Corp., 253 F.3d 34, 103, 107 (D.C. Cir. 2001). Restoring competition is the ''key to the whole question of an antitrust remedy,'' du Pont, 366 U.S. at 326. Competition was injured in this case principally because Microsoft's illegal conduct maintained the applications barrier to entry into the personal computer operating system market by thwarting the success of middleware that would have assisted competing operating systems in gaining access to applications and other needed complements. Thus, the key to the proper remedy in this case is to end Microsoft's restrictions on potentially threatening middleware, prevent it from hampering similar nascent threats in the future and restore the competitive conditions created by similar middleware threats. The Proposed Final Judgment imposes a series of prohibitions on Microsoft's conduct that are designed to accomplish these critical goals of an antitrust remedy.

1. Section III.A.

Section III.A. ensures that OEMS have the contractual and economic freedom to make decisions about distributing and supporting non-Microsoft software products that have the potential to weaken Microsoft's personal computer operating system monopoly without fear of coercion or retaliation by Microsoft. The District Court found, and the Court of Appeals upheld, that OEMs are a crucial channel for the distribution and ultimate usage of non-Microsoft Middleware Products such as browsers. Accordingly, it is critical that the OEMs, through whom the large majority of

copies of Microsoft's Windows Operating System Products reach consumers, are free to choose to distribute and promote middleware without interference from Microsoft.

Section III.A. broadly prohibits any sort of Microsoft retaliation against an OEM based on the OEM's contemplated or actual decision to support non-Microsoft software. Specifically, Microsoft is barred from retaliating by altering its existing commercial relations with an OEM based on the OEM's work with Non-Microsoft Middleware or Operating Systems. The existing Microsoft-OEM relationship provides a baseline against which any changes Microsoft makes in its treatment of that OEM for prohibited reasons can be detected and assessed. Microsoft is further prohibited from retaliating against OEMs by withholding newly-introduced forms of non-monetary ''Consideration'' (a defined term referring to the various means available to Microsoft by which it can retaliate against or reward another firm; specifically, preferential licensing terms; technical, marketing, and sales support; enabling programs; product information; information about future plans; developer support; hardware or software certification or approval; or permission to display trademarks, icons or logos). For example, if Microsoft begins a new technical program or a new logo or software certification program that is not yet part of its existing commercial relations with an OEM, Microsoft cannot withhold the new Consideration from the OEM because the OEM is shipping or promoting products that compete with Microsoft Middleware or Operating Systems. Microsoft similarly cannot punish the OEM by withholding participation in a successor version of an existing form of Consideration, for example, in a logo program for calendar year 2003. This effectively bars Microsoft from using either money or the wide range of economic and commercial levers at its disposal to restrain OEM's support of competing software.

Section III.A. is also broad in the range of OEM activities which Microsoft is prohibited from affecting through retaliation or coercion. Microsoft cannot retaliate against an OEM because Microsoft knows that the OEM either is or is contemplating: (I) Developing, distributing, promoting, using, selling, or licensing any software that competes with Microsoft Middleware or a Microsoft Operating System, or any product or service that distributes or promotes Non-Microsoft Middleware; (ii) shipping personal computers that have more than one operating system or that will ''dual boot'' into different operating systems; or (iii) exercising any other options or alternatives that are assured to OEMs by other provisions of the Proposed Final Judgment. Thus, OEMs will be assured the freedom to make independent decisions about the middleware and other operating systems they install, distribute and promote based on the demands of their customers and not on fear of retaliation by, or coercion from, Microsoft.

Section III.A. does permit Microsoft to provide Consideration to an OEM for a particular Microsoft product or service where the Consideration is commensurate with the level or amount of the OEM's development, distribution, promotion or licensing of that product or service. Thus, Microsoft is limited to providing Consideration for a specific Microsoft product or service in return for the OEM supporting that product or service. Moreover, Microsoft can base such Consideration only on the absolute level or amount of the OEM's support for the Microsoft product or service, rather than on any relative level or amount.

Finally, Section III.A. helps ensure the freedom of OEMs to make decisions about the software they install and promote free from Microsoft's influence by protecting the OEMs from having their vital licenses to Windows Operating System Products canceled without notice. Microsoft is barred from terminating the licenses of any of the 20 largest and most competitively significant OEMs (defined as ''Covered OEMs'') without first giving written notice of the reasons for the proposed termination and not less than a 30-day opportunity to cure (except for a Covered OEM that has already received two such notices during the term of its license agreement). Without such protection, the threat that key OEMs could suddenly lose their Windows license, and that such loss is at Microsoft's discretion, could act as a powerful deterrent against OEMs taking the risk of promoting and distributing software that competes with Microsoft's.

2. Section III.B.

In order to ensure freedom for the 20 Covered OEMs from the threat of Microsoft retaliation or coercion, Section III.B. requires that Microsoft's Windows Operating System Product licenses with such OEMs contain uniform terms and conditions, including uniform royalties. These royalties must be established by Microsoft in advance on a schedule that is available to Covered OEMs and the Plaintiffs.

Windows license royalties and terms are inherently complex and easy for Microsoft to use to affect OEMs' behavior, including what software the OEMs will offer to their customers. By eliminating any opportunity for Microsoft to set a particular OEM's royalty or license terms as a way of inducing that OEM to decline to promote non-Microsoft software or retaliating against that OEM for its choices to promote non-Microsoft software, this provision will ensure that OEMs can make their own independent choices. The provision permits Microsoft to employ volume discounts, but requires that such discounts be based on pre-set, legitimate volume levels.

Section III.B. also prohibits Microsoft from using market development allowances (''MDAs'') or programs or other discounts to reward or retaliate against particular OEMs for the choices they make about installing and promoting Non-Microsoft Middleware or Operating Systems or for any other purpose that is inconsistent with the provisions of the Proposed Final Judgment. If Microsoft utilizes MDAs or similar discounts, they must be available and awarded uniformly to the ten largest OEMs on one discount scale and separately to the ten next largest on the same or another discount scale. In addition, the discounts must be based on objective, verifiable criteria that are applied uniformly. These restrictions ensure that Microsoft cannot use MDAs or other discounts to in any way discourage or prevent OEMs from choosing to favor, promote, or ship software that could threaten Microsoft's monopoly or otherwise from exercising the options and alternatives assured to OEMs by the Proposed Final Judgment.

Section III.B. is limited to the 20 OEMs with the highest worldwide volume of licenses of Windows Operating System Products. Those OEMs together account for a substantial percentage of all Windows licenses and, consequently, ensuring their freedom to distribute and promote particular types of software that could erode Microsoft's monopoly is competitively significant.

3. Section III.C.

Section III.C. of the Proposed Final Judgment prohibits conduct—e.g., Microsoft's restrictions on an OEM's ability to remove or install desktop icons, folders and Start menu entries and to modify the initial boot sequence and to make certain alterations to the desktop—that the Court of Appeals found to be anticompetitive and unjustified. Section III.C. is designed to ensure that OEMs have the freedom to

configure the personal computers they sell by pre-installing, featuring and promoting Non-Microsoft Middleware or non-Microsoft Operating Systems, products that over time could help lower the applications barrier to entry. This Section prevents Microsoft from restricting a wide variety of actions OEMs may take to offer rival middleware to consumers and to feature that middleware in ways that increase the likelihood that consumers will choose to use it. Assuring this flexibility for OEMs is important to prevent the recurrence of conduct found to be illegal by the Court of Appeals and to help restore the competitive conditions that Microsoft's conduct undermined.

Flexibility in Offering and Promoting Non-Microsoft Middleware: The first three subsections of Section III.C. prohibit Microsoft from restricting by agreement (any contract, requirement or understanding) OEMs from pre-installing, distributing, promoting or launching automatically Non-Microsoft Middleware or related products or services. Thus, for example, Microsoft may not include terms in a license agreement, Windows OEM preinstallation kit instructions, MDAs or other programs, or any other contractual document, that restrict OEMs' freedom to install and feature Non-Microsoft Middleware in the ways specified in subsections III.C.1–3.

These subsections prevent Microsoft from restricting the freedom of OEM's to install and display icons, shortcuts, or menu entries both for Non-Microsoft Middleware and, more broadly, for any other product or service (including IAP products or services) that distributes, uses, promotes or supports Non-Microsoft Middleware. For example, an OEM may promote or install third-party offers for Internet access, subscription on-line music services, or Web-based applications that use or support Non-Microsoft Middleware such as an alternate browser, audio-video client software, or Java Virtual Machine. Subsection III.C.1. ensures that OEMs are free to install such products and services and to place icons, shortcuts or menu entries for them on the Windows desktop or Start menu.

This subsection also provides OEMs the flexibility to display such icons, shortcuts, or menu entries anywhere else in Windows where a list of icons, shortcuts or menu entries for applications are generally displayed. For example, OEMs must be free to feature Non-Microsoft Middleware in the system tray and quick launch bar, ''right-click'' lists, ''open with'' lists and lists that appear based on an action or an event, such as connecting hardware or inserting an audio CD. Microsoft may specify that certain lists of icons, shortcuts, or menu entries are limited to products with particular types of functionality; for example, Microsoft may require that OEMs not place icons for media players or browsers in control panel windows that are limited to system-utility type functions, so long as any such requirements apply equally to Microsoft and non-Microsoft products. Thus, by way of example, Microsoft may reserve a particular list for multimedia players, but cannot specify either that the listed player be its own Window Media Player or that, whatever multimedia player an OEM chooses to list in that entry, it be capable of supporting a particular proprietary Microsoft data format. Such non-generic specification, which would have the effect of restricting the display of competing Non-Microsoft Middleware, would not be ''non-discriminatory'' as required by subsection III.C.1.

Subsection III.C.2. prevents Microsoft from restricting an OEM's ability to distribute or promote Non-Microsoft Middleware by installing and displaying on the Windows desktop shortcuts of any size or shape, so long as the shortcut is not of a size or shape that effectively impairs the functionality of the user interface. Thus, Microsoft could prevent an OEM from installing a large ''shortcut'' that covered the Start button or obscured the entirety of the Windows user interface, but could not generally ban OEMs from installing large or differently-shaped shortcuts.

Subsection III.C.3. requires that Microsoft permit OEMs to configure their products to launch Non-Microsoft Middleware automatically at the conclusion of the first boot sequence or subsequent boot sequences or upon connection to or disconnection from the Internet, if Microsoft has configured any of its Microsoft Middleware Products that provide similar functionality to do so. Thus, if Microsoft configured its products automatically to launch functionality provided by a Microsoft Middleware Product on boot-up or in conjunction with an Internet session, an OEM must be free instead to launch automatically similar functionality of Non-Microsoft Middleware. For example, if Microsoft configured its Windows Media Player automatically to launch in a personal computer's memory upon boot-up or connection to the Internet, an OEM could instead automatically launch a competing media player upon those same events.

The only other limitation Microsoft may impose on OEMs in this circumstance is that any Non-Microsoft Middleware the OEM configures to launch automatically cannot display a user interface that is not of similar size and shape as the Microsoft Middleware Product user interface that would otherwise launch automatically. For example, if Windows Messenger automatically launches after connection to the Internet, but only appears in the system tray, an OEM may configure a competing instant messaging client to launch automatically at the same time, but that product also must appear only in the system tray and not display the full user interface.

Flexibility to Offer Alternate Operating Systems and ''Dual Boot'' Personal Computers: Subsection III.C.4. ensures that OEMs will be free, if they choose, to offer users the option of launching other operating Systems during the personal computer's boot-up, either from the initial BIOS program or from a non-Microsoft boot loader that launches prior to the start of the Windows Operating System Product. This provision forbids Microsoft from stopping OEMs from offering ''dual-boot'' systems—computers that give users the choice of either launching a Windows Operating System Product or another general- or special-purpose Operating System—on the same personal computer.

OEM-Specific IAP Offers in the Bootup Sequence: Subsection III.C.5. ensures that OEMs will be free to create and display in the initial Windows boot sequence a customized offer for the user to choose his or her IAP. Microsoft may limit such offers only by requiring that they comply with ''reasonable technical specifications,'' including a requirement that the initial boot sequence be completed upon conclusion of any such offer. Because a user's IAP can be an important source of choices about various middleware for the user, ensuring OEM freedom to offer customized IAP offers during the initial boot process can have substantial competitive value.

No Contractual Restrictions on OEMs Exercising Other Options in the Decree: Finally, subsection III.C.6. prohibits Microsoft from restricting by agreement an OEM's right to exercise any of the technical configuration options that Microsoft must make available to OEMs under Section III.H., discussed below. This ensures that Microsoft cannot prohibit or impede by contract an OEM's access to or use of what Microsoft must make available through technical facilities in its Windows Operating System Products.

4. Section III.D.

Section III.D. of the proposed Final Judgment requires Microsoft to disclose

to ISVs, IHVs, IAPs, ICPs and OEMs all of the interfaces and related technical information that Microsoft Middleware uses to interoperate with any Windows Operating System Product. This provision ensures that developers of competing middleware—software that over time could begin to erode Microsoft's Operating System monopoly—will have full access to the same interface and related information as Microsoft Middleware has to interoperate with Windows Operating System Products. Microsoft will not be able to hamper the development or operation of potentially threatening software by withholding interface information or permitting its own products to use hidden or undisclosed interfaces.

Section III.D. requires disclosure of ''Application Programming Interfaces'' or ''APIs,'' which are the interfaces, including any associated callback interfaces, that Microsoft Middleware running on a Windows Operating System Product uses to call upon that Windows Operating System Product in order to obtain services from it. ''Interfaces'' includes, broadly, any interface, protocol or other method of information exchange between Microsoft Middleware and a Windows Operating System Product.

Section III.D. also requires that Microsoft disclose ''Documentation,'' which means all the technical information regarding the identification and means of using APIs that a programmer of ordinary skill requires to make effective use of those APIs. Documentation refers to such information that is of the sort and to the level of specificity, precision and detail that Microsoft currently provides to ISVs and others through the Microsoft Developer's Network (''MSDN''). Through its MSDN service, Microsoft presently makes widely available on the Internet an extensive and detailed catalog of technical information that includes, among other things, information about most Windows APIs for use by developers to create various Windows applications. MSDN access is presently broadly available to developers and other interested third parties. If in the future Microsoft uses another mechanism for disclosure of such information, that mechanism must be similar in scope and availability to that provided today via MSDN.

Microsoft Must Disclose All APIs and Related Documentation: Section III.D. requires Microsoft to disclose to ISVs, IHVs, IAPs, ICPs and OEMs the APIs and related Documentation that any Microsoft Middleware uses to interoperate with a Windows Operating System Product. Third parties may then use those APIs and related Documentation for the purpose of ensuring that their products interoperate with Windows Operating System Products. Microsoft is to provide these disclosures via MSDN or similar mechanisms.

Microsoft's initial obligation to provide the disclosures of APIs and related Documentation under this section arises when Microsoft releases the upcoming first Service Pack for Windows XP, or twelve months after November 6, 2001 (the date the Proposed Final Judgment was presented to the Court), whichever occurs first. Thereafter, Microsoft is under a continuing obligation to disclose additional APIs and Documentation. Whenever Microsoft develops an updated version of a Windows Operating System Product, it must disclose all relevant APIs and Documentation in a ''Timely Manner,'' meaning at the time Microsoft first releases a widespread beta test version of that Windows Operating System Product (i.e., one made available to 150,000 or more beta testers). If, alternatively, Microsoft develops a new ''major version'' of Microsoft Middleware, it must disclose any APIs and Documentation used by that Middleware to interoperate with any Windows Operating System Product not later than the release of the last major beta version of that middleware (i.e., the version before the release of any ''release candidate'' version of the middleware). This dual-timing trigger mechanism is important to ensure that ISVs and other third parties learn of all relevant APIs and the information needed effectively to use them well in advance of the actual commercial releases of the relevant Microsoft software, so that the third parties can ensure that their own competing products function on and interoperate with Windows.

The effect of Section III.D. is to assure to Non-Microsoft Middleware meaningful access to the same services provided by the operating system as those available to Microsoft Middleware. Microsoft Middleware will not have access to any hidden or proprietary features of Windows Operating System Products that might allow it to operate more effectively. For example, going forward under this provision, the APIs and related Documentation for the Secure Audio Path digital rights management service that is part of Windows XP must be disclosed and made available for use by competing media players in interoperating with Windows XP.

5. Section III.E.

Section III.E. of the Proposed Final Judgment ensures that ISVs will have full access to, and be able to use, the protocols that are necessary for software located on a server computer to interoperate with, and fully take advantage of, the functionality provided by any Windows Operating System Product. The competitive significance of most Non-Microsoft Middleware, including the browser and Java Virtual Machine against which much of Microsoft's illegal conduct was directed, was and will continue to be highly dependent on content, data and applications residing on servers and passing over networks such as the Internet or corporate networks to that middleware running on personal computers. Section III.E. will prevent Microsoft from incorporating into its Windows Operating System Products features or functionality with which its own server software can interoperate, and then refusing to make available information about those features that non-Microsoft servers need in order to have the same opportunities to interoperate with the Windows Operating System Product.

The terms ''Communications Protocols'' and ''server operating system product'' are used throughout this Section. ''Communications Protocols'' are what Microsoft must make available to third parties. Communications Protocol is broadly defined to mean the set of rules for information exchange to accomplish predefined tasks between a Windows Operating System Product and a sever operating system product connected through any type of network, including, but not limited to, a local area network, wide area network, or the Internet. These rules govern the format, semantics, timing, sequencing, and error control of messages exchanged over a network. Every protocol that is implemented in a Windows Operating System Product and that can be used to interoperate with servers without other software being added to that Windows Operating System Product must be made available by Microsoft for third parties to license at all layers of the communications stack.

The term ''server operating system product'' includes, but is not limited to, the entire Windows 2000 Server product families and any successors. All software code that is identified as being incorporated within a Microsoft server operating system and/or is distributed with the server operating system (whether or not its installation is optional or is subject to supplemental license agreements) is encompassed by

the term. For example, a number of server software products and functionality, including Internet Information Services (a ''web server'') and Active Directory (a ''directory server''), are included in the commercial distribution of most versions of Windows 2000 Server and fall within the ambit of ''server operating system product.''

Microsoft Must Make Available All Communications Protocols: Starting nine months after submission of the Proposed Final Judgment to the Court, Section III.E. will impose on Microsoft a continuing obligation to license on reasonable and non-discriminatory terms the Communications Protocols implemented in a Windows Operating System Product that are used by a Microsoft server operating system product to interoperate with that Windows Operating System Product without the addition of other software to the client computer. If a Microsoft server interoperates with a Windows Operating System Product such as Windows 2000 Professional or Windows XP Home or Professional using any Communications Protocol that is part of that client operating system (that is, without additional software code being added to the client), then that Protocol must be made available to third parties. Protocols implemented in Windows Operating System Products on or after November 6, 2001 (the date this Protocol Final Judgment was submitted to the Court), must always be available for license. If, in the future, Microsoft chooses not to implement a new or modified protocol in a Windows Operating System Product, but instead only distributes the code that implements that protocol along with its server software or otherwise separately from the client operating system, as other server software vendors must do, then Microsoft will not be required by this Section to license that protocol. Because the Communications Protocols must be licensed ''for use'' by such third parties, the licensing necessarily must be accompanied with sufficient disclosure to allow licenses fully to utilize all the functionality of each Communications Protocol.

This provision will protect opportunities for the development and use of Non-Microsoft Middleware by ensuring that competing, non-Microsoft server products on which such Middleware can be hosted and served will have the same access to and ability to interoperate with Windows Operating System Products as do Microsoft's server operating systems. Thus, if a Windows Operating System Product is using all the Communications Protocols that it contains to communicate with two servers, one of which is a Microsoft server and one of which is a competing server that has licensed and fully implemented all the Communications Protocols, the Windows Operating System Product should behave identically in its interaction with both the Microsoft and non-Microsoft servers.

Section III.E. will permit seamless interoperability between Windows Operating System Products and non-Microsoft servers on a network. For example, the provision requires the licensing of all Communications Protocols necessary for non-Microsoft servers to interoperate with the Windows Operating System Products' implementation of the Kerberos security standard in the same manner as do Microsoft servers, including the exchange of Privilege Access Certificates. Microsoft must license for use by non-Microsoft server operating system products the Communications Protocols that Windows Operating System Products use to enable network services through mechanisms such as Windows server message block protocol/common Internet file system protocol communications, as well as Microsoft remote procedure calls between the client and server operating systems. Communications Protocols that permit a runtime environment (e.g., a Java Virtual Machine and associated class libraries or competing functionality such as the Common Language Runtime) to receive and execute code from a server also will be required to be licensed for use by non-Microsoft servers if those protocols are implemented in a Windows Operating System Product.

Section III.E. must be read in conjunction with subsection III.J.1.a., which exempts from these licensing requirements certain very limited and specific portions or layers of Communications Protocols which would, if disclosed, compromise the system security provided by Microsoft anti-piracy, anti-virus, software licensing, digital rights management, encryption and authentication features. The exception provided by subsection III.J.1.a. is a narrow one, limited to specific end-user implementations of security items such as actual keys, authorization tokens or enforcement criteria, the disclosure of which would compromise the security of ''a particular installation or group of installations'' of the listed security features. For example, this subsection permits Microsoft to withhold limited information necessary to protect particular installations of the Kerberos and Secure Audio Path features of its products (e.g., keys and tokens particular to a given installation), but does not permit it to withhold any capabilities that are inherent in the Kerberos and Secure Audio Path features as they are implemented in a Windows Operating System Product. This is a critical distinction, because it ensures that Section III.E. will make these features available to competing software and hardware developers and permit them to offer competing implementations of these features, and products that rely on them, that can do the same things as Microsoft implementations of these features, while protecting the integrity of actual, particular end-user implementations of those systems.

6. Section III.F.

Section III.F. prohibits Microsoft from retaliating against software and hardware developers based upon either: (i) Those developers' development use, distribution, promotion or support of any software that competes with Microsoft Middleware or Operating System software or any software that runs on such competing software; or (ii) those developers' attempts to exercise the options or alternatives provided for under the Proposed Final Judgment. This section redresses conduct by Microsoft specifically found unlawful by the District Court and the Court of Appeals. It prohibits any retaliatory action by Microsoft, while at the same time affording Microsoft a limited opportunity to enter into certain contractual agreements with software developers that limit the developers' ability to promote such competing software if such limitations are reasonably necessary to, and of reasonable scope and duration in relation to, certain bona fide contractual obligations of the software developer.

Subsection III.F.1. embodies the basic prohibitions against retaliation contained in Section III.F. Subsection III.F.1.a. explicitly prohibits Microsoft from retaliating against software or hardware developers that choose to develop, use, distribute, promote or support software that competes with Microsoft Platform Software or any software that runs on such competing software. Similarly, Subsection III.F.1.b. makes explicit that Microsoft is precluded from engaging in conduct that frustrates the purpose of the provisions contained in the Proposed Final Judgment. Thus, Subsection III.F.1.b. ensures that ISVs and IHVs are free to exercise the options and alternatives available to them under the Proposed Final Judgment without fear of retaliation from Microsoft for doing so.

Subsection III.F.2. prohibits agreements relating to Windows Operating System Products in which a grant of Consideration by Microsoft is conditioned upon a software developer refraining from developing, using, distributing, or promoting any software that competes wither with Microsoft Platform Software or any software that runs on such competing software. This subsection contains a limited exception that permits Microsoft to enter into such agreement where such agreements are reasonably limited in scope and duration and reasonably necessary to effectuate bona fide contractual relationships between Microsoft and any ISV relating to the use, distribution or promotion of Microsoft software or the development of software, for, or in conjunction, with Microsoft. This subsection prevents Microsoft from entering into agreements with an ISV pursuant to which, for no bona fide purpose, the ISV is prevented from developing, using, distributing or promoting software that rivals Microsoft's, while still permitting ISVs, as they choose, to benefit from legitimate agreements to use or promote Microsoft products. For example, Microsoft could enter into an agreement with an ISV pursuant to which it provides funds to the ISV that can only be used to promote Microsoft software and not rival software; such a restriction would be ''reasonably necessary to and of reasonable scope and duration in relation to a bona fide contractual obligations of the ISV. * * *''

Finally, subsection III.F.3. makes clear that nothing in Section III.F. prohibits Microsoft from enforcing either its agreements with ISVs and IHVs or its legitimate intellectual property rights unless doing so is inconsistent with any provision of the Proposed Final Judgment. This subsection again emphasizes that Microsoft may not take any actions, including those relating to the enforcement activities identified in this subsection, that frustrate the purpose of the provisions contained in the Proposed Final Judgment.

7. Section III.G.

Section III.G. of the Proposed Final Judgment prohibits Microsoft from entering into exclusionary agreements with a variety of firms. Subsection III.G.1 forbids agreements in which Microsoft grants Consideration to any IAP, ICP, ISV, IHV or OEM conditioned on that firm's exclusive distribution, promotion, use or support of Microsoft Middleware or Windows Operating Systems Products (defined as ''Microsoft Platform Software''). This prohibition will forbid Microsoft from using either money or the wide range of commercial blandishments at its disposal (encompassed in the defined term ''Consideration'') to hinder the development and adoption of products that, over time, could emerge as potential platform threats to the Windows monopoly. Thus, this provision would bar Microsoft from entering into agreements like the ''First Wave'' agreements with ISV's whose provisions regarding Java and the browser the Court of Appeals found to be exclusive in effect and illegal.

Subsection III.G.1. further prohibits agreements in which Microsoft grants Consideration conditioned on a firm's distribution, promotion, use or support of Microsoft Middleware or Operating Systems Products in a fixed percentage, since such agreements in practice can serve to exclude rival products. Microsoft is permitted to utilize fixed percentage contracts only in the specific case where the other party to the agreement expressly represents that it is ''commercially practicable'' for it to undertake equally extensive or greater distribution, promotion, use or support of non-Microsoft software that competes with Microsoft Platform Software. For example, Microsoft could not grant preferential marketing, technical or other support to an ISV on the condition that the ISV ship the Windows Media Player along with 70% of the shipments of the ISV's products, unless the ISV affirmatively states that it is commercially practicable for it also to ship competing media players with at least the same (or greater) number of its shipments. This provision is necessitated by the business reality that a fixed percentage requirement, even one that on its face requires less than full exclusivity, frequently will operate as an exclusive or near-exclusive requirement in practice because the other party is unable, due to capacity or other resource constraints, also to deal with competing products. On the other hand, when the other percentage requirement is less likely to operate as an exclusive, and may have pro-competitive benefits.

Subsection III.G.1. requires that Microsoft obtain any such ''commercially practicable'' representation from firms only in good faith, in other words, with a reasonable belief that the representation is accurate. Plainly, Microsoft could not in ''good faith'' make this representation a standard part of its agreements with all IAPs, ICPs, ISVs, IHVs or OEMs, nor could it insist on or coerce such a representation where the third party did not independently and affirmatively evaluate and conclude that the representation would be true. Such statements must be genuine and bona fide, and the decision whether or not to make them is entirely within the judgment of the third party.

Subsection III.G.2. prohibits Microsoft from entering into any agreement that conditions placement on the Windows desktop or anywhere else in a Windows Operating System Product of an IAP's or ICP's software, services, content or other material on its agreement to refrain from distributing, promoting, or using software that competes with Microsoft Middleware. The Court of Appeals upheld the conclusion that Microsoft violated Section 2 by explicitly conditioning valuable consideration—specifically the provision of easy access to IAP's services from the Windows desktop—on the IAPs' agreements to restrict distribution and promotion of the competing Navigator browser and instead to promote Microsoft's Internet Explorer exclusively. 253 F.3d at 68–69. Such agreements are barred by this subsection.

The restrictions in Section III.G. will not interfere with Microsoft's ability to engage in legitimate joint activities with ISV's IHVs, IAPs, ICPs or OEMs. Microsoft may enter into bona fide joint ventures or joint development or services arrangements for the creation of new or materially improved products, technologies or services that prohibit the other party from competing with the object of the joint venture for a reasonable period of time, but only so long as the arrangements involve the legitimate and substantial shared contribution of resources that necessarily characterize procompetitive collaborations. By limiting the joint agreement exception to activities that meet these conditions, Section III.G. ensures that Microsoft cannot use the exception to attempt to evade the prohibitions and to engage in exclusionary contracts in the course of normal commercial relations between it and ISVs, IHVs, IAPs, ICPs and OEMs.

Finally, Section III.G. does not apply to agreements in which Microsoft licenses intellectual property in from a third party. This licensing-in exception would, for instance, permit Microsoft to license new technology from an ISV for incorporation into Windows on the condition that the ISV not license the same technology for incorporation into any other personal computer operating system. Such an exception is consistent with the competitive goals of the Proposed Final Judgment because it preserves Microsoft's incentive to invest in successfully using and promoting the intellectual property that it licenses from others. This licensing-in exception

to Section III.G. does not permit Microsoft to enter into agreements, otherwise prohibited by Section III.G., that contain overboard terms not reasonably related to the licensing-in of intellectual property.

8. Section III.H.

Section III.H. of the Proposed Final Judgment addresses Microsoft's illegal use of license restrictions and other actions (such as the withdrawal of removal options from OEMs and end users) to exclude rival middleware products. This Section ensures that OEMs will be able to choose to offer and promote, and consumers will be able to choose to use, Non-Microsoft Middleware Products such as Internet browsers, media players, instant messaging programs, and email software. In particular, this Section requires Microsoft to provide the ability for OEMs (through standard preinstallation kits) and end users (through a mechanism such as an Add/Remove utility) to customize their personal computers by removing access to, and automatic invocation of, Microsoft Middleware Products, and by replacing those products with competing Non-Microsoft Middleware Products.

Because Microsoft must make certain technical changes to its Windows 2000 and Windows XP Windows Operating System Products to comply with Section III.H., its requirements will become effective upon the release of the first Service Pack for Windows XP or 12 months after submission of the Proposed Final Judgment to the Court, whichever is earlier.

With respect to any new (*i.e.,* post-Windows XP) Windows Operating System Product, Microsoft's obligations under this Section will be determined based on the Microsoft Middleware Products that exist 7 months prior to the last beta test version of that new Windows Operating System Product. This time period similarly is intended to give Microsoft the opportunity to make necessary product changes.

For a discussion of the definitions of ''Non-Microsoft Middleware Product,'' ''Non-Microsoft Middleware'' and ''Microsoft Middleware Product,'' terms which are used throughout this Section, see Section IV.A., supra.

End User Access Requirements: Subsection III.H.1. requires Microsoft to allow end users and OEMs to enable or remove access to, and enable or disable automatic invocations of, any Microsoft Middleware Product and Non-Microsoft Middleware Product. Consumers must be given the ability to make or reverse choices and to switch easily back and forth between the configurations. For example, Microsoft cannot offer end users or OEMs an option of eliminating access to or default invocation of all Non-Microsoft Middleware Products unless Microsoft permits an equally-obvious and accessible option to undo this choice and restore all Non-Microsoft Middleware Products and defaults.

The mechanism used to offer these choices must be unbiased; that is, it must not present the choices of removing or enabling access or defaults in any way that favors Microsoft's products over third-party products. The mechanism must offer a separate choice for each middleware product, though it may also offer a choice of enabling all of the Non-Microsoft Middleware Products or all of the Microsoft Middleware Products as a group.

Microsoft must allow the enabling or removal of access to Microsoft Middleware Products and Non-Microsoft Middleware Products via the desktop and Start Menu, as well as anywhere else in a Windows Operating System Product where lists of icons, shortcuts or menu entries are generally displayed. For instance, Microsoft must allow Non-Microsoft Middleware Products to appear in the system tray and quick launch bar, ''right-click'' lists, ''open with'' lists, and lists that appear based on an event, such as inserting an audio CD. Microsoft may restrict the types of applications that go in these lists only based on functionality, as long as the restrictions are non-discriminatory with respect to non-Microsoft and Microsoft products. For example, Microsoft could require that programs be capable of interacting with or playing audio files in order to be listed when an audio CD is inserted. Because these functionality requirements must be non-discriminatory, competing Non-Microsoft and Microsoft Middleware Products will always be given the same opportunity for placement in these points of access.

Automatic (''Default'') Launching of Competing Middleware: Subsection III.H.2. requires Microsoft to allow end users, OEMs and Non-Microsoft Middleware Products to designate Non-Microsoft Middleware Products to be invoked automatically in place of Microsoft Middleware Products, and vice versa. Microsoft is required to provide these points for automatically launching competing middleware, commonly referred to as ''defaults,'' in every case where the displaced Microsoft Middleware Product would be invoked in a separate Top-Level Window and display either all of that product's user interface elements or its Trademark. This requirement is designed to ensure that access to defaults exists whenever the alternative Microsoft product would be launched as the full ''product'' (*e.g.,* Internet Explorer as the Internet browser), rather than just a portion of its underlying functionality being launched to perform functions in Windows itself (such as code also used by Internet Explorer being used to display part of the Windows user interface), or otherwise where the end user might not necessarily be aware that he or she was using a specific Microsoft Middleware Product. Whereas up to now it has been completely in Microsoft's discretion where, and even if, ''default'' launching of competing products occurs, Subsection III.H.2. will ensure that Microsoft must allow competing programs to be automatically invoked in numerous competitively significant instances.

Preservation of OEM Configuration: Subsection III.H.3. prohibits Microsoft from designing its Windows Operating System Products to automatically alter an OEM's configuration choices—such as ''sweeping'' the unused icons the OEM has chosen to place on the Windows desktop—without first seeking confirmation from the user, and from attempting any such alteration before at least 14 days after the consumer has first booted his or her personal computer. Thus, for example, in Windows XP, the Clean Desktop Wizard cannot run at all until 14 days after the first boot and then not without seeking the user's confirmation to move the unused icons. Additionally, Microsoft cannot change the manner in which a Windows Operating System Product makes automatic alterations other than in new versions of a Windows Operating System Product.

Finally, subsection III.H. permits Microsoft to override existing defaults to Non-Microsoft Middleware Products only when: (I) A Microsoft Middleware Product would be invoked solely for use in interoperating with a server maintained by Microsoft (outside the context of general web browsing—for example, in the case of the Windows Help feature of Windows); or (ii) the designated Non-Microsoft Middleware Product fails to implement a reasonable technical requirement that is necessary for valid technical reasons to supply the end user with functionality consistent with a Windows Operating System Product, In the latter case, the valid technical reasons must be described in a reasonably prompt manner to any ISV that requests them.

9. Small III.I.

Section III.I. requires Microsoft to offer necessary related licenses for the intellectual property that is required to disclose pursuant to the terms of the Proposed Final Judgment (e.g., the disclosures required pursuant to Sections III.D. and III.E.). This Section is designed to ensure that such intellectual property may actually be used by an entity to which the information is disclosed; it prohibits Microsoft from thwarting the intended goals of the disclosure provisions either by withholding necessary intellectual property licenses or by providing such licenses in an unreasonable or discriminatory fashion. The overarching goal of this Section is to ensure that Microsoft cannot use its intellectual property rights in such a way that undermines the competitive value of its disclosure obligations, while at the same time permitting Microsoft to take legitimate steps to prevent unauthorized use of its intellectual property.

Subsections III.I.1 and III.I.4 are designed specifically to prevent Microsoft from using its intellectual property rights to frustrate the intended effectiveness of the Proposed Final Judgment's disclosure provisions. Subsection III.I.1. requires that any licenses granted pursuant to this Section be made on reasonable and non-discriminatory terms. Microsoft may not impose unreasonable or discriminatory royalties or other terms as a mechanism for subverting the disclosure or other requirements of the Proposed Final Judgment, which are essential to the efficacy of the relief it affords. Similarly, subsection III.I.4 is designed to guarantee the effectiveness of the disclosure provisions by prohibiting Microsoft from including any terms in any licenses granted pursuant to this Section that subvert the terms of the Proposed Final Judgment.

While the Department's foremost concern regarding Section III.I. is to ensure the effectiveness of the disclosure provisions of the Proposed Final Judgment, it also recognizes that Microsoft has a legitimate interest in limiting its intellectual property licensing to those licenses that are property related to the terms of the Proposed Final Judgment. Subsections III.I.2. and III.I.3 are thus designed to address this issue. Subsection III.I.2. makes clear that licenses granted pursuant to this Section III.I. need be no broader than necessity to permit ISVs, IHVs, IAPs, ICPs or OEMs to exercise the options or alternatives provided under the Proposed Final Judgment. Likewise, subsection III.I.3 permits Microsoft to preclude the assignment, transfer or sublicensing of rights by Microsoft pursuant to Section III.I., provided that any such preclusion is reasonable and non-discriminatory as required by subsection III.I.1.

Subsection III.I.5. provides that, to the extent that an ISV, IHV, IAP, ICP, or OEM has any intellectual property relating to its exercise of the options or alternatives provided by the revised proposed Final Judgment, then that ISV, IHV, IAP, ICP, or OEM may be required to grant Microsoft a license to any such intellectual property rights on reasonable and nondiscriminatory terms, if such a cross-license is necessary for Microsoft to provide the options or alternatives set forth in the revised proposed Final Judgment and exercised by the particular ISV, IHV, ICP or OEM. This subsection is thus designed to ensure that Microsoft is able fully to comply with the terms of the revised proposed Final Judgment without creating greater infringement liability for itself than it would otherwise have. This subsection limits Microsoft's access to third-party intellectual property rights through the expressed limitations on the scope of any such cross-licenses. Therefore, Microsoft will only be entitled to obtain such a license if a license to the ISV's, IHV's, ICPs, IAP's or OEM's intellectual property is necessary for Microsoft to do its part in ensuring the effective exercise of the options or alternatives set forth in the revised proposed Final Judgment. For example, a company might have a patent on a feature that relates to the interrelationship between the company's system and the operating system, such as a feature that manages operating system resources by making particular calls to the operating system. If, pursuant to the Final Judgment, Microsoft is required to disclose interfaces that might be used by others to support a similar feature in the same fashion, and if the patent-holder seeks a license to exercise any options provided under this Final Judgment, Microsoft is correspondingly entitled by this provision to obtain a limited license to the patent so that Microsoft can comply with its obligation to disclose and license the interface without subjecting itself to claims of direct or contributory infringement of the patent.

10. Section III.J.

Section III.J. addresses several security-related issues that may arise from the broad disclosures required of Microsoft by the Proposed Final Judgment. Subsection III.J.1.a. permits Microsoft to withhold from disclosure or licensing certain specific, limited portions of APIs, Documentation, and Communications Protocols that would, if disclosed, compromise the system security provided by a particular installation or group of installations of Microsoft anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication features. This is a narrow exception, limited so specific end-user implementations of security items such as actual keys, authorization tokens or enforcement criteria, the disclosure of which would compromise the security of ''a particular installation or group of installations'' of the listed security features. For example, this subsection permits Microsoft to withhold limited information necessary to protect particular installations of the Kerberos and Secure Audio Path features of its products (e.g., keys and tokens particular to a given installation), but does not permit it to withhold any capabilities that are inherent in the Kerberos and Secure Audio Path features as they are implemented in a Windows Operating System Product.

Subsection III.J.1.b. is intended to permit Microsoft to comply with lawful orders of official government agencies not to disclose, on security grounds, certain APIs or information that Microsoft otherwise would be required to disclose pursuant to this Proposed Final Judgment. This exception only exempts Microsoft from its disclosure obligation in the narrow situation where the direction not to disclose is made lawfully by a government agency of competent jurisdiction, and only to the extent and within the scope of that specific jurisdiction.

Subsection III.J.2. permits Microsoft to take certain limited steps to ensure that any disclosure of licensing of APIs, Documentation, or Communications Protocols related to anti-piracy systems, anti-virus technologies, license enforcement mechanisms, authentication/authorization security, or third party intellectual property protection mechanisms it makes pursuant to this Proposed Final Judgment is to third parties that have a legitimate need for and do not pose a significant risk of misusing that information. Subsection III.J.2.a. allows Microsoft to condition such disclosure or licensing on the recipient or licensee: (a) Having no history of software counterfeiting or piracy or willful violations of intellectual property rights; (b) having a reasonable business need for the information for a planned or shipping product; (c) meeting reasonable and objective standards for the authenticity and viability of its business; and (d) having its programs

verified by a third party to ensure compliance with Microsoft specifications for use of the information.

Subsection III.J.2., by its explicit terms, applies only to licenses for a small subset of the APIs and Communications Protocols that Microsoft will have to disclose, namely the specified types of security-related information. Except with respect to the small subset of information covered by this subsection, Microsoft's obligations to make disclosures of, or to license, APIs and Communications Protocols as otherwise required by the Proposed Final Judgment, including the requirements of Sections III.D. and III.E., are unaffected by this subsection. The requirements of this subsection cannot be used as a pretext for denying disclosure or licensing, but instead are limited to the narrowest scope of what is necessary and reasonable, and are focused on screening out only individuals or firms that should not have access to our use of the specified security-related information either because they have a history of engaging in unlawful conduct related to computer software (e.g., they have been found to have engaged in a series of willful violations of intellectual property rights or of one or more violations consisting of conduct such as counterfeiting), do not have any legitimate basis for needing the information, or are using the information in a way that threatens the proper operation and integrity of the systems and mechanisms to which they relate.

B. Section IV—Enforcement, Technical Committee and Internal Compliance Program

Section IV of the Proposed Final Judgment establishes standards and procedures by which the settling Plaintiffs may obtain access to documents and information from Microsoft related to its compliance with the Final Judgment, and sets forth a procedure for enforcing the Final Judgment. Section IV also establishes a Technical Committee to facilitate evaluation of Microsoft's obligations and compliance, and mandates that Microsoft appoint an Internal Compliance Officer to administer and supervise Microsoft's compliance with the Final Judgment.

1. Enforcement Authority

The United States and individual Plaintiff States each have authority to enforce the Proposed Final Judgment. Plaintiff States will coordinate their enforcement efforts through an enforcement committee, and in consultation with the United States. Enforcement by the United States or plaintiff States may include any legal actions or proceedings that may be appropriate to a particular situation, including petitions in criminal or civil contempt, petitions for injunctive relief to halt or prevent violations, motions for declaratory judgment to clarify or interpret particular provisions, and motions to modify the Final Judgment. While Microsoft will be given a reasonable opportunity to cure violations of Sections III.C., III.D., III.E. and III.H. of the Proposed Final Judgment prior to the filing of enforcement petitions, ex post abatement of violations will not be a defense to enforcement, through contempt actions or otherwise, of any knowing, willful or systematic violations by Microsoft or other persons specified in Section II of the Proposed Final Judgment.

To facilitate monitoring of compliance with the Final Judgment, Microsoft must make available to Plaintiffs, upon request, records and documents in its possession, custody or control relating to matters contained in the Final Judgment. Microsoft must also make its personnel available for interviews regarding such matters. In addition, Microsoft must prepare written reports relating to the Final Judgment upon request.

2. Technical Committee

The Proposed Final Judgment establishes a three-person Technical Committee (''TC'') to monitor Microsoft's compliance with its obligations under the Proposed Final Judgment, and to assist in enforcement and compliance. The TC does not, however, have independent enforcement authority. That authority remains with the United States and the Plaintiff States, just as it would if there were no TC to assist.

TC members will be experts in software design and programming. The Proposed Final Judgment specifies the procedures for establishing the TC as well as its substantive powers. The TC may employ or retain such staff or consultants, including technical staff, as may be necessary to assist the TC in carrying out its duties.

a. *TC Establishment:* One TC member each will be nominated by Plaintiffs and by Microsoft, and after the Plaintiff and Microsoft nominees are approved and appointed by the Court, those TC members will then nominate the third TC member for the Court's approval and appointment. Each TC member will serve for an initial 30-month term, after which the party that selected the TC member may either request that the Court reappoint the TC member, or may nominate a replacement. A TC member may be removed at any time if the United States in its sole discretion determines that the TC member has failed to act diligently and consistently with the purposes of the Proposed Final Judgment. In the event of a vacancy, the party who originally nominated that TC member will nominate a replacement for approval by the Court.

After appointment by the Court, each TC member will enter into a Technical Committee services agreement with the United States. The TC services agreements will specify the rights, powers, and authority of each TC member, and will provide for compensation at Microsoft's expense and upon such terms and conditions as Plaintiffs approve. The TC services agreements will contain ancillary confidentiality and pre- and post-employment non-compete provisions necessary to prevent conflicts of interest that could prevent a TC member from performing his or her duties in a fair and unbiased manner. In addition to paying the TC members' fees and expenses as specified in the TC services agreement, Microsoft will indemnify and hold harmless the TC and TC members from any damages, losses, claims, liabilities or expenses arising from the TC's activities, except to the extent that such damages, losses, liabilities or expenses result from misfeasance, gross negligence, willful or wanton acts or bad faith. Microsoft will also provide the TC with permanent offices, telephones, and other support facilities at Microsoft's corporate campus in Redmond, Washington, and at other Microsoft facilities as requested by the TC.

b. *TC Duties:* The TC will report to Plaintiffs, and will not be under the control or authority of Microsoft in any way. The TC will receive and investigate complaints or inquiries about Microsoft's compliance with the Proposed Final Judgment from third parties, Plaintiffs, or Microsoft's Compliance Officer. The TC has the power and authority to monitor Microsoft's compliance with the proposed Final Judgment, and will consult with Plaintiffs regarding its investigations. The TC will meet with Microsoft's Compliance Officer at least once during each investigation to allow Microsoft to respond to the substance of any complaints and to attempt to resolve them informally. This ''dispute resolution'' function reflects the recognition that the market will benefit from rapid, consensual resolution of issues, where possible. It complements, but does not supplant, Plaintiffs' other

methods of enforcement. If the TC concludes that a complaint is meritorious, the TC will so advise Plaintiffs and Microsoft and propose a remedy. The TC may also communicate with third parties who have made complaints or inquiries about how they or Microsoft might resolve such complaints or inquiries, provided that the TC complies with its confidentiality obligations as explained below. Thus, for example, the TC may explain to a third party various ways of implementing a right granted by the Proposed Final Judgment.

The Plaintiffs and third parties may, but are not required to, submit complaints about Microsoft's compliance with the Proposed Final Judgment to the Compliance Officer. The Compliance Officer will devise a procedure acceptable to the Plaintiffs for submitting such complaints, and post the procedure on Microsoft's Internet website. Any complaint received by the Compliance Officer must be resolved or rejected within thirty days after receipt. The Compliance Officer will promptly advise the TC of the nature of the complaint and its disposition.

Every six months during the term of the Proposed Final Judgment, the TC will prepare written reports summarizing its activities and Microsoft's business practices reviewed. Additionally, whenever the TC has reason to believe Microsoft may have failed to comply with the Proposed Final Judgment, the TC will immediately notify the Plaintiffs in writing and provide relevant details.

The TC will have the power to obtain information from Microsoft in connection with its investigations and duties. The TC may require Microsoft, upon request, to make available records and documents in Microsoft's possession, custody or control, and to provide physical access to Microsoft facilities, systems and equipment. Microsoft must also make its personnel available to the TC for interviews. In addition, Microsoft must prepare written reports, data, and other information upon request. The TC will have access to all of Microsoft's computer software source code, subject to a confidentiality agreement whose terms are to be approved by Plaintiffs. The United States anticipates that the TC may also require Microsoft to submit for its use all ancillary documentation, tools, test suites, compilers or other materials used in conjunction with the source code to which Microsoft personnel have access. The TC may study, interrogate and interact with Microsoft's source code in connection with performing its duties.

Information obtained from any source by the TC, any TC member, or any TC employee or consultant will remain confidential and will not be disclosed to any person other than the Plaintiffs, Microsoft or the Court. All such information, and any report or recommendations prepared by the TC, will be treated as Highly Confidential under the Protective Order in this case, except as may be otherwise specified by further order of the Court. The TC may preserve the anonymity of any third party complainant in its discretion or when requested to do so by that third party or by Plaintiffs.

Finally, no work product, findings or recommendations of the TC may directly be admitted in any enforcement proceeding before the Court, and TC members may not testify or comment publicly regarding any matter related to the TC's activities or the Proposed Final Judgment. Plaintiffs, however, are not precluded from utilizing, relying on, or making derivative use of the TC's work product, findings or recommendations in connection with any activities relating to enforcement of this Proposed Final Judgment. For example, Plaintiffs may use information obtained from the TC as the basis for commencing a compliance inquiry or investigation.

3. Internal Compliance Program

The Proposed Final Judgment requires Microsoft to maintain an antitrust compliance program to help ensure compliance with the Proposed Final Judgment. Microsoft must designate an internal Compliance Officer, who may be assisted by other Microsoft employees, with responsibility for administering Microsoft's antitrust compliance program and ensuring compliance with the Proposed Final Judgment. The Compliance Officer will be responsible for reviewing Microsoft's activities for compliance with the Proposed Final Judgment, and ensuring that Microsoft's internal notification and education responsibilities pursuant to the Proposed Final Judgment are carried out.

Microsoft, through the Compliance Officer, must distribute a copy of the Proposed Final Judgment and additional informational materials to all of present and future officers and directors. Microsoft must also obtain from each person who receives the Proposed Final Judgment a certification that he or she has read the Proposed Final Judgment and agrees to abide by its terms, and has been advised and understands that he or she must comply with the Final Judgment and that failure to do so may result in conviction for contempt of court. The Proposed Final Judgment further requires Microsoft to maintain an internal mechanism whereby the recipients of the Proposed Final Judgment are briefed annually on the meaning and requirements of the Proposed Final Judgment and the United States' antitrust laws and advising them that Microsoft's legal advisors are available to confer with them regarding any question concerning compliance with either the Proposed Final Judgment or the United States antitrust laws.

C. Section V—Termination of the Decree

Section V of the Proposed Final Judgment provides that, unless the Court grants an extension, the Final Judgment will expire five years after the date of entry by the Court. This time frame provides sufficient time for the conduct remedies contained in the Proposed Final Judgment to take effect in this evolving market and to restore competitive conditions to the greatest extent possible. Section V further provides that upon a finding by the Court that Microsoft has engaged in a pattern of willful and systematic violations, Plaintiffs may request a one-time extension of the Final Judgment of an additional two years, along with such other relief as the Court may deem appropriate. This provision is designed to supplement the government's traditional authority to bring contempt actions. By permitting Plaintiffs to seek a two-year extension upon a showing that Microsoft has engaged in a pattern of willful and systematic violations, this provision is designed to ensure that Microsoft will comply in good faith with the terms of the Final Judgment.

V. Alternatives to the Proposed Final Judgment

The United States considered a number of alternatives to the Proposed Final Judgment. The United States is satisfied, however, that the requirements and prohibitions contained in the Proposed Final Judgment, supported by strong compliance and enforcement procedures, provide a prompt, certain and effective remedy for the violations Microsoft has committed.

First, the United States considered litigation of the issue remedy in the District Court. The United States balanced the strength of the provisions obtained in the Proposed Final Judgment; the need for prompt relief in a case in which illegal conduct has long gone unremedied; the strength of the parties' respective positions in a remedies hearing and the uncertainties inherent in litigation; and the time and expense required for litigation of the

remedy. The United States determined that the Proposed Final Judgment, once implemented by the Court, will achieve the purposes of stopping Microsoft's unlawful conduct, preventing its recurrence, and restoring competitive conditions in the personal computer operating system market, while avoiding the time, expense and uncertainty of a litigated remedy. Given the substantial likelihood that Microsoft would avail itself of all opportunities for appellate review of any non-consensual judgment, the United States estimated that a litigated result would not become final for at least another two years. The remedies contained in the Proposed Final Judgment are not only consistent with the relief the United States might have obtained in litigation, but they have the advantages of immediacy and certainty.

Second, the United States considered the remedies set forth in the Final Judgment entered by the District Court on June 7, 2000. That June 2000 Final Judgment, which ultimately was vacated by the Court of Appeals, mandated the structural break-up of Microsoft into separate operating system and applications businesses and, during the pre-break-up period, interim conduct requirements. After remand to the District Court, the United States informed the Court and Microsoft that it had decided, in light of the Court of Appeals opinion and the need to obtain prompt, certain and effective relief, that it would not further seek a break-up of Microsoft into two businesses. During the settlement discussions that resulted in the Proposed Final Judgment, the United States considered the interim conduct provisions in the June 2000 Final Judgment. The provisions in the Proposed Final Judgment are modeled after those earlier provisions, with modifications, additions and deletions that take into account the current and anticipated changes in the computer industry, as well as the decision of the Court of Appeals, which reversed certain of the District Court's liability findings.

Finally, the United States received and carefully considered numerous remedy proposals, encompassing a broad range of relief, from industry participants and other interested individuals.

Remedies proposed and considered included variations on the following:

- A requirement that Microsoft license the Windows source code to OEMs to enable them to modify, compile and distribute modified versions of the Windows Operating System for certain limited purposes, such as automatically launching Non-Microsoft Middleware, operating systems or applications; setting such non-Microsoft Middleware as the default; and facilitating interoperability between Non-Microsoft Middleware and the Windows Operating System.
- A requirement that Microsoft disclose the entire source code for the Windows Operating System and Microsoft Middleware, possibily within a secure facility for viewing and possibly without such a facility.
- A requirement that Microsoft must carry certain Non-Microsoft Middleware, including but not limited to the Java Virtual Machine, in its distribution of the Windows Operating System.
- A requirement that Microsoft manufacture and distribute the Windows Operating System without any Microsoft Middleware or corresponding functionality included.
- A requirement that Microsoft continue to support fully industry standards if it chooses or claims to adopt them or extends or modifies their implementation.
- A requirement that Microsoft waive any rights to intellectual property in related APIs, communications interfaces and technical information if the Court finds that Microsoft exercised a claim of intellectual property rights to prevent, hinder, impair or inhibit middleware from interoperating with the operating system or other middleware.

The United States carefully weighed the foregoing proposals, as well as others received or conceived, considering their potential to remedy the harms proven at trial and upheld by the Court of Appeals; their potential to impact the market beneficially or adversely; and the chances that they would be imposed promptly following a remedies hearing. The United States ultimately concluded that the requirements and prohibitions set forth in the Proposed Final Judgment provided the most effective and certain relief in the most timely manner.

VI. Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees.

VII. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the Proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the Proposed Final Judgment is in the public interest.

As provided by sections 2(b) and (d) of the APPA, 15 U.S.C. 16(b) and (d), any person may submit to the Department written comments regarding the Proposed Final Judgment. Any person who wishes to comment should do so within sixty days of publication of this Competitive Impact Statement in the **Federal Register**.

The Department will evaluate and respond to the comments. All comments will be given due consideration by the Department, which remains free to withdraw its consent to the Proposed Final Judgment at any time prior to entry. The comments and the responses of the Department will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: Renata Hesse, Trial Attorney, Antitrust Division, U.S. Department of Justice, 601 D Street, NW., Suite 1200, Washington, DC 20530, Facsimile: (202) 616–9937 or (202) 307–1454, Email: *microsoft.atr@usdoj.gov.*

While comments may also be sent by regular mail, in light of recent events affecting the delivery of all types of mail to the Department of Justice, including U.S. Postal Service and other commercial delivery services, and current uncertainties concerning when the timely delivery of this mail may resume, the Department strongly encourages, whenever possible, that comments be submitted via email or facsimile.

The Proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any other necessary or appropriate for modification, interpretation, or enforcement of the Final Judgment. As previously set forth, the Proposed Finale Judgment would expire five years from the date of its entry.

VIII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed final judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed final judgment ''is in the public interest.'' In making that determination

the court *may* consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *United States v. Microsoft Corp.*, 56 F.3d 1448, 1457–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [3] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1997 WL 4352 at *8, 1997–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert denied*, 454 U.S. 1083 (1981); *see also Microsoft Corp.*, 56 F.3d at 1458, Precedent requires that:

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

The Proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).'' *United States v. American Tel. and Tel Co.*, 552 F. Supp. 131, 151, (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), *qoting Gillette Co.*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in the complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecurtorial discretion by bringing the case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.* at 1459–60. This is particularly true where, as here, the court's review of the decree is in-formed not merely by the allegations contained in the Complaint, but also by the extensive factual and legal record resulting from the district and appellate court proceedings.

IX. Determinative Material/Documents

No materials and documents of the type described in the section 2(b) of the APPA were considered in formulating the Proposed Final Judgment. Consequently, none are being filed with this Competitive Impact Statement.

Dated: November 15, 2001.

Respectfully submitted,

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DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 13, 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 contact Marlene Howze at (202) 219–8904 or Email *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, 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: Employment Standards Administration (ESA).

Title: Payment of Compensation Without Award.

OMB Number: 1215–0022.

Affected Public: Business of other for-profit.

Frequency: On Occasion.
Number of Respondents: 900.
Number of Annual Responses: 26,100.
Estimated Time Per Response: 15 minutes.
Total Burden Hours: 6,525.
Total Annualized Capital/Startup Costs: 0.
Total Annual Costs (operating/maintaining systems or purchasing services): 10,224.25.
Description: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act. This Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. The OWCP district offices use the information provided on Form LS–206 to determine the payment status of a given case. If the information were not collected the OWCP would have no way of determining whether compensation payments had been made by liable insurance carriers and self-insured employers.

Type of Review: Revision of currently approved collection.
Agency: Employment Standards Administration (ESA).
Title: Black Lung Provider Enrollment Form.
OMB Number: 1215–0137.
Affected Public: Business or other for-profit.
Frequency: On Occasion.
Number of Respondents: 9,000.
Number of Annual Responses: 9,000.
Estimated Time Per Response: 8 minutes (new enrollees) and 3 minutes (existing respondents).
Total Burden Hours: 1,017.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $3,330.
Description: The Division of Coal Mine Workers' (DCMWC) is responsible for maintaining a list of authorized treating physicians and medical facilities in the area of the miner's residence and for payment of certain medical bills for services and supplies provided to the miner under the Black Lung Benefits Act [30 U.S.C. 901 *et seq.*, 20 CFR 725.704(a) and 725.705(b)].

The OWCP–1168 is used to obtain profile information on each provider such as tax identification number, specialty, and addresses. Failure to obtain this data will prolong the bill payment process and increase the burden on providers by requiring them to resubmit bills that were previously rejected by DCMWC due to inadequate provider information.

Type of Review: Extension of a currently approved collection.
Agency: Employment Standards Administration (ESA).
Title: Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlements.
OMB Number: 1215–0151.
Affected Public: Individuals or households.
Frequency: Annually.
Number of Respondents: 50,000.
Number of Annual Responses: 50,000.
Estimated Time Per Response: 20 minutes.
Total Burden Hours: 16,667.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $18,500.
Description: The information request on the CA–1032 is obtained from claimants receiving continuing compensation on the periodic disability roll. The form requests information on the claimant's earnings, dependents, third party settlements, and other Federal benefits received. The information collected on this form is used to ensure that compensation being paid on the periodic roll is correct and to ensure that compensation payments meet the terms and conditions set forth in the Federal Employees' Compensation Act. Without this information, claimants might receive compensation to which they were not entitled, resulting in an overpayment of compensation.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 01–29507 Filed 11–27–01; 8:45 am]
BILLING CODE 4510–CF–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; Comment Request

November 15, 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 contact Marlene Howze at ((202) 693–4158) or Email *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, 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: Bureau of Labor Statistics (BLS).

Title: Census of Fatal Occupational Injuries.

OMB Number: 1220–0133.

Affected Public: State, Local or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms and Federal Government.

Number of Respondents: 2,665.

Number of Annual Responses: 27,500.

Estimated Time Per Response and Total Burden Hours:

Form	Total respondents	Frequency	Average time per response (min.)	Estimated total burden (hours)
BLS CFOI–1	2,500	Once	20	833

Form	Total respondents	Frequency	Average time per response (min.)	Estimated total burden (hours)
Source Documents	165	On Occasion	10	4,167
Totals	2,665			5,000

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 24(a) of the Occupational Safety and Health Act of 1970 states that ''the Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses * * *.'' The Secretary of Labor has delegated this responsibility to the Bureau of Labor Statistics.

The Census of Fatal Occupational Injuries (CFOI) provides policy makers and the public with comprehensive, verifiable, and timely measures of fatal work injuries. Data are compiled from various Federal, State, and local sources and include information on how the incident occurred as well as various characteristics of the employer and the deceased worker. The information is used of surveillance of fatal work injuries and for developing prevention strategies. Data are uniformly coded by States and electronically transmitted to BLS for validation of coding and publication of results. If this information were not collected, the confusion over the number and patterns in fatal occupational injuries would continue, thus hampering prevention efforts. Collecting data using a single data source and without verification of work-relationship would compromise the integrity of CFOI data.

Ira L. Mills,

DOL Clearance Officer.

[FR Doc. 01–29506 Filed 11–27–01; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Secretary

Combating Child Labor Through Education in Timebound Programs (El Salvador, Nepal, Tanzania)

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications (SGA 01–06).

This notice contains all of the necessary information and forms needed to apply for cooperative agreement funding.

SUMMARY: The U.S. Department of Labor, Bureau of International Labor Affairs, will award funds to an organization or organizations to develop and implement education programs as a means to combat the worst forms of child labor as defined in International Labor Organization (ILO) Convention No. 182. The education programs will supplement and complement ''Timebound Programs'' being implemented by the ILO's International Program on the Elimination of Child Labor in El Salvador, Nepal and Tanzania. ILAB is seeking applications from qualified organizations for implementation of the basic education component of the Timebound Program initiatives, which includes the successful integration of children removed from child labor into formal education, and support of improvements in the quality of transitional and non-formal education that precedes integration into the formal school system. Applicants may submit proposals for implementation in one or more of the three countries.

DATE: The closing date for receipt of applications is January 18, 2002. Applications must be received by 4:45 p.m. (Eastern Time) at the address below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telefacsimile (FAX) applications will not be honored.

ADDRESS: Application forms will not be mailed. They are published in this **Federal Register** Notice, and in the **Federal Register** which may be obtained from your nearest U.S. Government office or public library or online at *http://www.nara.gov/fedreg/nfpubs.html.*

Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Attention: Lisa Harvey, Reference: SGA 01–06, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey-lisa@dol.gov.* All inquiries should reference SGA 01–06.

SUPPLEMENTARY INFORMATION: The Bureau of International Labor Affairs (ILAB), U.S. Department of Labor (USDOL, Department, or Grantor), announces the availability of funds to be granted by cooperative agreement to one or more qualifying organizations for the purpose of preventing and combating the worst forms of child labor through basic education in El Salvador, Nepal and Tanzania. The cooperative agreement(s) is(are) to be actively managed by ILAB's International Child Labor Program (ICLP), to assure achievement of the stated goals. Applicants are encouraged to be creative in proposing cost-effective interventions that will have a demonstrable impact in using education as a means of reducing the worst forms of child labor in these countries.

I. Background and Program Scope

A. USDOL Support of the Global Elimination of Child Labor

The International Labor Organization estimates that there are 250 million working children between the ages of five and 14 in developing countries, about half of whom work full-time. Full-time child workers are generally unable to attend school, and from an early age part-time child laborers must balance economic survival with schooling, often to the detriment of their education.

The existence of child labor has many implications for a country. Education is a key investment that has been linked to the acceleration of a nation's productivity and socioeconomic development. Poorly educated workers tend to earn less, live in poverty, and may need to send their own children to work at a young age. It is important to undertake education initiatives for child laborers and their at-risk siblings because their lack of schooling hinders the development of a modern workforce, overall labor market reform, poverty reduction and social progress.

Since 1995 as mandated by the U.S. Congress, USDOL has supported a worldwide technical assistance program implemented by the International Labor Organization's International Program on the Elimination of Child Labor (ILO/IPEC). USDOL contributions to date to

ILO/IPEC have amounted to some $112 million, making the United States the program's largest donor and a leader in global efforts to combat child labor. In USDOL's FY 2001 appropriations, in addition to $45 million in funds earmarked for ILO/IPEC, the Department received $37 million for an Education Initiative that will fund programs that increase access to quality, basic education in areas with a high incidence of child labor. The cooperative agreement(s) awarded under this solicitation will be funded by this new initiative.

USDOL's Education Initiative nurtures the development, health, safety and enhanced future employability of children around the world by increasing access to basic education for children removed from child labor or at risk of entering it. Child labor elimination will depend in part on improving access to, quality of, and relevance of education. Without improving educational quality and relevance, children withdrawn from child labor may not have viable alternatives and could resort to other forms of hazardous work.

The Education Initiative has the following four goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;
2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;
3. Strengthen national institutions and policies on education and child labor; and
4. Ensure the long-term sustainability of these efforts.

B. The Timebound Strategy to Eliminate Child Labor

Programs funded by USDOL have evolved from targeted action programs in specific sectors into a more comprehensive approach. In June 2001, at the International Labor Conference in Geneva, new programs were launched in three countries (El Salvador, Nepal, and Tanzania) to effectively abolish the worst forms of child labor in a five to ten-year time frame. These programs are called ''Timebound Programs'' and are a technical assistance modality designed to assist countries to eliminate the worst forms of child labor in a defined period of time. Timebound programs provide assistance to countries to support implementation of ILO Convention 182 on the Worst Forms of Child Labor to which the United States is a signatory. Convention 182 lists four categories of the worst forms of child labor, and calls for their immediate elimination:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children; debt bondage and serfdom and forced or compulsory labor; including force or compulsory recruitment of children for use in armed conflict;
- The use, procurement or offering of a child for prostitution, production of pornography or pornographic performances;
- The use, procurement or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- Work which by its nature or by the circumstances by which it is carried out, is likely to harm the health, safety, and morals of children.

In determining the types of work likely to harm the health, safety and morals of children, Convention 182 considers the following: work which exposes a child to physical, psychological or sexual abuse; work underground, underwater, at dangerous heights or in confined workplaces; work with dangerous machinery, equipment and tools or handling or transporting heavy loads; work in an unhealthy environment including exposure to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to the health; work for long hours or night work where the child is unreasonably confined to the premises.

The Timebound Program is designed to be a country-owned initiative. Participation in a Timebound Program implies commitment by a country to mobilize and allocate national human and financial resources to combat the problem. USDOL-supported programs will assist governments in this process by identifying and supporting projects, measures, interventions, institutional mechanisms and partnerships required to eliminate the worst forms of child labor.

Success in the selected countries—El Salvador, Nepal and Tanzania—the first three countries to implement the Timebound Program, will provide the impetus and models for more countries to try this innovative approach, thereby increasing the impact in the elimination of child labor around the world.

C. The Timebound Program in the Target Countries

Substantial preparatory work has been conducted before launching the Timebound Programs in the target countries. This work includes rapid assessments, research and national stakeholder consultations. Of particular interest are the final project documents which, along with other background documents, are available for examination by applicants to this solicitation at: *www.dol.gov/dol/ilab/public/programs/iclp/welcome.html,* or in hard copy upon request (see Appendix F). The country information presented in Appendices C–E of this solicitation summarizes much of the pertinent information contained in documents produced in preparation for the implementation of the Timebound Program in the three countries.

II. Authority

ILAB is authorized to award and administer this program by the consolidated Appropriations Act, 2001, Pub. L. no. 106–554, 114 stat. 2763A–10 (2000).

III. Application Process

A. Eligible Applicants

Any organization capable of successfully developing and implementing the education component of Timebound programs is eligible for this cooperative agreement. Partnerships of more than one organization are also eligible. Applicants may apply for either one or more of the countries. The capability of an applicant or applicants to perform necessary aspects of this solicitation will be determined under Section V.B. Rating Criteria.

Please note that eligible cooperative agreement applicants must not be classified under the Internal Revenue Code as a 501(c)(4) entity. See 26 U.S.C. 506(c)(4). According to section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) ink-signed original, complete application plus two (2) copies of the Proposal, must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Washington, DC 20210, not later than 4:45 p.m. ET, January 18, 2002.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, ''Application for Federal Assistance'' (Appendix A) (The entry on SF 424 for the Catalog of Federal Domestic Assistance Number (CFDA) is 17.700) and sections A–F of the Budget Information Form SF 424A (Appendix

B). Part II must contain a technical proposal that demonstrates capabilities in accordance with the Statement of Work and the selection criteria.

To be considered *responsive* to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 40 single-sided (8½″ × 11″), double-spaced, 10 to 12 pitch typed pages *per country* for which a response is submitted. *Any proposals that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated.* Standard forms and attachments are not included in the page limit. Each proposal must include a table of contents and an abstract summarizing the proposal in not more than two (2) pages. These pages are also *not* included in the page limits.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

C. Acceptable Methods of Submission

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Applications sent by E-mail, telegram, or facsimile (FAX) will not be accepted.

D. Funding Levels

Up to US $12 million is available for this program, to fund activities in three (3) countries: El Salvador, Nepal and Tanzania, with fairly equal distribution of funds among the countries. USDOL reserves the option of awarding more than one cooperative agreement. One or more organizations may apply to implement in one or more of the countries, but separate proposals of up to 40 pages must be submitted for each country. (See Section B above, Submission of Applications).

E. Program Duration

The duration of the program(s) funded by this SGA is four (4) years. The start date of program activities will be negotiated upon awarding of grant.

IV. Requirements

A. Statement of Work

In developing their proposals, potential grant recipients should take into account the situation of the countries of implementation as outlined in Appendices C, D, and E and background documents on the Timebound Program available on-line at: *www.dol.gov/dol/ilab/public/programs/iclp/welcome.html,* or in hard copy upon request (Appendix F). The applicants will propose approaches that will meet the education needs of the identified target beneficiaries in each country and support the goals of USDOL's Education Initiative: (1) Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures; (2) Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school; (3) Strengthen national institutions and policies on education and child labor, and (4) Ensure the long-term sustainability of these efforts.

The Grantee(s) will be required to work cooperatively with stakeholders in the countries, including Ministries/Departments of Education and Labor, trade unions, the private sector, non-governmental organizations, national steering/advisory committees on child labor and education, and working children and their families. The Grantee(s) will need to coordinate their activities with those of the broad-based Timebound Programs being undertaken by the ILO/IPEC with USDOL funding, and will be required to work in close collaboration and consultation with ILO/IPEC to guarantee a seamless integration between the education component funded by the Education Initiative, and the other components of the Timebound Programs funded separately. Close collaboration includes, but is not limited to, working with the target populations and geographical areas as identified in Timebound project documents; and coordinating of advocacy and awareness raising campaigns. Project key personnel will work closely with the ILO/IPEC's Chief Technical Advisor and Senior National Officer for the Timebound Program in each country.

These general guidelines must be adapted and targeted to the needs and Timebound approach being developed in each of the three countries. The requirements form the core by which the Grantee will develop an implementation work plan after award. In developing responses, potential Grantees are referred to Timebound program and project documents and supporting documentation on-line. Below is a listing of country-specific requirements to guide potential grantees in the development of responses to this solicitation.

El Salvador

The applicant will propose creative and innovative approaches to improve access, quality and relevance of education for children of the project's four target groups: children working in garbage dumps; children working in sugar cane; children working in fishing; and child victims of commercial sexual exploitation. The approach suggested will include broad actions that promote an enabling environment at the national level, and specific, pilot interventions at the local level in 18 targeted municipalities (listed in Appendix C) to increase enrollment and attendance in educational settings, reduce dropout, increase promotion to next grade, and increase mainstreaming of children into formal schooling or to vocational education leading to improved employment. Applicants must propose how to address issues related to the following areas of implementation:

At the National Level

The applicant will propose:

1. The approach to be used to build a partnership with the Ministry of Education (MINED) to collaboratively develop strategies to provide targeted working children with educational alternatives.
2. Methods to strengthen MINED's capacity to improve the database on the education of working children or those removed from child labor, and particularly to collect data on their net enrollment, attendance, educational achievement, drop-out rates, and to cross-tabulate economic activity of children and school attendance and performance. Improved capacity would include the ability to assess existing methodological tools used in El Salvador for collecting, processing, analyzing, mapping and disseminating information on the education of the child labor population. The result of strengthened capacity would be the ability of MINED and other stakeholders to better monitor performance and design appropriate education policies and programs for the target population.
3. Ways to raise national awareness on the education of child laborers and the audiences for the awareness raising.
4. Ways to mobilize resources for the education of child laborers and to improve education infrastructures in areas of high child labor.
5. Possible objectives and content of modules on child labor to be developed for use in MINED's countrywide teacher training in El Salvador.
6. Ways to promote national policy dialogue in El Salvador on how to lower educational barriers for working children or children removed from child labor, particularly its worst forms, and how to use education policies to complement and support existing child labor policies. In proposing approaches,

the applicant must consider that the reform process must explicitly address the relationship between child labor and school desertion and absenteeism. The applicant must also keep in mind that education programs should address the needs of working children and their families, and the poverty and inability of some families to sustain school fees and attendance.

7. Methods for nationwide sharing of the lessons learned in pilot interventions, and for eventually scaling up and replicating them in other parts of El Salvador after the end of the project.

At the Municipal Level

The applicant will work in close collaboration with MINED to develop pilot interventions to reduce barriers within the education system that prevent target children from gaining access to quality, relevant education, and that address the particular needs of working children and their families. MINED will provide approximately 25 new teachers to work in targeted schools, and four MINED educational advisors, including curriculum design experts, who will work part-time on the project. Training for teachers on child labor will be provided by MINED.

The applicant will suggest ways to use and/or strengthen existing innovative MINED programs cited in Appendix C so that they can better serve the needs of the target population. The suggested approach is particularly important because MINED has agreed to absorb into their future programs and budgets the joint initiatives developed by the project so that it can later replicate and expand the successful models and experiences. Specifically at the municipal level in target areas, the applicant will propose methods to:

1. Raise awareness of parents, teachers, educators, children, and community leaders to promote enrollment and retention of target children into educational settings, and reduce late enrollment of at-risk siblings.

2. Increase community involvement and participation of different actors including local authorities, teachers' associations, parents, and others to improve the physical and material infrastructure in schools; mobilize resources to rebuild and repair classrooms and schools destroyed by earthquakes, and provide additionally needed materials and school supplies.

3. Support improvements in quality in transitional and non-formal education programs so as to ensure a greater chance of eventual integration by these children into the formal school system.

4. Work with MINED to upgrade the knowledge and skills of teachers and administrators to adapt schools and classrooms to receive and nurture the success of all students, including former child laborers and older children in the target areas where schools will be receiving a large influx of former child workers. Suggest courses and activities to improve pedagogy, participatory teaching methods, learning assessment, planning, and monitoring of results.

5. Mainstream large numbers of targeted children into the formal school system and provide educational support to help them succeed in that setting. This support can include after-school programs and centers in selected districts to provide counseling and guidance for target groups, recreational activities, tutoring, and life skills training.

6. Address gender issues that severely limit the participation of either boys or girls in school because of work demands, including childcare of younger siblings.

7. Improve the quality and relevance of the curriculum in education programs to make them more relevant to the needs of parents and children, and the communities where they live. In showing how quality and relevance would be improved, provide examples of how to utilize MINED's Quality Management Model that permits local communities to adapt the curriculum to their local environment. In this regard, the grantee will work with MINED curriculum design experts.

8. Identify and strengthen community organizations and networks that are critical to the success of pilot interventions including for the mobilization of resources, and for monitoring the target population's school attendance and access to improved education.

9. Address the issue of project sustainability by proposing a strategy to generate resources to cover recurrent costs of suggested education programs, either through existing budgetary mechanisms, or by generating alternative national or local community-based financing mechanisms, such as mandatory or voluntary contributions by users of services, or through philanthropy, volunteer programs, or corporate citizenship.

Nepal

The applicant will suggest creative and innovative approaches to improve access to education for children of the project's six target groups: child porters; child rag pickers; child domestic workers; child victims of trafficking; children in mines; and children working in the carpet sector. The applicant will suggest ways to use and/or strengthen existing education programs so that targeted children can benefit from them.

The approach suggested will include broad actions that promote an enabling environment at the national level, and specific interventions at the level of the 22 targeted districts (listed in Appendix D) to improve quality, increase enrollment and attendance at educational settings, reduce dropout, increase promotion to next grade, and increase mainstreaming of target children to formal schooling or to vocational education leading to improved employment. Especially important in Nepal will be to make education relevant and inclusive of those children who have been traditionally socially excluded. In implementing the approach, the Grantee will be required to develop partnerships with the Ministry of Education and Sports, with the ILO/IPEC Timebound project staff, with the Basic Primary Education Project (BPEP), and with the Asian Development Bank's future Teacher Training Program.

In their response applicants must show how they would address issues related to the following areas of implementation:

At the National Level

The applicant will propose:

1. The approach to be used to build a partnership with the Ministry of Education and Sports to collaboratively develop strategies to provide education to working children in targeted areas of Nepal, and to contribute to the implementation of His Majesty's Master Plan for the Elimination of Child Labor.

2. Methods to promote national policy dialogue in Nepal on how to make education and training responsive to the needs of the target population. In proposing approaches, the applicant must explicitly address the relationship between child labor and school desertion and absenteeism. The applicant must also keep in mind that education programs should address the needs of working children and their families, and the poverty and inability of some families to sustain school fees and attendance.

3. Methods to improve education data collection and analysis on the targeted children that will feed into education policy and planning.

4. Methods to raise national awareness and mobilize resources to improve school access, enrollment, attendance and retention for targeted children.

5. Ways that outreach and flexible schooling approaches that have been

developed in Nepal for other projects might be used to meet the needs and requirements of poor rural families vulnerable to child labor.

6. Methods to develop linkages between transitional and formal education systems to allow ex-working children to successfully be mainstreamed into formal education, and to increase targeted children's access to vocational education.

7. Objectives and content of modules on child labor and other related themes to be used in teacher training that can be picked up by donor initiatives such as BPEP and the ADB Teacher Training Program.

8. Approaches to review the examination system in schools to reduce the bias against excluded groups, and to develop alternative learning assessment tools to measure the educational achievement of the targeted children.

9. Methods for nationwide sharing of lessons learned in district interventions, and for eventual scaling up and replication in other parts of Nepal after the end of the project.

At the District Level

The applicant will work closely with local authorities and educators to create a coherent model of education interventions at the district level to provide education alternatives to children rescued from the worst forms of child labor. In the process of implementation it is expected that capacity and control of local delivery mechanisms for education will be strengthened. The applicant will propose:

1. Methods to raise awareness about the education needs of targeted children among various local actors including municipal authorities, community-based organizations, teachers unions, district and village development committees (DDCs and VDCs) and others to be suggested by the applicant.

2. Approaches to mobilize local communities to increase parental participation, and raise demand for accessible, affordable, relevant and quality education, improve education infrastructure, and develop community-based school improvement activities.

3. Types of training or other activities that could be provided to officials of the district, municipality and local government to improve local planning so that it addresses the education needs of the target population.

4. Methods to strengthen the quality of transitional and non-formal education programs, so that these children have a greater chance to be successfully mainstreamed into the formal system.

5. Ways to assist local education authorities to develop effective administrative systems to enhance the capacity of schools to receive a large influx of former child laborers, and strengthen school admission and retention policies to facilitate the entry or re-entry of children removed from child labor.

6. Approaches to mainstream the large numbers of targeted children into the formal school systems and provide educational support to help them succeed in that setting. This support can include after-school programs and centers in selected districts to provide counseling and guidance for target groups, recreational activities, tutoring, and life skills training.

7. Approaches to promote the decentralization of the education budget to the district level within the framework of Nepal's Local-Self Governance Act.

8. Approaches to develop the private sponsorship of school attendance by target children, particularly child domestic workers.

9. Ways to address gender issues that severely limit the participation of either boys or girls in school because of work demands, including childcare of younger siblings.

10. Methods for community monitoring of schools that receive target children that complement and reinforce formal education monitoring systems.

Tanzania:

The applicant will suggest creative and innovative approaches to improve access to formal education for children of the project's target population: children in prostitution, domestic work, mining, and commercial agriculture. The major thrust will be to promote an enabling environment and create capacity at the district level to contribute to the Government of Tanzania's plan to reduce by 75% the number of children working in these sectors by 2005.

The applicant will suggest ways to address education system barriers and education needs for target children cited in Appendix E. The approach suggested will include actions that promote a supportive environment at the national level, and specific interventions in the 11 targeted districts (see Appendix E). District interventions should improve quality, increase enrollment and attendance, reduce dropout, increase promotion to next grade, and increase mainstreaming of target children to formal schooling or to vocational education leading to improved employment.

At the national level:

The applicant will propose:

1. Ways to raise national awareness/mobilize resources for the education of child laborers, and the audiences for the awareness raising/resource mobilization initiatives.

2. Means by which to build inter-institutional coordination capacity for education policies and programs to support Tanzania's Child Labor Elimination Policy (CLEP), including a strategy to bring in institutions working on Tanzania's Poverty Reduction Master Plan (PRSP), Basic Education Master Plan (BEMP), Education Sector Development Program (ESDP), and ILO/IPEC's Strategic Program Framework (SPF) for the elimination of the Worst Forms of Child Labor.

3. A method by which to assist the Ministry of Education in Tanzania to develop guidelines for local government authorities on how to promote access to education for disadvantaged children, including those withdrawn from child labor. The guidelines should include references on how to improve education quality and relevance, physical and material infrastructure, and ensure enrollment, attendance and retention of the target children.

4. The approach and suggested content of training for teachers and Ministry of Education Inspectors on the theme of child labor.

5. Approaches to curriculum development/improvement to enhance the relevance of course content for the target population and the communities in which they live.

6. Approaches to create accountability mechanisms within the Ministry of Education to monitor the progress in reaching target children in affected communities.

7. Methods for nationwide sharing of lessons learned in district interventions, and for eventual scaling up and replication in other parts of Tanzania after the end of the project.

At the district level:

The applicant will work within the context of decentralization initiatives of the Local Government Reform Process (LGRP) in Tanzania to advance the education of children in the targeted sectors.

The applicant will propose:

1. An approach to improve capacity to collect education data and develop a database that feeds into decentralized planning and policy implementation in support of the LGRP in Tanzania. The applicant should specify the types of data that would be collected, and how they would feed into district education

plans, and which organizations would be strengthened.

2. The means to build capacity of key organizations (e.g., District Social Welfare Committees, Child Labor Committees at the village and/or ward level) to plan for and manage the education for the target children.

3. Ways to promote greater involvement of parents and community members in efforts to identify children who are not attending school, and take measures to prevent and withdraw children from work and place them in education settings.

4. Approaches to link transitional non-formal education (that will be administered by the ILO/IPEC to the target population) to formal education. These approaches would include means of preparing the formal system to give attention to need of ex-child workers, and the development of school admission, retention and other policies that could support their successful transition to formal schooling.

5. Ways to improve the quality of formal education at the local level, including through the development of enrichment programs or alternative education.

6. Ways to address gender issues in the education of the target children.

7. An approach to develop a community monitoring system for the education of the target children that would complement district level monitoring and information systems.

8. Methods to mobilize resources at district and local levels to sustain education activities for the target children.

In addition to meeting these requirements for each country, Grantee(s) also will be expected to monitor the implementation of the program, report to USDOL on a quarterly basis, and evaluate program results. The grant(s) will include funds to plan, implement and evaluate programs and activities, conduct various studies, and to establish education baselines to measure program results. The education baselines will complement those conducted by the ILO/IPEC. Grantee(s) must develop annual work plans that will be approved by USDOL. Corresponding indicators of performance will also be developed by the Grantee(s) and approved by USDOL.

B. Deliverables

Unless otherwise indicated, the Grantee(s) must submit copies of all required reports to ILAB by the specified due dates. Other documents, such as project design documents, are to be submitted by mutually agreed upon deadlines.

1. *Project Designs.* A project document to be established by ILAB in the logical framework format will be used, and will include a background/justification section, project strategy (objectives, outputs, activities, indicators), project implementation timetable and project budget. The project design will be drawn from the proposal written in response to this solicitation. The document will also include sections that address coordination strategies, project management and sustainability. The time for delivery of this document will be negotiated at the time of the award.

2. *Technical and Financial Progress Reports.* The Grantee(s) must furnish a typed technical report to ILAB on a quarterly basis by 31 March, 30 June, 30 September, and 31 December. The grantee(s) must also furnish a separate financial report to ILAB on the quarterly basis mentioned above. The format for the technical progress report will be the format developed by ILAB and must contain the following information:

a. For each project objective, an accurate account of activities carried out under that objective during the reporting period;

b. An accounting of staff and any subcontractor hours expended;

c. An accounting of travel performed under the cooperative agreement during the reporting period, including purpose of trip, persons or organizations contacted, and benefits derived;

d. A description of current problems that may impede performance, and proposed corrective action;

e. Future actions planned in support of each project objective; and

f. Aggregate amount of costs incurred during the reporting period.

3. *Annual Work Plan.* An annual work plan will be developed within a month of project award and approved by ILAB so as to ensure coordination with ILO/IPEC components of the Timebound project in each of the countries. Subsequent annual work plans will be delivered no later than one year after the previous one.

4. *Monitoring and Evaluation Plan.* A monitoring and evaluation plan for all projects will be developed, in collaboration with ILAB, including beginning and ending dates for projects, planned and actual dates for mid-term review, and final end of project evaluations. Although financed separately and with its own budget, the Grantee(s) will coordinate activities with ILO/IPEC, and its outputs and activities will support common objectives for the project as a whole. The monitoring plan will be prepared after completion of baseline surveys, including revision of indicators provided in project document, targets, and means of verification.

5. *Evaluation Reports.* The Grantee(s) and the Grant Officer's Technical Representative (GOTR) will determine on a case-by-case basis whether mid-term evaluations will be conducted by an internal or external evaluation team. All final evaluations will be external in nature. The Grantee must respond to any comments and recommendations resulting from the review of the mid-term report.

C. Production of Deliverables

1. *Materials Prepared Under the Cooperative Agreement.* The Grantee(s) must submit to ILAB all media-related and educational materials developed before they are reproduced, published, or used. ILAB considers that education materials include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. ILAB will review materials for technical accuracy. The Grantee(s) must obtain prior approval from the Grant Officer for all materials developed or purchased under this cooperative agreement. All materials produced by Grantee(s) must be provided to ILAB in a digital format for possible publication by ILAB.

2. *Printing and Duplicating.* The Grantee(s)/recipient(s) must comply with all duplicating and printing regulations issued by the Joint Committee on Printing under the authority of 44 U.S.C. 103, 501, and 502. The term ''duplicating'' as used means material produced on single unit duplicating equipment not larger than 11 by 17 inches and which have a maximum image of 10¾ × 14¼ inches using direct image plates not requiring the use of negatives. The term ''printing'' as used must be construed to include and apply to the processes of composition, platemaking, presswork, binding, and microform.

Under this cooperative agreement, the Grantee(s)/recipient(s) may duplicate up to a maximum of 5,000 copies of one page or 25,000 copies in the aggregate of multiple pages.

The Grantee(s)/recipient(s) shall not use funds under this cooperative agreement to provide duplicating in excess of the quantities stated above nor provide printing without the written authorization of the Joint Committee on Printing. Such authorization shall be obtained from the Grant Officer through the Departmental Printing Officer. Nothing in this clause precludes the procurement of writing, editing, preparation of manuscript copy, or

preparation of related illustrative material.

3. *Acknowledgment of USDOL Funding.* In all circumstances the following must be displayed on printed materials: ''Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. E–9–X–X–XXXX.''

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds, including State and local governments and recipients of Federal research grants, must clearly state:

a. The percentage of the total costs of the program or project which will be financed with Federal money;

b. The dollar amount of Federal funds for the project or program; and

c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

In consultation with ILAB, USDOL's role will be identified as one of the following:

a. The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The Grantee will consult with USDOL on whether the logo should be used on any such items prior to final draft or final preparation for distribution. In no event will the USDOL logo be placed on any item until USDOL has given the grantee written permission to use the logo, after obtaining appropriate internal USDOL approval for use of the logo on the item.

b. If ILAB determines the logo is not appropriate and does not give written permission, the following notice must appear on the document:

''This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

D. Administrative Requirements

1. *General.* Grantee organizations are subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles. The cooperative agreement(s) awarded under this SGA are subject to the following administrative standards and provisions, if applicable:

29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

29 CFR Part 93—New Restrictions on Lobbying.

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, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 98—Federal Standards for Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

2. *Subgrants/Subcontracts.* Subgrants and contracts must be awarded in accordance with 29 CFR 95.40. In compliance with Executive Orders 12876 as amended, 13230, 12928 and 13021 as amended, the Grantee is strongly encouraged to provide subgranting opportunities to Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities.

3. *Key Personnel.* The applicant shall list individual(s) who has (have) been designated by the Grantee(s) as having primary responsibility for the conduct and completion of all work in project(s) it proposes. The applicant will submit written proof that key personnel will be available to begin work on the project no later than three weeks after award. The Grantee agrees to inform the GOTR whenever it appears impossible for these individual(s) to continue work on the project as planned. The Grantee may nominate substitute personnel and submit the nominations to the GOTR; however, the Grantee must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer is unable to approve the personnel change, he/she reserves the right to terminate the cooperative agreement.

4. *Encumbrance of Cooperative Agreement Funds.* Cooperative agreement funds may not be encumbered/obligated by the Grantee(s) before or after the cooperative agreement period of performance. Encumbrances/obligations outstanding as of the end of the cooperative agreement period may be liquidated (paid out) after the end of the cooperative agreement period. Such encumbrances/obligations shall involve only specified commitments for which a need existed during the grant period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the grantee's purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period shall be liquidated within 90 days after the end of the grant period, if practicable.

5. *Site Visits.* The Grantor, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If the grantor makes any site visit on the premises of the Grantee or a subgrantee(s)/ contractor(s) under this grant(s), the Grantee(s) shall provide and shall require its subgrantees/ contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations shall be performed in a manner that will not unduly delay the work.

V. Review and Selection of Applications for Grant Award

A. The Review Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. Each complete application will be objectively rated by a technical panel against the criteria described in this announcement. Applicants are advised that the panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select a Grantee(s) on the basis of the initial proposal submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make final selection determination based on

what is most advantageous to the Government, considering factors such as: panel findings; the geographic distribution of the competitive applications; and the availability of funds. The Grant Officer's determination for award under this SGA 01–06 is final.

Note: Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before the actual cooperative agreement is awarded, USDOL will enter into negotiations about such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

B. Rating Criteria and Selection

The technical panel will review grant applicants against the various criteria on the basis of 100 points with an additional 5 points available for non-federal or leveraged resources.

The factors are presented in the order of emphasis that they will receive.

1. Approach, Understanding of the Issue, and Budget Plan (45 points)

a. *Overview.* This section of the proposal must explain:

(1) The applicant's proposed innovative method for performing all the specific areas of work requirements presented in this solicitation for the country (or countries) in which the applicant proposes to implement activities;

(2) The expected outcomes over the period of performance for each of the tasks; and

(3) The approach for producing the expected outcomes.

The applicant must describe in detail the proposed approach to comply with each requirement in Section IV–A of this solicitation, including all tasks and methods to be utilized to implement a project (or projects). Also, the applicant must explain the rationale for using this approach. In addition, this section of the proposal must demonstrate the applicant's thorough knowledge and understanding of the issues involved in providing basic education to children removed from child labor or at risk; best-practice solutions to address their needs; and the implementing environment in the targeted Timebound countries.

b. *Implementation Plan.* The applicant must submit an implementation plan, preferably with a visual such as a Gantt chart, for the country (or countries) it proposes to operate a project (or projects). The implementation plan should list the outcomes, objectives and activities during the life of the project (or projects), and scheduling of time and staff starting with the execution of the cooperative agreement and ending with the final report. In describing the implementation plan, the applicant must address the following points:

(1) Describe the use of existing or potential infrastructure and use of qualified personnel, including qualified nationals, to implement the project. The applicant also must include a project organizational chart, demonstrating management structure, key personnel positions, and indicating proposed links with Government, business leaders, trade unions, educators, and other significant local actors.

(2) Develop a list of activities and explain how each relates to the overall development objective of reducing the worst forms of child labor through education.

(3) Explain how appropriate awareness raising, training and pedagogic materials will be developed.

(4) Demonstrate how the organization will strengthen national institutions and policies on education and child labor.

(5) Demonstrate how the organization would systematically report on project performance to measure the achievement of the project objective(s).

(6) Demonstrate how the organization would build national and local capacity to ensure that project efforts to reduce the worst forms of child labor through the provision of basic education are sustained after completion of the project.

c. *Budget Plan.* Develop a country-specific budget for the project for each of the countries for which the applicant proposes a project. This section of the proposal must explain the costs for performing all of the requirements presented in this solicitation and for producing all required reports and other deliverables presented in this solicitation; costs must include labor, equipment, travel, and other related costs.

d. *Management and Staff Loading Plan.* This section also must include a management and staff loading plan. The management plan is to include the following:

(1) A project organization chart and accompanying narrative which differentiates between elements of the applicant's staff and subcontractors or consultants who will be retained;

(2) A description of the functional relationship between elements of the project's organization; and

(3) The identity of the individual responsible for project management and the lines of authority between this individual and other elements of the project.

(4) A description of how the implementation plan will be integrated into and support the ILO/IPEC's Timebound Program in the target countries.

The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including subcontractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation.

2. Experience and Qualifications of the Organization (30 points)

The evaluation criteria in this category are as follows:

a. The organization applying for the award has experience in basic education, preferably working with disadvantaged children including working children and those removed from child labor, in the target or neighboring countries.

b. The organization has a field presence in the implementing country, or could rapidly establish an office that allows it the capability to work directly with government ministries, educators, civil society leaders including employers' organizations, and other local organizations, *e.g.,* community-based or faith-based groups; the organization can document that it has already established relations of this nature in the target countries or can show that it has the capacity to readily establish such relations.

c. The organization has international experience in implementing basic education programs that address issues of access, quality and policy reform, and preferably in the target countries.

d. The organization has experience working with, or can show it has the ability to work with, U.N. and multilateral donor organizations.

The proposal must include information about previous grants or contracts relevant to this solicitation including:

a. The organization for which the work was done;

b. A contact person in that organization with their current phone number;

c. The dollar value of the grant, contract, or cooperative agreement for the project;

d. The time frame and professional effort involved in the project;

e. A brief summary of the work performed; and

f. A brief summary of accomplishments.

This information on previous grants and contracts shall be provided in appendices and will *not* count in the 40-page maximum page requirement.

3. Experience and Qualifications of Key Personnel (25 points)

This section of the proposal must include sufficient information to judge the quality and competence of staff proposed to be assigned to the project(s) to assure that they meet the required qualifications. Successful performance of the proposed work depends heavily on the qualifications of the individuals committed to the project(s). Accordingly, in its evaluation of the applicant's proposal, USDOL will place emphasis on the applicant's commitment of personnel qualified for the work involved in accomplishing the assigned tasks. Information provided on the experience and educational background of personnel must indicate the following:

a. The identity of key personnel assigned to the project. ''Key personnel'' are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have their hours reduced without the approval of the Grant Officer.

b. The educational background and experience of all staff to be assigned to the project.

c. The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.

d. The current employment status of staff and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or subcontracting. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of grant award.

The following information must be furnished:

a. The applicant must designate a Program Director (Key Personnel) to oversee the project(s) and be responsible for implementation of the requirements of the cooperative agreement. The Program Director must have a minimum of three years of professional experience in a leadership role in implementation of complex basic education programs in developing countries in areas such as education policy; improving educational quality and access; teacher training and materials development; educational assessment of disadvantaged students; development of community participation in the improvement of basic education; and monitoring and evaluation of basic education projects. Points will be given for candidates with additional years of experience. Preferred candidates will also have knowledge of child labor issues, and experience in the development of transitional, formal, and vocational education of children removed from child labor.

b. The applicant must designate a Child Labor/Education Specialist (Key Personnel) who will provide leadership in developing the technical aspects of this project in collaboration with the Project Director. This person shall have at least three years experience in basic education projects in developing countries in areas including student assessment, teacher training, educational materials development, educational management, and educational monitoring and information systems. This person shall have experience in working successfully with Ministries of Education, networks of educators, employers' organizations and trade union representatives or comparable entities. Additional experience with child labor and education policy and monitoring and evaluation is an asset.

c. The applicant must specify other personnel proposed to carry out the requirements of this solicitation.

d. The applicant must include a description of the roles and responsibilities of all personnel proposed for this project (or projects) and a resume for each professional person to be assigned to the program. Resumes will be attached in an appendix. At a minimum, each resume must include: the individual's current employment status and previous work experience, including position title, duties performed, dates in position, and employing organizations and educational background. Duties must be clearly defined in terms of role performed, *i.e.*, manager, team leader, consultant, etc. Indicate whether the individual is currently employed by the applicant, and (if so) for how long.

e. The applicant must indicate whether proposed personnel are currently employed by the organization or are dependent upon planned recruitment or subcontracting. Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where subcontractors or outside assistance are proposed, organizational control must be clearly delineated to ensure responsiveness to the needs of USDOL.

4. Leverage of Federal Funding (5 points)

The Department will give up to five (5) additional rating points to proposals reflecting the criteria above when the proposal includes non-Federal resources that expand the dollar amount, size and scope of the proposal. The applicant may include any leveraging or co-funding anticipated. To be eligible for the additional points in the criterion, the applicant must list the source(s) of funds, the nature, and possible activities anticipated with these funds under this cooperative agreement and any partnerships, linkages or coordination of activities, cooperative funding, etc.

Signed at Washington, DC, this 20th day of November, 2001.

Lawrence J. Kuss,

Grant Officer.

Appendix A: SF 424—Application Form.

Appendix B: SF 424A—Budget Information Form.

Appendix C: Background Information on Timebound Program in El Salvador.

Appendix D: Background Information on Timebound Program in Nepal.

Appendix E: Background Information on Timebound Program in Tanzania.

Appendix F: Background Material available in hard copy (upon request).

BILLING CODE 4510–28–P

Appendix A: SF 424 - Application Form.

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX "A"

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	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, telephone number and fax number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

00-0000000

7. TYPE OF APPLICANT: (enter appropriate letter in box)

A. State H Independent School Dist.
B. County I State Controlled Institution of Higher Learning
C. Municipa J . Private University
D. Township K Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District 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:

00-000

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. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable
(REV 4-88)
by OMB Circular A-102

Standard Form 424
Prescribed

Authorized for Local Reproduction

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months,

18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds

or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.

5. Supplies: Include the cost of consumable supplies and materials to be used during the project period.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Costs: Add lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. Training /Stipend Cost: (If allowable)

11. Total Federal funds Requested: Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

BILLING CODE 4510–28–C

Appendix C: Background Information on the Timebound Program in El Salvador

The Timebound Program in El Salvador will contribute to the government's intent to eliminate the worst forms of child labor. The Multipurpose Household Survey (EHPM) of the General Department of Statistics and Census (DIGESTYC) in El Salvador estimated that in 1999 there were 159,717 children between 10–17 working in the country. This figure represents 14.6% of the 1.1 million children in that age group. It is estimated that almost a quarter of these children are not enrolled in school, and an additional 6.4% are enrolled in school, but not attending.

El Salvador experiences the common and prevalent problem of children working with their families in fields, particularly during the coffee and sugar harvests. Children work harvesting commercial crops such as coffee and sugarcane, and are found working in charcoal production, shellfish harvesting, and fireworks production. Orphans and children from poor families frequently work as street vendors and general laborers in small, informal sector businesses. It is estimated that as many as 115,000 girls between the ages of 7 and 18 work as domestic servants. There is also growing concern over the extent of child sexual exploitation in port cities and in San Salvador. Moreover, there have been reports of trafficking in young girls both into and from the country for the purpose of sexual exploitation.

The Salvadoran Constitution prohibits the employment of children under the age of 14. Minors between the ages of 14 and 18 may receive special permission from the Labor Ministry to work, but only when such employment is absolutely necessary to the minor's and his/her family's survival. Minors between 14 and 18 years of age are limited to work for six-hour shifts and a maximum 36-hour workweek. The Ministry of Labor is responsible for enforcing child labor laws. However, scarce resources and difficulty in monitoring the large informal sector has limited the Ministry's effectiveness.

El Salvador ratified the United Nations Convention on the Rights of the Child in 1990 and ILO Convention No. 138 on the Minimum Age for Employment in 1996. The country ratified ILO Convention 182 on the Worst Forms of Child Labor in October 2000.

The Salvadoran Constitution prohibits older children without a basic education from working. Yet much remains to be done in the field of education to use it as a tool to eliminate the worst forms of child labor, despite strong commitment on the part of the Ministry of Education (MINED) to support the Timebound initiative.

Improved primary education has been one of the most visible successes in El Salvador since the peace agreements in 1992. Reforms have aimed to improve the quantity, quality, efficiency and equity of education with the backing of donors including the World Bank, the Inter-American Development Bank, and USAID. Before the damage caused by the earthquakes, El Salvador had increased public expenditure on education; increased the number of schools, classrooms and teachers; reduced the average distance to primary schools; expanded early childhood centers; increased teachers' salaries and provided a salary incentive to rural teachers; created a training program for teachers; and provided incentives to reward schools and principals that achieve certain indicators. The government has also established a number of innovative programs—*e.g.*, EDUCO (Educación con Participación de la Comunidad), the Accelerated School Program (Programa de Educación Acelerada), the Multi-Grade School Program (Programa de Educación Alternativa); Distance Learning Program (Programa de Educación a Distancia), the Open-School Program (Escuelas Abiertas), Centers for Educational Resources (Centros de Tecnologías Educativas); Quality Management Model (Modelo de Gestión para la Calidad), and scholarship programs—all of which could potentially benefit working children or those removed from the worst forms of child labor.

Yet despite these achievements in El Salvador, data from the United Nations Development Program indicate that the average number of years that children attend school on the national level is 5.3, and only 3.2 in rural areas. Recent research cited by ILO/IPEC has explored why rural families do not enroll their children in school or allow them to drop out and join the labor force. Particularly in rural areas, the school system is not able to meet the needs of working children and their families because the quality is low, the opportunity costs of schooling are high, and because education seems irrelevant in terms of their future employment.

The Government of El Salvador signed a Memorandum of Understanding (MOU) with ILO/IPEC in 1996, and is collaborating on a number of ILO/IPEC projects aimed at combating child labor. Current USDOL-funded projects are designed to discourage children from working in shellfish and coffee harvesting, and the cottage production of fireworks. El Salvador is also part of a USDOL-funded regional effort aimed at gathering statistical information on children engaged in economic activities. The Timebound project in El Salvador builds upon these efforts.

The Government of El Salvador has established a National Steering Committee, which is responsible for coordinating all child labor initiatives in El Salvador. It will provide overall guidance on priorities and implementation of the Timebound program in the country. The Committee is coordinated by the Ministry of Labor and includes the Ministers of Education and Health, and representatives from worker and employer organizations.

The Timebound Project in El Salvador has identified as a priority focus the following four worst forms of child labor: (1) Child victims of commercial sexual exploitation; (2) children scavenging at dumpsites; (3) hazardous child labor in sugar cane production and harvesting, and (4) hazardous child labor in fishing.

The National Steering Committee has prioritized selected geographical regions where model interventions will be developed that can be extended or scaled up to address children in these and other worst forms of child labor at the national level.

The ILO/IPEC has set a goal of reducing the worst forms of child labor in the targeted sectors by 50 percent by the end of the project. Implementation by sector will take place in the six Departments (18 municipalities). The Timebound Project in El Salvador will benefit around 9,300 working children, and 15,700 younger siblings of working children. The number of beneficiaries may be modified once project baseline surveys are conducted. The target sectors are as follows:

Garbage Dumps

Department of Santa Ana (Municipalities of Santa Ana, Chalchuapa).

Estimated beneficiaries: 1,000 children, 2,000 children at risk and 500 families.

Specific educational needs identified: Little or no schooling of children, high opportunity cost of sending children to school.

Sugar Cane

Department of San Vicente (Municipalities of San Vicente, Tecoluca), Department of San Salvador (Municipalities of San Salvador, Apopa, Nejapa, Aguilares, El Paisnal); Department of Sonsonate (Municipalities of Izalco, Nahuizalco, Nahulingo).

Estimated beneficiaries: 5,000 children, 7,500 children at risk, and 1,000 families.

Specific educational needs identified: Development of relevant curriculum for the school as part of the MINED pilot program, including agricultural extension, agricultural mechanics, agribusiness and other relevant courses.

Commercial Sexual Exploitation

Department of San Miguel (Municipality of San Miguel); Department of San Salvador (Municipality of San Salvador).

Estimated beneficiaries: 200 children, 200 children at risk, and 50 families.

Specific educational needs identified: Development of flexible, informal education and vocational programs, including support of MINED accelerated classroom and distance learning programs.

Fishing

Department of Usulután (Municipalities of Usulután, Jiquilisco, Puerto El Triunfo, San Dionisio, Jucurán).

Estimated beneficiaries: 3,100 children, 4,650 children at risk, and 3,000 families.

Specific educational needs identified: Improve relevancy of curriculum for schools as part of the MINED pilot program that includes environmental education, sensitization to sustainable fishing, vocational education, and other relevant courses.

Appendix D: Background Information on the Timebound Program in Nepal

The Timebound Program in Nepal supports His Majesty's Government of Nepal Master Plan for the Elimination of Child Labor, which aims to eliminate the worst forms of child labor by 2005, and all forms of child labor by 2010. Based on a 1996 ILO-sponsored national child labor survey, it is estimated that there are 2.6 million working children between the ages of 5 to 14 in Nepal. This accounts for more than 40 percent of the country's 6.2 million children. The survey further revealed that more than 80 percent of child workers do not receive wages. In Nepal, approximately 60 percent of children who work also attend school; the percentage is noticeably lower for working girls as compared to working boys.

Child labor is found in a variety of sectors, with the overwhelming majority of working children participating in family-based subsistence agriculture. Children are also found working in brick-kiln operations, tea shops, construction sites, and as porters, rag pickers and domestic servants. Nepali children are also the victims of domestic and cross border trafficking for purposes of exploitative labor or commercial sexual exploitation.

Child labor in Nepal is a complex phenomenon deeply embedded in historic, cultural, social and economic patterns. On the supply side, the main determining factors are household poverty and the poor performance of the education systems in preventing child labor. There is a weak demand for education among families prone to child labor due to the inadequacy of the education system, poor infrastructure, inadequate number of qualified teachers and their absenteeism, lack of learning materials, and a poor learning environment. Related factors are the inadequacy of basic health services and absence of social protection schemes that push children into labor when there is a family crisis such as illness, social exclusion, gender discrimination, and neglect or abuse at home.

Nepal has ratified several significant conventions, including United Nations Convention on the Rights of the Child in 1990 and ILO Convention No. 138 on Minimum Age for Employment in 1997. The country is in the process of ratifying ILO Convention No. 182 on the Worst Forms of Child Labor. The Constitution of Nepal (Article 20) prohibits the employment of any minor in a factory, mine or in other hazardous work. The 1992 Labor Act and the 1992 Children Act prohibit the employment of children under 14 years from working in any kind of employment. A new Child Labor Act (1999) makes amendments to the 1992 Labor Act and lists specific hazardous work that children below 16 are prohibited from doing. However, unclear or contradictory definitions in legislation and weak enforcement of child labor laws remain serious impediments to protecting the welfare of children.

A comprehensive review of child labor-related programs in Nepal by the ILO indicated that 29 programs totaling $62.6 million dollars directly or indirectly related to the issue of child labor. Furthermore, an estimated 240 NGOs that have a stated objective of assisting children are registered throughout the country. Nepal receives significant funds from a variety of development agencies including the World Bank, Asian Development Bank, the multi-donor Basic and Primary Education Program (BPEP), UNICEF, UNDP, UNESCO, World Food Program, USAID, German Technical Cooperation (GTZ), Swiss Association for Development Cooperation (SDC) and Danish International Development Agency (DANIDA).

USDOL provides funding to support two ILO/IPEC projects in Nepal. These include a project to combat bonded child labor, which targets 14,000 *Kamaiya* (bonded labor) families, including 16,000 *Kamaiya* children. Nepal is also included in a South Asia sub-regional project to combat trafficking of children for exploitative employment.

National Stakeholder Consultations for the Timebound Program in Nepal were held on May 8–10, 2001. The consultations were well attended and included representatives from government, trade unions, business, NGOs, international organizations, and the international donor community. Based on these meetings and rapid assessment surveys conducted earlier this year, 6 priority target groups have been identified for the Timebound Program. They include: child rag pickers; child porters; child domestic workers; children in mining; child labor in the carpet sector; and child trafficking for labor or sexual exploitation. It is estimated that there are about 122,000 children working in these 6 priority sectors. (Bonded labor was also identified in the 2001 Stakeholder Consultations, however a USDOL funded ILO/IPEC project already underway targets children in this specific sector.)

The 2001 Stakeholder Consultations also identified several areas of education policy and program intervention:

- Increasing enrollment of new groups and reducing dropout rates by focusing on educational access, relevance and affordability;
- Developing appropriate skills through education in order to offer enhanced future employability;
- Focusing improvements in education in the districts with high concentration of the worst forms of child labor;
- Using non-formal education for rehabilitation and transition to formal school or vocational training; and
- Promoting community-based monitoring of education.

The Timebound Project in Nepal will target 17,000 working children in the six selected worst forms of child labor in 22 Districts. The number of beneficiaries may be modified once project baseline surveys are conducted.

Child Porters

Estimated beneficiaries: 4,500 children

Specific educational needs identified: Improving the quality of education in areas of origin to be monitored by community-based systems.

Child Domestic Workers

Estimated beneficiaries: 7,500 children

Specific educational needs identified: Seventy percent of child domestic workers are school dropouts. Isolation and long working hours (often 15 hours per day) that leave little time for schooling. Only ⅓ of child domestic workers attend school, and of these, most are boys.

Child Ragpickers

Estimated beneficiaries: 1,000 children

Specific educational needs identified: Most children are from rural areas where schools are available. About one-half boys and one-quarter of girls are literate. Early school drop out is a problem since the average age of ragpickers is 11.7 years. Many children in this group live in the streets so there is a need for drop-in centers for counseling, rehabilitation and skills training for older children.

Children in Mines

Estimated beneficiaries: 500 children

Specific educational needs identified: Both boys and girls are employed in this sector, and most of the girls are illiterate.

Children in the Carpet Sector

Estimated beneficiaries: 1,500 children

Specific educational needs identified: Children work 12–20 hours per day. About 60% of children in this sector are illiterate.

Child Victims of Trafficking

Estimated beneficiaries: 2,000 children

Specific educational needs identified: Need for trauma counseling before

reintegration into school or occupational training.

Appendix E: Background Information on the Timebound Program in Tanzania

The Timebound Program in Tanzania will contribute to the government's Child Labor Elimination Program (CLEP). The Department of Labor in the Ministry of Labor, Youth Development and Sports is the chief national agency involved in enforcing anti-child labor laws. Tanzania ratified ILO Convention No. 138 on Minimum Age for Employment in 1998, and ILO Convention 182 on September 12, 2001. Tanzania's Employment Ordinance of 1956 prohibits children under 15 years of age from working in the industrial sector, in the vicinity of machinery, or in any subsurface work that is entered by means of a mine-shaft. Yet recent investigation indicates that in the last two decades in Tanzania there has been a significant increase in child labor and deterioration in school enrollment figures. The gross enrollment rate of school-aged children was 98% in 1977 and 77% by 1999.

According to preliminary data from the first round of Tanzania's 2000–2001 Child Labor Survey (CLS), nearly 4.1 million (39%) of an estimated 10.2 million children between the ages of 5 and 14 are not in school, and nearly 4 million of these children engage in economic activities or housekeeping. Only 40% of children aged 5–9 years were attending school. For the age groups 10–14 and 15–17, the corresponding attendance rates are 78% and 59% respectively. Overall, only 58% of an estimated 12.4 million children aged 5–17 are in school, while 39% engaged in economic activity or in housekeeping without attending school. Fifty three percent of the 7.3 million school children aged 5–17 report being involved in economic activities, and 48% of working children are enrolled in school.

Poverty is a major contributor to both the rise of child labor and the decline in school participation among children, particularly for children from female-headed households who tend to be more vulnerable to child labor. Furthermore, in Tanzania approximately 3 million children are living in child-headed homes as a result of the death of parents due to HIV/AIDS. Tanzania's Poverty Reduction Strategic Plan (PRSP) includes education as a key intervention with targets that include universal primary education by 2010; gender equality in primary and secondary school by 2005; and increases in primary completion, gross enrollment rates, transition rates from primary to secondary, net primary school enrollment and a reduction of primary dropout rates.

There are a number of education system barriers for poor and at-risk children including child laborers. These include inadequate mechanisms to ensure school attendance; inadequate alternative schooling for child laborers and inflexible school schedules; low relevance of the curriculum to the current labor market and self-employment trends; inadequate learning assessment tools; lack of teachers, poor teacher motivation and teaching methods; high teacher absenteeism exacerbated by death rates from HIV/AIDS; inappropriate treatment of children by teachers which includes violence and sexual abuse; overcrowded classrooms (average 113 children); inadequate education infrastructure; centralized control over resources so that materials do not reach schools; shortage of teaching and learning materials, libraries and laboratories; and lack of skills and ability to mobilize community resources.

In Tanzania, more girls are withdrawn from school than boys (60/40 ratio). Efforts to increase girls' education must go hand in hand with efforts to reduce child labor particularly because some prevalent forms of child labor such as prostitution and child domestic work largely affect girls.

For school dropouts, systems that mainstream them back into formal education are lacking. There are only two small programs for reaching the out-of-school population: the Complimentary Basic Education and Training Program (COBET) and Appropriate Cost-effective Centres for Education within the School System (ACCESS). At present these programs only reach 3,000–4,000 children per year, but the government has plans to extend education to 650,000 out-of-school children by 2004.

Access to secondary and vocational training has been more limited. There are few of these schools in many parts of the country, and costs are high for many households. Only 6% of children attend secondary school. Furthermore, there is an urban bias in education, and insufficient linkages between the content of education and the needs of local labor market and local economy. It is estimated that 500,000 youngsters come into the job market each year, yet only 30,000 jobs are created in the formal sector. The informal sector is the most rapidly expanding, generating 80% of the country's jobs.

The challenges faced by Tanzanian local economies and communities in areas of education and labor, including child labor, will in the future be addressed within the context of the Local Government Reform Process (LGRP), which fosters decentralization and devolves decision making, resources, and accountability to the district level. As part of the LGRP processes, district level micro-planning and tools and approaches will need to be developed, as will be the basis by which block grants will be awarded by the national government for provision of a certain quality of basic services including education.

Tanzania has been active in ILO/IPEC since 1994. ILO/IPEC efforts, which have been financed by a number of donors including USDOL, include a range of interventions such as rehabilitation and reintegration of working children into primary education or vocational training; awareness raising about the problem of child labor and mobilization of local communities; support for labor inspector training with respect to the hazards of child labor; and collaboration with employers and workers to address child labor on commercial plantations.

In preparation for the Timebound Programs, rapid assessments were conducted in five sectors: children in prostitution, domestic work, the informal sector (including scavenging, garage work, and quarrying), mining, and commercial agriculture. The rapid assessment studies suggest a significant incidence of the worst forms of child labor in Tanzania. Children working in the worst forms of child labor in Tanzania are exposed to a range of hazards, including long hours, physical and sexual abuse, heavy loads, exposure to dust and toxic chemicals, and the handling of potentially dangerous tools often without adequate training or protective gear.

National Stakeholder Consultations for the Timebound Program in Tanzania were held April 23–25, 2001. Representatives from government, trade unions, business, NGOs, international organizations, and the international donor community attended the meetings. The Tanzanian government has committed itself to reducing the incidence of child labor in four targeted sectors (child prostitution, child domestic work, children in mining and children employed in commercial agriculture) by 75% by 2005, and to eradicate it by 2010. The major thrust of the Timebound Program will be to create capacity and enabling environment to contribute to the Government of Tanzania's objective. Under the project funded by USDOL with ILO/IPEC, 30,000 children under the age of 18 in 11 districts will be prevented or withdrawn from child labor in the four target sectors.

The 30,000 children withdrawn in the 11 target districts will be enrolled in transitional schools in preparation for formal schooling or vocational training. The ILO/IPEC will be responsible for the transitional education for children above age 10 and vocational education for older children above age 14. Transitional education for children under 14 will last from 6–18 months. Children under age 10 will be directly mainstreamed into formal schools and this activity will be carried out by the Education Initiative. It will be important to form linkages between the formal school system, and transitional education and vocational education.

The 11 target districts are as follows: *Arusha Region:* Arusha, Arumeru, Simanjiro; *Singida Region:* Iramaba; *Dodoma Region:* Kondoa; *Iringa Region:* Iringa rural, Mufindi; *Tabora Region:* Urambo; *Dar es Salaam Region:* All 3 districts.

The number of beneficiaries may be modified, once project baseline surveys are conducted. The targeted sectors are as follows:

Prostitution

Target districts: Dar es Salaam (all districts); Iringa rural; Kondoa; Iramba; Arusha.

Estimated beneficiaries: 5,000 children.

Specific educational needs identified: Rehabilitation and counseling may be needed to combat triggers of prostitution including family breakdown and abuse, peer influence, lure of the city and dreams of the better life. Need for education on risk of HIV/AIDS and other sexually transmitted diseases.

Domestic Work

Target districts: Arusha: Kondoa; Iringa rural; Dar es Salaam (all districts).

Estimated beneficiaries: 10,000 children. Girls aged 9–15 migrating from rural to urban areas are employed mostly by working and middle class families as ''house girls.'' Many children are isolated, work 14–18 hours per day.

Specific educational needs identified: Reaching both children and employers, HIV/AIDS education to counter sexual abuse by employers or their relatives. Need for education on risk of HIV/AIDS and other sexually transmitted diseases.

Mining

Target districts: Simanjiro.

Estimated beneficiaries: 2,500 children.

Specific educational needs identified: Up to an estimated 70% of children attend primary school and often work to earn money to cover school fees and expenses, yet school attendance is irregular and performance is weak. A majority of those working full-time originated from female-headed households or were orphans. The majority in sector are male, but young girls can be found working as barmaids and cooks in restaurants, and bars catering to the mines. Interaction with adults leads to sexual abuse and potential of being infected with HIV/AIDS and STDs. Need for education on risk of HIV/AIDS and other sexually transmitted diseases.

Commercial Agriculture

Target districts: Arusha; Arumeru; Simanjiro; Iringa rural; Mufindi; Urambo.

Estimated beneficiaries: 17,500 children aged 5–17 working in commercial agriculture (tea, tobacco, and coffee).

Specific educational needs identified: Commercial farms are far from community residential areas and children living and working in such facilities have little if any hope of schooling as there are often no schools within the vicinity of any of the plantations.

Appendix F: Background Material Available in Hard Copy (Upon Request)

1. Timebound Program Manual.
2. Timebound Program Information Kit.
3. Project Document for Timebound Program El Salvador.
4. Project Document for Timebound Program Nepal.
5. Project Document for Timebound Program Tanzania.
6. Timebound Program Stakeholders Consultations—Tanzania.
7. Timebound Program Stakeholders Consultations—Nepal.
8. Rapid Assessments—Nepal.
9. Rapid Assessments—Tanzania.
10. Rapid Assessments—El Salvador.

[FR Doc. 01–29423 Filed 11–27–01; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Attestations by Employers Using Alien Crewmembers for Longshore Activities at Locations in the State of Alaska

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension to the collection of information on the Attestation by Employers Using Alien Crewmembers to Perform Longshore Work at Locations in the State of Alaska. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 28, 2002.

ADDRESSES: Comments and questions regarding the collection of information on Form ETA 9033–A, Attestation by Employers Using Alien Crewmembers for Longshore Activities in the State of Alaska, should be directed to Dale Ziegler, Chief, Division of Foreign Labor Certifications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210 ((202) 693–3010 (this is not a toll-free number)).

SUPPLEMENTARY INFORMATION:

I. Background

The information collection is required due to amendments to section 258 of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) (INA). The amendments created an Alaska exception to the general prohibition on the performance of longshore work by alien crewmembers in U.S. ports. Under the Alaska exception, before any employer may use alien crewmembers to perform longshore work in the State of Alaska, it must submit an attestation to ETA containing the elements prescribed by the INA.

The INA further requires that the Department make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation it has received.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed information collection 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 collections techniques or other forms of information, e.g., permitting electronic submissions of responses.

III. Current Actions

In order for the Department to meet its statutory responsibilities under the INA there is a need for an extension of an existing collection of information pertaining to employers' seeking to use alien crewmembers to perform longshore activities at locations in the State of Alaska.

Type of Review: Extension of a currently approved collection without change.

Agency: Employment and Training Administration, Labor.

Title: Attestations by Employers Using Alien Crewmembers for Longshore Activities at Locations in the State of Alaska.

OMB Number: 1205–0352.

Affected Public: Businesses or other for-profit.

Form: Form ETA 9033–A.

Total Respondents: 350.

Frequency of Response: Annually.

Total Responses: 350.

Average Burden Hours Per Response: 3.

Estimate Total Annual Burden Hours: 1,050.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also be become a matter of public record.

Signed at Washington, DC this 20th day of November, 2001.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 01–29505 Filed 11–27–01; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 72, Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste.

2. *Current OMB approval number:* 3150–0132.

3. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur; submittal of reports varies from less than one per year under some rule sections to up to an average from less than one per year under some rule sections to up to an average of about 100 per year under other rule sections. Applications for new licenses, certificates of compliance (CoCs), and amendments may be submitted at any time; applications for renewal of licenses would be required every 20 years for an Independent Spent Fuel Storage Installation (ISFSI) and every 40 years for a Monitored Retrievable Storage (MRS) facility. Application for renewal of a CoC would be required every 20 years.

4. *Who is required or asked to report:* Certificate holders of casks for the storage of spent fuel, licensees and applicants for a license to possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI, and the Department of Energy for licenses to receive, transfer, package and possess power reactor spent fuel, high-level waste, and other radioactive materials associated with spent fuel and high-level waste storage in an MRS.

5. *The number of annual respondents: 33.*

6. The number of hours needed annually to complete the requirement or request: 41,283 hours (27,777 hours for reporting plus 13,506 hours for recordkeeping) or approximately 1,251 hours per respondent.

7. *Abstract:* 10 CFR part 72 establishes requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI, and requirements for the issuance of licenses to the Department of Energy to receive, transfer, package, and possess power reactor spent fuel and high-level radioactive waste, and other associated radioactive materials, in an MRS. The information in the applications, reports and records is used by NRC to make licensing and other regulatory determinations. The revised estimate of burden reflects an increase primarily because of five rulemakings completed (and approved by OMB) since the last extension and an increase in the number of licensees.

Submit, by January 28, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *BJS1@NRC.GOV.*

Dated at Rockville, Maryland, this 20th day of November, 2001.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–29586 Filed 11–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information Collection:*

—DOE/NRC Forms 741 & 741A—Nuclear material Transaction Report;

—DOE/NRC Form 740M—Concise Note;

—NUREG/BR Revision 4—''Instructions for Completing Nuclar Material Transfer Reports DOE/NRC Forms 741, 741A, and 740M.''

2. *Current OMB approval number:*

NRC/DOE Forms 741/741A and NUREG/BR–0006 Revision 4: 3150–0003.

NRC/DOE Form 740M: 3150–0057.

3. *How often the collection is required:*

—DOE/NRC Forms 741/741A: As occasioned by special nuclear material or source material transfers, receipts, or inventory changes that meet certain criteria. Licensees range from not submitting any forms to submitting over 5,000 forms in a year.

—DOE/NRC Form 740M: As necessary to inform the US or the International Atomic Energy Agency (IAEA) of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement. On average, 15 licensees submit about 10 forms each per year—150 forms annually.

4. *Who is required or asked to report:* Persons licensed to possess specified quantities of special nuclear material or source material, and licensees of facilities on the US eligible list who have been notified in writing by the Commission that they are subject to Part 75.

5. *the number of annual respondents:*
—DOE/NRC Forms 741/741A: 1,200.
—DOE/NRC Form 740M: 15.

6. *The number of hours needed annually to complete the requirement or request:*
—DOE/NRC Forms 741/741A: 27,375 hours for NRC and Agreement State licensees (.75 hour per response with an average of approximately 22.8 hours per respondent for 1,200 respondents).
—DOE/NRC Form 740M: 113 hours (.75 hour per response with an average of approximately 7.5 hours per respondent for 15 respondents).

7. *Abstract:* NRC and Agreement State licensees are required to make inventory and accounting reports DOE/NRC Forms 741/741A for certain source or special nuclear material inventory changes, for transfers or receipts of special nuclear material, or for transfer or receipt of 1 kilogram or more of source material. Licensees affected by Part 75 and related sections of Parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the US or the IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement. The use of Forms 740M, 741, and 741A, together with NUREG/BR–0006 Revision 4, the instructions for completing the forms, enables NRC to collect, retrieve, analyze as necessary, and submit the data to IAEA to fulfill its reporting responsibilities.

Submit, by January 28, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide website (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *BJS1@NRC.GOV.*

Dated at Rockville, Maryland, this 20th day of November, 2001.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–29587 Filed 11–27–01; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Entergy Nuclear Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–59, issued to Entergy Nuclear Operations, Inc. (ENO or the licensee) for operation of the James A. FitzPatrick Nuclear Power Plant, (FitzPatrick), located in Oswego County, New York.

The initial notice of consideration of issuance of amendment to facility operating license and opportunity for hearing was originally published in the **Federal Register** (64 FR 60854) on November 8, 1999, and corrected in the **Federal Register** (64 FR 69574) on December 13, 1999. The information included in the supplemental letters indicates the original notice, that included 13 proposed beyond-scope issues (BSls) to the improved Technical Specifications (ITS) conversion, needs to be expanded and revised to include a total of thirty one BSls and requires re-notice in the **Federal Register**. This notice supercedes the previous notice.

The proposed amendment, requested by the Power Authority of the State of New York, the former licensee, in a letter dated March 31, 1999, as supplemented by letters dated May 20, June 1, July 14, October 14, 1999, February 11, April 4, April 13, June 30, July 31, September 12, September 13, and October 23, 2000, represents a full conversion from the current Technical Specifications (CTS) to a set of ITS based on NUREG–1433, ''Standard Technical Specifications (STS) for General Electric Plants, BWR/4'' Revision 1, dated April 1995. On November 21, 2000, the Power Authority of the State of New York's (PASNY's) ownership interest in FitzPatrick was transferred to Entergy Nuclear FitzPatrick, LLC, to possess and use FitzPatrick and to Entergy Nuclear Operations (ENO), Inc. to possess, use and operate FitzPatrick. By letter dated January 26, 2001, ENO requested that the NRC continue to review and act on all requests before the Commission which had been submitted by PASNY before the transfer. ENO has supplemented the original application with supplements by letter dated February 7, February 20, May 31 and August 6, 2001. NUREG–1433 has been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the Technical Specifications (TSs) for nuclear power plants. As part of this submittal, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the CTS and using NUREG–1433 as a basis, proposed an ITS for FitzPatrick. The criteria in the Final Policy Statement was subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

The licensee has categorized the proposed changes to the CTS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes and less restrictive changes.

Administrative changes are those that involve restructuring, renumbering, rewording interpretation and complex rearranging of requirements and other

changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1433 and does not involve technical changes to the CTS. The proposed changes include: (a) Providing the appropriate numbers, etc., for NUREG–1433 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1433 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TSs. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the 10 CFR 50.36(c)(2)(ii) and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in the attachment of the licensee's March 31, 1999, submittal, which is entitled, ''Application of NRC Selection Criteria to James A. FitzPatrick Nuclear Power Plant Technical Specifications'' (Split Report) in Volume 1 of the submittal. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TSs to administratively controlled documents such as the quality assurance program, the final safety analysis report (FSAR), the ITS BASES, the Technical Requirements Manual (TRM) that is incorporated by reference in the FSAR, the Core Operating Limits Report (COLR), the Offsite Dose Calculation Manual (ODCM), the Inservice Testing (IST) Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the STS that is more restrictive than the CTS that the licensee proposes to adopt in the ITS, the licensee has provided an explanation as to why it has concluded that adopting the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the Improved standard Technical Specifications. Generic relaxations contained in NUREG–1433 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design is being reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1433, thus providing a basis for the ITS, or if relaxation of the requirements in the CTS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are different to the requirements in both the CTS and the Standard Technical Specifications (STS) NUREG–1433. These proposed beyond-scope issues to the its conversion are as follows:

1. ITS 3.3.1.1, Reactor Protection System (RPS) Instrumentation Function 5, reactor scram on main steam isolation valve (MSIV) closure. The trip setting valve was changed from less than or equal to 10 percent (in the CTS) to less than or equal to 14 percent in the ITS.

2. ITS 3.3.1.1 changed the CTS allowable values for turbine stop valve closure, the turbine control valve fast closure and the EHC oil pressure low functions setpoints based on recent setpoint calculations.

3. ITS 3.3.3.1, Suppression Pool Water Temperature is modified by footnote (c), which states : ''A channel requires 15 to 16 RTDs to be OPERABLE.'' This results in a CTS change and a deviation from the STS.

4. ITS 3.3.4.1 changes the CTS and ISTS channel configuration from 2 channels per trip system to 4 channels in one trip system.

5. ITS 3.3.5.1 changed the CTS allowable values for CS pump flow, LPCI pressure, LPCI pump flow, HPCI vessel water level high and HPCI pump discharge flow low based on recent setpoint calculations.

6. ITS 3.3.5.1, Automatic Depressurization System (ADS) initiation timer and the containment Spray (CS) and Low-Pressure Coolant Injection (LPCI) pump start timer values were changed from the CTS and the ISTS and tolerances relaxed to allow the extension of calibration Frequency to 24 months in the ITS.

7. ITS 3.3.5.1 changed CTS Table 3.2–2 Item 9, Reactor Low Pressure, LPCI and Core Spray Injection Valve Open Permissive of >450 psig to >410 psig in ITS Table 3.3.4.1–1 Functions 1.c and 2.c.

8. ITS 3.3.5.1 changed CTS Table 3.3–2, Item 5, Reactor Low Level Containment spray Interlock trip level setting of >~0.0 inch to >~1.0 inch in ITS Table 3.3.5.1–1.

9. ITS 3.3.5.1 changed the trip setpoint Allowable Values in CTS Table 3.2–2 for the Core Spray Pump Start Timer (item 11), the RHR LPCI Pump Start Timer (item 12, and the Auto Blowdown Timer (item 13) in ITS Table 3.3.5.1–1 Functions 1.d, 2.f, 4.b and 5.b to reflect values corresponding to a 6-month to 24-month reduction in calibration Frequency.

10. ITS 3.3.5.1 changed the trip setpoint Allowable Values in CTS Table 3.2–1 for the suppression Chamber High Level (item 13) in ITS Table 3.3.5.1–1 Function 3.e to 14.5 inches which is <~6 inches above normal level.

11. ITS 3.3.5.1 changed the CTS Table 3.2–2 trip level setting for Item 24, Reactor Low-pressure from 285 to 335

psig to >~300 psig in ITS Table 3.3.5.1 Function 2.d.

12. ITS 3.3.6.1 changed the Allowable Values in CTS Table 3.2–1 for the HPCI Turbine steam Line High Flow to reflect values corresponding to 160 to 161 inches of water differential pressure (dp) in ITS TABLE 3.3.6.1–1 Function 3.a.

13. ITS 3.3.6.1 changed the trip setpoint Allowable Value ''HPCI/ Reactor Core Isolation cooling (RCIC) Steam Line Low Pressure'' in ITS Table 3.3.6.1–1 Function 3.b and 4.b to reflect values corresponding to >60 and <~90 for HPCI and >61 and <~90 for RCIC.

14. ITS 3.3.6.1 changed the CTS allowable values of setpoint temperatures for the RWCU, HPCI, and RCIC.

15. ITS 3.3.6.1 changed the CTS allowable values for the setpoints for main steam line flow high, main steam tunnel area temperature high, HPCI steam line flow high, HPCI turbine exhaust diaphragm pressure high, HPCI steam line penetration (drywell entrance) area temperature high, HPCI steam line torus room area temperature high, HPCI equipment area temperature high, RHR heat exchanger A area temperature high, reactor building (RB) southwest area of elevation 272 feet temperature high, RCIC steam line flow high, RCIC steam supply line pressure low, RCIC turbine exhaust diaphragm pressure high RCIC steam supply line pressure low, RCIC turbine exhaust diaphragm pressure high, RCIC steam line steam line penetration (drywell entrance) area temperature high, RCIC steam line torus room area temperature high, RCIC equipment area temperature high, RWCU suction line penetration area temperature high, RWCU heat exchanger room area temperature high, RWCU pump area temperature high (Pumps A and B), and SDC reactor pressure high to be consistent with support setpoint calculations.

16. ITS 3.3.7.3 changed the LCO section of the Bases consistent with the changes made to accommodate RAI 3.3.1.1–1.

17. ITS 3.3.8.1 safety analysis section of the Bases has been changed to be consistent with changes made as a result of RAI 3.3.1–1.SI

18. ITS 3.3.8.2 changed the Trip Level Settings for Loss of Offsite Power (LOP) instrumentation listed in CTS Table 3.2.–2 to new ITS Allowable Values listed in ITS Table 3.3.8.1–1.

19. ITS 3.3.8.2 changed CTS 4.9.G.3 setpoint or Allowable Value of >~108V to >109.9V in its SR 3.3.8.2.3.

20. ITS 3.4.7 added an RHR Shutdown Cooling-Hot Shutdown specification to the ITS SPECIFICATION based on current licensing basis been restored to operable status within 30 days. ITS 3.3.3.1 ACTION B specifies initiating action in accordance with ITS 5.5.6 which relates to reporting requirements.

21. ITS 3.4.9, Reactor Coolant System (RCS) Pressure/Temperature (P/T) Limits in CTS were changed to add a new alternate criteria in ITS to allow idle recirculating pump (loop) start if the operating loop is greater than 40 percent flow or if the idle loop is less than 40% flow for less than or equal to 30 minutes.

22. ITS 3.5.1 and ITS 3.5.2, Emergency Core Cooling System (ECCS)-Operating and Shutdown, High-Pressure Coolant Injection (HPCI) and Residual Heat Removal (RHR) LPCI pump flow rates in CTS were reduced to SAFER/GESTR-Loss-of-Coolant Accident (LOCA) flow rates in the ITS.

23. ITS 3.5.3 adds an additional requirement to ITS SR 3.5.3.3 that requires the performance of the surveillance ''Once each startup prior to exceeding 25% RTP.''

24. ITS 3.5.3 divides the existing CTS 4.5.E.1.d surveillance requirement that ''RCIC delivers at least 400 gpm against a system head corresponding to a reactor vessel pressure of 1195 psig to 150 psig'' into two separate Surveillance Requirements: ITS SR 3.4.3.5 and ITS SR 3.5.3.6.

25. ITS 3.6.1.1 deletes the CTS 4.7.A.1 requirement to inspect the interior surface of the drywell and suppression chamber above the water line every 24 months based on the inspection being required by the primary containment leakage rate testing program 3 times in 10 years.

26. ITS SR 3.6.1.1.1 changes the note in the ISTS markup that LPCI and Core Spray air operated testable check valve leakage test failure does not result in an ITS SR 3.6.1.1.1 failure.

27. ITS 3.6.1.3 changed CTS LPCI and CS testable check valve testing per Primary Containment Leakage Rate Testing (PCLRT) program (twice every 24 months).

28. ITS SR 3.6.1.7.1, SR 3.6.1.7.2, and B 3.6.1.7 changes the frequency of performing a functional test of each required vacuum breaker from 31 days as indicated in the ISTS to a new schedule in accordance with the IST Program which is 92 days.

29. ITS SR 3.6.2.3.2 was changed to add the word ''required'' to make it clearer that the SR is only applicable to the single RHR pump in a subsystem rather than both pumps in a subsystem that are provided by design.

30. ITS 3.8.1, AC Sources—Operating, Condition D for two reserve circuits inoperable in CTS was changed to add new interim power reduction to less than or equal to 45 percent with a 36-hour Completion Time in the ITS.

31. ITS 3.8.4, DC Sources—Operating (in CTS) was changed to allow 8 hours to restore one inoperable source in the ITS.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the commission's regulations.

By December 28, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the

petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include alist of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. David E. Blabey, attorney for the licensee, 1633 Broadway, New York, New York 10019.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10CAR 2.714(a)(1)(l)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92. For further details with respect to the proposed action, see the licensee's application dated March 31, 1999, as supplemented by letters dated May 20, June 1, July 14, October 14, 1999, February 11, April 4, April 13, June 30, July 31, September 12, September 13, October 23, 2000, February 7, February 20, May 31, and August 6, 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 Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http*\\www.nrc.gov. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 21st day of November 2001.

Guy S. Vissing,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Note: The publication date for this notice will change from every other Wednesday to every other Tuesday, effective January 8, 2002. The notice will contain the same information and will continue to be published biweekly.)

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 5 through November 16, 2001. The last biweekly notice was published on November 14, 2001 (66 FR 57116).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 28, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for

public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by email to pdr@nrc.gov.

AmerGen Energy Company, LLC,. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: April 4, 2001, as supplemented on October 12, 2001.

Description of amendment request: The proposed amendment request would delete Technical Specifications (TSs) 5.3.1.B and 5.3.1.C. These TSs restrict the handling of heavy loads over irradiated fuel stored in the storage pool. The basis for deleting these TSs is the upgrade of the reactor building crane and associated handling systems to a single-failure proof system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed amendment does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Until August 2000, the reactor building crane was not single-failure-proof. For heavy load handling associated with the spent fuel pool, Oyster Creek was consistent with Section 5.1.4(2) of NUREG–0612: ''The effects of heavy load drops in the reactor building should be analyzed to show that the evaluation criteria of Section 5.1 are satisfied.'' An alternative to this is Section 5.1.4(1): ''The reactor building crane, and associated lifting devices used for handling of heavy loads, should satisfy the single-failure-proof guidelines of Section 5.1.6 of this report.'' The upgraded crane and handling systems satisfy the guidelines of Section 5.1.6. Therefore, the licensing basis for the reactor building crane with regard to its use in handling heavy loads above the spent fuel storage pool is being revised to include Section 5.1.4(1) of NUREG–0612 in addition to 5.1.4(2).

The cask drop protection system was required with the original crane because the load drop analysis will yield unacceptable consequences to the spent fuel storage pool (SFSP) structure. The cask drop protection system (CDPS) serves to mitigate the consequences of a cask drop accident involving the original crane which complied with NUREG–0612 Phase I. The upgraded single-failure-proof crane satisfies the criteria of NUREG–0612 Section 5.1.6. Therefore, the reactor building crane eliminates reliance on the design function of the CDPS because the probability of a heavy load drop is very low.

With the proposed revisions to the TSs, the evaluation criteria of NUREG–0612, Section 5.1 is met with a single-failure-proof crane that satisfies the guidelines of Section 5.1.6 or with consequence analyses that satisfies Section 5.1.4(2).

The proposed TS revisions do not significantly change the potential for unacceptable consequences to the plant in conducting heavy load handling above the SFSP because the probability of a load drop accident caused by use of the reactor building crane has been reduced to where it is very unlikely, and therefore, can be considered not credible within regulatory accepted standards.

Therefore, the proposed TS revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The CDPS was installed in the Oyster Creek SFSP to mitigate the effects of a cask drop when the reactor building crane was not single-failure proof. The CDPS acts as a hydraulic dashpot to limit the velocity of a falling cask to attenuate impact forces to within acceptable levels. The CDPS structure cannot be removed from the spent fuel pool without eliminating its functional requirement. The use of the CDPS increases the duration of cask lifts and exposure to personnel. Therefore, eliminating the complications caused by the use of the CDPS together while improving the reliability of the crane and associated systems does not create the possibility of a new or different kind of accident.

Therefore, operation of the facility in accordance with the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed TS change will remove the load limit over the SFSP and CDPS restrictions when the reactor building crane is used with single-failure-proof handling systems that comply with criteria in Section 5.1.6 of NUREG–0612.

The reactor building crane was upgraded to single-failure-proof in compliance with NUREG–0554. The upgraded crane and handling system is in compliance with NUREG–0612, Sections 5.1.1 and 5.1.6. The NRC in NUREG–0612, Section 5.2 documented their review of the potential consequences of a load drop when handled by a single-failure-proof crane using single-failure-proof rigging compared with other alternatives and concluded as follows:

''The likelihood for unacceptable consequences in terms of excessive releases of gap activity or potential for criticality due to accidental dropping of postulated heavy loads after Receptionist (OWFN and TWFN) implementation of the guidelines of Section 5.1 is very low.''

Therefore, there is a very minimal chance of a load drop that could result in consequences that exceed the regulatory accepted standards when the load is handled by a single-failure-proof crane and handling system, and performed in accordance with Section 5.1 of NUREG–0612. A single-failure-proof crane design incorporates the applicable design basis event that in this case is a seismic event. A load drop is of such low probability that it is considered unlikely when it is handled with the reactor building crane because the crane and its handling systems satisfy the NUREG–0612 criteria for a single-failure-proof crane. Therefore, any load lifted over the SFSP using the reactor building crane, and adhering to NUREG–612 Phase I guidelines has a very low probability of falling into the spent fuel pool accidentally or as a result of a design basis event.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: L. Raghavan, Acting.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: September 10, 2001.

Description of amendment request: The proposed change would revise the requirement for the source range monitor (SRM) operability during core operations. The proposed change would require two SRM channels to be operable, one with its detector located in the core quadrant where core alterations are being performed, and another with its detector located in an adjacent quadrant.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS [Technical Specification] change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises Technical Specification 3.9.D for source range monitor operability requirements during core alterations. The only accident described in the Final Safety Analysis Report (FSAR) while the plant is in Cold Shutdown or Refueling is a fuel handling (dropped bundle) accident. The proposed change involves equipment that is not involved in the mitigation or prevention of a fuel handling accident as described in FSAR. Therefore, the change to SRM operability requirements does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to TS 3.9.D does not involve any physical alteration of plant equipment or system configuration. Core reactivity and reactivity control functions are not affected, and adequate reactivity monitoring capability is maintained. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change to TS 3.9.D affects the operability requirements for source range monitors during core alterations. The SRMs do not perform any required functions for mitigating the consequences of an accident. The current specification only requires one operable SRM. The proposed specification will ensure redundant monitoring is available to detect changes in the reactivity condition of the core by requiring the operability of at least two source range monitors. This will provide adequate capability for detecting an inadvertent criticality. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: L. Raghavan, Acting.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: September 11, 2001

Description of amendment request: The purpose of the proposed revision to the Technical Specifications (TSs) is to delete the cycle-specific footnote for the Safety Limit Minimum Power Critical Ratio (SLMCPR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the cycle specific SLMCPR limit for incorporation into the Technical Specification, and its use to determine cycle specific thermal limits, has been performed using the methodology discussed in ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–13, and Amendment 25. Amendment 25 was approved by the NRC in a Safety Evaluation Report dated March 11, 1999. The footnote to Technical Specification 2.1.A is being deleted. The footnote associated with the Technical Specification 2.1.A was originally included to ensure that the SLMCPR was only applicable for the identified cycle because Amendment 25 was not yet NRC approved. Amendment 25 has subsequently been approved. Therefore, this footnote is no longer necessary. The footnote was for information only, and has no impact on the design or operation of the plant. Cycle-specific SLMCPR values will continue to be developed in accordance with NRC approved methods, which ensures that applicable regulatory requirements are met [. . .]

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change deletes the footnote contained in Technical Specification 2.1.A as the result of the NRC approval of Amendment 25 to NEDE–24011–P–A. This change does not affect the design or operation of any plant structures, systems or components. Cycle-specific SLMCPR values will continue to be developed in accordance with NRC approved methods, which ensures that applicable regulatory requirements are met. Changes to the SLMCPR value specified in the Technical Specification will require prior NRC approval [. . .]

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed change deletes the footnote contained in Technical Specification 2.1.A as the result of the NRC approval of Amendment 25 to NEDE–24011–P–A. Cycle-specific SLMCPR values will continue to be developed in accordance with NRC approved methods as specified in the Technical Specifications. These methods ensure that applicable regulatory requirements are met. Changes to the SLMCPR value specified in the Technical Specifications will require prior NRC approval [. . .]

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: L. Raghavan, Acting.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: September 11, 2001.

Description of amendments request: The amendments would allow the non-operating shutdown cooling loop to be declared inoperable for a period up to 2 hours for surveillance testing in MODE 6. The request is based on Technical Specification Task Force Traveler Number 361, Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment would add a note to the limiting condition of operation (LCO) of Technical Specification 3.9.5, Shutdown Cooling (SDC) and Coolant Circulation—Low Water Level, that would permit one required SDC loop to be declared inoperable for a period of up to 2 hours for surveillance testing, provided the other SDC loop is OPERABLE and in operation.

Allowing the non-operating SDC loop to be declared inoperable in accordance with the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated because the SDC system is not an accident initiator of any previously evaluated accidents. Because the SDC system does not initiate any previously analyzed accidents, it cannot increase the probability of these accidents occurring.

Furthermore, allowing the non-operating SDC loop to be declared inoperable in accordance with the proposed amendment does not involve a significant increase in the consequences of an accident previously analyzed because only one operating SDC loop is necessary to perform the SDC system function of removing decay heat from the reactor core.

The proposed amendment does not represent a change to the design of the facility. Nor does the proposed amendment prevent the safety function of the shutdown cooling system from being performed. The proposed amendment does not alter, degrade, or prevent actions described or assumed in any accident described in the PVNGS Updated Final Safety Analysis Report (UFSAR) from being performed. Therefore, since the SDC system is not an accident initiator and because only one SDC loop is necessary to perform the design function, the proposed amendment would not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment would add a note to the limiting condition of operation (LCO) of Technical Specification 3.9.5, Shutdown Cooling (SDC) and Coolant Circulation—Low Water Level, that would permit one required SDC loop to be declared inoperable for a period of up to 2 hours for surveillance testing, provided the other SDC loop is OPERABLE and in operation. Allowing the non-operating SDC loop to be declared inoperable in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because: (1) The proposed amendment does not represent a change to the design of the plant, (2) the proposed amendment does not involve the installation of new or different equipment, (3) the proposed amendment does not alter the methods for operating plant equipment, and (4) the proposed amendment does not affect any other safety related equipment. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment would add a note to the limiting condition of operation (LCO) of Technical Specification (TS) 3.9.5, Shutdown Cooling (SDC) and Coolant Circulation—Low Water Level, that would permit the non-operating SDC loop to be declared inoperable for a period of up to 2 hours for surveillance testing in MODE 6, when the water level is less than 23 feet above the top of the reactor vessel flange, provided the other SDC loop is OPERABLE and in operation. Allowing the non-operating SDC loop to be declared inoperable in accordance with the proposed amendment does not involve a significant reduction in a margin of safety because the operating SDC loop provides sufficient decay heat removal capacity. The proposed change does not impact the operating SDC loop. In the unlikely event that the operating SDC loop becomes inoperable concurrent with the inoperability of the non-operating SDC loop allowed by the proposed note, adequate controls exist within the TS 3.9.5 Required Actions to ensure adequate decay heat removal. In addition, if the operating SDC loop fails, operator action to restore the SDC loop being tested to OPERABLE status and place that SDC loop in operation will be timely such that adequate decay heat removal capability is maintained. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the responses to these three criteria, Arizona Public Service Company (APS) has concluded that the proposed amendment involves no significant hazard consideration.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: November 7, 2001.

Description of amendments request: The proposed license amendments would revise Technical Specification (TS) 3.1.4, ''Control Rod Scram Times'' and TS 5.5.10, ''Technical Specifications Bases Control Program.'' TS 3.1.4 would be revised to better delineate the requirements for testing control rod scram times following refueling outages. TS 5.1.10 would be revised to reference Title 10 of the Code of Federal Regulations (10 CFR) Section 50.59. This license amendment application incorporates the NRC-approved Technical Specification Task Force (TSTF) Item 222, Revision 1, ''Control Rod Scram Time Testing,'' and TSTF Item 364, Revision 0, ''Revision to TS Bases Control Program to Incorporate Changes to 10 CFR 50.59.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to adopt TSTF–222, Revision 1, is an administrative clarification of existing Technical Specification requirements regarding scram time testing requirements for control rods. The current wording of Surveillance Requirement 3.1.4.1 requires each control rod to be tested if any fuel movement occurs in the reactor pressure vessel. Surveillance Requirements 3.1.4.3 and 3.1.4.4 require only the affected control rods to be tested. The NRC-approved TSTF–222, Revision 1, clarifies that post-refueling scram time testing of control rods only applies to control rods affected by work activities. The requirement to test all control rods following routine refueling outages remains unchanged. As such, there is no effect on initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to adopt TSTF–364, Revision 0, is an administrative change to provide consistency between the Technical Specification requirements for the Technical Specification Bases Control Program and the regulatory requirements of Title 10, Section 50.59 of the Code of Federal Regulations, as revised by the NRC on October 4, 1999. The change will have no affect on the initiators of analyzed events or assumed mitigation of accidents or transients.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to adopt TSTF–222, Revision 1 and TSTF–364, Revision 0, do not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety.

The proposed change to adopt TSTF–222, Revision 1, will not reduce a margin of safety because it has no effect on any safety analysis assumptions. The proposed license amendment implements an administrative clarification to better delineate the requirements for scram time testing control rods following refueling outages and for control rods requiring testing due to work activities. The requirement to test all control rods following a routine refueling outage remains unchanged. As such, the proposed change does not involve a significant reduction in the margin of safety.

The proposed change to adopt TSTF–364, Revision 0, is an administrative change to provide consistency between the Technical Specification requirements for the Technical Specification Bases Control Program and the regulatory requirements of Title 10, Section 50.59 of the Code of Federal Regulations, as revised by the NRC on October 4, 1999. The change will not reduce the margin of safety because the change has no effect on any safety analyses assumptions. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: August 24, 2001.

Description of amendment request: The proposed amendment would delete the Technical Specification (TS)-required action which, in the event of inoperability of the oscillation power range monitor (OPRM) trip function, limits plant operation above 25-percent power to 120 days. Instead, continued plant operation would be allowed if a TS-required action is taken to implement an alternate method to detect and suppress thermal-hydraulic instability oscillations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The OPRM function is not considered as an initiator of any previously analyzed accident. Therefore, this proposed change does not significantly increase the probability of such accidents. This proposed change would allow the use of existing well-established alternate methods to detect and suppress the thermal hydraulic instability oscillations. Considering that multiple Boiling Water Reactor plants, including Fermi 2, have satisfactorily operated using alternate stability monitoring methods for extended periods of time prior to the installation of OPRM systems, it is concluded that these measures are adequate. Therefore, the consequences of a previously analyzed accident would not be significantly increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

This proposed change would allow the use of an existing alternate method to detect and suppress thermal hydraulic instability oscillations to continue to operate the reactor above 25% power in the event of the inoperability of the OPRM system. Considering that multiple Boiling Water Reactor plants, including Fermi 2, have satisfactorily operated using alternate stability monitoring methods for extended periods of time, it is concluded that these measures are adequate, and that the proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: William D. Reckley.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: October 23, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) surveillance requirement (SR) 3.8.4.1 to change limits for the battery terminal voltage when on a float charge for 125 VDC station battery 31 following the replacement of this battery in early 2002. The proposed amendment would also revise the applicable TS Bases section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed License Amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed TS SR change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The newly installed battery 31 will consist of 59 cells, instead of the presently installed 58-cell battery. An additional cell will be added to 31 Battery in order to provide an acceptable design margin for future load addition to this battery.

The resulting change in the minimum 31 Battery terminal voltage on float charge to 125.7 V is due to the additional cell added. This new value will ensure that the 31 Battery is properly verified to be functional to meet its design requirements. Calculations demonstrated in IP3–ECCF–845 indicate that 31 Battery DC circuit coordination is not affected by the proposed replacement of the existing battery with a 59-cell battery. The proposed TS SR change does not affect accident initiators or precursors, nor do they alter design assumptions for the systems or components used to mitigate the consequences of an accident as analyzed in Chapter 14 of the IP3 UFSAR [Indian Point 3 Updated Final Safety Analysis Report].

2. Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This TS SR change for 31 Battery is based upon replacement of the 31 Battery with a new 59-cell battery. This new battery 31 is at least equivalent to the existing 58-cell 31 Battery. This new 31 battery, with the added cell, provides an acceptable design margin to the 31 Battery. Battery 31 circuit coordination is not adversely affected by the addition of this new battery with 59 cells. The proposed changes to this TS SR do not introduce any new accident initiators or precursors, or any new design assumptions for those components used to mitigate the consequences of an accident.

3. Does the proposed License Amendment involve a significant reduction in a margin of safety?

No. During the replacement of the existing 31 battery with a new 59-cell battery and the subsequent TS SR change that verifies higher minimum terminal voltage on float charge, the new 31 battery and the requirements associated with verifying its design functionality will not involve a significant reduction in the margin of safety. The replacement 31 Battery is at least equivalent to the existing battery. The additional cell in the proposed new 59-cell battery provides an acceptable design margin, which will be 120% for 31 battery with 59 cells. The increase in the number of cells from 58 to 59 will result in a higher 31 Battery terminal voltage on float charge. This proposed TS SR simply documents the verification of this new minimum voltage value. The minimum terminal voltage value for the new 32 Battery will not change nor be impacted by this TS change. Accordingly, there is no significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: L. Raghavan (Acting).

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 15, 2001.

Description of amendment request: The proposed change to Technical Specification 3.4.7 limits Reactor Coolant System activity permitted by the ACTION statement to 60 microcuries per gram (μCi/gm) at all power levels. The letdown line break accident analysis in the Final Safety Analysis Report is also changed to reflect revised dose consequences.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed change to the Technical Specifications (TS) conservatively limits Reactor Coolant System (RCS) activity permitted by Action Statement 3.4.7.a to 60 μCi/gm at all reactor power levels. The proposed change to the Final Safety Analysis Report (FSAR) Section 15.6.3.1 revises the letdown line break accident analyses.

The probability of a previously evaluated accident is not affected by this change because the pre-existing iodine spike is not an accident initiator and the FSAR change does not affect any plant Structure, Systems, or Component (SSC) but merely determines the consequences of the previously evaluated accident.

This TS change is conservative in that it will reduce the accident consequences for events occurring at lower power levels.

The proposed FSAR change meets the original SER [Safety Evaluation Report] acceptance criteria with the exception of the Exclusion Area Boundary (EAB) accident induced iodine spiking thyroid dose. The SRP [Standard Review Plan] acceptance criteria for the EAB accident induced iodine spiking thyroid dose is a small fraction of the 10 CFR [Part] 100 limits (30 rem). The proposed change falls well within 10 CFR [Part] 100 limits (75 rem).

The EAB accident induced iodine spiking thyroid dose consequences are considered acceptable and reasonable for the following reasons:

- The letdown line break event starting from the most limiting parameters allowed by the TS LCO [Limiting Conditions for Operation] on RCS activity, pressure, temperature, primary to secondary leakage, and proceeding unmitigated for 30 minutes is highly unlikely. The additional use of conservative assumptions such as an iodine spiking factor of 500, maximum bounding letdown flow, worst case 95 percentile atmospheric dispersion factors, flashing fraction based on 560 °F even though the break flow would travel through the regenerative heat exchanger and cool down, no activity plate out, no ground deposition, and no activity decay in the transit to the exclusion area boundary significantly increases the overall conservative nature of the calculation.
- Currently, FSAR Table 15.6–4 lists the 'Realistic' EAB thyroid dose as 0.46 rem. The realistic dose is based upon no iodine spike, 50 percentile X/Q [atmospheric dispersion factor], and 0.12% failed fuel RCS activity. The best estimate dose consequences using the new analysis methodology with the normal plant operating parameters would remain below 0.46 rem even for the accident induced iodine spiking event.
- The new analysis accident induced iodine spiking results would remain below the SRP acceptance criteria if any one of the following normal plant operating parameters were used: RCS steady state activity, iodine spiking factor, letdown flow, or atmospheric dispersion factors.

The letdown line break consequences are considered acceptable due to the unlikeliness of the event and conservative nature of the analyses. The 'no iodine spike' results remain within a small fraction of the 10 CFR [Part] 100 limits; the 'accident induced iodine spike' results fall well within the 10 CFR [Part] 100 limits; and the 'pre-existing iodine spike' results are within the 10 CFR [Part] 100 limits.

Therefore, this change does not involve a significant increase in the probability or consequence of any accident previously evaluated.

2. Will the operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The probability of a new or different accident is not affected by this change because the pre-existing iodine spike is not an accident initiator and the FSAR change does not affect any plant Structure, Systems, or Components (SSC) but merely determines the consequences of the previously evaluated accident.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will the operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response:

The TS change is more limiting in that it will reduce the accident consequences for events occurring at lower plant levels.

The proposed FSAR change meets the original SRP acceptance criteria with the exception of the Exclusion Area Boundary (EAB) accident induced iodine spiking thyroid dose. The SRP acceptance criteria for the EAB accident induced iodine spiking thyroid dose is a small fraction of the 10 CFR [Part] 100 limits (30 rem). The proposed change falls well within 10 CFR [Part] 100 limits (75 rem).

The EAB accident induced iodine spiking thyroid dose consequences are considered not to be a significant reduction in the margin of safety for the following reasons.

- The letdown line break event starting from the TS LCO on RCS activity, pressure, temperature, primary to secondary leakage, and proceeding unmitigated for 30 minutes is highly unlikely. The additional use of conservative assumptions such as an iodine spiking factor of 500, maximum bounding letdown flow, worst case 95 percentile atmospheric dispersion factors, flashing fraction based on 560 °F even though the break flow would travel through the regenerative heat exchanger and cool down, no activity plate out, no ground deposition, and no activity decay in the transit to the exclusion area boundary significantly increases the overall conservative nature of the calculation.
- The FSAR Table 15.6–4 lists the ''Realistic'' EAB thyroid dose as 0.46 rem. The realistic dose is based upon no iodine spike, 50 percentile X/Q, and 0.12% failed fuel RCS activity. The best estimate dose consequences using the new analysis methodology with the normal plant operating parameters would remain below 0.46 rem even for the accident induced iodine spiking event.
- The new analysis accident induced iodine spiking results would remain below the SRP acceptance criteria if any one of the following normal plant operating parameters were used: RCS steady state activity, iodine spiking factor, letdown flow, or atmospheric dispersion factors.

The letdown line break consequences are considered acceptable due to the unlikeliness of the event and conservative nature of the analyses. The ''no iodine spike'' results remain within a small fraction of the 10 CFR [Part] 100 limits; the ''accident induced iodine spike'' results fall well within the 10 CFR [Part] 100 limits; and the ''pre-existing iodine spike'' results are within the 10 CFR [Part] 100 limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

[Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois]

Date of amendment request: September 21, 2001.

Description of amendment request: The proposed amendment would revise the Reactor Core Safety Limit (SL) for peak fuel centerline temperature from less than or equal to 4700 °F (i.e., the current TS limit) to the design basis fuel centerline melt temperature of less than 5080 °F, for unirradiated fuel, decreasing by 58 °F per 10,000 Megawatt-Days per Metric Tonne Uranium (MWD/MTU) burnup.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The use of high burnup rods or assemblies will not increase the probability of any accident previously evaluated. These high burnup rods or assemblies will continue to satisfy all fuel mechanical, nuclear, thermal-hydraulic, and transient analysis design criteria.

Fuel type is not directly related to the probability of any previously evaluated accidents; however, adhering to applicable design criteria and standards precludes challenges to components and systems that could increase the probability of an accident. The high burnup fuel rods will continue to satisfy the Specified Acceptable Fuel Design Limits (SAFDLs) specified in the Westinghouse Topical Report, WCAP–12488–A, ''Westinghouse Fuel Criteria Evaluation Process,'' which was approved by the Nuclear Regulatory Commission (NRC) on July 27, 1994. The clad integrity of the four high burnup rods in the LTA will be maintained as the LTAs will be placed in non-limiting core locations as permitted by TS 4.2.1 and will continue to meet the safety parameter requirements. In addition, the acceptability of using the four high burnup rods in an LTA is evaluated in the Byron Station, Unit 2, Cycle 10 Reload Safety Evaluation which is supported by Westinghouse Topical Report, ''Extended Burnup Operation Assessment for the VANTAGE+ Design in Byron, Unit 2, Cycle 10,'' dated March 2001.

It has been shown in Westinghouse Topical Report, WCAP–12610–P–A, ''VANTAGE+ Fuel Assembly Reference Core Report,'' approved by the NRC in April 1995, that even though there are variations in core inventories of isotopes due to extended burnup up to 75,000 MWD/MTU, there are no significant increases of isotopes that are major contributors to accident doses. It is worthy to note that, at higher burnups, there is a reduction in certain isotopes that are major dose contributors under accident situations (e.g., Kr–88). With only four high burnup rods in the entire core, any variation of isotopes will be extremely small. Thus, the radiation dose limitations of 10 CFR [Part] 100, ''Reactor Site Criteria,'' will not be exceeded.

The bases for establishing the fuel centerline melt temperature are discussed in WCAP–12610–P–A, noted above, and implemented by Westinghouse Topical Report WCAP–14483–A, ''Generic Methodology for Expanded Core Operating Limits Report,'' approved by the NRC on January 19, 1999. These methodologies and associated analyses confirm that the present analytical limits for all accidents will be maintained.

Based on this evaluation, it is concluded that the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed TS changes create the possibility of a new or different kind of accident from any accident previously evaluated?

As required by WCAP–12488–A, the LTA with the four high burnup rods must satisfy the five guidelines accepted by the NRC. These guidelines are as follows:

- Design of LTAs are mechanically and hydraulically compatible with existing fuel
- Peaking factors meet the TS limits
- NRC approved/accepted safety/design methods and codes are used
- No SAFDLs are exceeded
- Not more than eight LTAs per core are inserted

As previously noted, TS 4.2.1 allows the use of a limited number of LTAs in nonlimiting core regions.

The use of high burnup rods or assemblies will comply with WCAP–12488–A and TSs. All safety evaluations in support of using high burnup rods or assemblies have been performed in accordance with accepted methodologies.

In support of proposed High Burnup LTA Programs in the industry, the NRC has requested fuel characterization inspections prior to high burnup irradiation. LTA M09E, (i.e., the assembly containing the high burnup fuel rods at Byron Station) was subjected to fuel characterization inspections prior to operation in Byron Station, Unit 2, Cycle 10. These inspections included assembly growth, rod growth, assembly bow, peripheral rod oxidation, grid growth, grid oxidation, guide thimble inner diameter oxidation, grid cell size, crud scraping, single rod exams for the high burnup rods, profilometry, and pellet-to-pellet gap measurements using a Gamma Scanner instrument. All parameters inspected were found to be acceptable.

By performing the above inspection regimen, the demonstrated adherence to the inspection standards and acceptance criteria precludes the potential for new risks to components and systems that could introduce a new type of accident.

Based on this evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

There is no significant reduction in the margin of safety due to the proposed change. The current TS Safety Limit (SL) 2.1.1.3 states that ''In MODES 1 and 2, the peak fuel centerline temperature shall be maintained ≤ 4700 °F.'' The TS Safety Limit Bases states that overheating of the fuel is prevented by maintaining the steady state peak Linear Heat Rate (LHR) below the level at which fuel centerline melting occurs. Fuel centerline melting occurs when the local LHR, or power peaking, in a region of fuel is high enough to cause the fuel centerline temperature to reach the fuel melting point.

WCAP–14483–A conservatively states that the fuel centerline temperature limit has been established based on the melting temperature for Uranium Dioxide (UO_2) fuel of 5080 °F, decreasing by 58 °F per 10,000 MWD/MTU of burnup. Based on the WCAP–14483–A equation, a burnup of approximately 65,500 MWD/MTU could be accrued before the melting temperature would academically reach the current TS SL of 4700 °F.

Westinghouse has evaluated the fuel centerline temperatures for the Byron Station and Braidwood Station reactor cores under uprated power conditions. This evaluation shows that the high burnup rods' temperatures would remain below both the current SL of 4700 °F and the proposed WCAP–14483–A equation (i.e., the proposed SL) for fuel melting temperatures under extended burnup conditions past 75,000 MWD/MTU. Thus, fuel melting will not occur in the LTA high burnup rods.

The insertion of the four high burnup rods does not impact any other TS. The LTA has been designed to operate within the SAFDLs and will therefore have sufficient safety margins. Furthermore, the high burnup LTA will satisfy the five guidelines specified in WCAP–12488–A approved by the NRC. The high burnup LTA will comply with TS 4.2.1 by being placed in a nonlimiting core region.

Based on the above discussion, changing the fuel centerline melt temperature from the

existing 4700 °F to an equation consistent with the design basis for fuel melt temperature will not significantly reduce the margin of safety. The analysis shown in WCAP–12610–P–A indicates that the minimum margin to safety occurs at fuel assembly Beginning of Life (BOL). The evaluation in WCAP–12610–P–A demonstrates that margin of safety with respect to the proposed SL equation remains sufficient for fuel burnups up to 75,000 MWD/MTU.

Based on this evaluation, the proposed TS changes do not involve a significant reduction in a margin of safety.

Conclusion: Based upon the above analyses and evaluations, we have concluded that the proposed change to the TS involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: September 14, 2001.

Description of amendment request: Exelon proposed to extend the use of the pressure temperature limits specified in Technical Specification (TS) Figure 3.4.6.1–1, ''Minimum Reactor Vessel Metal Temperature vs. Reactor Vessel Pressure,'' through Cycle 10 of operation, currently scheduled to end April 2004. Exelon also proposed to modify TS Table 4.4.6.1.3–1, ''Reactor Vessel Material Surveillance Program—Withdrawal Schedule,'' with a note clarifying that surveillance capsule withdrawals are to be scheduled for the nearest vessel refueling outage date subsequent to the withdrawal time specified in the TS Table.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensees analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Extended Use of Pressure-Temperature Limits

The proposed change to the TSs to extend the use of the P–T limits does not affect the operation or configuration of any plant equipment. Thus, no new accident initiators are created by this change. The proposed change extends the use of the pressure-temperature (P–T) limits for an additional cycle of operation. The P–T curves prohibit operational conditions in which brittle fracture of the reactor vessel materials is possible. The P–T limits are based on the projected reactor vessel neutron fluence at 32 effective full power years (EFPY) of operation. At the end of the next cycle of operation, Cycle 10, Limerick Generating Station (LGS) Unit 1 will have attained a maximum of 48.1 percent of the 32 EFPY operating time which provides significant margin to ensure that the current 32 EFPY fluence projection will not be exceeded. This ensures that the basis for proposed applicability of the P–T limits is conservative and that the reactor vessel integrity is protected under all operating conditions. Therefore, neither the probability nor the consequences of an accident are increased.

Deferral of Withdrawal of Vessel Surveillance Specimens

Deferring the withdrawal of the vessel surveillance capsules will not initiate or is not a precursor to any of the accident scenarios presented in the Updated Final Safety Analysis Report (UFSAR). This schedular adjustment will not increase the likelihood of equipment failure, will not defeat the design reactor protection functions, and will not increase the likelihood of failure of any plant structure, system or component. Therefore, neither the probability nor the consequences of an accident are increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Extended Use of Pressure-Temperature Limits

The proposed change to the technical specifications to extend the use of the P–T limits does not affect the operation or configuration of any plant equipment. The current P–T limits will remain valid and conservative during the proposed extension. Thus, no new or different accidents are created by this proposed change.

Deferral of Withdrawal of Vessel Surveillance Specimens

The proposed deferral of the withdrawal of the vessel surveillance capsule does not involve a change to the plant design or operation. No new equipment will be installed or utilized, and no new operating conditions will be initiated as a result of this change. Because the P–T limit curves are not impacted, the safety function of the reactor vessel to mitigate the release of radioactive steam and limit reactor inventory loss under normal, accident, and transient conditions is not affected. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Extended Use of Pressure-Temperature Limits

The proposed change extends the use of the current P–T limits for an additional cycle of operation. No changes to the P–T limits are proposed. The current P–T limit curves are based on the projected reactor vessel neutron fluence after 32 EFPY of operation. At the end of the next operating cycle, Cycle 10, LGS Unit 1 will have attained a maximum of 48.1 percent of the 32 EFPY reactor vessel neutron fluence projection upon which the current P–T curves are based. The maximum operating time at the end of Cycle 10, when compared with the maximum operating time assumed for the P–T limits curves, ensures that the P–T limits will remain conservative and will ensure that the current margins for reactor pressure vessel integrity are unchanged. The proposed change maintains the relative margin of safety commensurate with that which existed at the time the American Society of Mechanical Engineers Boiler & Pressure Vessel Code, Section XI, Appendix G, was approved in 1974. No plant safety limits, setpoints, or design parameters are adversely affected by the proposed TS change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Deferral of Withdrawal of Vessel Surveillance Specimens

No plant safety limits, set points, or design parameters are adversely affected by the proposed deferral of withdrawal of vessel surveillance specimens. The deferral of the withdrawal of the vessel surveillance specimens does not affect the current P–T limit curves, and therefore, does not affect a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

Florida Power and Light Company, et al. (FPL), Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: October 18, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for St. Lucie, Units 1 and 2, regarding Engineered Safety Feature Actuation System (ESFAS) instrumentation. Specifically, it would limit the period of time that inoperable recirculation actuation signal (RAS), containment spray actuation signal (CSAS), and auxiliary feedwater actuation signal (AFAS) input channels could be in the bypassed and/or tripped condition. Generally, the proposed TS employ a 48-hour completion time to restore an inoperable channel, which, in most cases, is more restrictive than the existing TS, and is comparable to the value used in the Standard TS for Combustion Engineering plants.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would operation of the facility in accordance with the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

No, facility operation under the new Technical Specification (TS) restrictions would not increase the probability of occurrence of any accident previously evaluated. The proposed changes only affect the ESFAS functions of RAS, CSAS, and AFAS; generally limiting the time that any instrument channel may be inoperable in a bypassed or tripped condition. No physical plant changes are proposed in conjunction with these revisions. The proposed changes to RAS and AFAS channel operability greatly reduce the time that actuation systems are vulnerable to spurious, inadvertent actuation. The proposed changes do allow a new unlimited time for trip of one CSAS channel on Unit 1. Although this increases the possibility of a spurious channel trip with a potential for causing an inadvertent spray actuation, this is offset by the increased reliability of spray in this configuration. Unit 2 already contains provision for the indefinite single channel trip of CSAS, and this change will also make the two units similar. Additionally, it is important to note that inadvertent actuation of any of these functions (RAS, CSAS, or AFAS) during plant operation is not an accident initiating event. Therefore, with no physical effects on the plant and no increase in probability that the subject ESFAS functions will initiate an accident, there is no increased probability that any previously evaluated accident will occur. The changes provided in this safety evaluation do not affect the assumptions or results of any accident evaluated in the UFSAR [Updated Final Safety Analysis Report].

Likewise, the consequences of any accident previously evaluated have not been increased. The proposed changes, by limiting the time that ESFAS functions are inoperable, will increase the reliability of the associated ESFAS functions to respond to accidents. In particular, the revision to the RAS TS will limit the time that the RAS will be vulnerable to single failure and will therefore improve the system reliability during an accident. As these proposed changes constitute no physical change to the facility and only serve to increase ESF function reliability, FPL concludes that the consequences of previously evaluated accidents are not increased. The ability of the ESFAS to respond to accident conditions as assumed in any accident analysis has not been affected.

(2) Would operation of the facility in accordance with the proposed amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

No, the proposed activity does not create the possibility of an accident of a different type than any previously evaluated. The proposed changes only affect the ESFAS functions of RAS, CSAS, and AFAS; generally limiting the time that any instrument channel may be inoperable in a bypassed or tripped condition. No physical plant changes are proposed in conjunction with these revisions. Thereby, the proposed changes do not create any new equipment interfaces, equipment response characteristics, or operating configurations. Without creation of a new interaction of materials, operating configuration, or operating interface, there is no possibility that the proposed changes can introduce a new or different kind of accident.

(3) Would operation of the facility in accordance with the proposed amendments involve a significant reduction in a margin of safety?

The margin of safety as defined in the basis for any Technical Specification or in any licensing document has not been reduced. The TS Bases for the associated ESF LCO [Limiting Condition for Operation] do not explicitly discuss a related margin of safety. However, by virtue of the increased ESFAS reliability provided by the proposed amendments, it is evident that the margin of safety will not be reduced in any manner.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: October 17, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 6.8.4.h, ''Containment Leakage Rate Testing Program,'' to allow only one-time deviation from the 10-year frequency of the performance-based leakage rate testing program for Type A tests as recommended by Nuclear Energy Institute, NEI 94–01, Revision 0, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J,'' and endorsed by Regulatory Guide 1.163, ''Performance-Based Containment Leak-Rate Program.'' The one-time deviation would allow intergrated leak rate testing (ILRT) at no more than 15 years after the last ILRTs, performed in November 1992 and October 1991 for Units 3 and 4 respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to the Technical Specifications adds a one-time extension to the current interval for Type A (ILRT) testing. The current test interval of ten years, based on past performance, would be extended on a one-time basis to 15 years from the last Type A test. The proposed extension to Type A testing cannot increase the probability of an accident previously evaluated since the containment Type A testing extension is not a modification, nor a change to the operation of the plant, and the test extension is not a type that could lead to equipment failure or accident initiation. The proposed extension of Type A testing does not involve a significant increase in the consequences of an accident since research documented in NUREG–1493 has found that, generically, very few potential containment leakage paths are not identified with Type B and C tests. In fact, an analysis of 144 ILRT results, including 23 failures, found that no failures

were due to containment liner breech. The NUREG concluded that reducing the Type A frequency to one per twenty years was found to lead to an imperceptible increase in risk.

Florida Power & Light provides a high degree of assurance through testing and inspection that the containment will not degrade in a manner detectable only by Type A testing. The last four Type A tests for both Turkey Point Units 3 and 4 show leakage rates well below acceptance criteria, indicating a leak-tight containment. Inspections required by the Maintenance Rule [10 CFR 50.65] and ASME [American Society of Mechanical Engineers] code, will identify indications of containment structure degradation that could affect that leak tightness. Type B and C testing required by Technical Specifications will identify any containment openings, such as valves, that would otherwise be detected by the Type A tests. These factors show that the Turkey Point Units 3 and 4 Type A test extension will not represent a significant increase in the consequences of an accident.

Based on the above, it is concluded that the proposed amendments to extend the Type A test frequency does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not create a new or different type of accident for Turkey Point because no physical plant changes are being made, and no compensatory measures are imposed that would create a new failure scenario. The proposed change only requests a one-time extension to the current interval for Type A testing. The current test interval of 10 years, based on past performance, would be extended on a one-time basis to 15 years from the last Type A test.

The proposed extension to Type A testing cannot create the possibility of a new or different type of accident because there are no physical changes being made to the plant, and there are no changes to the operation of the plant that could introduce a new failure mode creating an accident or affecting the mitigation of an accident.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed license amendment requests a one-time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one-time basis to 15 years from the last Type A test. The proposed extension to Type A testing will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year test interval for Type A leakage testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributed about 0.1 percent to the individual risk and that the decrease in Type A testing frequency would have minimal effect on this risk, since 95 percent of the potential leakage paths are detected by Type B and C testing. A Turkey Point plant-specific risk calculation is consistent with the generic conclusions identified in NUREG–1493.

Therefore, the proposed changes in this license amendment will not result in a significant reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: August 7, 2001.

Description of amendment requests: The proposed amendments would create Technical Specification (TS) 3.0.6 and associated bases to allow equipment that was removed from service or declared inoperable to be returned to service under administrative controls solely to perform the testing required to demonstrate its operability or the operability of other equipment. TS 3.0.6 would incorporate the administrative controls currently approved for use as TS 3.0.5 in NUREG–1431, ''Standard Technical Specifications Westinghouse Plants,'' Revision 2, dated April 30, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Probability of Occurrence of an Accident Previously Evaluated

The potential impact of temporarily returning the equipment to service is considered to be insignificant since the equipment will either be expected to be able to perform its required safety function or sufficient redundancy will exist such that the function would still occur if required. This is addressed in Generic Letter (GL) 87–09, ''Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements.'' GL 87–09 states, ''It is overly conservative to assume that systems or components are inoperable when a surveillance has not been performed because the vast majority of surveillances do in fact demonstrate that systems or components are operable.'' In addition, returning the equipment to service for testing will promote timely restoration of the equipment. Therefore, the proposed changes do not significantly affect accident initiators or precursors.

The proposed change to create a Bases statement for TS 3.0.6 provides explanatory information regarding the intent of the specification and how it is to be implemented. The proposed Bases change does not alter requirements of the associated TS. Therefore, the effect of the Bases change on accident initiators and precursors of an accident is bounded by the effect of the TS change as described above. The format changes are intended to improve appearance and do not alter any requirements.

Therefore, the proposed changes do not adversely affect any accident initiators or precursors and will not involve a significant increase in the probability of an accident previously evaluated.

Consequences of an Accident Previously Evaluated

The proposed change will allow temporarily returning equipment, that was previously declared inoperable, to service in a state in which it is expected to function to mitigate the consequences of a previously analyzed accident. The proposed change will also permit temporarily restoring inoperable equipment to service in situations where sufficient redundancy would exist for its function to mitigate the consequences of a previously analyzed accident to be performed. This will promote timely restoration of equipment and capabilities to mitigate the consequences of an accident previously analyzed.

The proposed change to include a Bases statement for TS 3.0.6 provides explanatory information regarding the intent of the specification and how it is to be implemented. The proposed Bases change does not alter requirements of the associated TS. Therefore, the effect of the Bases change on offsite dose consequences of an accident previously analyzed is bounded by the effect of the TS change as described above. The format changes are intended to improve appearance and do not alter any requirements.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not introduce a new mode of plant operation and do not involve a physical modification to the plant. Operation with the inoperable equipment temporarily restored to service under administrative controls is not considered a new mode of operation since the equipment is not being physically altered. As such, the manner in which it can fail remains the same.

The proposed change to include a Bases statement for TS 3.0.6 provides explanatory information regarding the intent of the specification and how it is to be implemented. The proposed Bases change does not alter requirements of the associated TS. Therefore, the effect of the Bases changes on accident initiators or precursors is bounded by the effect of the associated TS as described above. The format changes are intended to improve appearance and do not alter any requirements.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed new TS 3.0.6 can be applied to any structures, systems, and components that are governed by the TS. As such, the proposed changes are applicable to every margin of safety imposed by the TS.

The proposed change will allow temporarily returning equipment that was previously declared inoperable to service in a state in which it is expected to function to mitigate the consequences of a previously analyzed accident. The proposed change will also permit temporarily restoring inoperable equipment to service in situations where sufficient redundancy would exist for its function to mitigate the consequences of a previously analyzed accident to be performed. The performance of the testing should confirm the expected capability of the equipment and there is no significant impact on any TS safety setting or setpoint.

There is no margin of safety pertinent to the proposed Bases change. The format changes are intended to improve appearance and do not alter any requirements.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety. In summary, based upon the above evaluation, I&M has concluded that the proposed amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: William D. Reckley, Acting Section Chief.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 9, 2001.

Description of amendment request: The proposed amendment would change the Technical Specification (TS) to correct an error in TS Table 3.3.1.1–1 Function 2.b, correct a typographical error in labeling surveillance requirement 3.3.1.1.13, and revise bases pages B 3.3–8 and B 3.3–10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change is to correct an error in documentation that was introduced during implementation of Amendment 151 and retained in TS during the conversion to ITS [Improved Technical Specifications] as well as an error that was introduced into TS during the conversion to ITS. Neither the design basis nor the functionality of the instrumentation is being physically changed. The Neutron Monitoring system performs a mitigating function and is not an accident initiating system. The actual mitigating function of the Neutron Monitoring is not changed. Only an implied but non-existent mitigating capability is being removed from TS. This change does not create or modify any accident initiators. Therefore, there is no increase in the probability of an accident previously evaluated.

The APRM [Average Power Range Monitor] system is credited for mitigating the consequences of the Control Rod Drop Accident. The APRM system also provides protection for the reactor to mitigate the consequences of such abnormal operational transients as loss of feedwater heater, pressure regulator failure, or Main Steam Isolation Valve closure. The proposed change will not change the functionality or setpoints for either the APRM Flux-High (Fixed) or the APRM Flux-High (Biased) functions. Additionally, the correction of an incorrect Surveillance Requirement reference does not change how any surveillance is performed. Therefore the consequences of an accident previously evaluated will not be increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Since this change in the TS does not involve a physical change to the instrumentation, to the setpoints, or to the design or functionality of the circuitry for reactor scram on APRM Flux-High, fixed or flow-biased, the change does not create a possibility of a new or different kind of accident not previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The setpoints for the Neutron Flux-High instrumentation are not changed by this proposed TS change. The safety function allowable value setpoint remains at less than or equal to 120% RTP [rated thermal power]. The formula for the APRM Flux-High (flow biased) is not being changed. Since neither of these is being changed, the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: August 6, 2001, as supplemented November 2, 2001.

Description of amendment request: The proposed amendment would revise the Seabrook Station Technical Specifications (TS) Index, TS 1.0, ''Definitions,'' and TS Table 1.2, ''Operational Modes,'' to reflect the improved Standard Technical Specifications for Westinghouse plants.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS Index, TS 1.0 and TS Table 1.2 are changes that do not change any structures, systems or components (SSCs) thus, the proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility. In addition, the proposed changes do not affect the manner in which the plant responds in normal operation, transient or accident conditions. The proposed changes do not alter or prevent the ability of SSCs to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). Finally, while these changes may afford North Atlantic operational flexibility, the changes are an enhancement and do not affect plant safety.

The proposed changes do not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, it is concluded that these proposed revisions to TS Index, TS 1.0 and TS Table 1.2 do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

This [sic] proposed changes to TS Index, TS 1.0 and TS Table 1.2 are changes that do not change the operation or the design basis of any plant system or component during normal or accident conditions. The proposed change incorporates definitions delineated in the improved Standard Technical Specifications (NUREG–1431). The proposed changes do not include any physical changes to the plant. In addition, the proposed changes do not change the function or operation of plant equipment or introduce any new failure mechanisms. The plant equipment will continue to respond per the design and analyses and there will not be a malfunction of a new or different type introduced by the proposed changes.

The proposed changes are administrative in nature and only correct, update and clarify the Seabrook Station Operating License to reflect the definitions in the improved Standard Technical Specifications. The proposed changes do not modify the facility nor do they affect the plant's response to normal, transient or accident conditions. The changes do not introduce a new mode of plant operation. While these changes may afford North Atlantic operational flexibility, the changes are an enhancement and do not affect plant safety. The plant's design and design basis are not revised and the current safety analyses remains in effect.

Thus, these proposed revisions to TS Index, TS 1.0 and TS Table 1.2 do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes to TS Index, TS 1.0 and TS Table 1.2 are administrative in nature and only correct, update and clarify the Seabrook Station Operating License to reflect the improved Standard Technical Specifications. While these changes may afford North Atlantic operational flexibility, the changes are an enhancement and do not affect plant safety. The safety margins established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits as specified in the Technical Specifications are not revised nor is the plant design revised by the proposed changes.

Thus, it is concluded that these proposed revisions to TS Index, TS 1.0 and TS Table 1.2 do not involve a significant reduction in a margin of safety.

Based on the above evaluation, North Atlantic concludes that the proposed changes to TS Index, TS 1.0 and TS Table 1.2 do not constitute a significant hazard.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: November 2, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 3.3.1–1, Item 1, ''Variable High Power Trip'' (VHPT), by increasing the maximum allowable value for the VHPT from 106.5 percent to 111 percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Nuclear Management Company has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of Amendment.'' The following evaluation supports the finding that operation of the facility in accordance with the proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the maximum Allowable Value for the Variable High Power Trip (VHPT) function in the Technical Specifications would not change or remove any considerations of uncertainties from the FSAR [Final Safety Analysis Report] Chapter 14 Safety Analysis. The methodology that was utilized in determining the recommended change in the maximum allowable value follows standard ANSI/ISA–S67.04–1994, ''Setpoints for Nuclear Safety-Related Instrumentation,'' and NRC Regulatory Guide 1.105, ''Setpoints for Safety-Related Instrumentation,'' Revision 3. With the proposed changes to the maximum allowable value and calculated setpoint of the VHPT in place, the reactor is still protected from reaching the analytical limit of 115% reactor power.

Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the maximum Allowable Value and Calculated Setpoint for the Variable High Power Trip function in the Technical Specifications would not change or add a system function. The proposed change alters the way the uncertainties (including uncertainties of instrument measurement and calibration) are accounted for without actually removing uncertainties from the calculation. This proposed change follows the standard ANSI/ISA–S67.04–1994 and NRC Regulatory Guide 1.105, Revision 3.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to the maximum Allowable Value for the Variable High Power Trip function in the Technical Specifications would account for all uncertainties in the VHP trip setpoint calculation, instead of taking them into account in the maximum allowable value calculation, as is currently done. In addition, double accounting for nuclear instrumentation uncertainties has been removed. The uncertainties will still be taken into account in determining the calculated setpoint based on the maximum allowable value of the VHPT, in accordance with the standard ANSI/ISA–S67.04–1994 and NRC Regulatory Guide 1.105, Revision 3. This methodology continues to assure that the Analytical Limit will not be exceeded.

Therefore, the proposed change to the Technical Specifications would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based upon this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: William D. Reckley (Acting).

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: November 1, 2001.

Description of amendment request: The proposed amendments would change the Technical Specifications (TSs) to allow a one-time extension of the allowed outage time for the control room emergency filtration system (CREFS) from 7 days to 30 days. The licensee is requesting this one-time change in order to implement modifications to the CREFS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The operability of CREFS ensures that the control room will remain habitable for operators during and following all credible accident conditions. The inoperability or failure of CREFS is not an accident initiator or precursor. Therefore, the probability of an accident previously evaluated will not be significantly increased as a result of the proposed change. Because design limitations continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, the assumptions employed in the calculation of the offsite radiological doses remain valid. Control room dose calculations are not affected outside the limited one-time period when the CREFS modifications/upgrades are ongoing.

During the period that CREFS will be inoperable, temporary ventilation will provide adequate filtration to the control room and adequate cooling to the control and computer rooms. The effectiveness of the temporary filtration provided during this 30 day period is not significantly less than that of the permanently installed CREFS. Only the duration of a currently allowed outage time is being changed, with commensurate compensatory measures being taken. Therefore, the consequences of an accident previously evaluated will not be significantly increased as a result of the proposed change.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident from any accident previously evaluated is not created as a result of this amendment. The evaluation of the effects of the proposed changes indicate that all design standards and applicable safety criteria limits are met. These changes therefore do not cause the initiation of any new or different accident nor create any new failure mechanisms.

Equipment important to safety will continue to operate as designed. Only the duration of a system's allowed outage time is being changed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The CREFS functions to mitigate the effects of accidents. Implementation of the modifications/upgrades will require removing the system from service for a period of time longer than presently allowed by the Technical Specification. This results in a longer period during which the consequences of a design basis accident, affecting the dose of control room personnel, may be slightly increased. During the period that CREFS will be inoperable, a temporary ventilation system will provide adequate filtration to the control room and adequate cooling to the control and computer rooms. The effectiveness of the temporary filtration provided during this 30 day period is not significantly less than that of the permanently installed CREFS. Only the duration of a currently allowed outage time is being changed, with commensurate compensatory measures being taken. There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed modification will not otherwise affect the plant protective boundaries, will not cause a release of fission products to the public, nor will it degrade the performance of any other SSCs important to safety. The analysis for the limiting design basis accident, the large break LOCA, has a significant amount of conservatism built in to account for uncertainties in system performance an analysis techniques. This conservative margin of safety, along with the temporary filtration unit, provide a high level of confidence that the health and safety of the operators will be maintained, such that they will be able to prevent or mitigate an event. Therefore, removing the CREFS from service for 30 days on a one-time basis to permit system upgrading, will not significantly reduce the margin of safety. The improvements to CREFS resulting from the proposed modifications will enhance operator protection against conditions resulting from a design basis accident and therefore provide a net benefit to radiological health and reactor safety.

Conclusion

Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant increase in the probability or consequences of any accident previously analyzed; will not result in a new or different kind of accident from any accident previously analyzed; and, does not result in a significant reduction in any margin of safety. Therefore, operation of PBNP [Point Beach Nuclear Plant] in accordance with the proposed amendments does not result in a significant hazards determination.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: William Reckley (Acting).

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station (SSES), Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: October 18, 2001.

Description of amendment request: The proposed amendments would modify the Technical Specification Surveillance Requirement (SR) 3.4.3.1 for testing of the main steam safety relief valves (MSRVs) so that the setpoint tolerance for ''As-Found'' testing would be changed from ±1 percent to ± 3 percent. The requirements for testing of the tolerances associated with ''As-left'' testing would remain unchanged. An editorial change would also be made to remove a note regarding an associated relief request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed action does not involve a significant increase in the probability or consequences of an accident as previously evaluated.

The proposed change allows an increase in the as-found MSRV safety mode setpoint tolerance, determined by test after the valves have been removed from service, from ±1% to ±3%. The proposed change does not alter the TS 3.4.3 Surveillance Requirements on the nominal MSRV safety mode lift setpoints, the MSRV relief mode setpoints, the required frequency for the MSRV lift setpoint tests, or the number of MSRVs required to be operable.

Consistent with current requirements, this change continues to require that these valves be adjusted to within ±1% of their nominal lift setpoints following testing. The proposed action does not change any other behavior or operation of any MSRV, and therefore, has no significant impact on the reactor operation. It also has no significant impact on response to any perturbation of reactor operation including transients and accidents previously analyzed in the Final Safety Analysis Report (FSAR).

The proposed action does not involve physical changes to the valves, nor does it change the safety function of the valves. The proposed TS revision involves no significant changes to the operation of any systems or components in normal or accident operating conditions and no changes to existing structures, systems, or components. Therefore, these changes will not increase the probability of an accident previously evaluated.

Generic considerations related to the change in setpoint tolerance were addressed in NEDC–31753P, ''BWROG In-Service Pressure Relief Technical Specification Revision Licensing Topical Report,'' and were reviewed and approved by the NRC in a Safety Evaluation Report (SER) dated March 8, 1993. The plant specific evaluations, required by the NRC's SER and performed to support this proposed change, show that there is adequate margin to the design core thermal limits and to the reactor vessel pressure limits using a ±3% setpoint tolerance. These analyses also show that

operation of the high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) systems are not adversely affected and the containment response from a loss of coolant accident is acceptable. The plant systems associated with these proposed changes are capable of meeting all applicable design basis requirements and retain the capability to mitigate the consequences of accidents described in the FSAR. Therefore, these changes do not involve an increase in the consequences of any accident previously evaluated.

Therefore, the proposed amendment does not increase the probability or consequences of an accident previously evaluated.

2. The proposed action does not create a possibility of a new or different kind of accident than previously evaluated.

The proposed change was developed in accordance with the provisions contained in the NRC SER, dated March 8, 1993, for the ''BWR Owners Group Inservice Pressure Relief Technical Specification Revision Licensing Topical Report,'' NEDC–31753P. The revised MSRV setpoint tolerance limit does not adversely impact the operation of any safety-related component or equipment. Since the proposed action does not involve hardware changes, significant changes to the operation of any systems or components, nor changes to existing structures, systems, or components, there is no possibility that a new or different kind of accident is created.

The proposed change to allow an increase in the MSRV safety mode setpoint tolerance from ±1% to ±3% does not alter the nominal MSRV lift setpoints or the number of MSRVs currently required to be operable by SSES Technical Specifications. The proposed action does not involve physical changes to the valves, nor does it change the safety function of the valves. The proposed action does not involve a physical alteration of any existing plant equipment. No new or different equipment is being installed. There is no alteration to the parameters within which the plant is normally operated. As a result no new failure modes are being introduced. There are no changes in the procedures governing normal plant operation, nor the procedures utilized to respond to plant transients.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed action does not involve a significant reduction in a margin of safety.

The proposed action does not involve a significant reduction in a margin of safety. Establishment of the ±3% MSRV safety setpoint tolerance limit does not adversely impact the operation of any safety-related component or equipment. Engineering evaluations concluded that there are no significant impacts on fuel thermal limits, safety related systems, structures or components, and no significant impact on the accident analyses associated with the proposed changes.

The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Lakshminaras Raghaven.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: September 20, 2001.

Description of amendment request: The proposed amendments would support extension of the operating cycle from 18 months to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

a. Surveillance Testing Interval Extensions.

The proposed Technical Specification (TS) change involves a change in the surveillance testing intervals to facilitate a change in the operating cycle from 18 months to 24 months. The proposed TS change does not physically impact the plant, nor does it impact any design or functional requirements of the associated systems. That is, the proposed TS change neither degrades the performance of, nor increases the challenges to, any safety systems assumed to function in the plant safety analysis. The proposed TS change neither impacts the TS SRs [surveillance requirements] themselves nor the manner in which the surveillances are performed.

In addition, the proposed TS change does not introduce any accident initiators, since no accidents previously evaluated relate to the frequency of surveillance testing. Also, evaluation of the proposed TS change demonstrates that the availability of equipment and systems required to prevent or mitigate the radiological consequences of an accident is not significantly affected because of other, more frequent testing that is performed, the availability of redundant systems and equipment, or the high reliability of the equipment. Since the impact on the systems is minimal, it is concluded the overall impact on the safety analysis is negligible.

Furthermore, an historical review of surveillance test results and associated maintenance records indicate there is no evidence of any failure that would invalidate the above conclusions. Therefore, the proposed TS change does not significantly increase the probability or consequences of an accident previously evaluated.

b. Allowable Value Changes.

A change in Allowable Values is proposed for Table 3.3.5.1–1, Item 2.f. The proposed change is the result of application for the Hatch Instrument Setpoint Methodology using plant-specific drift values. Application of this methodology results in Allowable Values that more accurately reflect total instrumentation loop accuracy, as well as that of test equipment and calculated drift between surveillances. The proposed change will not result in any hardware changes. The instrumentation is not assumed to be an initiator of any analyzed event. Existing operating margin between plant conditions and actual plant setpoints is not significantly reduced due to the proposed changes. The role of the instrumentation is in mitigating and thereby, limiting the consequences of accidents.

The Allowable Values were developed to ensure the design and safety analysis limits are satisfied. The methodology used for the development of the Allowable Values ensures: 1) the affected instrumentation remains capable of mitigating design basis events as described in the safety analysis and 2) the results and radiological consequences described in the safety analysis remain bounding. Additionally, the proposed change does not alter the plant's ability to detect and mitigate events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

c. Surveillance Testing Interval Reduction to Semiannual.

The proposed TS change involves a reduction in the surveillance testing interval from 18 months to 184 days for the instrumentation associated with Table 3.3.8.2–1. The shorter intervals are based upon the plant-specific results of a review of the surveillance test history for the devices. The implementing procedures for these SRs have been performed on a 184-day interval for a number of years, and this change more accurately reflects actual plant maintenance practices. The proposed, more restrictive TS change does not physically impact the plant, nor does it impact any design or functional requirements of the associated systems. That is, the proposed TS change neither degrades the performance of, nor increases the challenges to, any safety systems assumed to function in the safety analysis. This proposed TS change neither impacts the TS SRs

themselves nor the manner in which the surveillances are performed.

In addition, the proposed TS change does not introduce any accident initiators, since no accidents previously evaluated relate to the frequency of surveillance testing. The proposed TS intervals demonstrate that the equipment and systems required to prevent or mitigate the radiological consequences of an accident are continuing to meet the assumptions of the setpoint evaluation on a more frequent basis. Since the impact on the systems is minimal, and the assumptions of the safety analyses are maintained, it is concluded the overall impact on the plant safety analysis is negligible.

Furthermore, setpoint drift evaluations prepared for the subject instrumentation show that the existing Allowable Values are acceptable without change. Therefore, the proposed TS change does not significantly increase the probability or consequences of an accident previously evaluated.

d. Change of CHANNEL CALIBRATION to CHANNEL FUNCTIONAL TEST for Float Switches.

The proposed TS change involves a change in the SRs from CHANNEL CALIBRATIONS to CHANNEL FUNCTIONAL TESTS for float switches used in Table 3.3.1.1–1, Item 7.b; Table 3.3.5.1–1, Item 3.d; and Table 3.3.5.2–1, Items 3 and 4. The float switches are mechanical devices that require mechanical setting at the proper level only. Because the devices cannot be significantly adjusted without a physical change in the location of the installation, the CHANNEL FUNCTIONAL TEST provides all the functionality of a CHANNEL CALIBRATION for this type of device. Therefore, the change in type of SR does not impact the actual testing requirements for the subject devices.

The proposed TS change does not physically impact the plant, nor does it impact any design or functional requirements of the associated systems. That is, the proposed TS change neither degrades the performance of, nor increases the challenges to, any safety systems assumed to function in the safety analysis. The proposed TS change does not impact the manner in which the surveillances are performed.

In addition, the proposed TS change does not introduce any accident initiators, since the same functional requirements exist with the proposed change. Also, evaluation of the proposed TS change demonstrates the availability of equipment and systems required to prevent or mitigate the radiological consequences of an accident is not significantly affected because of the availability of redundant systems and equipment and the high reliability of the equipment. Since the impact on the systems is minimal, it is concluded the overall impact on the plant safety analysis is negligible.

Furthermore, an historical review of surveillance test results and associated maintenance records indicated that there was no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed TS change does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

a. Surveillance Testing Interval Extensions.

The proposed TS change involves a change in the surveillance testing intervals to facilitate a change in the operating cycle length. The proposed TS change does not introduce any failure mechanisms of a different type than those previously evaluated, since there are no physical changes being made to the facility. No new or different equipment is being installed. No installed equipment is being operated in a different manner. As a result, no new failure modes are introduced. In addition, the SRs themselves, and the manner in which surveillance tests are performed, remain unchanged.

Furthermore, an historical review of surveillance test results and associated maintenance records indicate there is no evidence of any failure that would invalidate the above conclusions. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

b. Allowable Value Changes.

The proposed change in Allowable Values is the result of application of the Instrument Setpoint Methodology using plant-specific drift values and does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based upon the fact that the method and manner of plant operation are unchanged.

The use of the proposed Allowable Values does not impact safe operation of the plant in that the safety analysis limits are maintained. The proposed change in Allowable Values involves no system additions or physical modifications to plant systems. The Allowable Values are revised to ensure the affected instrumentation remains capable of mitigating accidents and transients. Plant equipment will not be operated in a manner different from previous operation, except that setpoints may be changed. Since operational methods remain unchanged and the operating parameters were evaluated to maintain the plant within existing design basis criteria, no different type of failure or accident is created.

c. Surveillance Testing Interval Reductions to Semiannual.

The proposed TS change involves a change in the surveillance testing interval due to the review of the surveillance test history of the subject devices. Also, the semiannual tests reflect current HNP calibration practices. The proposed TS change does not introduce any failure mechanism of a different type than those previously evaluated, since the proposed change makes no physical changes to the plant. No new or different equipment is being installed. No installed equipment is being operated in a different manner.

Furthermore, an historical review of surveillance test results and associated maintenance records indicate there is no evidence of any failure that would invalidate the above conclusions. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

d. Change of CHANNEL CALIBRATION to CHANNEL FUNCTIONAL TEST for Float Switches.

The proposed TS change does not impact the actual testing requirements for the subject devices. The proposed TS change does not introduce any failure mechanism of a different type than those previously evaluated, since the proposed change makes no physical changes to the plant. No new or different equipment is being installed. No installed equipment is being operated in a different manner. As a result, no new failure mode is being introduced. In addition, the SRs themselves, and the manner in which surveillance tests are performed, remain unchanged.

Furthermore, an historical review of surveillance test results and associated maintenance records indicates there is no evidence of any failure that would invalidate the above conclusions. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety

a. Surveillance Testing Interval Extensions.

Although the proposed TS change results in changes in the interval between surveillance tests, the impact, if any, on system availability is minimal, based upon other, more frequent testing that is performed, the existence of redundant systems and equipment, or overall system reliability. Evaluations show there is no evidence of any time-dependent failure that would impact the system availability.

The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed change does not significantly impact any safety analysis assumptions or results. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

b. Allowable Value Changes.

The proposed change does not involve a reduction in a margin of safety. The proposed change was developed using a methodology to ensure safety analysis limits are not exceeded. As such, this proposed change does not involve a significant reduction in a margin of safety.

c. Surveillance Testing Interval Reductions to Semiannual.

The proposed TS change results in a shorter interval between surveillance tests to ensure the assumptions of the safety analysis are maintained. The impact, if any, on system availability is minimal, as a result of the more frequent testing that is performed. The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed change does not significantly impact any safety analysis assumptions or results. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

d. Change of CHANNEL CALIBRATION to CHANNEL FUNCTIONAL TEST for Float Switches.

The proposed TS change does not impact the actual testing requirements for the subject devices. The impact, if any, on system availability due to this change is minimal, based upon the existence of redundant systems and equipment and overall system reliability.

An historical review of surveillance test results and associated maintenance records indicates there is no evidence of any failure that would invalidate the above conclusions. The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed change does not significantly impact any safety analysis assumptions or results. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer, Acting.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: September 20, 2001.

Description of amendment request: The proposed amendments would change specified surveillances from 92 days to 184 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specifications (TS) change involves an increase in the surveillance testing intervals for various Surveillance Requirements (SRs) from 92 days to 184 days. The proposed TS changes do not physically impact the plant, nor do they impact any design or functional requirements of the associated systems. That is, the proposed TS change does not degrade the performance of, or increase the challenges to, any safety systems assumed to function in the safety analysis. The proposed TS changes neither impact the TS SRs themselves nor the way in which the surveillances are performed. In addition, the proposed TS change does not introduce any accident initiators, since no accidents previously evaluated relate to the frequency of surveillance testing. Also, evaluation of the proposed TS change demonstrates that the availability of equipment and systems required to prevent or mitigate the radiological consequences of an accident are not significantly affected because of other, more frequent testing that is performed, the availability of redundant systems and equipment, or the high reliability of the equipment. Since the impact on the systems is minimal, it is concluded that the overall impact on the plant safety analysis is negligible.

A sensitivity analysis was performed to determine the effect of the increased surveillance intervals on the HNP [Hatch Nuclear Plant] Probabilistic Risk Assessment (PRA). This sensitivity analysis shows a negligible increase in core damage frequency (CDF) and essentially no change in large early release frequency (LERF) due to the proposed change.

Furthermore, an historical review of surveillance test results and associated maintenance record indicates there is no evidence of any failure that would invalidate the above conclusions. Therefore, the proposed TS change does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change involves a change in the various SR intervals from 92 days to 184 days. The proposed TS change does not introduce any failure mechanisms of a different type than those previously evaluated, since no physical changes to the plant are being made. Also, no new or different equipment is being installed, and no installed equipment is being operated in a different manner. As a result, no new failure modes are introduced. In addition, the surveillance test requirements themselves, and the way surveillance tests are performed, remain unchanged.

Furthermore, an historical review of surveillance test results and associated maintenance records indicates there is no evidence of any failure that would invalidate the above conclusions. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

Although the proposed TS change results in changes to the interval between surveillance tests, the impact, if any, on system availability is minimal, based upon other, more frequent testing that is performed, the existence of redundant systems and equipment, or overall system reliability. Evaluations show there is no evidence of time-dependent failures that would impact the availability of the systems. The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation.

A sensitivity analysis was performed to determine the effect of the increased surveillance intervals on the HNP PRA. This sensitivity analysis shows a negligible increase in CDF and essentially no change in LERF due to the proposed change.

Furthermore, an historical review of surveillance test results and associated maintenance records indicates there was no evidence of any failure that would invalidate the above conclusions. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer, Acting.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 16, 2001.

Brief description of amendment request: The proposed amendment would add a condition to the Operating License to extend certain Technical Specification surveillance requirement (SR) intervals, one time. The SR intervals would be extended up to 65 days, but no later than April 30, 2003, to permit them to be performed during

the next refueling outage, which has been rescheduled because the plant is currently in a forced extended outage.

Date of publication of individual notice in ***Federal Register:*** November 13, 2001 (66 FR 56865).

Expiration date of individual notice: December 13, 2001.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: December 29, 2000, as supplemented March 22 and July 27, 2001.

Brief description of amendment: The amendment increases the allowed outage time from 3 to 14 days for a single inoperable Division 1 or 2 diesel generator.

Date of issuance: November 8, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 141.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 24, 2001 (66 FR 7668). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 2001.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 2, 2001, as supplemented July 18, 2001.

Brief description of amendment: The amendment extends the surveillance test interval of the slave relays of the Engineered Safety Features Actuation System from 90 days to 8 months.

Date of issuance: November 5, 2001.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 198.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 11, 2001 (66 FR 36337).

The July 18, 2001, supplement was within the scope of the original application and did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 5, 2001.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 2, 2001, as supplemented by letter dated August 23, 2001.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to not require the moderator temperature coefficient (MTC) determination in TS 4.1.1.4.2c if the results of the MTC determination required in TSs 4.1.1.4.2a and 4.1.1.4.2b are within a certain tolerance of the corresponding design values.

Date of issuance: November 16, 2001.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 236.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 12, 2001 (66 FR 31706).

The August 23, 2001, supplemental letter provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of application for amendment: June 6, 2001, as supplemented by letter dated September 17, 2001.

Brief description of amendment: The amendment revises the values of the Safety Limit for the Minimum Critical Power Ratio in Technical Specification Section 2.1.1.

Date of issuance: November 2, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 189.

Facility Operating License No. DPR–19: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 5, 2001 (66 FR 46479).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: September 29, 2000, as supplemented by letters dated March 1, July 13, August 9, August 13, and October 17, 2001

*Brief description of amendments:*The amendments change the technical specifications to reflect a change in fuel vendors from Siemens Power Corporation to General Electric, and a transition to GE14 fuel. As part of the transition, changes are made to the number of required automatic depressurization system valves and to the time delay relay settings on emergency core cooling system pumps. These changes were noticed in the **Federal Register** on December 27, 2000 (65 FR 81908), August 22, 2001 (66 FR 44170), and August 23, 2001 (66 FR 44382).

Date of issuance: November 2, 2001

Effective date: As of the date of issuance and shall be implemented following refueling outage 17.

Amendment Nos.: 188 and 183

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** December 27, 2000

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: May 30, 2001, as supplemented September 10, 2001.

Brief description of amendments: The amendments change the Technical Specifications (TS) Surveillance Requirement (SR) 3.6.1.1.3 and adds two new SRs, SR 3.6.1.1.4 and SR 3.6.1.1.5, covering the testing of Suppression Chamber-Drywell Vacuum Breakers and the Drywell-to-Suppression Chamber Bypass Leakage Test.

Date of issuance: November 7, 2001

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 149 and 135

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revise the Technical Specifications.

*Date of initial notice in **Federal Register:*** July 25, 2001 (66 FR 38761).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated November 7, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: July 9, 2001

Brief description of amendments: These amendments revised the current Technical Specifications of Limerick Generating Station, Units 1 and 2, to make them more consistent with changes to Title 10 of the Code of Federal Regulations, Section 50.59.

Date of issuance: As of date of issuance and shall be implemented within 60 days.

Effective date: November 1, 2001

Amendment Nos.: 154 and 118

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** August 22, 2001 (66 FR 44170).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 1, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of application for amendments: July 9, 2001

Brief description of amendments: These amendments replaced the term ''unreviewed safety question'' with ''requires NRC approval pursuant to 10 CFR 50.59'' in order to provide consistency with the changes to 10 CFR 50.59, ''Changes, tests, and experiments,'' which became effective on March 13, 2001.

Date of issuance: November 6, 2001

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendments Nos.: 242 and 246.

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications and the License.

*Date of initial notice in **Federal Register:*** August 22, 2001 (66 FR 44170).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 6, 2001.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: April 1, 2001, as supplemented July 20, 2001.

Brief description of amendment: This amendment introduces new Technical Specification 6.17, ''Technical Specification (TS) Bases Control Program'' to provide consistency with the changes to 10 CFR 50.59 as published in the **Federal Register** (Volume 64, Number 191) dated October 4, 1999.

Date of issuance: November 15, 2001.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 249.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** May 30, 2001 (66 FR 29356).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 2001.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: August 22, 2001.

Brief description of amendments: Revised Technical Specifications Section 6.0, ''Administrative Controls,'' to change the title of the corporate executive responsible for plant nuclear safety from ''President-Nuclear Division'' to ''Chief Nuclear Officer.''

Date of Issuance: November 13, 2001.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 178 and 121.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register***: October 3, 2001 (66 FR 50469).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 13, 2001.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: June 12, 2000, as supplemented by letters dated November 7, 2000, June 19 and August 17, 2001.

Brief description of amendments: The amendments would use the methodology and the alternative source term (AST) in 10 CFR 50.67 and described in NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants,'' and Regulatory Guide 1081, ''Alternative Radiological Source Terms for Evaluating the Radiological Consequences of Design-Basis Accidents at Boiling and Pressurized Water Reactors.'' Implementing the AST of 10 CFR 50.67 results in a new acceptance criterion for 10 CFR Part 50, Appendix A, General Design Criterion 19, of 5 rem total effective dose equivalent. The licensee determined that use of the revised analysis assumptions, methodology, and acceptance criterion required prior Nuclear Regulatory Commission (NRC) approval. In addition, the NRC requires in 10 CFR 50.67, a license amendment to implement the AST as a replacement for the Technical Information Document 14844 source term.

Date of issuance: November 13, 2001.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 258 and 241.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments approve changes to the updated final safety analysis report.

*Date of initial notice in **Federal Register***: August 23, 2000 (65 FR 51356).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 13, 2001.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 15, 2001.

Brief description of amendment: The amendment consists of deletion of Operating License Condition 2.D, and revision to the Technical Specifications (TSs) to remove depiction of railroad tracks in TS Figure 4.1–1.

Date of issuance: November 16, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 190

Facility Operating License No. DPR–46: Amendment revised the Operating License and the Technical Specifications.

*Date of initial notice in **Federal Register***: June 27, 2001 (66 FR 34285).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 2001.

No significant hazards consideration comments received: No.

Niagara Mohawk Power Corporation, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, Oswego County, New York

Date of application for amendments: February 1, 2001; as supplemented on March 1, March 16, March 29, April 5, April 27, May 30, June 7, September 10, September 26, September 28, and November 2, 2001.

Brief description of amendments: The amendments changed the operating licenses and associated documents to reflect the transfer of Niagara Mohawk Power Corporation's (NMPC's) ownership interest in Nine Mile Point Nuclear Station, Unit No. 1, the transfer of the ownership interests of NMPC, New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, and Central Hudson Gas & Electric Corporation in Nine Mile Point Nuclear Station, Unit No. 2, and the transfer of NMPC's operating authority for both units, to Nine Mile Point Nuclear Station, LLC. The amendments and corresponding license transfers were approved by the U.S. Nuclear Regulatory Commission by Order dated June 22, 2001, and Supplemental Order dated October 30, 2001.

Date of issuance: November 7, 2001.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 172 (for Unit 1), 100 (for Unit 2).

Facility Operating License Nos. DPR–63 and NPF–69: Amendments revised the operating licenses (both units), Technical Specifications (both units) and Environmental Protection Plan (Unit 2).

*Date of initial notice in **Federal Register***: April 2, 2001 (66 FR 17584).

The staff's related evaluation of the amendments is contained in two Safety Evaluations dated June 22 and October 30, 2001.

No significant hazards consideration comments received: Not applicable.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: August 16, 2001.

Brief description of amendments: The amendments revised the Technical Specifications by deleting Section 5.5.3, ''Post Accident Sampling,'' and thereby eliminating the requirements to have and maintain the post-accident sampling program. The amendments also revised Section 5.5.2, ''Primary Containment Sources Outside Containment,'' to reflect the elimination of requirements to maintain the post accident sampling system.

Date of issuance: November 13, 2001.

Effective date: As of the date of issuance and shall be implemented on or before June 28, 2002.

Amendment Nos.: 123 and 101.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 3, 2001 (66 FR 50472).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 13, 2001.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 2, 2001.

Brief description of amendments: The amendments revised the Technical Specifications by deleting Section 6.8.3.d, ''Post Accident Sampling,'' and thereby eliminate the requirements to have and maintain the post-accident sampling program. The amendments also revise Section 6.8.3.a, ''Primary Containment Sources Outside Containment,'' to reflect the elimination of requirements to maintain the post accident sampling system.

Date of issuance: November 7, 2001.

Effective date: As of the date of issuance and shall be implemented within 6 months of the date of issuance.

Amendment Nos.: Unit 1—133; Unit 2—122.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 7, 2001.

No significant hazards consideration comments received: No.

Note: The publication date for this notice will change from every other Wednesday to every other Tuesday, effective January 8, 2002. The notice will contain the same information and will continue to be published biweekly.

Dated at Rockville, Maryland, this 20th day of November 2001.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–29446 Filed 11–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide and Draft Standard Review Plan; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a regulatory 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.

The draft guide, temporarily identified as DG–1085 (which should be mentioned in all correspondence concerning this draft guide), is ''Standard Format and Content of Decommissioning Cost Estimates for Nuclear Power Reactors.'' DG–1085 is being developed to provide guidance to licensees on the various cost estimates that are required for different stages and methods of decommissioning nuclear power reactors.

A conforming document, Draft NUREG–1713, ''Standard Review Plan for Decommissioning Cost Estimates for Nuclear Power Reactors,'' is also being issued for public comment. The NRC staff plans to use Draft NUREG–1713 in their review of licensees' cost estimates for decommissioning that are submitted to the NRC.

The NRC staff is soliciting comments on these draft documents and will incorporate appropriate changes to these documents based on the comments received.

This draft guide and draft standard review plan have not received complete staff approval and do not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by January 30, 2002.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* For information about the draft guide and the related standard review plan, contact Mr. W. Mike Ripley at (301) 415–1112; e-mail *WMR@NRC.GOV.*

Although a time limit is given for comments on these drafts, 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.

Electronic copies of these drafts are available through NRC's interactive rulemaking web site (see above) and from the ADAMS Public Library component on the NRC's web site (the Electronic Reading Room), *http://www.nrc.gov.* These drafts are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; email *PDR@NRC.GOV.* Requests for single copies of draft or final guides or standard review plans (which may be reproduced), or for placement on an automatic distribution list for single copies of future draft guides in specific divisions, should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *DISTRIBUTION@NRC.GOV;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 8th day of November, 2001.

For the Nuclear Regulatory Commission.

Mabel F. Lee,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 01–29445 Filed 11–27–01; 8:45 am]

BILLING CODE 7590–01–P

SOCIAL SECURITY ADMINISTRATION

Agreement on Social Security Between the United States and Chile; Entry Into Force

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Social Security gives notice that an agreement coordinating the United States (U.S.) and Chilean social security programs will enter into force on December 1, 2001. The agreement with Chile, which was signed on February 16, 2000, is similar to U.S. social security agreements already in force with 18 other countries—Austria, Belgium, Canada, Finland, France, Germany, Greece, Ireland, Italy, Korea (South), Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act.

Like the other agreements, the U.S.-Chilean agreement eliminates dual social security coverage—the situation that exists when a worker from one country works in the other country and is covered under the social security systems of both countries for the same work. When dual coverage occurs, the worker or the worker's employer or both may be required to pay social security contributions to the two countries simultaneously. Under the U.S.-Chilean agreement, a worker who is sent by an employer in one country to work in the other country for 5 years or less remains covered only by the sending country. The agreement includes additional rules that eliminate dual U.S. and Chilean coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of benefit rights because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial U.S. benefits or partial

Chilean benefits based on combined (totalized) work credits from both countries.

Individuals who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Programs, Post Office Box 17741, Baltimore, MD 21235–7741 or visit the Social Security Web site at *www.ssa.gov/international.*

Dated: November 19, 2001.

JoAnne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 01–29562 Filed 11–27–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2001–11040]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on August 10, 2001.

DATES: Comments must be submitted before December 28, 2001. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: 49 U.S.C. Sections 5309 and 5307 Capital Assistance Programs (*OMB Number: 2132–0543*).

Abstract: 49 U.S.C. Sections 5309 Capital Program and Section 5307 Urbanized Area Formula Program authorize the Secretary of Transportation to make grants to State and local governments and public transportation authorities for financing mass transportation projects. Grant recipients are required to make information available to the public and to publish a program of projects for affected citizens to comment on the proposed program and performance of the grant recipients at public hearings. Notices of hearings must include a brief description of the proposed project and be published in a newspaper circulated in the affected area. FTA also uses the information to determine eligibility for funding and to monitor the grantees' progress in implementing and completing project activities. The information submitted ensures FTA's compliance with applicable federal laws and OMB Circular A–102.

Estimated Annual Burden on Respondents: 54 hours for each of the 3,675 respondents.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the collection burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: November 21, 2001.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 01–29516 Filed 11–27–01; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 01–10257; Notice 2]

Aprilia, S.p.A.; American Honda Motor Co., Inc.; Grant of Applications for Temporary Exemption and Request for Extension of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

This notice grants the applications by Aprilia S.p.A. of Noale, Italy, and by American Honda Motor Co. of Torrance, California (''Honda''), for a temporary exemption of two years, from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays.* This notice also grants Aprilia's request for an extension of NHTSA Temporary Exemption No. EX99–9 from the same requirement. Both Aprilia and Honda assert that ''compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles,'' 49 U.S.C. Sec. 30113(b)(3)(iv).

Notice of receipt of Aprilia's application for a temporary exemption of its Habana 150 model was published in the **Federal Register** on August 1, 2001, and an opportunity afforded for comment (66 FR 39825). Because the safety issues raised by the Honda petition and Aprilia extension request are identical to those raised by Aprilia's Habana 150 petition, and given the recent opportunity for public comment, we have concluded that a further opportunity to comment on the same issues is not likely to result in any substantive submissions, and that we may proceed to decisions on the Honda petition and Aprilia extension request. See our similar decision on Aprilia's previous request for an extension of NHTSA Temporary Exemption No. EX99–9 (65 FR 1225). See also our decisions on applications by Dan Hill & Associates and Red River Manufacturing, Inc., for temporary exemptions from Standard No. 224(66 FR 20028).

The Reason Why Aprilia and Honda Need a Temporary Exemption

The problem is one that is common to the two Aprilia motorcycles and the one Honda motorcycle covered by the applications. If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, although the left handlebar is permissible for motor driven cycles (Item 11, Table 1). Aprilia petitioned to use the left handlebar as the control for the rear brakes of its Habana 150 motorcycle, whose 150 cc engine produces more than the 5 hp maximum that separates motor driven cycles from motorcycles. According to Aprilia, the Habana frame has not been designed to mount a right foot operated brake pedal (i.e, a scooter-type vehicle provides a platform for the feet and operates only through hand controls). Applying considerable stress to this sensitive pressure point of the frame could cause failure due to fatigue unless proper design and testing procedures are performed. The Habana 150 is described as a retro-style cruiser scooter, as contrasted with the Aprilia Leonardo

150 sport scooter and the Scarabeo 150 touring scooter which we have previously exempted from compliance with the rear brake location requirement of Standard No. 123 (see 64 FR 44264 and 65 FR 1225).

Honda has made a similar petition on behalf of its FJS600 motor scooter. Aprilia has also requested that the temporary exemption for its Scarabeo 150 (65 FR 1225) be extended from December 1, 2001, until October 1, 2002 on the basis that it did not begin importation of the Scarabeo 150 until October 2000.

Absent an exemption, Aprilia and Honda will be unable to sell the Habana 150, Scarabeo 150, and the FJS 600 because the vehicles would not fully comply with Standard No. 123.

Arguments Why the Overall Level of Safety of the Vehicles to Be Exempted Equals or Exceeds that of Non-exempted Vehicles

Aprilia and Honda have argued that the overall level of safety of the Habana 150 and Scarabeo 150, and FJS 600, respectively, equals or exceeds that of a non-exempted motor vehicle for the following reasons. All three vehicles are equipped with an automatic transmission. As there is no foot operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, as Aprilia argued, concluding that the vehicles can be operated without requiring special training or practice.

Although admitting that ''the foot can apply more force than the hand,'' Aprilia argues that this is not important with respect to operation of the Habana 150 because ''even the smallest rider can apply more than enough brake actuation force.'' Aprilia cited tests performed by Carter Engineering on a similar Aprilia scooter to support its statement that ''a motor vehicle with a hand-operated rear wheel brake provides a greater overall level of safety than a nonexempt vehicle.'' See materials in Docket No. NHTSA 98–4357. According to Aprilia, a rear wheel hand brake control allows riders to brake more quickly and securely, it takes a longer time for a rider to find and place his foot over the pedal and apply force than it does for a rider to reach and squeeze the hand lever, and there is a reduced probability of inadvertent wheel locking in an emergency braking situation.

Aprilia has provided copies of its own recent test reports on the Habana, dated March 1, 2001, and May 1, 2001, which have been placed in the docket.

Aprilia also points out that European regulations allow motorcycle manufacturers the option of choosing rear brake application through either a right foot or left handlebar control, and that Australia permits the optional locations for motorcycles of any size with automatic transmissions.

Honda informs us that ''the FJS600 can easily meet the braking performance requirements of both [Federal Motor Vehicle Safety] Standard 122 and ECE 78,'' and, therefore, that ''This braking system provides the FJS600 with an overall safety level exceeding * * * nonexempted vehicles.''

Arguments Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

In Aprilia's view, an exemption would be in the public interest because the Habana 150 is intended for low-speed urban use, and ''it is expected that it will be used predominantly in congested traffic areas.'' Further, the design of the vehicle has been tested by long use around the world, and ''neither consumer groups nor government authorities have raised safety concerns about this design.'' For this reason, Aprilia argues that an exemption would also be consistent with the objectives of motor vehicle safety. Similar arguments are made in support of an extension of the exemption for its Scarabeo 150.

In support of its petition, Honda reiterates its certainty ''that the level of safety of the FJS600 is equal to similar vehicles certified under Standard No. 123.''

NHTSA's Decisions on the Applications and Request

We received one comment on Aprilia's petition, from Jeff Saunders of Palo Alto, California. Mr. Saunders supported granting the petition.

It is evident that, until such time as Standard No. 123 is amended to extend the left handlebar brake control option to motorcycles with more than 5 hp, Aprilia and Honda will be unable to sell their Habana 150, Scarabeo 150, and FSJ600 motorcycles if they do not receive a temporary exemption from the requirement that the right foot pedal operate the brake control. It is also evident from the previous grants of similar petitions by Aprilia, Honda, and others, that we have repeatedly found that the motorcycles exempted from the brake control location requirement of Standard No. 123 have an overall level of safety that equals or exceeds that of nonexempted motorcycles. Although the Honda FJS600, equipped with a 600cc engine, would be the most powerful scooter-type vehicle exempted to date, we do not believe that this fact alone is relevant to brake control location.

Aprilia's argument that an exemption for the Habana 150 would be in the public interest because of its probable use in congested urban areas is equally applicable to the Scarabeo 150, as is its arguments that use of such vehicles worldwide has raised no vehicle safety issues related to location of brake controls. While Honda did not make a public interest argument per se, reiterating only its belief that overall the FJS600 is as safe as a conforming motorcycle, we note that its last previous request for exemption from Standard No. 123, for its NSS250 motor scooter, was supported by approximately 40 commenters (See 66 FR 69130). This indicates a great public interest in scooter-type vehicles and a belief of the commenters that such vehicles have a place in the nation's overall private-vehicle transportation fleet.

In consideration of the foregoing, we hereby find that Aprilia and Honda have met their burden of persuasion that to require compliance with Standard No. 123 would prevent these manufacturers from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Therefore:

1. Aprilia SpA is hereby granted NHTSA Temporary Exemption No. EX2001–7 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control. This exemption applies only to the Habana 150 model, and will expire on November 1, 2003.

2. Honda Motor Co. Ltd. is hereby granted NHTSA Temporary Exemption No. EX2001–8 from the requirements of item 11,column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear brakes be operable through the right foot control. This exemption applies only to the FJS600 model, and will expire on November 1, 2003.

3. The expiration date of NHTSA Temporary Exemption No. EX99–9 is hereby extended from December 1, 2001 to October 1, 2002.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on November 20, 2001.

Jeffrey W. Runge,

Administrator.

[FR Doc. 01–29515 Filed 11–27–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 19, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 28, 2001 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0085.

Form Number: Customs Form 247.

Type of Review: Extension.

Title: Cost Submission.

Description: The Cost Submissions, Customs Form 247, are used by importers to furnish cost information to Customs which serves as the basis to establish the compliance with Customs Laws.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent : 50 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 50,000 hours.

OMB Number: 1515–0104.

Form Number: None.

Type of Review: Extension.

Title: Declaration of Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes.

Description: The ''Declaration of Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes'' is used to provide duty free entry under conditions when articles are temporarily exported solely for scientific or educational purposes.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 55.

Estimated Burden Hours Per Respondent : 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 27 hours.

OMB Number: 1515–0110.

Form Number: None.

Type of Review: Extension.

Title: Declaration by the Person Who Performed the Processing of Goods Abroad.

Description: This declaration, prepared by the foreign processor, submitted by the filer with each entry, provides details on the processing performed abroad and is necessary to assist Customs in determining whether the declared value of the processing is accurate.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 730.

Estimated Burden Hours Per Respondent : 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,880 hours.

OMB Number: 1515–0144.

Form Number: Customs Forms 301 and 5297.

Type of Review: Extension.

Title: Importation Bond Structure.

Description: The bond is used to assure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid; to facilitate the movement of merchandise through Customs; and to provide legal recourse for the Government for noncompliance with Customs laws and regulations and the laws and regulations of other agencies which are enforced by Customs.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 590,250.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 147,596 hours.

OMB Number: 1515–0192.

Form Number: None.

Type of Review: Extension.

Title: U.S./Israel Free Trade Agreement.

Description: This collection is used to ensure conformance with the provisions of the U.S./Israel Free Trade Agreement for duty free entry status.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 34,500.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,505 hours.

OMB Number: 1515–0207.

Form Number: None.

Type of Review: Extension.

Title: Articles Assembled Abroad with Textile Components Cut to Shape in the U.S.

Description: This collection of information enables Customs to ascertain whether the conditions and requirements relating to 9802.00.80 HTUS, have been met.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 667 hours.

Clearance Officer: Tracey Denning, (202) 927–1429, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 01–29577 Filed 11–27–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 16, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 28, 2001 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0353.
Recordkeeping Requirement ID Number: ATF REC 5170/2.
Type of Review: Extension.
Title: Wholesale Dealers Records of Receipt of Alcoholic Beverages, Disposition of Distilled Spirits, and Monthly Summary Report.
Description: An accounting tool, this record is used to show the person from whom a wholesale dealer purchased alcoholic beverages, and the person to whom the dealer sold alcoholic beverages. When required, the monthly report will provide a report of sales activities and on-hand inventory quantities.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 50.
Estimated Burden Hours Per Recordkeeper: 2 hours.
Frequency of Response: On occasion, Monthly.
Estimated Total Recordkeeping Burden: 1,200 hours.

OMB Number: 1512–0379.
Recordkeeping Requirement ID Number: ATF REC 5530/2.
Type of Review: Extension.
Title: Manufacturers of Nonbeverage Products—Records to Support Claims for Drawback.
Description: Records required to be maintained by manufacturers of nonbeverage products are used to verify claims for drawback of taxes and hence, protect the revenue. Maintains accountability; allows tracing of spirits by audit.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 611.
Estimated Burden Hours Per Recordkeeper: 21 hours.
Frequency of Response: Other (Daily).
Estimated Total Recordkeeping Burden: 12,831 hours.

OMB Number: 1512–0385.
Recordkeeping Requirement ID Number: ATF REC 5900/1.
Type of Review: Extension.
Title: Proprietors or Claimants Exporting Liquors.
Description: Distilled spirits, wine and beer may be exported from bonded premises without payment of excise taxes, or, they may be exported if their taxes have been paid and the exporters may claim drawback of the taxes paid. The record is needed to allow the amounts exported to be verified and to maintain accountability over products. The records protect the revenue.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 120.
Estimated Burden Hours Per Respondent: 60 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 7,200 hours.

OMB Number: 1512–0528.
Form Number: None.
Type of Review: Extension.
Title: Administrative Remedies—Closing Agreements.
Description: This is a written agreement between ATF and regulated taxpayers used to finalize and resolve certain tax related issues. Once an agreement is approved, it will not be reopened unless fraud or misrepresentation of material facts are proven.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

OMB Number: 1512–0533.
Recordkeeping Requirement ID Number: ATF REC 5210/2.
Type of Review: Extension.
Title: Drawback of Tax on Tobacco Products and Cigarette Papers and Tubes-Export Shipment.
Description: Exporters may file claim for drawback of tax on tobacco products and cigarette papers and tubes which have been taxpaid and are to be exported. Needed to ensure drawback of tax is properly documented and justified.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1.
Estimated Burden Hours Per Recordkeeper: 5 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 5 hours.

OMB Number: 1512–0564.
Form Number: None.
Type of Review: Extension.
Title: A National Repository for the Collection and Inventory of Information Related to Arson and the Criminal Misuse of Explosives.
Description: These regulations implement Public Law 104–208 of the Omnibus Consolidated Appropriation Act of 1997. These regulations require the reporting of all Federal agencies information related to arson and the suspected misuse of explosives. It also allows for the voluntary submission of said information by State and Local agencies.
Respondents: State, Local, or Tribal Government, Federal Government.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 17 hours.
Clearance Officer: Frank Bowers, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports, Management Officer.
[FR Doc. 01–29578 Filed 11–27–01; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 20, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 28, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1639.
Regulation Project Number: REG–106012–98 Final.
Type of Review: Extension.
Title: Definition of Contribution in Aid of Construction under Section 118(c).
Description: The regulations provide guidance with respect to Section 118(c), which provides that a contribution in aid of construction received by a regulated public water or sewage utility is treated as a contribution to the capital of the utility and excluded from gross income.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 300.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 300 hours.

OMB Number: 1545–1753.

Form Number: IRS Form 10574.

Type of Review: Extension.

Title: Community Based Outlet Program.

Description: Form 10574 will be used by companies, businesses and government agencies to indicate their interest in participating in the IRS Community Based Outlet Program. This form will be returned to the Western Area Distribution Center for processing and order fulfillment.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 42 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 01–29579 Filed 11–27–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–SF

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–SF, U.S. Income Tax Return for Settlement Funds (Under Section 468B).

DATES: Written comments should be received on or before January 28, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B).

OMB Number: 1545–1394.

Form Number: 1120–SF.

Abstract: Form 1120–SF is used by settlement funds to report income and taxes on earnings of the fund. The fund may be established by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120–SF to determine if income and taxes are correctly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 26 hours, 40 minutes.

Estimated Total Annual Burden Hours: 26,920.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 21, 2001.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 01–29607 Filed 11–27–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
November 28, 2001

Part II

Department of Education

Capacity Building for Traditionally Underserved Populations; Notice

DEPARTMENT OF EDUCATION

Capacity Building for Traditionally Underserved Populations

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services proposes priorities under the Capacity Building for Traditionally Underserved Populations program. The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2002 and in later years. We take this action to focus on meeting the needs of traditionally underserved populations. We intend these priorities to enhance and improve the capacity of minority entities to compete for Rehabilitation Services Administration (RSA) discretionary grants and to improve services provided to minority people with disabilities under programs that are authorized under the Rehabilitation Act of 1973, as amended (the Act).

DATES: We must receive your comments on or before December 28, 2001.

ADDRESSES: Address all comments about these proposed priorities to Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202–2649. If you prefer to send your comments through the Internet, use the following address: *Ellen.Chesley@ed.gov*

You must include the term ''Capacity Building for Traditionally Underserved Populations'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Ellen Chesley. Telephone: (202) 205–9481 or via Internet: *Ellen.Chesley@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8133.

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 under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities in room 3414, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priorities as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities: Capacity Building for Traditionally Underserved Populations General

The authority for us to establish priorities under the Capacity Building for Traditionally Underserved Populations program by reserving funds to support training, technical assistance, capacity building, and service improvement activities is in section 21 of the Act (29 U.S.C. 718b). Under this program, we make awards to public agencies and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. This program is designed for the support of projects that would provide training, technical assistance, or related activities in order to improve services provided under the Act, especially services provided to individuals from minority backgrounds. Further, section 21 speaks to enhancing the capacity and increasing the participation of ''minority entities'' in programs funded under the Act. ''Minority entity'' is defined under section 21(b)(5) of the Act as a historically Black college or university, Hispanic-serving institution of higher education, American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent.

Under section 21 of the Act, RSA and the National Institute on Disability and Rehabilitation Research (NIDRR) reserve 1 percent of funds budgeted for titles II, III, VI, and VII of the Act to carry out activities related to improving services to people with disabilities from racial and ethnic minority backgrounds. Further, section 21 provides that one of the following three types of awards be made to carry out section 21 activities: (1) Making awards to minority entities and Indian tribes to carry out activities under the programs authorized under titles II, III, VI, and VII. (2) Making awards to minority entities and Indian tribes to conduct research, training, technical assistance, or a related activity to improve services provided under the Act, especially services provided to individuals from minority backgrounds. (3) Making awards to a State or a public or a private nonprofit agency or organization, such as an institution of higher education or an Indian tribe, to

provide outreach and technical assistance to minority entities and Indian tribes to promote their participation in activities funded under the Act, including assistance to enhance their capacity to carry out those activities.

We propose to fund projects that would focus on training, technical assistance, or related activities that would improve services provided under the Act, especially services provided to individuals from racial and ethnic minority backgrounds.

Proposed Priority 1—Train Staff of the Independent Living Services for Older Individuals Who Are Blind Program

Background: According to internal RSA staff review of narrative reports by grantees of the Independent Living Services for Older Individuals Who Are Blind program, statistics show that an increasing number of minorities, especially African-Americans, will develop blindness and other significant visual impairments due to other medical conditions, such as diabetes and glaucoma. Further, in large States like California and Florida with significant racial and ethnic minority populations, statistics have shown that these populations are underserved.

In a recent analysis of this program's grantees' annual reports conducted by the Mississippi State University Rehabilitation and Research Training Center, two significant findings suggest that (1) of those served by this program, less than 10 percent were racial and ethnic minority consumers, and (2) racial and ethnic minority consumers are receiving information about techniques of daily living services in their homes with less frequency than their white counterparts.

These findings by the Mississippi State University Rehabilitation and Research Training Center further suggest that outreach services and information about independent living services to older blind individuals are not being disseminated to African-Americans, Native Americans, Pacific Islanders, and Hispanic-Americans with glaucoma and diabetic retinopathy who live in urban areas.

Therefore, an awareness about the lack of peer support group activities within racially and ethnically diverse communities may not be realized by a significant number of grantees and other private organizations serving older blind individuals with visual disabilities.

Priority: We propose to fund a project that meets this priority. The project funded must meet the requirements in section 21(b)(2)(B) of the Act. A project must provide training that would—

(1) Increase the capacity and skills of staff of federally funded independent living programs serving older blind minority consumers in networking towards building trust within racial and ethnic minority communities;

(2) Increase the ability of staff of federally funded independent living programs serving older blind racial and ethnic minority consumers to identify and build partnerships with key or specific organizations and resources that provide infrastructure supports and specialized services to racial and ethnic minority consumers and their families;

(3) Increase the skills and capacity of staff of federally funded independent living programs serving older blind racial and ethnic minority consumers to understand family and community values and traditions of aging racial and ethnic minority consumers that will lead to improved methods of effective communication and dissemination of information about independent living services and other related resources for aging individuals with visual disabilities.

A project must—

(1) Partner or collaborate with other key institutions and agencies that have expertise in this training, technical assistance, and networking area;

(2) Develop a regional training and technical assistance activity that will enhance and improve the knowledge and skills of staff of federally funded independent living programs (i.e., field professionals and direct service providers) serving older blind consumers and improve outreach to racial and ethnic minority consumers and communities to increase their involvement in the independent living program funded under the Act;

(3) Provide training and technical assistance based upon a needs assessment of the region or geographical area being assisted;

(4) Include an evaluation component based upon clear, specific performance and outcome measures; and

(5) Report the results of the evaluation in its annual performance report.

Training must focus on the following:

(1) Specific methods on how to integrate and build alliances with key organizations, institutions, and individuals within a community to reach older individuals who are blind from racial and ethnic minority backgrounds.

(2) Specific training on how to identify, develop, and evaluate appropriate mediums of communication in disseminating critical information about this program.

(3) Specific training on the definitions of blindness and disability in the context of racial and ethnic minority cultures and the attitudes associated with these terms.

(4) Specific training on the implication of health-related conditions associated with certain racial and ethnic minority groups (i.e., diabetic retinopathy, glaucoma, hypertension, etc.).

(5) Specific training on what are some of the ''promising practices'' that are currently being used to educate consumers from racial and ethnic minority groups about these medical conditions and their relationship to blindness.

Proposed Priority 2—Community Rehabilitation Programs

Background: Section 21 of the Act states that minorities tend to have a disproportionately high rate of disability and that patterns of inequitable treatment have been documented in all major junctures of the vocational rehabilitation process. According to section 21 of the Act, as compared to white Americans, a larger percentage of African-American applicants to the vocational rehabilitation (VR) system are denied acceptance. Of applicants accepted for service, a larger percentage of African-American cases are closed without being rehabilitated. Minorities are provided less training than their white counterparts. Consistently, less money is spent on minorities than on their white counterparts.

Priority: We propose to fund projects that meet the priority. Projects funded must meet the requirements in section 21(b)(2)(B) of the Act.

Projects must—

(1) Focus on referring more minorities currently served by community rehabilitation programs having service agreements, as well as those not having service agreements, to the vocational rehabilitation system;

(2) Target community rehabilitation programs serving large numbers of minorities with disabilities;

(3) Involve partnerships with community rehabilitation programs that serve significant numbers of minorities with disabilities;

(4) Provide training on diversity;

(5) Develop and conduct a survey that looks at why clients and consumers from minority backgrounds are reluctant to enter, remain in, or successfully exit the vocational rehabilitation program;

(6) Design and implement strategies that address the findings of the survey to increase the numbers of clients and consumers from minority backgrounds who successfully navigate through the vocational rehabilitation system;

(7) Identify effective practice models for service provision to unserved and underserved populations;

(8) Disseminate those models across the United States to community rehabilitation program sites used by minority persons with disabilities;

(9) Disseminate information about the vocational rehabilitation program and its potential benefits to minorities and other appropriate community agencies and organizations involved in community outreach activities;

(10) Enhance the capacity of clinics and outreach personnel to detect and respond to potential clients and consumers who are reluctant to enter the vocational rehabilitation system;

(11) Employ public relations and marketing strategies to highlight the vocational rehabilitation program in minority communities;

(12) Include an evaluation component based upon clear, specific performance and outcome measures; and

(13) Report the results of the evaluation in its annual performance report.

Proposed Priority 3—Establishing New Rehabilitation Training Programs

Background: Section 21(a)(4) addresses the need for recruitment efforts within vocational rehabilitation at the level of preservice training, continuing education, and in-service training to focus on bringing larger numbers of minorities into the vocational rehabilitation profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of vocational rehabilitation. This recruitment effort clearly can be addressed by increasing the number of rehabilitation training programs at minority institutions of higher education, particularly at the associate degree, undergraduate degree, and graduate degree levels.

Priority: We propose to fund projects that meet the following priority. Projects funded must meet the requirements in section 21(b)(2)(B) of the Act.

Projects must—

(1) Enhance and increase the capacity of minority institutions of higher education to prepare more individuals for careers in the public vocational rehabilitation program, including individuals from minority backgrounds;

(2) Be located at minority institutions of higher education, including community colleges whose minority student enrollment is at least 50 percent, that are interested in establishing new first-time rehabilitation training programs at the associate degree, undergraduate degree, and graduate degree levels;

(3) Include an evaluation component based upon clear, specific performance and outcome measures; and

(4) Report the results of the evaluation in its annual performance report.

Proposed Priority 4—Capacity Building for Minority Entities

Priority: We propose to fund projects that meet the priority. Projects funded must meet the requirements in section 21(b)(2)(C) of the Act.

Projects must—

(1) Provide outreach, capacity building, and technical assistance to minority entities and Indian tribes to promote their participation in activities funded under the Act, including assistance to carry out those activities;

(2) Provide a variety of training and technical assistance activities, including grant writing workshops that focus on RSA and NIDRR discretionary grant programs, the peer review process, selection criteria, training on disability legislation (i.e. Americans with Disabilities Act, Rehabilitation Act, etc.), and technical assistance to minority entities that are first-time recipients of grants funded under the Act in order to increase their ability to carry out their grants;

(3) Include an evaluation component based upon clear, specific performance and outcome measures; and

(4) Report the results of the evaluation in its annual performance report.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

These proposed priorities would address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

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.

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(Catalog of Federal Domestic Assistance Number 84.315, Capacity Building for Traditionally Underserved Populations)

Program Authority: 29 U.S.C. 718b.

Dated: November 21, 2001.

Andrew J. Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

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