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Presidential Documents

Title 3—

The President

Proclamation 7061 of December 16, 1997

Wright Brothers Day, 1997

By the President of the United States of America

A Proclamation

On December 17, 1903, Orville Wright lay inside the first heavier-than-air powered craft that permitted controlled flight. His brother Wilbur stood nearby, steadying the craft at one wing tip. In a few moments, the brothers would know if their years of hard work and painstaking experimentation would finally bear fruit. With Wilbur running beside the plane to build its momentum, Orville achieved, for a scant 12 seconds over a distance of 120 feet, what humankind had always dreamed of—he flew.

That historic moment marked the first step in a long journey through the skies that would ultimately take Americans beyond Earth's atmosphere and into space. The Mars Pathfinder spacecraft that captured the world's attention and imagination this past summer reflects the same American ingenuity and pioneering spirit that sent the Wrights' fragile craft aloft so briefly over Kitty Hawk almost a century ago. With unwavering perseverance in the face of many failures, steady conviction in the possibility of flight, and a determination to bring their vision to reality, the Wright brothers expanded our horizons and also brought the world closer together.

We are still reaping the benefits of their extraordinary achievement. America's aerospace industry has experienced enormous growth and development since the Wright brothers' first flight. It has strengthened our economy, created new business and recreational opportunities, freed us from many of the limits of time and distance, and made our Nation's aviation system the finest in the world. And thanks in large part to the efforts of the men and women throughout the Federal Government—in the Departments of Transportation and Defense, the National Transportation Safety Board, and the National Aeronautics and Space Administration—that system is also the safest in the world.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated December 17 of each year as "Wright Brothers Day" and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 17, 1997, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

[FR Doc. 97–33269
Filed 12–17–97; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Presidential Determination No. 98–7 of December 5, 1997

Presidential Determination Under Subsections 402(a) and 409(a) of the Trade Act of 1974, as Amended—Emigration Policies of Albania, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan

Memorandum for the Secretary of State

Pursuant to the authority vested in me by subsections 402(a) and 409(a) of the Trade Act of 1974 (19 U.S.C. 2432(a) and 2439(a) (the "Act")), I determine that Albania, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan are not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act, or paragraph (1), (2), or (3) of subsection 409(a) of the Act.

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

William J. Clinton

THE WHITE HOUSE,
Washington, December 5, 1997.

[FR Doc. 97–33233
Filed 12–17–97; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 98–8 of December 5, 1997

Presidential Determination on Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me under section 539(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998, Public Law 105–118, I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204, through June 4, 1998.

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

William J. Clinton

THE WHITE HOUSE,
Washington, December 5, 1997.

[FR Doc. 97–33234
Filed 12–17–97; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–97–13]

RIN 0581–AB50

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products: Revision of User Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the fees charged for services provided under the dairy inspection and grading program. This rule will yield an estimated $343,000 during 1998. The program is a voluntary, user fee program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. This action increases the hourly rate to $51.00 per hour for continuous resident services and $56.00 per hour for nonresident services between the hours of 6:00 a.m. and 6:00 p.m. The fee for nonresident services between the hours of 6:00 p.m. and 6:00 a.m. would be $61.60 per hour. These fees represent an increase of four dollars per hour.

The fees are being increased to cover the costs of recent salary increases and locality adjustments, the costs necessary to maintain adequate levels of service during changing production and purchasing patterns within the dairy industry, the continued full funding for standardization activities, and other nonpay operating costs.

EFFECTIVE DATE: January 4, 1998.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Programs, Dairy Grading Branch, Room 2750—South Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 720–9381.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the AMS has considered the economic impact of this action on small entities.

There are more than 600 users of Dairy Grading Branch's inspection and grading services. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). This rule will raise the fee charged to businesses for voluntary inspection services and grading services for dairy and related products. Even though the fees will be raised, the increase is approximately 8 percent and will not significantly affect these entities. These businesses are under no obligation to use these services, and any decision on their part to discontinue the use of the services should not prevent them from marketing their products. The AMS estimates that overall this rule will yield an additional $343,000 during 1998. The rule reflects certain fee increases needed to recover the cost of inspection and grading services rendered in accordance with the Agricultural Marketing Act of 1946.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Without a fee increase, revenue projections for FY 1998 would remain constant at $4.695 million. Costs are projected to increase to $5.628 million. The shortfall, if allowed to continue, would translate into an approximate 1.6 month operating reserve at the end of FY 1998, which is less than Agency policy requires.

The AMS has determined that this action will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601).

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the cost of maintaining the program.

FY 1997 revenue was projected to be $4.733 million and costs to be $5.240 million. The shortfall during the year reduced the operating reserve from 5.6 months at the beginning of the year to 3.8 months at the end of August, and is projected to further reduce the operating reserve to approximately 1.6 months at the end of FY 1998. With this proposed increase, assuming a slightly increased workload, revenue for FY 1998 is projected to be $5.540 million with costs totaling $5.628 million. Of these costs, the general salary increase represents $110,000 per year and is scheduled to be effective in January 1998. Employee salaries and benefits are major program costs and account for approximately 70 percent of the total operating budget. Program travel costs (of which approximately 80 percent are reimbursed by the industry), general contract obligations and Agency overhead account for another 24 percent of the budget. Changing workloads are analyzed on a regular basis in order to maximize grading assignment efficiency and to minimize grader and supervisory costs. Future increases would be proposed as necessary in following years to cover any annual increases in program costs and to maintain the capital reserve at four months.

Since the costs of the grading program are covered entirely by user fees, it is essential that fees be increased when necessary to cover the cost of maintaining a financially self-supporting program. The last fee increase under this program became effective on January 5, 1997. On the same effective date, the salaries of

Federal employees increased by 3 percent, which included locality pay. Also, there have been normal increases in other nonpay operating costs that include utilities, office space, and reimbursable travel. In addition, recent congressional action will result in additional salary increases of 3 percent in 1998. Although the program's operating reserves were adequate to cover the January 5, 1997, salary increase, this will not be the case for 1998 salary increases, and a fee increase is needed.

The grading program fees need to be increased to cover the costs associated with maintaining adequate levels of service during shifting production patterns within the dairy industry. The industry changes include plant consolidations, geographical shifts of dairy production areas, and changes in the types of dairy products being manufactured and offered for inspection and grading services. To minimize the necessary fee increase, the Department has initiated cost-reduction efforts which include the reduction of staff and program overhead.

On October 16, 1997, the AMS published in the **Federal Register** (62 FR 53760), a proposed rule for public comment. Only one comment was received. A U.S. Senator forwarded a constituent comment from a dairy product manufacturer to the Department for its review. That commenter opposed the proposed fee increase as harmful to the dairy industry.

The commenter was of the view that the proposed fee increase coupled with the most recent increase made effective on January 5, 1997 (61 FR 68997), is far out of line with the general economic conditions in the United States. The commenter went on to conclude that manufacturers who must have USDA inspection to sell their products domestically or internationally would bear the brunt of the fee increase. The commenter discussed passing the fee increase on to customers but stated that it would be unable to pass though the increases to its customers. The commenter further stated that it would not accept price increases from its suppliers unless it was an absolute last resort. As stated previously, the Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the service to cover, as nearly as practicable, the cost of maintaining the program. The fees, as proposed in this rulemaking, are consistent with the provisions of the 1946 Act. The Agency conducts continuing fee analyses and has instituted annual fee increases, when necessary, to recover salary and other routine costs. The programs' financial situation described herein requires implementation of the fee increase. Even so, every effort has been and will continue to be made to operate the program as efficiently as possible and to seek cost-cutting measures that are consistent with the Agency's mission under this program.

With regard to the commenters passing increases forward or backward, such actions are subject to agreement between buyers and sellers as is any provision between the parties to require inspection. This program is a voluntary program under the 1946 Act. Even though the fees will be revised, the increase is approximately 8 percent and will not significantly affect the industry. Accordingly, consistent with the provisions of the Agricultural Marketing Act of 1946, the fees as proposed are made final in this rule.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective date of this action until 30 days after publication of this final rule in the **Federal Register**. A revenue shortfall warrants putting the higher rates into effect as quickly as possible. The increase in fees is essential for effective management and operation of the program and to satisfy the intent of the Agricultural Marketing Act of 1946. A proposed rule setting forth proposed fee increases was published in the **Federal Register** on October 16, 1997 (62 FR 53760).

Accordingly, the program fees are being increased as set forth below.

Program Changes Adopted in the Final Rule

This rule document makes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increases the hourly fee for nonresident services from $52.00 to $56.00 for services performed between 6:00 a.m. and 6:00 p.m. The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel plus travel costs.

2. Increases the hourly fee for continuous resident services from $47.00 to $51.00. The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round resident basis.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58 is amended as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

1. The authority citation for part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

Subpart A—[Amended]

2. In subpart A, § 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $56.00 for service performed between 6:00 a.m. and 6:00 p.m. and $61.60 for service performed between 6:00 p.m. and 6:00 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident services.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $51.00 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Dated: December 12, 1997.

Enrique E. Figueroa,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 97–33005 Filed 12–17–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 97–061–2]

Expenses Associated With Transporting and Disposing of Tuberculosis-Exposed Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations concerning animals destroyed because of tuberculosis to allow the U.S. Department of Agriculture to pay herd owners some of their expenses for transporting tuberculosis-exposed cattle, bison, and cervids to slaughter or to the point of disposal, and for disposing of the animals. Prior to the interim rule, herd owners could only receive help with these costs for affected animals. Consequently, herd owners in some cases elected to keep exposed animals in a herd until testing revealed them to be either free of tuberculosis or affected with tuberculosis, or elected not to depopulate an affected herd, providing opportunity for further spread of the disease. The interim rule also made minor changes to the provisions for paying some of the expenses for transporting tuberculosis-affected animals to the point of disposal and disposing of them. The interim rule was necessary to ensure continued progress toward eradicating tuberculosis in the U.S. livestock population.

EFFECTIVE DATE: The interim rule was effective on September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road, Unit 36, Riverdale MD 20737–1231, (301) 734–7727.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective September 17, 1997, and published in the **Federal Register** on September 23, 1997 (62 FR 49590–49593, Docket No. 97–061–1), we amended the regulations in 9 CFR 50.8 to allow the U.S. Department of Agriculture (the Department) to pay herd owners one-half the expenses of transporting tuberculosis-exposed cattle, bison, and cervids to slaughter or to the point of disposal, and for disposing of the animals. The interim rule also provided that the Department may pay more than one-half of the expenses when the Administrator of the Animal and Plant Health Inspection Service (APHIS) determines that doing so will contribute to the tuberculosis eradication program. Prior to this interim rule, herd owners could only receive help with these costs for affected animals. We also amended § 50.8 in the interim rule to allow the Department to pay herd owners of tuberculosis-affected cattle, bison, and cervids more than one-half of the expenses of transporting the animals to slaughter or the point of disposal, and for disposing of the animals when the Administrator of APHIS determines that doing so will contribute to the tuberculosis eradication program. In addition, we amended § 50.8 to remove the provisions concerning forms for payment of expenses for disposal or transportation of tuberculosis-affected animals, and we amended § 50.8 to remove the provision that the Department will not pay any portion of the expenses for transporting or disposing of affected animals when the transportation or disposal is provided by the owner of the affected animals.

Comments on the interim rule were required to be received on or before November 24, 1997. We received one comment by that date. The commenter supported the interim rule as written. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 50 and that was published at 62 FR 49590–49593 on September 23, 1997.

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 12th day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–33037 Filed 12–17–97; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0993]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

AGENCY: Final rule; staff commentary.

SUMMARY: The Board is publishing revisions to its staff commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure). The Board is required to adjust annually the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. The adjustment reflects changes for the twelve-month period ending in November. In 1998, depository institutions with assets totaling $29 million or less are not required to collect data.

DATES: *Effective date.* This rule is effective January 1, 1998.

Applicability date. This rule applies to all data collection in 1998.

FOR FURTHER INFORMATION CONTACT: Pamela C. Morris, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) *only,* contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 *et seq.*) requires most mortgage lenders located in metropolitan statistical areas to collect data about their housing-related lending activity. Annually, lenders must file reports with their federal supervisory agencies and make disclosures available to the public. The Board's Regulation C (12 CFR part 203) implements HMDA. Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) amended HMDA to modify the exemption threshold for small depository institutions. Until 1997, HMDA exempted depository institutions with assets of $10 million or

less, as of the preceding year end. The statutory amendment increased the asset-size exemption threshold by requiring a one-time adjustment of the $10 million figure based on the percentage by which the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW) for 1996 exceeded the CPIW for 1975, and annual adjustments thereafter based on the annual percentage increase in the CPIW. The one-time adjustment increased the exemption threshold to $28 million for 1997 data collection.

To implement the statutory amendment, the Board published an interim rule in January 1997. (62 FR 3603, Jan. 24, 1997). The interim rule was made final in May. (62 FR 28620, May 27, 1997; correction at 62 FR 62339, June 19, 1997). Section 203.3(a)(1)(ii) provides that the Board will adjust the threshold based on the year-to-year change in the average of the CPIW, not seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million. During the period ending in November 1997, the Consumer Price Index for Urban Wage Earners and Clerical Workers increased by 2.4%. As a result, the new threshold is $29 million. Thus, depository institutions with assets of $29 million or less as of December 31, 1997 are exempt from data collection in 1998. An institution's exemption from collecting data in 1998 does not affect its responsibility to report the 1997 data if it was required to collect it.

The Board is adopting this amendment to the staff commentary to implement the annual change in the exemption threshold. The Administrative Procedure Act provides that notice and opportunity for public comment are not required if an agency finds that notice and public comment are unnecessary or would be contrary to the public interest. 5 U.S.C. 553(b)(B). Regulation C establishes a formula (adopted by the Board after notice and comment) for determining the annual adjustment, if any, to the exemption threshold. The Board's amendment to the staff commentary, which merely applies the formula, is technical and not subject to interpretation. For these reasons, the Board has determined that publishing a notice of proposed rulemaking for public comment for the following amendment is unnecessary. Therefore, the Board has adopted this amendment, establishing a new threshold, in final form. This rule is effective as of January 1, 1998, so that institutions that are no longer covered can avoid collecting data unnecessarily.

II. Section Analysis

Section 203.3—Exempt Institutions

Comments 3(a)–2 and 3(a)–3 have been redesignated as comments 3(a)–3 and 3(a)–4, respectively, and a new comment 3(a)–2 has been added to specify the exemption threshold, which is adjusted annually each December. Depository institutions with assets that are at or below the threshold as of December 31, 1997, need not collect the HMDA data for 1998.

List of Subjects in 12 CFR Part 203

Banks, banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for Part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. In Supplement I to part 203, under Section 203.3—Exempt Institutions, under 3(a) *Exemption based on location, asset size, or number of home-purchase loans,* paragraphs 2 and 3 are redesignated as paragraphs 3 and 4, respectively; and a new paragraph 2 is added to read as follows:

Supplement I to Part 203—Staff Commentary

* * * * *

Section 203.3—Exempt Institutions

3(a) *Exemption based on location, asset size, or number of home-purchase loans.*

* * * * *

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 1998, the asset-size exemption threshold is $29 million. Depository institutions with assets at or below $29 million are exempt from collecting data for 1998.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 12, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–33036 Filed 12–17–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 544, 545, 552, 559, 560, 561, 563, 565, 567, 575

[No. 97–126]

Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. The OTS is amending its capital rules to remove transition periods that are outdated, making technical revisions to final rules issued during December, 1996 pursuant to the regulatory reinvention initiative, and making other miscellaneous technical changes to existing regulations.

EFFECTIVE DATE: December 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Senior Paralegal (Regulations), (202) 906–7135, or Karen A. Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Capital

OTS is today adopting several technical amendments to its capital regulations to remove references to transition periods that have elapsed and to streamline its definitions relating to capital.

Regulatory Burden Reduction Regulations

OTS is also making a number of technical corrections to its charter and bylaw, conversion, and subordinate organization regulations [1] that were substantially revised during December, 1996, pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.[2]

In particular, § 552.10, regarding the mailing of annual reports to stockholders, is being amended. Section 552.10 currently requires Federal stock associations that are not wholly-owned

[1] Corporate Governance, 61 FR 64007 (December 3, 1996). Subsidiaries and Equity Investments, 61 FR 66561 (December 18, 1996).

[2] 12 U.S.C. 4803(a)(1).

to send out annual reports to their shareholders within 90 days of the end of the association's fiscal year.

OTS's regulation regarding Corporate Governance [3] extended the time frame within which an association must hold its annual meeting from 120 days to 150 days after the close of its fiscal year. OTS inadvertently did not extend the time frame for mailing annual reports to stockholders.

Section 552.10 is, therefore, being amended to provide a 130-day mailing requirement for annual reports to enable federal savings associations that are subject to the Securities Exchange Act of 1934 to take advantage of the full time period permitted for delivery of an annual report under the SEC's Proxy Rules, [4] and to conform to the changes to the regulations under Corporate Governance. The extension to 130 days also ensures that the mailing requirement in section 552.10 is consistent with the OTS rule that a notice for an annual meeting be sent 20 to 50 days before the meeting.[5]

In addition, section 545.71, which restates federal savings associations' statutory authority to invest in liquid assets, is being removed. The substance of the provision was added to the lending and investment powers chart found at 12 CFR 560.30 as part of the final rule on Subsidiaries and Equity Investments.

Miscellaneous

Finally, OTS is making the following technical revisions:

—OTS's subordinated debt securities regulation is amended to remove references to the Resolution Trust Corporation.

—Erroneous cross-references are corrected throughout OTS's regulations.

—The definition of service corporation in § 561.45 is revised to correct a cross-reference to OTS's subordinate organizations regulations.

—Part 506 is amended to include language mandated by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and to update the display table of OMB control numbers.

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

The OTS has found good cause to dispense with both prior notice and comment on this final rule and a 30-day delay of its effective date mandated by the Administrative Procedure Act.[6] OTS believes that it is contrary to public interest to delay the effective date of the rule, as it eliminates provisions that have caused confusion. Because the amendments in the rule are not substantive, they will not detrimentally affect savings associations by becoming effective immediately.

In addition, this document is exempt from the requirement found in section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 [7] that regulations must not take effect before the first day of the quarter following publication, as it imposes no new requirements.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, [8] it is certified that this technical corrections regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

OTS has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 544

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 559

Savings associations, Subsidiaries.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 561

Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 565

Administrative practice and procedure, Capital, Savings associations.

12 CFR Part 567

Capital, Savings associations.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V, of the Code of Federal Regulations as set forth below:

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended:

a. In paragraph (a) by adding a sentence at the end of the paragraph;

b. In paragraph (b) by adding two entries to the table in numerical order, and revising the entry for Part 575.

The additions and revisions read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) * * * Respondents/recordkeepers are not required to comply with any collection of information unless it displays a currently valid OMB control number.

(b) * * *

[3] 61 FR 64007 (December 3, 1996).

[4] See 17 CFR 240.14a–3(b), which requires that proxy statements sent to shareholders must be accompanied or preceded by the annual report to shareholders.

[5] 12 CFR 552.6(b).

[6] 5 U.S.C. 553.

[7] Pub. L. 103–325, 12 U.S.C. 4802.

[8] Pub. L. 96–354, 5 U.S.C. 601.

12 CFR part or section where identified and described	Current OMB control No.
* * * * *	
Part 516	1550–0005, 1550–0006, 1550–0016
* * * * *	
550.3	1550–0037
* * * * *	
Part 575	1550–0072
* * * * *	

PART 544—CHARTER AND BYLAWS

3. The authority for part 544 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

§ 544.5 [Amended]

4. Section 544.5 is amended, in paragraph (a), by removing the word "shall" from the last sentence, and by adding in lieu thereof the word "may".

PART 545—OPERATIONS

5. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.71 [Removed]

6. Section 545.71 is removed.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

7. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 552.4 [Amended]

8. Section 552.4 is amended in paragraph (b)(4), Section 5 of the charter, by removing the word "section", and by adding in lieu thereof the word "Section", where it appears in:

a. The second sentence of the first paragraph;

b. The first sentence of the third paragraph;

c. The first sentence of paragraph (iii); and

d. The first sentence of paragraph A.

§ 552.6–1 [Amended]

9. Section 552.6–1 is amended by removing, in the last sentence of paragraph (c), the word "such", and by adding in lieu thereof the word "regular".

§ 552.10 [Amended]

10. Section 552.10 is amended by removing the word "ninety" in the first sentence, and by adding in lieu thereof the number "130".

PART 559—SUBORDINATE ORGANIZATIONS

11. The authority citation for part 559 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828.

§ 559.3 [Amended]

12. Section 559.3(g)(2) is amended by removing the phrase "entities be aggregated", and by adding in lieu thereof the phrase "entities must be aggregated".

PART 560—LENDING AND INVESTMENT

13. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

14. Section 560.93 is amended by removing and reserving paragraph (b)(6), and revising paragraph (d)(3)(ii) to read as follows:

§ 560.93 Lending limitations.

* * * * *

(d) * * *

(3) * * *

(ii) The savings association is, and continues to be, in compliance with its capital requirements under part 567 of this chapter;

* * * * *

§ 560.100 [Amended]

15. Section 560.100 is amended by removing the phrase "12 CFR 567.1(l)", and by adding in lieu thereof the phrase "12 CFR 567.1".

PART 561—DEFINITIONS

16. The authority citation for part 561 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 561.45 [Amended]

17. Section 561.45 is amended by removing the phrase "§ 545.74 of this chapter", and by adding in lieu thereof the phrase "part 559 of this chapter".

PART 563—OPERATIONS

18. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 3806; 42 U.S.C. 4106.

§ 563.41 [Amended]

19. Section 563.41(b)(11) is amended by removing the phrase "§ 563.93(b)(11) of this part", and by adding in lieu thereof the phrase "§ 560.93(b)(11) of this chapter".

20. Section 563.81 is amended by revising paragraphs (A) and (B) of the certificate statement contained in paragraph (d)(1)(vi), and by removing the phrase "or RTC" where it appears in paragraph (d)(3), to read as follows:

§ 563.81 Issuance of subordinated debt securities and mandatorily redeemable preferred stock.

* * * * *

(d) * * *

(1) * * *

(vi) * * *

* * * (A) if the FDIC shall be appointed receiver for the issuer of this certificate (the "issuer") and in its capacity as such shall cause the issuer to merge with or into another financial institution, or in such capacity shall sell or otherwise convey part or all of the assets of the issuer to another financial institution or shall arrange for the assumption of less than all of the liabilities of the issuer by one or more other financial institutions, the FDIC shall have no obligation, either in its capacity as receiver or in its corporate capacity, to contract for or to otherwise arrange for the assumption of the obligation represented by this certificate in whole or in part by any financial institution or institutions which results from any such merger or which has purchased or otherwise acquired from the FDIC as receiver for the issuer, any of the assets of the issuer, or which, pursuant to any arrangement with the FDIC, has assumed less than all of the liabilities of the issuer. To the extent that obligations represented by this certificate have not been assumed in full by a financial institution with or into which the issuer may have been merged, as described in this paragraph (A), and/or by one or more financial institutions which have succeeded to all or a portion of the assets of the issuer, or which have assumed a portion but not all of the liabilities of the issuer as a result of one or more transactions entered into by the FDIC as receiver for the issuer, then the holder of this certificate shall be entitled to payments on this obligation in accordance with the procedures and priorities set forth in any applicable receivership regulations or in orders of the FDIC relating to such receivership.

(B) In the event that the obligation represented by this certificate is assumed in full by another financial institution, which shall succeed by merger or otherwise to substantially all of the assets and the business of the issuer, or which shall by arrangement with the FDIC assume all or portion of the liabilities of the issuer, and payment or provision for payment shall have been made in respect of all matured installments of interests upon the certificates together with all matured installments of principal on such certificates which shall have become due otherwise than by

acceleration, then any default caused by the appointment of a receiver for the issuer shall be deemed to have been cured, and any declaration consequent upon such default declaring the principal and interest on the certificate to be immediately due and payable shall be deemed to have been rescinded.

* * * * *

21. Section 563.134 is amended by:

a. Revising paragraph (a)(3); and

b. By removing, in paragraphs (a)(7), (a)(8), and (a)(9), the phrase "fully phased-in capital requirement", and by adding in lieu thereof the phrase "capital requirement'.

The revisions read as follows:

§ 563.134 Capital distributions.

(a) * * *

(3) *Capital requirement* means an association's capital requirement under part 567 of this chapter.

* * * * *

PART 565—PROMPT CORRECTIVE ACTION

22. The authority citation for part 565 continues to read as follows:

Authority: 12 U.S.C. 1831o.

§ 565.2 [Amended]

23. Section 565.2 is amended, in paragraph (f), by removing the phrase "§ 567.1(m)", and by adding in lieu thereof the phrase "§ 567.1".

PART 567—CAPITAL

24. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

25. Section 567.1 is amended by:

a. removing paragraph (ll) and the alphabetic paragraph designations for the remaining definitions, and placing the definitions in alphabetical order;

b. in the definition of *adjusted total assets,* removing paragraph (2)(ii), adding the word "and" at the end of paragraph (2)(i), redesignating paragraph (2)(iii) as paragraph (2)(ii) and revising it, and revising paragraphs (1), (3)(i), and (3)(iii);

c. in the definition of *equity investments,* redesignating paragraph (2) introductory text and paragraphs (2)(i) through (2)(vii) as paragraph (2)(i) introductory text and paragraphs (2)(i)(A) through (2)(i)(G), respectively, designating the concluding text of paragraph (2) as paragraph (2)(ii) and revising it, and adding a colon at the end of newly redesignated paragraph (2)(i) introductory text;

d. in the definition of *Qualifying multifamily mortgage loan,* revising paragraph (3) and paragraph (4) introductory text;

e. in the definition of *Qualifying residential construction loan,* revising paragraph (2); and

f. in the definition of *Qualifying supervisory goodwill,* revising paragraphs (2)(i), (2)(ii)(A), (2)(ii)(B), and (2)(ii)(C) introductory text.

The revisions read as follows:

§ 567.1 Definitions.

* * * * *

Adjusted total assets. * * *

* * * * *

(1) A savings association's total assets as that term is defined in this section;

* * * * *

(2) * * *

(ii) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in the definition of *qualifying supervisory goodwill* in this section;

(3) * * *

(i) Assets not included in the applicable capital standard except for those subject to paragraphs (3)(ii) and (3)(iii) of this definition; * * *

(iii) Investments in any subsidiary subject to consolidation under paragraph (2)(ii) of this definition; and

* * * * *

Equity investments. * * *

* * * * *

(2) * * *

(ii) The term *equity securities* does not include investments in a subsidiary as that term is defined in this section, equity investments that are permissible for national banks, ownership interests in pools of assets that are risk-weighted in accordance with § 567.6(a)(1)(vi) of this part, or the stock of Federal Home Loan Banks or Federal Reserve Banks.

* * * * *

Qualifying multifamily mortgage loan. * * *

* * * * *

(3) For purposes of paragraphs (1) (vi) and (vii) of this definition, the term *value of the property* means, at origination of a loan to purchase a multifamily property: the lower of the purchase price or the amount of the initial appraisal, or if appropriate, the initial evaluation. In cases not involving purchase of a multifamily loan, the *value of the property* is determined by the most current appraisal, or if appropriate, the most current evaluation.

(4) In cases where a borrower refinances a loan on an existing property, as an alternative to paragraphs (1)(iii), (vi), and (vii) of this definition:

* * * * *

Qualifying residential construction loan. * * *

* * * * *

(2) The documentation for each loan and home sale must be sufficient to demonstrate compliance with the criteria in paragraph (1) of this definition. The OTS retains the discretion to determine that any loans not meeting sound lending principles must be placed in a higher risk-weight category. The OTS also reserves the discretion to modify these criteria on a case-by-case basis provided that any such modifications are not inconsistent with the safety and soundness objectives of this definition.

Qualifying supervisory goodwill. * * *

* * * * *

(2) * * *

(i) Supervisory goodwill as defined in this section that is included in goodwill that is reflected in the current reporting period under generally accepted accounting principles ("GAAP"); or

(ii)(A) Supervisory goodwill as defined in this section that is included in goodwill that is reflected in the current reporting period under GAAP;

(B) Plus any amortization of the goodwill in paragraph (2)(ii)(A) of this definition that occurred subsequent to April 12, 1989 for GAAP reporting purposes;

(C) Minus the amortization of the goodwill in paragraph (2)(ii)(A) of this definition through the current reporting period that results when the goodwill is amortized subsequent to April 12, 1989 on a straightline basis over the shorter of—

* * * * *

§ 567.2 [Amended]

26. Section 567.2 is amended by removing and reserving paragraph (b).

27. Section 567.5 is amended by:

a. revising paragraphs (a)(1)(v), (a)(2)(i), (a)(2)(v), and (c);

b. in paragraph (a)(2)(vi), removing the word "subsidi.ary", and by adding in lieu thereof the word "subsidiary", and removing the phrase "§ 567.1(l)", and by adding in lieu thereof the phrase "§ 567.1"; and

c. in paragraph (b)(4), removing the last two sentences.

The revisions read as follows:

§ 567.5 Components of capital.

(a) * * * (1) * * *

(v) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in paragraph (1) of the definition for *qualifying supervisory goodwill* in § 567.1 of this part.

(2) *Deductions from core capital.* (i) Intangible assets, as defined in § 567.1 of this part, are deducted from assets and capital in computing core capital,

except as otherwise provided by § 567.12 of this part.

* * * * *

(v) If a savings association has any investments (both debt and equity) in one or more subsidiaries engaged as of April 12, 1989 and continuing to be engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments from assets and, thus, core capital in accordance with this paragraph (a)(2)(v). The savings association must first deduct from assets and, thus, core capital the amount by which any investments in such subsidiary(ies) exceed the amount of such investments held by the savings association as of April 12, 1989. Next the savings association must deduct from assets and, thus, core capital the lesser of:

(A) The savings association's investments in and extensions of credit to the subsidiary as of April 12, 1989; or

(B) The savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

* * * * *

(c) *Total capital.* (1) A savings association's total capital equals the sum of its core capital and supplementary capital (to the extent that such supplementary capital does not exceed 100% of its core capital).

(2) The following assets, in addition to assets required to be deducted elsewhere in calculating core capital, are deducted from assets for purposes of determining total capital:

(i) Reciprocal holdings of depository institution capital instruments;

(ii) All equity investments; and

(iii) That portion of land loans and nonresidential construction loans in excess of 80 percent loan-to-value ratio.

(3) For the purposes of any risk-based capital requirement under this part, a savings association's total capital equals the amount calculated pursuant to paragraphs (c)(1) and (c)(2) of this section, minus the amount of its IRR component as calculated pursuant to § 567.7 of this part.

28. Section 567.6 is amended by revising paragraph (a)(1)(iii)(D) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(1) * * *

(iii) * * *

(D) Qualifying residential construction loans as defined in § 567.1 of this part.

* * * * *

29. Section 567.9 is amended by:

a. in paragraph (c)(1), removing the phrase "§ 567.1(m)", and by adding in lieu thereof the phrase "§ 567.1";

b. revising paragraph (c)(3); and

c. in paragraph (c)(4), removing the phrase "§ 567.1(1)", and by adding in lieu thereof the phrase "§ 567.1".

The revisions read as follows:

§ 567.9 Tangible capital requirement.

* * * * *

(c) * * *

(3) If a savings association has any investments (both debt and equity) in one or more subsidiary(ies) engaged as of April 12, 1989 and continuing to be engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments from assets and, thus, tangible capital in accordance with this paragraph (c)(3). The savings association must first deduct from assets and, thus, capital the amount by which any investments in such a subsidiary(ies) exceed the amount of such investments held by the savings association as of April 12, 1989. Next, the savings association must deduct from assets and, thus, tangible capital the lesser of:

(i) The savings association's investments in and extensions of credit to the subsidiary as of April 12, 1989; or

(ii) The savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

* * * * *

30. Section 567.12 is amended by revising paragraph (a) and the last sentence of paragraph (b) to read as follows:

§ 567.12 Qualifying intangible assets and mortgage servicing rights.

(a) *Scope.* This section prescribes the maximum amount of qualifying intangible assets, as defined in § 567.1 of this part, and mortgage servicing rights that savings associations may include in calculating tangible and core capital.

(b) * * * Intangible assets, as defined in § 567.1 of this part, other than purchased credit card relationships and core deposit intangibles grandfathered by paragraph (g)(3) of this section, must be deducted in computing tangible and core capital.

* * * * *

PART 575—MUTUAL HOLDING COMPANIES

31. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

§ 575.9 [Amended]

32. Section 575.9 is amended, in the last sentence of paragraph (a)(4), by removing the phrase "remaining paragraphs of section 11", and by adding in lieu thereof the phrase "remaining paragraphs of section 12".

Dated: December 11, 1997.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 97–32829 Filed 12–17–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–222–AD; Amendment 39–10248; AD 97–26–05]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace (Jetstream) Model HS 748 series airplanes. This action requires inspections of the inspection holes in all engine 'W' frame socket fittings to determine if certain fasteners have been installed, or if the inspection holes have been reworked; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent fatigue cracking at the inspection hole locations, due to the installation of certain fasteners or hole enlargement, which could result in failure of the engine mount structure and consequent separation of the engine from the airplane.

DATES: Effective January 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of January 2, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace (Jetstream) Model HS 748 series airplanes. The CAA advises that drive screws have been found installed in the inspection holes of engine 'W' frame socket fittings, which resulted in fatigue cracks at the inspection holes. In addition, investigation revealed that, in some cases, the inspection holes had been enlarged beyond the original 0.125-inch diameter, which would reduce the structural strength of the fittings. Such fatigue cracking at the inspection hole locations, if not detected and corrected in a timely manner, could result in failure of the engine mount structure and consequent separation of the engine from the airplane.

Explanation of Relevant Service Information

British Aerospace (Jetstream) has issued Viscount Preliminary Technical Leaflet (PTL) No. 501, Issue 2, dated June 1, 1994, including Appendix 1, dated January 1, 1994, which describes procedures for a detailed visual inspection of the inspection holes in all engine 'W' frame socket fittings to determine if drive screws, and/or blind rivets have been installed, or if the original 0.125-inch diameter hole size has been reworked. The PTL also describes procedures for reworking the inspection holes and/or replacement of the 'W' frame fitting, if necessary. The CAA classified this service information as mandatory and issued British airworthiness directive 002–09–94, dated September 1994, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) 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 the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the PTL described previously, except as described below.

Differences Between This AD and the Service Information

Operators should note that, unlike the procedures described in the referenced PTL and the British airworthiness directive, this AD will not permit further flight if drive screws, blind rivets, and/or reworked holes are found to exist at the inspection hole locations. The FAA has determined that, due to the safety implications and consequences associated with the installation of drive screws, blind rivets, and/or the existence of reworked holes at the inspection hole locations, corrective action must be accomplished prior to further flight.

Cost Impact

None of the Jetstream Model HS 748 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 13 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this AD would be $780 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–222–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this 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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–26–05 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited, British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10248. Docket 97–NM–222–AD.

Applicability: All Model HS 748 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 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking at the inspection hole locations, due to the installation of drive screws, and/or blind rivets, or hole enlargement, which could result in failure of the engine mount structure and consequent separation of the engine from the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a detailed visual inspection of the inspection holes in all of the aft engine 'W' frame socket fittings to determine if drive screws and/or blind rivets have been installed, and to determine if the inspection holes have been reworked, in accordance with PART ONE of the Accomplishment Instructions of British Aerospace (Jetstream) Viscount Preliminary Technical Leaflet (PTL) No. 501, Issue 2, dated June 1, 1994, including Appendix 1, dated January 1, 1994. If a drive screw or blind rivet is installed, or if any inspection hole has been reworked, prior to further flight, accomplish follow-on corrective actions, as applicable, in accordance with PART THREE of the Accomplishment Instructions of the PTL.

(b) At the next engine 'W' frame removal, or within 24 months after the effective date of this AD, whichever occurs first: Perform a detailed visual inspection of the inspection holes in all of the forward engine 'W' frame socket fittings to determine if drive screws and/or blind rivets have been installed, and to determine if the inspection holes have been reworked, in accordance with PART TWO of the Accomplishment Instructions of British Aerospace (Jetstream) Viscount PTL No. 501, Issue 2, dated June 1, 1994, including Appendix 1, dated January 1, 1994. If a drive screw or blind rivet is installed, or if any inspection hole has been reworked, prior to further flight, accomplish follow-on corrective actions, as applicable, in accordance with PART THREE of the Accomplishment Instructions of the PTL.

Note 2: Accomplishment of the inspections and/or corrective actions in accordance with Jetstream Service Bulletin HS748–71–33, dated September 2, 1994, is considered acceptable for showing compliance with the requirements of paragraphs (a) and (b) of this AD.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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.

(e) The actions shall be done in accordance with British Aerospace (Jetstream) Viscount Preliminary Technical Leaflet (PTL) No. 501, Issue 2, dated June 1, 1994, including Appendix 1, dated January 1, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 002–09–94, dated September 1994.

(f) This amendment becomes effective on January 2, 1998.

Issued in Renton, Washington, on December 9, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32610 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–51–AD; Amendment 39–10251; AD 97–26–08]

RIN 2120–AA64

Airworthiness Directives; Mooney Aircraft Corporation Models M20F, M20J, and M20L Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Mooney Aircraft Corporation (Mooney) Models M20F, M20J, and M20L airplanes. This action requires removing the fuel cap retaining lanyard from the fuel filler cap assemblies. A report of lost engine power during flight because of fuel starvation prompted the action. The investigation revealed that the airplane fuel float became trapped by the fuel cap retaining lanyard, keeping the float from following the fuel

level. This condition caused the pilot to get a false fuel quantity reading. The actions specified by this AD are intended to prevent loss of engine power and fuel depletion during flight caused by a false fuel gauge reading.

DATES: Effective January 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 1998.

ADDRESSES: Service information that applies to this AD may be obtained at Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas, 78028. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 96–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Alma Ramirez-Hodge, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5147; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Mooney Models M20F, M20J, and M20L airplanes was published in the **Federal Register** on March 26, 1997 (62 FR 14359). The action proposed to require removing the lanyard (nylon type material) from the fuel cap assembly. Accomplishment of the proposed action would be in accordance with Mooney Aircraft Bulletin M20–259, Issue Date: September 1, 1996.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter was opposed to the AD based on the premise that the total cost impact to the U.S. fleet outweighs the report of only one incident. The commenter goes on to say that if the pilot had been following good operating practices by doing a visual check of the fuel and using time as a basis for fuel consumption, there most probably wouldn't have been an incident to report. The commenter thinks the AD is not justified by one occurrence of a captured fuel cap lanyard.

The FAA disagrees. The FAA believes that one incident, in some cases, does justify the issuance of an AD. When the single incident indicates that there could be a loss of engine power to the affected airplane model, the justification for the AD is the continued safe flight and safe landing of over 2,000 airplanes. The total cost impact per airplane is minimal, $60 per airplane, when compared to the damage that could be done, should another fuel cap lanyard become trapped. The pilot that experienced a loss of engine power in his/her airplane was fortunate to have landed safely and without further incident. Therefore, this final rule will not change as a result of this comment.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 2,526 airplanes in the U.S. registry will be affected by this AD, that it would take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. There are no parts to include in this cost estimate. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $151,560 or $60 per airplane. The FAA has no way to determine how many owners/operators have already accomplished this action, and assumes that no operator has accomplished this action.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this 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) 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 final 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, Incorporation by reference, Safety.

Adopting of the Amendment

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

PART 39—AIRWORHTINESS 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 (AD) to read as follows:

97–26–08 Mooney Aircraft Corporation: Amendment 39–10251; Docket No. 96–CE–51–AD.

Applicability: The following Models and serial numbered airplanes, certificated in any category.

Models	Serial numbers
M20F	All serial numbers.
M20J	24–0001 through 24–3381.
M20L	26–0001 through 26–0041.

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 within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent loss of engine power and fuel depletion during flight caused by a false fuel gauge reading, accomplish the following:

(a) Remove the lanyard (nylon type material) from the left-hand (LH) and right-hand (RH) fuel filler cap assembly in accordance with the INSTRUCTIONS section of Mooney Aircraft Corporation Service Bulletin M20–259, Issue Date: September 1, 1996.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

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

(d) The removal required by this AD shall be done in accordance with Mooney Aircraft Service Bulletin M20–259, Issue Date: September 1, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas, 78028. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–10251) becomes effective on January 20, 1998.

Issued in Kansas City, Missouri, on December 9, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32849 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–41–AD; Amendment 39–10255; AD 97–26–12]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, and PA–42–1000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all The New Piper Aircraft, Inc. (Piper) Models PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, and PA–42–1000 airplanes. This AD requires amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This AFM amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: January 28, 1998.

ADDRESSES: Information related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–41–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Wayne A. Shade, Aerospace Engineer, FAA, Atlanta Certification Office, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6094; facsimile (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Models PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, and PA–42–1000 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 24, 1997 (62 FR 39793).

The NPRM proposed to require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning could lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

The NPRM was the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received on the NPRM. No comments were received regarding the FAA's determination of the cost to the public.

Comment Disposition

The commenter states that the applicability statement of the NPRM is unclear. The commenter explains that the NPRM references Models PA–42, PA–42–720, and PA–42–1000 airplanes. No reference is made to Model PA–42–720R airplanes. The commenter explains that since common practice is for the FAA to refer to groups of aircraft as a "series", a reasonable inference would be that the Model PA–42–720R airplanes should be included in the applicability of the NPRM. On the other hand, the Model PA–42–720R airplanes are covered by another type certificate than the models referenced in the NPRM so one could also infer that the Model PA–42–720R airplanes should not be included. The commenter asks for clarification on this issue and requests that the FAA not make such obvious differing inferences.

The FAA concurs that the NPRM references Models PA–42, PA–42–720, and PA–42–1000 airplanes, and that no reference is made to Model PA–42–720R airplanes. The FAA also concurs that referencing the term "series" in the Applicability section of an AD could cause confusion. The FAA is making a conscious effort to list all affected models in the Applicability section of all AD's, as was done in the NPRM. The term series in the Applicability section puts the burden of interpreting which airplanes are affected on the owners/operators. The term "series" is acceptable when referring to a large number of airplane models in the narrative of the preamble of the AD. In this NPRM, the FAA's intent was to not include the Model PA–42–720R airplanes. All affected models are listed in the Applicability section. No changes to the final rule have been made as a result of this comment.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has

determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of "30 days after the effective date of this AD" will not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 607 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate can accomplish this AD, as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9), the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the AFM.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this 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) 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 final 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–26–12 The New Piper Aircraft, Inc.: Amendment 39–10255; Docket No. 97–CE–39–AD.

Applicability: Models PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, and PA–42–1000 airplanes, all serial numbers, 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 (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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

"Positioning of power levers below the flight idle stop while in flight is prohibited. Such positioning could lead to loss of airplane control or may result in an engine overspeed condition and consequent loss of engine power."

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10255) becomes effective on January 28, 1998.

Issued in Kansas City, Missouri, on December 10, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32991 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–40–AD; Amendment 39–10257; AD 97–26–14]

RIN 2120–AA64

Airworthiness Directives; MAULE Models MX–7–420 and MXT–7–420 Airplanes and Models M–7–235 and M–7–235A Airplanes Modified in Accordance With Maule Supplemental Type Certificate (STC) SA2661SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that

applies to all MAULE Models MX–7–420 and MXT–7–420 airplanes, and all Models M–7–235 and M–7–235A airplanes that are modified in accordance with Maule STC SA2661SO, which incorporates a certain gas turbine engine, certain amphibious floats, and certain propellers. This AD requires amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This AFM amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: January 28, 1998.

ADDRESSES: Information related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–40–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Wayne A. Shade, Aerospace Engineer, FAA, Atlanta Certification Office, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6094; facsimile (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all MAULE Models MXT–7–420 and MX–7–420 airplanes and all Models M–7–235 and M–7–235A airplanes that are modified in accordance with STC SA2661SO was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 24, 1997 (62 FR 39789).

The NPRM proposed to require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

> Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning could lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

The NPRM was the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of "30 days after the effective date of this AD" will not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 3 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate can accomplish this AD, as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9), the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the AFM.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this 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) 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 final 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–26–14 Maule: Amendment 39–10257; Docket No. 97–CE–40–AD.

Applicability: The following airplane models, certificated in any category:

—Models MXT–7–420 and MX–7–420 airplanes, all serial numbers; and

—Models M–7–235 and M–7–235A airplanes, all serial numbers, that are modified in accordance with Maule Supplemental Type Certificate (STC) SA2661SO.

Note 1: Maule STC SA2661SO includes the procedures for incorporating the following items on the Maule Models M–7–235 and M–7–235A airplanes:

—An Allison 250–B17C gas turbine engine;

—Edo Model 797–2500 amphibious floats; and

—Hartzell Model HC–B3TF–7A/T10173–11R or HC–B3TF–7A/T10173F–11R propellers.

Note 2: 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 (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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

"Positioning of power levers below the flight idle stop while in flight is prohibited. Such positioning could lead to loss of airplane control or may result in an engine overspeed condition and consequent loss of engine power."

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10257) becomes effective on January 28, 1998.

Issued in Kansas City, Missouri, on December 10, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32990 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–39–AD; Amendment 39–10256; AD 97–26–13]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Models EMB–110P1 and EMB–110P2 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Models EMB–110P1 and EMB–110P2 airplanes. This AD requires amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This AFM amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent increased propeller drag beyond the certificated limits caused by the power levers being positioned below the flight idle stop while the airplane is in flight, which could result in loss of airplane control or engine overspeed with consequent loss of engine power.

EFFECTIVE DATE: January 28, 1998.

ADDRESSES: Information related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–39–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Wayne A. Shade, Aerospace Engineer, FAA, Atlanta Certification Office, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6094; facsimile (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to EMBRAER Models EMB–110P1 and EMB–110P2 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 24, 1997 (62 FR 39791).

The NPRM proposed to require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may result in increased propeller drag beyond the certificated limits.

The NPRM was the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of "30 days after the effective date of this AD" will not inadvertently ground airplanes and would assure that all owners/operators

of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 54 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate can accomplish this AD, as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9), the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the AFM.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this 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) 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 final 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–26–13 Empresa Brasileira De Aeronautica S.A.: Amendment 39–10256; Docket No. 97–CE–39–AD.

Applicability: Models EMB–110P1 and EMB–110P2 airplanes, all serial numbers, 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 (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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent increased propeller drag beyond the certificated limits caused by the power levers being positioned below the flight idle stop while the airplane is in flight, which could result in loss of airplane control or engine overspeed with consequent loss of engine power, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

"Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may result in increased propeller drag beyond the certificated limits."

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10256) becomes effective on January 28, 1998.

Issued in Kansas City, Missouri, on December 10, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32995 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–97–3057]

RIN 2105–AC67

Computer Reservations System Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is adopting a rule which amends its rules governing airline computer reservations systems (CRSs) (14 CFR part 255) by changing their expiration date from December 31, 1997, to March 31, 1999. This amendment will keep the rules from terminating on December 31, 1997, and will thereby cause those rules to remain in effect while the Department carries out its reexamination of the need for CRS regulations. The Department believes that the current rules should be maintained during that reexamination because they appear to be necessary for promoting airline competition and helping to ensure that consumers and travel agents can obtain complete and accurate information on airline services.

DATES: This rule is effective on December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: When the Department adopted its rules governing CRS operations, 14 CFR part 255, in 1992, it included a sunset date for the rules to ensure that the need for the rules and their effectiveness would be reexamined within several years. The sunset date is December 31, 1997. 14 CFR 255.12. We have begun the process of reexamining the rules but cannot complete that task by the rules' current

sunset date. We therefore proposed to change the sunset date to March 31, 1999. 62 FR 59313, November 3, 1997. We gave interested persons an opportunity to comment on our proposal, but no one except America West Airlines submitted comments. America West supports the proposal. We have determined to adopt our proposed rule.

Background

As we explained in the notice of proposed rulemaking, in our last major CRS rulemaking, and in recent CRS proceedings, CRS regulations are necessary to protect airline competition and ensure that consumers can obtain accurate and complete information on airline services. *See, e.g.*, 57 FR 43780, 43783–43787, September 22, 1992. CRSs have become essential for the marketing of airline services, and market forces do not discipline the price and quality of service offered airlines by the systems. Furthermore, the systems operating in the United States are each entirely or predominantly owned by one or more airlines or airline affiliates. Without regulations, a system's owners could use it to unreasonably prejudice the competitive position of other airlines or to provide misleading or inaccurate information to travel agents and their customers. 62 FR 59315, November 3, 1997.

When we last reexamined the CRS rules, we readopted them with changes designed to promote airline and CRS competition. 57 FR 43780, September 22, 1992. Our rules included a sunset date, December 31, 1997, to ensure that we would reexamine them after several years. 14 CFR 255.12; 57 FR at 43829–43830, September 22, 1992.

We have begun the process of reexamining our rules by publishing an advance notice of proposed rulemaking asking interested persons to comment on whether we should readopt the rules and, if so, whether changes are needed. 62 FR 47606, September 10, 1997. At the request of some parties, we gave the parties more time for submitting their comments and reply comments on the advance notice. 62 FR at 58700, October 30, 1997. We later invited interested persons to comment on a rulemaking petition filed by America West Airlines in their comments on our advance notice. 62 FR 60195, November 7, 1997.

Our Proposed Extension of the Current Rules

We obviously cannot complete the rulemaking proceeding for the reexamination of our rules by December 31, 1997, the current sunset date set forth in our rules. We therefore proposed to change the rules' sunset date to March 31, 1999. The proposed amendment would keep the current rules in force while we conducted our overall reexamination of the rules.

We reasoned that a temporary extension of the current rules would preserve the status quo while we determine whether our existing rules should be readopted. As we noted, the systems, airlines, and travel agencies have been operating with the expectation that each system will comply with the rules. They would be unduly burdened if the rules expired and were later reinstated by us, since they could have changed their method of operations in the meantime. 62 FR at 59315, November 3, 1997.

We also tentatively determined that a short-term continuation of the current rules was necessary to protect airline competition and consumers against unreasonable practices. The findings made in our last major CRS rulemaking on the need for CRS rules still appeared to be valid. Those findings indicated that the rules should be maintained to protect airline competition and consumers against the injuries that could otherwise occur.

We further found that an extension of the rules was unlikely to impose significant costs on the systems and their owners, since they had already adjusted their operations to comply with the rules and since the rules did not impose costly burdens of a continuing nature on the systems. 62 FR 59316, November 3, 1997.

Finally, we suggested that our obligation under section 1102(b) of the Federal Aviation Act, recodified as 49 U.S.C. 40105(b), to act consistently with the United States' obligations under treaties and bilateral air services agreements provided an additional ground for maintaining our current rules during our reexamination of their need and effectiveness. 62 FR 59316, November 3, 1997.

Due to the need to make the proposed amendment effective by the end of 1997, we shortened the comment period to fifteen days. As we noted, however, the advance notice of proposed rulemaking for the reexamination of the CRS rules had stated that we intended to propose an extension of the current rules. 62 FR at 59314, November 3, 1997.

Comments

America West was the only party that filed comments on our proposal to change the rules' sunset date. America West agrees with our tentative findings in the notice of proposed rulemaking that the systems have market power that requires continuing regulation and the findings made in our parity clause rulemaking and in our last major CRS rulemaking. America West further cites the complaints made by it in its recent petition for a rulemaking on CRS booking fee practices and travel agency transactions, Docket OST–97–3014, and asks that we act promptly on that petition.

Decision

We will amend the rules' sunset date as proposed by our notice of proposed rulemaking. America West supports our proposal, and no one objected to it. The analysis underlying that proposal is consistent with the findings made by us in other recent rulemakings on CRS issues, as stated in our notice and America West's comments. We will, of course, review our past findings on the need for continued CRS regulation as part of our overall reexamination of the CRS rules.

We recognize America West's interest in prompt action on its rulemaking petition, but we plan to address its petition when we review the comments and reply comments being filed in the proceeding for reexamining all of the CRS rules. We have already asked parties to include their responses to America West's petition in their comments on our advance notice of proposed rulemaking. 62 FR 60195, November 7, 1997.

Effective Date

We have determined for good cause to make this amendment effective on December 31, 1997, rather than thirty days after publication as required by the Administrative Procedure Act, 5 U.S.C. 553(d), except for good cause shown. In order to maintain the current rules in effect on a continuing basis, we must make this amendment effective by December 31, 1997. Since the amendment preserves the status quo, it will not require the systems, airlines, and travel agencies to change their operating methods. As a result, making the amendment effective less than thirty days after publication will not burden anyone.

Regulatory Process Matters

Regulatory Assessment

This rule is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that order. Executive Order 12866 requires each executive agency to prepare an assessment of costs and benefits for each significant rule under section 6(a)(3) of that order. The rule is also not significant under the

regulatory policies and procedures of the Department of Transportation, 44 FR 11034, February 26, 1979.

In our notice of proposed rulemaking we tentatively determined that maintaining the current rules should impose no significant costs on the CRSs. The systems have done the work necessary to comply with the rules' requirements on displays and functionality. Continuing to operate in compliance with the rules would not impose a substantial burden on the systems. Maintaining the rules would benefit airlines using CRSs, since otherwise they could be subjected to unreasonable terms for participation, and would benefit consumers, who otherwise might obtain incomplete or inaccurate information on airline services.

We also noted that our notice of proposed rulemaking in our last major rulemaking included a tentative regulatory impact statement whose analysis we made final in adopting the rules. In proposing to change the rules' sunset date, we stated our belief that the analysis remained applicable to that proposal and that no new regulatory impact statement therefore seemed necessary. We further stated our willingness to consider any comments on that analysis before making our proposal final.

As indicated, no one filed any comments. We will therefore base this rule on the analysis used in our last major CRS rulemaking, as discussed in our notice of proposed rulemaking. We will, of course, undertake a new regulatory assessment as part of our review of the existing rules, if we determine that rules remain necessary.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. and foreign airlines and smaller travel agencies.

Our notice of proposed rulemaking set forth the reasons for our proposed extension of the rules' expiration date and the objectives and legal basis for that proposed rule. We also pointed out that keeping the current rules in force would not change the existing regulation of small businesses. In addition, we presented a regulatory flexibility analysis on the impact of the rules in our last major CRS rulemaking. That analysis appeared to be valid for our proposed amendment of the rules' sunset date. We therefore adopted that analysis as our tentative regulatory flexibility statement and stated that we would consider any comments submitted on that analysis in this proceeding.

We noted that the continuation of our existing CRS rules will primarily affect two types of small entities, smaller airlines and travel agencies. To the extent that the rules enable airlines to operate more efficiently and reduce their costs, changing the sunset date of the CRS rules would also affect all small entities that purchase airline tickets, since airline fares may be somewhat lower than they would otherwise be.

We reasoned that the rules would benefit smaller airlines without a CRS ownership affiliation, by protecting them from certain potential system practices that could injure their ability to operate profitably and compete successfully. If there were no rules, the systems' airline owners could use them to prejudice the competitive position of smaller airlines. The rules protect smaller airlines, for example, by prohibiting display bias and discriminatory fees for services provided airlines. The rules also impose no significant costs on smaller airlines.

The CRS rules affect the operations of smaller travel agencies, primarily by prohibiting certain CRS practices that could unreasonably restrict the travel agencies' ability to use more than one system or to switch systems. Among other things, the rules give travel agencies the right to use third-party hardware and software and prohibit display bias.

No one filed comments on our Regulatory Flexibility Act analysis. We will adopt the analysis set forth in the notice of proposed rulemaking.

The Regulatory Flexibility Act also requires each agency to periodically review rules which have a significant economic impact upon a substantial number of small entities. 5 U.S.C. 610. Our rulemaking reexamining the need for the CRS rules and their effectiveness will constitute the required review of those rules. Our reexamination of the rules will include a Regulatory Flexibility Act analysis if we propose new CRS rules.

Our rule contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

The Department certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35.

Federalism Implications

This rule will have no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, we have determined that the rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

Accordingly, the Department of Transportation proposes to amend 14 CFR part 255, Carrier-owned Computer Reservations Systems, as follows:

PART 255—[AMENDED]

1. The authority citation for part 255 is revised to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

§ 255.12 Termination.

Unless extended, these rules on carrier-owned computer reservation systems shall terminate on March 31, 1999.

Issued in Washington, D.C. on December 11, 1997.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–32897 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 95N–0245 and 94P–0110]

RIN 0910–AA59

Food Labeling; Statement of Identity, Nutrition Labeling and Ingredient Labeling of Dietary Supplements; Compliance Policy Guide, Revocation; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of September 23, 1997 (62 FR 49826). The final rule amended the food labeling regulations to establish requirements for the identification of dietary supplements and for their nutrition labeling and ingredient labeling in response to the Dietary Supplement Health and Education Act of 1994 (the DSHEA). The document was published with several inadvertent editorial errors. This document corrects those errors.

DATES: The regulation is effective March 23, 1999.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5587.

In FR Doc. No. 97–24739, appearing on page 49826 in the **Federal Register** of Tuesday, September 23, 1997, the following corrections are made:

1. On page 49829, in the first column, in the last sentence of the first paragraph, add "§ 101.36(b)(2)." after the word "modifying".

2. On page 49833, in the first column, in the third paragraph, in the second line from the bottom, "or" is corrected to read "for".

3. On page 49840, in the third column, in the first full paragraph, in the eleventh line, add "514" after "U.S.".

§ 101.12 [Corrected]

4. On page 49848, § 101.12 *Reference amounts customarily consumed per eating occasion* is corrected in paragraph (b), Table 2, under the subheading "Miscellaneous category", by adding seven asterisks above the entry for Dietary supplements.

Dated: December 9, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32806 Filed 12–17–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AA95

Methylene Chloride; Partial Stay

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; partial stay of start-up dates for compliance.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has received a motion for reconsideration of certain provisions of its standard regulating occupational exposure to methylene chloride, 62 FR 1494 (Jan. 10, 1997). The motion, filed jointly by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW; the Halogenated Solvents Industry Alliance, Inc., and others, requests, among other things, extensions of the current start-up dates for installation of engineering controls and use of respiratory protection for certain employers. It also requests an interim stay of those compliance dates pending OSHA's ruling on the motion for reconsideration.

OSHA has preliminarily evaluated the motion for reconsideration and, based on that evaluation, finds good cause to grant in part the movants' request for an interim stay of the start-up dates. Accordingly, for those employers subject to the motion who would otherwise need to use respiratory protection or install engineering controls on or before April 10, 1998, OSHA is hereby delaying until August 31, 1998 the requirement to use respiratory protection to achieve the 8-hour TWA PEL, and to December 10, 1998 the requirement to achieve the 8-hour TWA PEL and the STEL through engineering controls.

DATES: The effective date of this partial stay is December 18, 1997. Under the stay, the start-up date for certain employers to use respiratory protection to achieve the 8-hour TWA PEL is August 31, 1998, and the start-up date for certain employers to install engineering controls is December 10, 1998.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, OSHA Office of Public Affairs, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: OSHA published a new methylene chloride (MC) standard on January 10, 1997 (62 FR 1494). The standard establishes an 8-hour time-weighted-average permissible exposure limit (8-hour TWA PEL) for MC of 25 per million (ppm). It also sets a short term exposure limit (STEL) of 125 ppm averaged over a 15 minute period. Employers must achieve the 8-hour TWA PEL and the STEL, to the extent feasible, by engineering and work practice controls. If such controls are unable to achieve the exposure limits, and during the time they are being implemented, employers must use respirators to protect employees against excessive MC exposure.

The methylene chloride standard establishes different start-up dates for employers in different size categories. It requires compliance with the engineering control requirement by April 10, 2000 for employers with fewer than 20 employees; April 10, 1999 for polyurethane foam manufacturers with 20 to 99 employees; and April 10, 1998 for all other employers. As originally published, compliance with the requirement for respiratory protection was required by April 10, 1998 for employers with fewer than 20 employees; January 5, 1998 for polyurethane foam manufacturers with 20 to 99 employees; and October 7, 1997 for all other employers. OSHA subsequently extended certain start-up dates, including the requirement for all other employers to use respiratory protection, to December 21, 1997. (62 FR 54382, Oct. 20, 1997).

On November 24, 1997, OSHA received a joint motion for reconsideration of certain aspects of the standard from the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW; the Halogenated Solvents Industry Alliance, Inc.; Benco Sales, Inc.; Brock Woodcraft; Masters Magic Products, Inc.; Bassco Foam, Inc; and Tupelo Foam Sales, Inc. Among other things, the movants ask that the compliance dates for installation of engineering controls and use of respiratory protection to achieve the 8-hour TWA PEL be extended for employers who use methylene chloride in certain specific applications. Those applications are polyurethane foam

manufacturing; foam fabrication; furniture refinishing; general aviation aircraft stripping; formulation of products containing methylene chloride; boat building and repair; recreational vehicle manufacture; van conversion; upholstery; and use of methylene chloride in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing.

The motion for reconsideration requests that the standard's current final engineering control start-up date of April 10, 2000, which is now limited to employers with fewer than 20 employees, also apply to employers in the specified application groups with 20–49 employees and foam fabricators with 20–149 employees. According to the parties, employers in these size categories, like those with fewer than 20 employees, have limited resources with which to develop and implement engineering controls and will be able to use those resources more efficiently if given sufficient time to develop and install effective controls and to take advantage of compliance assistance that OSHA plans to offer. The motion requests shorter extensions of the engineering control dates for larger employers in these application groups. The parties further request that respirator use to achieve the 8-hour TWA PEL not be required before the engineering control start-up dates for the employers covered by the motion. The parties assert that it would better protect workers to enable these employers to concentrate their resources on implementation of effective engineering controls rather than divert part of those resources to interim respiratory protection that would no longer be needed once full compliance with the 8-hour TWA PEL and STEL is achieved by engineering controls. Unlike for most substances, inexpensive respirators do not protect against MC exposures. Thus, the extensions of start-up dates the parties seek are designed to allow employers to allocate their resources effectively in developing permanent engineering solutions that will reduce worker MC exposures to below the 8-hour TWA PEL and STEL.

OSHA generally agrees that worker protection against MC exposure will best be achieved if employers develop and install effective engineering controls as soon as practicable. The agency recognizes that employers require a reasonable amount of time to develop and install such controls. OSHA's preliminary evaluation of the motion for reconsideration indicates that the parties have provided good cause for the extensions they seek. However, the agency intends to further evaluate the motion and to ask for public comment on it.

In their motion, the parties ask that OSHA temporarily stay the start-up dates for which they request extensions until OSHA takes final action on the motion. OSHA finds good cause to grant in part the movants' request for an interim stay in order to avoid the need for employers to meet start-up dates that would no longer apply if the motion is granted. At present, certain start-up dates that would be extended if the motion is granted take effect on or before April 10, 1998. These include: December 21, 1997 for employers with 20 or more employees (except polyurethane foam manufacturers with 20–99 employees) to use respiratory protection to achieve the 8-hour TWA PEL; January 5, 1998 for polyurethane foam manufacturers with 20–99 employees to use respiratory protection to achieve the 8-hour TWA PEL; April 10, 1999 for employers with fewer than 20 employees to use respiratory protection to achieve the 8-hour TWA PEL; and April 10, 1998 for employers with 20 or more employees (except polyurethane foam manufacturers with 20–99 employees) to install engineering controls to achieve the 8-hour TWA PEL and STEL. The only start-up dates scheduled to take effect on or after April 10, 1998 are: April 10, 1999 for polyurethane foam manufacturers with 20–99 employees to use engineering controls to achieve the 8-hour TWA PEL and STEL; and April 10, 2000 for employers with fewer than 20 employees to use engineering controls to achieve the 8-hour TWA PEL and STEL.

OSHA recognizes that employers should receive a reasonable amount of notice before the start-up dates for installation of engineering controls and use of respirators take effect. Accordingly, to assure that employers who would receive extensions of the start-up dates if the motion is granted have sufficient notice, OSHA concludes it is appropriate to extend the start-up dates that would otherwise take effect on or before April 10, 1998. Accordingly, the agency is (1) extending the start-up date for all employers subject to the motion to use respiratory protection to achieve the 8-hour TWA PEL to August 31, 1998; and (2) extending the start-up for employers with 20 or more employees (except polyurethane foam manufacturers with 20–99 employees) to install engineering controls to achieve the 8-hour TWA PEL and STEL to December 10, 1998. To further assure that employers are afforded a reasonable amount of notice of the date by which they must comply with these provisions, OSHA may further extend these start-up dates if a final ruling on the joint motion is not issued sufficiently far in advance of the August 31, 1998 start-up date for use of respiratory protection to achieve the 8-hour TWA PEL that is being established by this partial stay.

The parties request extensions of compliance deadlines only for installation of engineering controls and for use of respiratory protection to meet the 8-hour TWA PEL. As their motion points out, employees exposed to methylene chloride will still receive important protection from other provisions of the standard even if their motion is granted. Thus, during the period covered by this partial stay, employers will, by the start-up dates currently established by the standard be required to achieve the STEL (by either engineering controls or respiratory protection, at their option), implement all feasible work practice controls to reduce methylene chloride exposures, and comply with all other provisions of the MC standard that are not being stayed. Moreover, all employers must achieve the prior limits specified in 29 CFR 1910.1000 Table Z–2 with feasible engineering controls until the new exposure limits take effect.

OSHA further finds that there is good cause to issue this stay without notice and public comment because following such procedures would be impractical, unnecessary or contrary to the public interest in this case.

Authority and Signature: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

List of Subjects in 29 CFR Part 1910

Chemicals, Hazardous Substances, Occupational safety and health.

Signed at Washington, DC this 12th day of December 1997.

Charles N. Jeffress,

Assistant Secretary of Labor.

Part 1910 of title 29 of the Code of Federal Regulations is amended as follows:

PART 1910—[AMENDED]

1. The general authority citation for subpart Z of 29 CFR part 1910 continues to read, in part, as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76

(41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable; and 29 CFR Part 1911.

* * * * *

2. A note is added after paragraph (o) of § 1910.1052 to read as follows:

§ 1910.1052 Methylene Chloride.

* * * * *

[Note to paragraph (o): The requirement of 29 CFR 1910.1052(g)(1) to use respiratory protection whenever an employee's exposure to methylene chloride exceeds or can reasonably be expected to exceed the 8-hour TWA PEL is hereby stayed until August 31, 1998 for employers engaged in polyurethane foam manufacturing; foam fabrication; furniture refinishing; general aviation aircraft stripping; formulation of products containing methylene chloride; boat building and repair; recreational vehicle manufacture; van conversion; upholstery; and use of methylene chloride in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing.

The requirement of 29 CFR 1910.1052(f)(1) to implement engineering controls to achieve the 8-hour TWA PEL and STEL is hereby stayed until December 10, 1998 for employers with more than 100 employees engaged in polyurethane foam manufacturing and for employers with more than 20 employees engaged in foam fabrication; furniture refinishing; general aviation aircraft stripping; formulation of products containing methylene chloride; boat building and repair; recreational vehicle manufacture; van conversion; upholstery; and use of methylene chloride in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing.]

[FR Doc. 97–33027 Filed 12–17–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI89

Reservists' Education: Increase in Rates Payable Under the Montgomery GI Bill—Selected Reserve

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: By statute, the monthly rates of basic educational assistance payable to reservists under the Montgomery GI Bill—Selected Reserve must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing rates of basic educational assistance payable under the Montgomery GI Bill—Selected Reserve for fiscal year 1998 (October 1, 1997, through September 30, 1998) are changed to show a 2.8% increase in these rates.

DATES: This final rule is effective December 18, 1997. However, the changes in rates are applied retroactively to conform to statutory requirements. For more information concerning the dates of application, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs (202) 273–7187.

SUPPLEMENTARY INFORMATION: Under the formula mandated by 10 U.S.C. 16131(b) for fiscal year 1998, the rates of basic educational assistance under the Montgomery GI Bill—Selected Reserve payable to students pursuing a program of education full time, three-quarter time, and half time must be increased by 2.8%, which is the percentage by which the total of the monthly Consumer Price Index-W for July 1, 1996, through June 30, 1997, exceeds the total of the monthly Consumer Price Index-W for July 1, 1995, through June 30, 1996.

10 U.S.C. 16131(b) requires that full-time, three-quarter time, and half-time rates be increased as noted above. In addition, 10 U.S.C. 16131(d) requires that monthly rates payable to reservists in apprenticeship or other on-the-job training must be set at a given percentage of the full-time rate. Hence, there is a 2.8% raise for such training as well.

10 U.S.C. 16131(b) also requires that the Department of Veterans Affairs (VA) pay reservists training less than half time at an appropriately reduced rate. Since payment for less than half-time training became available under the Montgomery GI Bill—Selected Reserve in fiscal year 1990, VA has paid less than half-time students at 25% of the full-time rate. Changes are made consistent with the authority and formula described in this paragraph.

Nonsubstantive changes also are made for the purpose of clarity.

The changes set forth in this final rule are effective from the date of publication, but the changes in rates are applied retroactively from October 1, 1997 in accordance with the applicable statutory provisions discussed above.

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Defense, the Commandant of the Coast Guard, and the Acting Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 17, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

Approved: November 7, 1997.

Al H. Bemis,

Deputy Assistant Secretary for Defense for Reserve Affairs (Manpower and Personnel).

Approved: Novmeber 25, 1997.

G.F. Woolever,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set out above, 38 CFR part 21, subpart L, is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart L—Educational Assistance for Members of the Selected Reserve

1. The authority citation for part 21, subpart L, continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

2. In 21.7636, paragraphs (a)(1), (a)(2)(i), and (a)(3) are revised to read as follows:

§ 21.7636 Rates of payment.

(a) *Monthly rate of educational assistance.* (1) Except as otherwise provided in this section or in § 21.7639, the monthly rate of educational assistance payable to a reservist is the amount stated in this table:

Period of pursuit of training	Training time			
	Full-time	¾ time	½ time	¼ time
Oct. 1, 1996-Sept. 30, 1997	$203.24	$152.43	$101.62	$50.81
On or after Oct. 1, 1997	208.93	156.70	104.47	52.23

(2) * * * (i)

Training period	Monthly rate	
	Oct. 1, 1996—Sept. 30, 1997	On or after Oct. 1, 1997
First six months of pursuit of training	$152.43	$156.70
Second six months of pursuit of training	111.78	114.91
Remaining pursuit of training	71.13	73.13

* * * * *

(3) The monthly rate of educational assistance payable to a reservist for pursuit of a cooperative course during the period beginning on October 9, 1996, and ending on September 30, 1997, is $203.24. The monthly rate of educational assistance payable to a reservist for pursuit of a cooperative course on or after October 1, 1997, will be the rate stated in paragraph (a)(1) of this section.

* * * * *

[FR Doc. 97–32988 Filed 12–17–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 72, 73, 74, 75, 77, and 78

[FRL–5936–3]

RIN 2060–AF43

Acid Rain Program: Revisions to Permits, Allowance System, Sulfur Dioxide Opt-ins, Continuous Emission Monitoring, Excess Emissions, and Appeal Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: Title IV of the Clean Air Act authorizes the Environmental Protection Agency (EPA or the Agency) to establish the Acid Rain Program. The purposes of the Acid Rain Program is to significantly reduce emissions of sulfur dioxides and nitrogen oxides from utility electric generating plants in order to reduce the adverse health and ecological impacts of acidic deposition (or acid rain) resulting from such emissions. On January 11 and March 23, 1993, the Agency promulgated final rules governing permitting, the allowance system, continuous emissions monitoring, excess emissions, and appeal procedures. On October 24, 1997, EPA published final revisions to those rules. This action corrects certain inadvertent, drafting errors in the October 24, 1997 document.

EFFECTIVE DATE: December 18, 1997.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, attorney-advisor, at (202) 564–9151 (U.S. Environmental Protection Agency, 401 M Street, SW, Acid Rain Division (6204J), Washington DC 20460); or the Acid Rain Hotline at (202) 564–9620.

SUPPLEMENTARY INFORMATION: On October 24, 1997 (62 FR 55460 (1997)), EPA promulgated final revisions to the permits, allowance system, sulfur dioxide opt-ins, continuous emission monitoring, excess emissions, and appeal procedures rules. Subsequently, EPA identified certain inadvertent, drafting errors in the October 24, 1997 document. While the errors may cause some confusion, they do not alter the substance of the rule revisions. Today's action corrects those errors.

The October 24, 1997 final rule, EPA revised the procedures for fast-track modifications of Acid Rain permits. In particular, § 72.82(d) was revised to provide State permitting authorities 90 days after the close of the 30-day comment period (or a total of 120 days) for acting on a requested fast-track modification. 62 FR 55485; *see also* 61 FR 68340, 68377 (1996) (proposed rule revisions). The October 24, 1997 preamble erroneously stated that proposed rule revisions (promulgated on December 27, 1996) and the final rule revisions gave State permitting authorities only 60 days after the comment period (or a total of 90 days). Today's action corrects the preamble language to make it consistent with the rule language.

The other corrections made by today's action involve minor corrections to ensure that revised language for certain rule provisions is correctly incorporated into those provisions. For example, the October 24, 1997 document removed certain words in § 78.4(c)(1) and replaced them with new language. In so doing, the October 24, 1997 document failed to state all of the words that are to be removed. This is corrected by today's action.

For the reasons discussed above, this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735 (1993)). For the same reasons, this action does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. With regard to this action, the Agency thus has no obligations under sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, the action is not subject to

the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this document and any other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this document in today's **Federal Register**. This action is not a "major rule" as defined in 5 U.S.C. 804(2).

Dated: December 9, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

Accordingly, for the reasons set out above, the publication on October 24, 1997 of the final rule at 62 FR 55460 is corrected as follows:

1. On page 55470, first column, lines 45–47, the words "a 90-day period (i.e., the 30-day comment period and 60 days after the end of the period)" are removed and replaced by the words "a 120-day period (i.e., the 30-day comment period and 90 days after the end of the period)".

PART 72—[CORRECTED]

§ 72.8 [Corrected]

2. On page 55477, third column, § 72.8(b)(2), line 4, the words "which that the unit" are removed and replaced by the words "which the unit".

PART 77—[CORRECTED]

§ 77.4 [Corrected]

3. On page 55487, second column, amendatory instruction 49, line 4, the words "and removing paragraph (g)(2)(i)(D)" are added after the words "(k)(2)".

PART 78—[CORRECTED]

§ 78.4 [Corrected]

4. On page 55488, second column, amendatory instruction 54, line 11, the word "shown" is added after the words "based on good cause".

[FR Doc. 97–32927 Filed 12–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL117–3; FRL–5935–2]

Approval and Promulgation of State Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action on the following revisions to the Illinois ozone State Implementation Plan (SIP): Rate-Of-Progress (ROP) plans for the purpose of reducing Volatile Organic Compound (VOC) emissions in the Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Oswego Township in Kendall County, and Aux Sable and Goose Lake Townships in Grundy County) and in the Metro-East St. Louis ozone nonattainment area (Madison, Monroe, and St. Clair Counties) by 15 percent by November 15, 1996, relative to 1990 baseline emissions; contingency plans for the same ozone nonattainment areas for the purpose of achieving an additional 3 percent VOC emission reductions beyond the 15 percent ROP plans; and transportation control measures (TCM) for the Metro-East St. Louis area. Previously, on July 14, 1997, EPA issued a direct final approval of these SIP revisions. On the same day (July 14, 1997), EPA proposed approval and solicited public comment on the SIP revisions. This proposed rule established a 30-day public comment period noting that if adverse comments were received regarding the direct final rule EPA would withdraw the direct final rule and publish an additional final rule to address the public comments. Adverse comments were received during the public comment period, and EPA withdrew the direct final rule on September 3, 1997 (62 FR 46446). This final rule addresses these comments and finalizes the approval of the Chicago and Metro-East area 15 percent and contingency plans, and the Metro-East area TCMs.

DATES: This final rule is effective January 20, 1998.

ADDRESSES: Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office).

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background on Rate-Of-Progress and Contingency Plan Requirements and EPA Review Criteria

On November 15, 1990, Congress enacted amendments to the Clean Air Act (Act); Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 182(b)(1) of the Act requires States with ozone nonattainment areas classified as moderate and above to submit ROP plans to reduce VOC emissions by 15 percent from 1990 levels by November 15, 1996, accounting for growth in the VOC emissions occurring after 1990. For purposes of these plans, the Act, under sections 182(b)(1) (B) and (D), defines baseline emissions as the total amounts of actual VOC emissions from all anthropogenic sources in the ozone nonattainment areas during the calendar year of the enactment of the revision of the Act (1990), subtracting or factoring out emission reductions achieved by the Federal Motor Vehicle Emissions Control Program (FMVCP) regulations promulgated before January 1, 1990, and by the 1990 gasoline Reid Vapor Pressure (RVP) regulations (55 FR 23666, June 11, 1990).[1] The baseline emissions are also referred to as the "1990 adjusted base year inventories." EPA interprets "calendar year" emissions to consist of typical ozone season weekday emissions, because the applicable ozone National Ambient Air Quality Standard (NAAQS) (0.12 parts per million, one-hour average) is generally exceeded or violated during ozone season weekdays when ozone precursor emissions and meteorological conditions are the most conducive to ozone formation. (See "State Implementation Plans: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," proposed rule (57 FR 13507), **Federal Register**, April 16, 1992 (hereafter referred to as the General Preamble)).

Section 182(b)(1)(D) of the Act places limits on what emission reductions can be claimed by ROP plans. All permanent and enforceable VOC emission reductions occurring after 1990 are creditable with the following exceptions: (1) Those resulting from any emission control measure relating to

[1] The 1990 RVP regulations limit the volatility of gasoline in ozone nonattainment areas during the ozone season. The FMVCP provides vehicle emission limits that automobile manufacturers must meet in designing and building new automobiles.

motor vehicle exhaust and evaporative emissions promulgated by the Administrator by January 1, 1990; (2) those due to RVP regulations promulgated by the Administrator by November 15, 1990, or due to regulations required under section 211(h) of the Act; (3) those due to measures to correct Reasonably Available Control Technology (RACT) regulations as required under section 182(a)(2)(A) of the Act; and (4) those due to measures to correct previously noted problems in an existing vehicle inspection and maintenance (I/M) program as required under section 182(a)(2)(B) of the Act.

Section 172(c)(9) of the Act as implemented by EPA requires States with ozone nonattainment areas classified as moderate and above to adopt contingency measures by November 15, 1993. Such measures must provide for the implementation of specific emission control measures if an ozone nonattainment area fails to achieve ROP or fails to attain the NAAQS within the time-frames specified under the Act. Section 182(c)(9) of the Act requires that, in addition to the contingency measures required under section 172(c)(9), the contingency measure SIP revision for serious and above ozone nonattainment areas must also provide for the implementation of specific measures if the area fails to meet any applicable milestone in the Act. As provided by these sections of the Act, the contingency measures must take effect without further action by the State or by the EPA Administrator upon failure by the State to meet ROP requirements or attainment of the NAAQS by the required deadline, or other applicable milestones of the Act.

The General Preamble states that the contingency measures, in total, must generally be able to provide for 3 percent reductions from the 1990 baseline emissions. While all contingency measures must be fully adopted rules or measures, States can use the measures in two different ways. A State can choose to implement contingency measures before the November 15, 1996, ROP milestone deadline. Alternatively, a State may decide not to implement a contingency measure until an area has actually failed to achieve a ROP or attainment milestone. In the latter situation, the contingency measure emission reduction must be achieved within one year following identification of a milestone failure.

The EPA has developed a number of guidelines addressing the review of ROP and contingency plans and addressing such topics as: (1) The relationship of ROP plans to other SIP elements required by the Act; (2) recommended emission reduction levels for various control measures including Federal emission control measures; and (3) emission inventory projection procedures. All relevant guidelines are listed below.

1. *Procedures for Preparing Emissions Projections,* EPA–450/4–91–019, Environmental Protection Agency, July 1991.

2. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed rule (57 FR 13498), **Federal Register**, April 16, 1992.

3. "November 15, 1992, Deliverables for Reasonable Further Progress and Modeling Emission Inventories," memorandum from J. David Mobley, Edwin L. Meyer, and G. T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 7, 1992.

4. *Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans,* EPA–452/R–92–005, Environmental Protection Agency, October 1992.

5. "Quantification of Rule Effectiveness Improvements," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 1992.

6. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans,* EPA–452/R–93–002, March 1993.

7. "Correction to 'Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans'," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 2, 1993.

8. "15 Percent Rate-of-Progress Plans," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 16, 1993.

9. *Guidance on the Relationship Between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act,* EPA–452/R–93–007, Environmental Protection Agency, May 1993.

10. "Credit Toward the 15 Percent Rate-of-Progress Reductions from Federal Measures," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, May 6, 1993.

11. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans,* EPA–452/R–93–005, Environmental Protection Agency, June 1993.

12. "Correction Errata to the 15 Percent Rate-of-Progress Plan Guidance Series," memorandum from G. T. Helms, Chief, Ozone and Carbon Monoxide Programs Branch, Environmental Protection Agency, July 28, 1993.

13. "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, August 13, 1993.

14. "Region III Questions on Emission Projections for the 15 Percent Rate-of-Progress Plans," memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 17, 1993.

15. "Guidance on Issues Related to 15 Percent Rate-of-Progress Plans," memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, Environmental Protection Agency, August 23, 1993.

16. "Credit Toward the 15 Percent Requirements from Architectural and Industrial Maintenance Coatings," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 10, 1993.

17. "Reclassification of Areas to Nonattainment and 15 Percent Rate-of-Progress Plans," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 20, 1993.

18. "Clarification of Guidance for Growth Factors, Projections and Control Strategies for the 15 Percent Rate of Progress Plans," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

19. "Review and Rulemaking on 15 Percent Rate-of-Progress Plans," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

20. "Questions and Answers from the 15 Percent Rate-of-Progress Plan

Workshop," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, October 29, 1993.

21. "Rate-of-Progress Plan Guidance on the 15 Percent Calculations," memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, October 29, 1993.

22. "Clarification of Issues Regarding the Contingency Measures that are due November 15, 1993, for Moderate and Above Ozone Nonattainment Areas," memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, November 8, 1993.

23. "Credit for 15 percent Rate-of-Progress Plan Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, December 9, 1993.

24. "Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, January 21, 1994.

25. "Guidance on Projection of Nonroad Inventories to Future Years," memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, February 4, 1994.

26. "Discussion at the Division Directors Meeting on June 1 Concerning the 15 Percent and 3 Percent Calculations," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, June 2, 1994.

27. "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards," memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, November 28, 1994.

28. "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, November 29, 1994.

29. "Transmittal of Rule Effectiveness Protocol for 1996 Demonstrations," memorandum from Susan E. Bromm, Director, Chemical, Commercial Services and Municipal Division, Office of Compliance, Environmental Protection Agency, December 22, 1994.

30. "Future Nonroad Emission Reduction Credits for Locomotives," memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, January 3, 1995.

31. "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 22, 1995.

32. "Fifteen Percent Rate-of-Progress Plans—Additional Guidance," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, May 5, 1995.

33. "Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, June 22, 1995.

34. "Update on the credit for the 15 percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 7, 1996.

II. Rate-Of-Progress and Contingency Plan Submittals for the Chicago and Metro-East St. Louis Ozone Nonattainment Areas

A. Administrative Actions/ Requirements

The Act requires States to observe certain procedural requirements in developing SIPs and SIP revisions for submittal to the EPA. Sections 110(a)(2) and 110(l) of the Act provide that each SIP submitted by a State must be adopted by the State after reasonable notice and public hearing.

The State of Illinois held a public hearing on October 15, 1993, to hear and collect public comments on the 15 percent ROP and 3 percent contingency plans for both the Chicago and the Metro-East St. Louis ozone nonattainment areas. Subsequently, the plans were adopted by the State and submitted to EPA on November 15, 1993. The submittals included records of public comments, hearing records, and responses to public comments. The plans were supplemented with additional submittals to the EPA on February 18, 1994, November 22, 1994, January 31, 1995, and May 23, 1995. These subsequent submittals contain supplemental documentation on the State's emission reduction estimates for various source categories. At EPA's request, the Illinois Environmental Protection Agency (IEPA) made additional submittals of technical support information and updated emission estimates on May 9, 1996, and July 22, 1996. All of the above submittals are considered to be part of the record of decision for this rulemaking. All submittals are available for review at the EPA Region 5 offices noted above.

On January 21, 1994, by letter, the EPA found the November 1993, submittals to be incomplete due to an incomplete set of State emission control regulations. Subsequently, the State adopted and submitted all required regulations. EPA found the ROP and contingency plan submittals to be complete, by letter, on June 15, 1995.

B. Accurate Emission Inventories

Sections 172(c)(3) and 182(b)(1) of the Act require nonattainment plans to include and be based on comprehensive, accurate, and current inventories of actual emissions from all sources of relevant pollutants in the nonattainment areas. On March 14, 1995 (60 FR 13631), EPA approved base year (1990) VOC emission inventories for the Chicago and Metro-East St. Louis ozone nonattainment areas (the inventories also included major source emissions from surrounding areas). The VOC emissions from these emission inventories establish the baseline for Illinois' ROP and contingency plans.

It should be noted throughout the discussions that follow that volatile organic emissions are referred to as VOC emissions. In the Illinois ROP and contingency plans (as well as in the base year emission inventory documentation), the State uses the term "Volatile Organic Material (VOM)" rather than VOC. The State's definition of VOM is equivalent to EPA's definition of VOC. The two terms are interchangeable when discussing volatile organic emissions. For consistency with the Act and with EPA policy, the term VOC is used in this rulemaking. VOC emissions referred to in today's action are identical to VOM emissions referred to in Illinois' ROP and contingency measure plans.

C. Required VOC Emission Reductions

Following EPA ROP guidelines (primarily guidance contained in the *Guidance on the Adjusted Base Year*

Emissions Inventory and the 1996 Target of the 15 Percent Rate of Progress Plans, EPA–452/R–92–005, October 1992, and in the *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans*, EPA–452/R–93–002, March 1993), the IEPA has determined that creditable VOC reductions (as opposed to noncreditable emission reductions defined in section 182(b)(1)(D) of the Act) of 249.98 tons per day (TPD) for the Chicago ozone nonattainment area, and 26.66 TPD for the Metro-East St. Louis ozone nonattainment area are needed to achieve the 15% ROP requirement. To meet the 3 percent contingency requirement, the IEPA determined that the contingency measures must also be able to achieve a 31.92 TPD VOC emission reduction in the Chicago ozone nonattainment area and 4.96 TPD VOC emission reduction in the Metro-East St. Louis ozone nonattainment area. The IEPA has fully documented the calculation of these emission reduction requirements and has shown that EPA recommended procedures were followed. This documentation includes identification of emission/source growth factors and noncreditable emission reductions from emission controls referenced in section 182(b)(1)(D) of the Act. Tables 1 and 2 summarize the calculation of emission reductions needed by 1996.

TABLE 1.— EMISSION REDUCTIONS REQUIRED BY 1996 FOR THE CHICAGO AREA

Calculation of reduction needs by 1996	Tons VOC/day
1990 Chicago Area Total VOC Emissions	1,363.40
1990 ROP Emissions (Anthropogenic only)	1,216.56
1990–1996 Noncreditable Reductions (Reductions from 1990 RVP, Pre-1990 FMVCP, and RACT Fix-up Regulations)	199.93
1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions)	1,064.05
15 Percent of Adjusted Base Year Emissions	159.61
Total Required Emission Reductions by 1996 (15 Percent of Adjusted Base Year Emissions plus Noncreditable Reductions)	359.54
1996 Target Level (1990 ROP Emissions minus Total Required Emission Reductions by 1996)	857.02
1996 Projected Emissions (1990 Adjusted Base Year Emissions plus Growth Factors)	1,107.00
Reduction Needs By 1996 To Achieve 15 Percent Net Of Growth (1996 Projected Emissions plus 1996 Target Level)	249.98
Contingency Measure Requirement (3% of Adjusted Base Year Emissions)	31.92
Total Emission Reductions Required	281.90

TABLE 2.—EMISSION REDUCTIONS REQUIRED BY 1996 FOR THE METRO-EAST ST. LOUIS AREA

Calculation of reduction needs by 1996	Tons VOC/day
1990 Metro-East Area Total VOC Emissions	234.79
1990 ROP Emissions (Anthropogenic only)	174.65
1990–1996 Noncreditable Reductions (1990 RVP, Pre-1990 FMVCP, and RACT Fix-Up Reductions)	10.75
1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions)	165.24
15 Percent of Adjusted Base Year Emissions	24.79
Total Required Emission Reductions by 1996 (15 Percent of Adjusted Base Year Emissions plus Noncreditable Reductions)	35.54
1996 Target Level (1990 ROP Emissions minus Total Required Emission Reductions by 1996)	139.11
1996 Projected Emissions (1990 Adjusted Base Year Emissions plus Growth Factors)	165.77
Reduction Needs By 1996 To Achieve 15 Percent Net Of Growth (1996 Projected Emissions minus 1996 Target Level)	26.66
Contingency Measure Requirement (3% of Adjusted Base Year Emissions)	4.96
Total Emission Reductions Required	31.62

D. Control Measures

Tables 3 and 4 below summarize the creditable emission reductions from the 15% ROP and 3% contingency plan control measures. These tables indicate the emission reduction credit the State has claimed for each control measure, and the actual emission reduction credit which EPA finds acceptable. Unless otherwise noted, the emission control measures apply to both the Chicago and Metro-East St. Louis ozone nonattainment areas. Table 5 indicates the date of EPA approval of State adopted control measures, date of EPA promulgation of Federal control measures, or an identification of the source for taking credit for a control measure, where EPA promulgation has not occurred. Following the tables is a discussion describing each of the emission control measures selected to help achieve ROP and contingency measure plan requirements, and EPA's review of the emission reduction claimed for each control measure. (Note that the IEPA, in describing the selected emission control measures and emission reduction impacts, does not distinguish between ROP plan measures and contingency plan measures).

Emission reductions not needed to achieve 15 percent ROP and 3 percent contingency requirements in the Chicago and Metro-East St. Louis ozone nonattainment areas, respectively, will be applied toward achieving the post-1996 ROP requirement, leading to attainment of the ozone air quality standard. (Post-1996 ROP plans are required to be submitted under section 182(c)(2)(B) of the Act).

Certain federal measures relied on by Illinois to meet the 15 percent ROP requirement were not implemented by 1996: non-road small engine standards, Toxic Substance Disposal Facility (TSDF) RACT Phase II Controls, Architectural and Industrial Maintenance (AIM) coating, traffic coating, and consumer and commercial products solvent control. Many of the 15 percent ROP SIPs originally submitted to EPA have relied on some of these federal measures as well as reductions from enhanced I/M programs which were not implemented by 1996. Consequently, it is no longer possible for these States to achieve the portion of the 15 percent reductions attributed to these programs by November 15, 1996. Under these circumstances, disapproval of the 15 percent SIPs would serve no

purpose. Therefore, in these circumstances, EPA will approve a 15 percent ROP plan SIP if the emission reductions under the plan will achieve the 15 percent level as soon after November 15, 1996, as practicable. To make this "as soon as practicable" determination, the EPA must determine that the 15 percent ROP plan contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15 percent level is achieved. The EPA does not believe that measures meaningfully accelerate the 15 percent date if they provide only an insignificant amount of reductions. However, as a minimum requirement, EPA will approve a 15 percent SIP only if it achieves the reductions from the measures needed to reach the 15 percent level by no later than November 15, 1999.

The federal rules for federal non-road small engine standards and TSDF RACT Phase II have been promulgated and emission reductions will occur before November 15, 1999. Proposed rules have been published for AIM coatings, traffic coatings, and consumer and commercial products, and EPA expects final rules to be promulgated in 1998, with compliance dates for these rules to occur no later than November 15, 1999. EPA has reviewed other VOC SIP measures that are at least theoretically available to Illinois, and has concluded that implementation of any such measure that might be appropriate would not accelerate the date of achieving the 15 percent reductions. Therefore, EPA finds that Illinois' ROP plans for the Chicago and Metro-East ozone nonattainment areas achieve 15 percent emission reduction as soon as practicable.

TABLE 3.—CONTROL MEASURES FOR THE CHICAGO OZONE NONATTAINMENT AREA

Control Measure	VOC reduction state claimed tons/day	VOC reduction credit accepted tons/day
Mobile Source Measures:		
Enhanced Vehicle I/M Program	19.60	See below
Conventional TCMs	2.00	2.00
National Energy Policy Act of 1992	0.20	0.20
Post-1994 Tier 1 Vehicle Emission Rates	2.40	2.40
1995 Reformulated Gasoline	112.79	112.79
1992 Vehicle I/M Program Amendments	8.40	8.40
Federal Detergent Additive Gasoline	2.20	2.20
Federal Non-Road Small Engine Standards	4.37	4.37
Subtotal	151.96	132.36
Industrial Source Measures:		
RACT Geographic Expansion	3.43	3.43
Expanded RACT—Lowered Source Size Cutoffs (25 Tons Per Year)	2.78	2.78
New Control Technique Guidelines (CTG):		
Batch Processes	12.60	3.21
Industrial Waste Treatment Facilities (IWTF)	0.14	0.14
Volatile Organic Liquid (VOL) Storage	2.18	2.18
Plastic Parts Coating	0.28	0.28
Lithographic Printing	4.06	4.06
Automobile Refinishing	16.30	16.30
Coke Oven National Emission Standard for Hazardous Air Pollutants (NESHAP)/Maximum Available Control Technology (MACT)	6.93	6.93
SOCMI NESHAP	1.33	1.33
TSDF RACT Phase I and II Controls	2.08	2.08
Marine Vessel Loading	1.40	1.40
Tightening of RACT Standards and Source Size Cutoffs	12.05	12.05
Plant Shut-Downs	31.60	31.60
Improved Rule Effectiveness from Clean Air Act Permit Program (CAAPP)	26.30	26.30
Subtotal	123.46	114.07
Area Source Measures:		
Stage II Service Station Vapor Recovery	23.67	23.67
AIM Coating	13.28	10.60
Traffic and Maintenance Coatings	3.73	3.73
Underground Gasoline Storage Tank Breathing Control	4.87	4.87
Consumer and Commercial Products Solvent Control	8.10	8.10
Subtotal	53.65	50.97
Total	329.07	297.40

TABLE 4.—CONTROL MEASURES FOR THE METRO-EAST ST. LOUIS OZONE NONATTAINMENT AREA

Control measure	VOC reduction credit requested (TPD)	VOC reduction credit approved (TPD)
Mobile Source Measures:		
Enhanced Vehicle I/M Program	4.80	See below
Conventional TCMs	0.20	0.20

TABLE 4.—CONTROL MEASURES FOR THE METRO-EAST ST. LOUIS OZONE NONATTAINMENT AREA—Continued

Control measure	VOC reduction credit requested (TPD)	VOC reduction credit approved (TPD)
Post–1994 Tier 1 Vehicle Emission Rates	0.19	0.19
7.2/8.2 psi RVP Conventional Gasoline	8.55	8.55
1992 Vehicle I/M Program Amendments	0.20	0.20
Federal Detergent Additive Gasoline	0.20	0.20
Federal Non-Road Small Engine Standards	0.42	0.42
Subtotal	14.56	9.76
Industrial Source Measures:		
New CTGs or Available CTGs:		
Batch Processes	0.36	0.36
IWTF	0.10	0.10
Automobile Refinishing	1.20	1.20
Coke Oven NESHAP/MACT	0.10	0.10
SOCMI NESHAP	0.26	0.26
TSDF RACT Phase I and II Controls	0.06	0.06
Marine Vessel Loading	11.82	11.82
Tightening of RACT Standards and Source Size Cutoffs	0.39	0.39
Plant Shut-Downs	1.44	1.44
Improved Rule Effectiveness from CAAPP	9.50	9.50
Hazardous Air Pollutant (HAP) Standards Early Reduction Program	0.74	0.74
Subtotal	25.97	25.97
Area Source Measures:		
AIM Coating	0.94	0.75
Traffic and Maintenance Coating	0.62	0.62
Underground Gasoline Storage Tank Breathing Control	0.44	0.44
Consumer and Commercial Product Solvent Reduction	0.58	0.58
Subtotal	2.58	2.39
Total	43.11	38.12

TABLE 5.—FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES

Control measure	Date of EPA approval
Chicago Area TCMs	September 21, 1995 (60 FR 4886).
Metro-East Area TCMs	Date of EPA approval action is date of today's **Federal Register**. See discussion below.
1992 National Energy Policy Act	Federal Regulation March 14, 1996 (61 FR 10621).
Post-1994 Tier 1 Vehicle Emission Rates	Federal Regulation June 5, 1991 (56 FR 25724).
1995 Reformulated Gasoline	Federal Regulation February 16, 1994 (59 FR 7716).
Metro-East area 7.2 psi RVP Conventional Gasoline Rule.	March 23, 1995 (60 FR 5318).
1992 Vehicle I/M Program Amendments	April 9, 1996 (61 FR 15715).
Federal Gasoline Detergent Additive	Federal Regulation November 1, 1994 (59 FR 54706).
Federal Non-Road Small Engine Standards	Federal Regulation August 2, 1995 (60 FR 34582) See "Guidance on Projection of Nonroad Inventories to Future Years," February 4, 1994, and "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards," November 28, 1994.
Chicago Area RACT Geographic Expansion	September 9, 1994 (59 FR 46562).
Chicago Area Expanded RACT—Lowered Size Cutoffs (25 Tons VOC Per Year).	October 21, 1996 (61 FR 54556).
Batch Processes	April 2, 1996 (61 FR 14484).
IWTF	Federal Regulation April 22, 1994 (59 FR 19468).
VOL Storage Tanks	August 8, 1996 (61 FR 41338).
Plastic Parts Coating	October 26, 1995 (60 FR 54807).
Lithographic Printing	November 8, 1995 (60 FR 56238).
Automobile Refinishing	July 25, 1996 (61 FR 38577).
Coke Oven NESHAP	Federal Regulation October 27, 1993 (58 FR 57911).
SOCMI NESHAP	Federal Regulation April 22, 1994 (59 FR 19454).
TSDF RACT (RCRA) Phase I and II	Federal Regulation Phase I, June 21, 1990 (55 FR 25454) Phase II, December 6, 1994 (59 FR 62896) See "Credit Toward the 15 Percent Rate-Of-Progress Reductions from Federal Measures," May 6, 1993.
Marine Vessel Loading Control	April 3, 1995 (60 FR 16801).
Tightened RACT Coating Standards	February 13, 1996 (61 FR 5511).
Tightened RACT SOCMI Air Oxidation	September 27, 1995 (60 FR 49770).
Plant Shut-downs	See discussion below.
Improved Rule Effectiveness from CAAPP	March 7, 1995 (60 FR 12478).
HAP Standards Early Reduction Program	Federal Regulation November 21, 1994 (59 FR 59924).
Underground Gasoline Storage Tank Breathing Controls.	March 23, 1995 (60 FR 15233).

TABLE 5.—FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES—Continued

Control measure	Date of EPA approval
Stage II Gasoline Vapor Recovery	January 12, 1993 (58 FR 3841).
AIM Coatings	Creditable toward ROP. See "Update on the Credit for the 15 Percent ROP Plans for Reductions from the AIM Coatings Rule," March 7, 1996.
Traffic and Maintenance Coatings	Creditable toward ROP. See "Update on the Credit for the 15 Percent ROP Plans for Reductions from the AIM Coatings Rule," March 7, 1996.
Consumer and Commercial Products Solvent Control.	Creditable toward ROP. See "Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act," June 22, 1995.

1. Mobile Sources

a. Enhanced Vehicle I/M. The Illinois 15 percent ROP plan submittal claims emission reduction credit for enhanced vehicle I/M for the Chicago and Metro-East St. Louis areas. The State has signed a contract for the construction and implementation of enhanced I/M, which provides that enhanced I/M testing will begin in January 1999. Based on EPA's review of the State's plan submittal, the State has adopted sufficient measures, in conjunction with credit from certain Federal measures, to achieve 15 percent ROP and 3 percent contingency requirements without enhanced I/M. Enhanced I/M will play a significant role in achieving post-1996 9 percent ROP requirements, and ultimately, help bring the Chicago and Metro-East St. Louis ozone nonattainment areas into attainment of the public health based ozone air quality standards. The amount of emission reduction credit which can be taken for enhanced I/M will be determined when Illinois submits and EPA takes action on the State's 9 percent ROP plan.

b. Conventional TCMs. The Metropolitan Planning Organizations (MPO) for the Chicago and Metro-East St. Louis areas (Chicago Area Transportation Study and East-West Gateway Coordinating Council, respectively) are administering a number of TCM projects to both reduce vehicle miles traveled (VMT) and the amount of VOC emissions per VMT. The projects have been programmed and funded through the areas' Transportation Improvement Programs (TIP) under the federal Congestion Mitigation and Air Quality Improvement Program (CMAQ).[2] Illinois is claiming emission reductions from the TCMs in its 15 percent ROP plans for the Chicago and Metro-East areas.

States can take credit for TCMs which are approved as revisions to the SIP. EPA's requirements for TCMs are summarized in the June 1993, EPA guidance document, *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans.* The required elements are (1) a complete description of the measure, and, if possible, its estimated emissions reduction benefits; (2) evidence that the measure was properly adopted by a jurisdiction(s) with legal authority to execute the measure; (3) evidence that funding will be available to implement the measure; (4) evidence that all necessary approvals have been obtained from all appropriate government offices; (5) evidence that a complete schedule to plan, implement, and enforce the measure has been adopted by the implementing agencies; and (6) a description of any monitoring program to evaluate the measure's effectiveness and to allow for necessary in-place corrections or alterations.

The Chicago area TCMs were approved on September 21, 1995 (60 FR 4886). The Metro-East St. Louis area's 15 percent ROP plan includes work trip reductions, transit improvements, and traffic flow improvements TCMs. These TCMs are being approved in today's action as a revision to the SIP because they fully satisfy all the requirements based on the following: (1) a complete description of the program and estimated emission reduction are provided in documentation included in the docket for this rulemaking action; (2) the measure has been adopted by the East-West Gateway Coordinating Council, the authorized MPO for the St. Louis metropolitan area; (3) the program is currently operating and has received federal CMAQ program money for operation; (4) all necessary approvals have been obtained from DOT in the FY 1994–1997 TIP (which includes the TCMs); (5) the TIP provides the schedule, implementation mechanism, and also the enforcement mechanism for the TCM (the conformity provisions in 40 CFR part 93 provide that TCMs in an approved SIP must be implemented on schedule before a conformity determination can be made by DOT); and (6) the CMAQ program requires monitoring of programs funded under CMAQ and annual reports to DOT on achieved emission reductions.

The emission reductions claimed in the ROP plans for both the Chicago and Metro-East TCMs are adequately documented and acceptable.

c. National Energy Policy Act of 1992. The National Energy Policy Act (EPAct) was enacted in October 1992. EPAct mandates implementation (use) of Alternative Fueled Vehicles (AFVs) in federal, State, and utility fleets. EPAct requires that 25% of new vehicle purchases by federal fleets, 10% of new vehicle purchases by State fleets, and 30% of new vehicle purchases by utility fleets must be AFVs beginning in 1996. IEPA estimated that EPAct would implement approximately 2,000 AFVs in the Chicago Area by 1996. The EPA mobile source emission factor model, MOBILE5a, was used to determine the impacts of EPAct on mobile source emissions. The State's emission reduction estimates for this federal measure are adequately documented and acceptable.

d. Post-1994 Tier 1 Emission Rates. Section 202 of the Act sets new Tier 1 emission standards for motor vehicles, some of which will be implemented prior to the end of 1996. The Tier 1 standards are approximately twice as stringent as prior (established prior to the 1990 Clean Air Act amendments) motor vehicle emission standards. For passenger cars and light-duty trucks weighing up to 6,000 pounds, the implementation of the standards is to be phased-in over three years, 40 percent of the manufactured vehicles for model year 1994, 80 percent of the manufactured vehicles in model year 1995, and 100 percent of the manufactured vehicles in the model year 1996 and later. For gasoline and diesel powered light-duty trucks weighing more than 6,000 pounds, the Tier 1 standards are to be met in 50 percent of the manufactured vehicles in model year 1996 and in 100 percent of the manufactured vehicles thereafter.

The IEPA has determined that the emission reductions resulting from these tightened vehicle standards are

[2] MPOs can utilize United States Department of Transportation (DOT) funds from CMAQ. CMAQ is a federal program which provides funding for transportation related projects and programs designed to contribute to attainment of air quality standards.

creditable toward the 15 percent ROP plan and used the MOBILE5a emission factor model to calculate the VOC emission reductions for this control measure. The State's emission reduction estimates are adequately documented and acceptable.

e. 1992 I/M Program Amendments. As a result of an agreement resolving a lawsuit between Wisconsin and EPA, the State of Illinois added a tamper check and two-speed idle test to the basic I/M program in the Chicago metropolitan area. The I/M program area coverage was also increased to encompass almost all of the Chicago metropolitan area. These changes in the I/M program were implemented in 1992, and were approved by EPA on April 9, 1996 (61 FR 15715). Similar changes in the components of the I/M program were implemented in the Metro-East St. Louis area, as well.

The IEPA used the MOBILE5a emission factor model to estimate the emission reductions for both areas. The State's emission reduction estimates are adequately documented and are acceptable.

f. Federal Detergent Gasoline Additive. The Federal detergent gasoline additive regulation was promulgated November 1, 1994 (59 FR 54706). This regulation requires, beginning January 1, 1995, that gasoline sold nationwide contain additives to prevent accumulation of deposits in engines and fuel systems. Preventing such deposits maintains the efficiencies of engine systems and reduces VOC emissions resulting from engine efficiency degradation.

The State has reviewed guidance from EPA's Office of Mobile Sources which indicates that the use of gasoline containing the required additives will reduce vehicle VOC emissions by 0.7 percent in 1996. This guidance is the basis for the VOC emission reductions claimed in the 15 percent ROP plans for this control measure. The emission reduction estimates are acceptable.

g. Federal Non-Road Small Engine Standards. Federal standards for non-road engines (25 horsepower and below) were promulgated on July 3, 1995 (60 FR 34582). The standards would primarily affect 2 stroke and 4 stroke lawn and garden equipment and light commercial, construction, and logging equipment. Although full implementation of this control measure will not occur until after November 15, 1996, the States can take credit for this measure pursuant to EPA policy memoranda, "Guidance on Projection of Nonroad Inventories to Future Years," February 4, 1994, and "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards," November 28, 1994. Based on this policy, the IEPA assumed that the Federal non-road small engine standards would reduce 1996 VOC emissions from these sources by 4.5 percent. The IEPA also assumes that these rules will have a rule effectiveness of 100 percent because the rules affect all manufacturers of small engines in the nation. The 4.5 percent emission reduction claim is assumed to appropriately account for rule penetration (the fraction of small engine emissions affected by the rule). The assumed emission reduction percentage is acceptable.

h. Reformulated Gasoline. Beginning January 1, 1995, sellers of gasoline in the Chicago ozone nonattainment area were required to sell only reformulated gasoline as required under federal regulation promulgated February 16, 1994 (59 FR 7716). Using the MOBILE5a emission factor model, the IEPA has determined that the use of reformulated gasoline will result in a 15 percent reduction in vehicle VOC emissions. The IEPA notes that the use of reformulated gasoline will also result in lower gasoline marketing and off-road engine emissions in the Chicago ozone nonattainment area. The emission reduction estimates are adequately documented and acceptable.

i. 7.2 RVP Gasoline. On October 25, 1994, the IEPA submitted to the EPA a SIP revision request for the purpose of lowering the RVP of gasoline from 9.0 pounds per square inch (psi) to 7.2 psi in the Metro-East St. Louis ozone nonattainment area. EPA approved this SIP revision on March 23, 1995 (60 FR 15233). The Illinois rule requires the use of 7.2 psi RVP gasoline in the Metro-East St. Louis area during the period of June 1 through September 15 each year beginning in 1995. The rule grants a 1 psi waiver for ethanol blended gasolines that have an ethanol content between 9 and 10 percent ethanol by volume.

The IEPA used the MOBILE5a emission factor model to calculate the resulting VOC emission reduction for on-highway mobile sources. Illinois used a RVP ratio (reduced RVP versus average RVP of gasoline sold in 1990) along with 1996 gasoline usage estimates to calculate the VOC emission reduction from gasoline marketing sources. The calculation of the emission reduction is adequately documented and acceptable.

2. Industrial Sources

a. RACT Geographic Expansion. The State, on August 13, 1992, adopted a rule to expand the coverage of existing RACT regulations to include Oswego Township in Kendall County, and Aux Sable and Goose Lake Townships in Grundy County. This geographic expansion has affected several facilities, which are adequately documented in the ROP plan submittal. EPA approved this expansion on September 9, 1994 (59 FR 46562). The emission reduction estimate is acceptable.

b. RACT—Reduction in Major Source Threshold. Section 182(d) of the Act defines "major source" for severe ozone nonattainment areas to include any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons of VOC per year. This establishes a maximum source size cutoff for the application of RACT rules (the State has adopted RACT rules with much smaller source size cutoffs for most applicable source categories) for severe ozone nonattainment areas, such as the Chicago area.

On January 6, 1994, the Illinois Pollution Control Board (IPCB) adopted modified source size cutoffs of 25 tons per year, potential to emit, for flexographic/rotogravure printing operations, petroleum solvent dry cleaners, and non-Control Technology Guideline (non-CTG) sources in the Chicago ozone nonattainment area. Other source categories regulated in the Chicago area are covered by category-specific source size applicability cutoffs well below the 25 ton VOC per year specified in section 182(d) of the Act. EPA approved this regulation on October 21, 1996 (61 FR 54556). The State's emission reduction estimates for this rule are adequately documented and acceptable.

c. Post-1990 CTG Rules. Section 182(b)(2)(A) of the Act requires States with moderate and above ozone nonattainment areas to adopt RACT rules covering post-1990 CTG source categories. Illinois claimed emission reduction credit for many of the State rules adopted to meet the section 182(b)(2)(A) requirement. The following briefly discusses these rules and claimed emission reduction credit taken by the State:

i. Batch Processes. Illinois' batch process rule controls VOC emissions from batch chemical processes found in the following industries: plastic materials and resin manufacturing; cyclic crudes and intermediates manufacturing and processing; industrial organic chemical manufacturing; pharmaceuticals manufacturing; gum and wood chemicals manufacturing; and agricultural chemicals manufacturing. This rule was derived from an EPA draft

CTG dated December 29, 1993, and an EPA Alternative Control Techniques (ACT) document completed in February 1994. The rule was approved by EPA on April 2, 1996 (61 FR 14484). The IEPA used RACT flow rate equations from the draft CTG for the development of the control specifications of batch processes. Emissions must be controlled using condensers, absorbers, adsorbers, thermal destruction systems, flares, thermal incinerators, or catalytic incinerators. In determining the applicability of the control requirements of the rule, owners or operators must determine the actual average flow rates for vent streams. If the actual average vent stream flow rate (standard cubic feet per minute) is below the applicability flow rate value calculated using the RACT flow rate equations (specific to volatility), the VOC from a process vent must be controlled with a reduction efficiency of 90 percent (or down to a VOC concentration of no more than 20 parts per million volume). Sources are exempted from emission controls if the annual VOC emissions are less than 500 pounds for individual batch operations or less than 30,000 pounds for a batch process train. The owner or operator must keep records of average flow rates during testing periods and annual VOC mass emission rates. Compliance with this rule is required by March 15, 1996.

The IEPA has determined there are 15 affected facilities in the Chicago ozone nonattainment area and 3 affected facilities in the Metro-East St. Louis ozone nonattainment area. The EPA accepts the emission reductions of 3.21 TPD claimed for facilities in the Chicago area, and 0.36 TPD in the Metro-East area.

It should be noted that the State, during discussions with the EPA, has raised the point that a significant additional VOC emission reduction may be claimed for this source category. In the earlier submittals, the State indicated a significant emission reduction of 9.39 TPD for an alcohol stripper unit at the Stepan Company's Millsdale facility (Chicago ozone nonattainment area) (permit/source number 78030038087). The State and EPA are working with the affected company to determine the exact timing of the emission reduction. If it is ultimately determined that the emission reduction occurred after 1990, the State will seek the correction of the ROP plan to credit this emission reduction in the post-1996 ROP plans.

ii. IWTF. The State is claiming emission reduction from the NESHAP for this source category, 40 CFR part 63, subpart G, promulgated April 22, 1994 (59 FR 19468). The State's emission reduction estimates for this rule are adequately documented and acceptable. It should be noted, however, that the IEPA is still expected to develop a State rule for this source category to implement RACT. If a RACT level rule is adopted and implemented in the near future, the State may claim additional emission reduction credits for this source category in the post-1996 ROP plans.

iii. VOL Storage. On November 30, 1994, the IEPA submitted an adopted rule and supporting information for the control of VOC emissions at VOL storage operations in the Chicago and Metro-East St. Louis ozone nonattainment areas. The EPA approved this rule on August 8, 1996 (61 FR 41339).

The VOL storage emission control requirements apply to facilities storing VOLs with vapor pressures of 0.75 pounds per square inch absolute (psia) or greater (facilities storing VOLs with vapor pressures equal to or exceeding 0.5 psia must keep records of VOLs stored including VOL vapor pressures) in any storage tank of 40,000 gallons capacity or greater. The rule does not apply to vessels storing petroleum liquids, which are covered under other rules.

For fixed roof tanks, the VOL storage rule requires the installation of internal floating roofs with foam or liquid-filled seals and secondary seals to close the gap between the tank's inner wall and the floating roof. These controls must be implemented by March 15, 1996.

External floating roof tanks must be equipped with primary and secondary seals before March 15, 2004, or at the time of the next tank cleaning, whichever comes first.

For internal floating roof tanks, the internal floating roofs must be equipped with primary and secondary seals before March 15, 2004, or at the time of the next tank cleaning, whichever comes first.

Sources may also use closed vent systems and emission control devices provided the emission control systems are operated with no detectable emissions or monitored VOC concentrations above 500 parts per million above background levels. Control devices must be operated to reduce VOC emissions by at least 95 percent. Storage vessels of 40,000 gallons or greater storage capacity that store VOLs with a maximum true vapor pressure equal to or greater than 11.1 psia must be equipped with a closed vent system and emission control device with emission control efficiency equal to or greater than 95 percent.

Recognizing that only fixed roof tanks would be required to implement emission controls by the end of 1996, the IEPA claimed emission reductions for only these types of tanks. The emission reduction estimates are adequately documented and acceptable.

iv. Plastic Parts Coating. On May 5, 1995, the IEPA submitted an adopted rule for the control of VOC emissions from automotive/transportation and business machine plastic parts coating operations in the Chicago and Metro-East St. Louis ozone nonattainment areas (no applicable sources exist in the Metro-East St. Louis area). The EPA approved this rule on October 25, 1995 (60 FR 54807).

The rule specifies the VOC content limits for various types of coating distinguishing between coating of automotive/transportation plastic parts and business machine plastic parts (see 60 FR 54808). Sources may also choose to use add-on control devices which achieve equivalent emission reductions. Compliance with this rule must be met by March 15, 1996. The emission reductions claimed for this source category are adequately documented and acceptable.

v. Lithographic Printing. Using EPA's September 1993 draft CTG for this source category, the IEPA developed a regulation establishing VOC content limits, emission control requirements, and required work practices for this source category. The State's rule includes limitations on the VOC content of fountain solutions and cleaning solutions. The rule also provides for the use of afterburners and other emission control devices for heat set web offset lithographic printing operations. The rule establishes recordkeeping, testing, and reporting requirements as well as work-practice requirements, such as a requirement for the storage of cleaning materials and spent cleaning solutions in air-tight containers.

The rule is applicable to all lithographic printing lines at a facility if the VOC emissions, in total, from the lithographic printing lines exceed 45.5 kilograms per day or 100 pounds per day. The rule also applies to facilities with heat set web offset printing lines if the maximum theoretical emissions of VOC, in total, ever exceed 90.7 megagrams per year or 100 tons per year. Compliance with the rule is required by March 15, 1996. The EPA approved this rule on November 8, 1995 (60 FR 56238).

The IEPA has determined that 113 facilities in the Chicago ozone nonattainment area will be potentially affected by the rule, with 49 facilities likely to require new emission controls

or process modifications. Only one facility in the Metro-East St. Louis area is expected to be affected by the rule, with no anticipated reduction in VOC emissions. Emission reduction credits for the Chicago facilities were calculated using the emission reduction factors for add-on controls, fountain solution reformulation or process modification, and cleaning solution reformulation provided for model plants in the September 1993 draft CTG. The emissions reduction credit claimed is adequately documented and acceptable.

vi. Automobile Refinishing. The EPA, on the behalf of the IEPA, contracted with Midwest Research Institute (MRI) to conduct a study of the motor vehicle refinishing industry in the Chicago and Metro-East ozone nonattainment areas. This study included an estimate of the 1990 base year emissions and the study report recommended emission control strategies and possible resultant emission reductions. The study concluded that approximately 1,463 refinishing shops are located in the Chicago ozone nonattainment area, and 107 are located in the Metro-East ozone nonattainment area.

Based on the study, review of similar regulations developed by the California Air Resources Board (CARB), and discussions with local automobile refinishing representatives, the IEPA adopted the following coating VOC content limits (pounds VOC per gallon of coating, minus water and exempt compounds):

Pretreatment Wash Primer	6.5
Precoat	5.5
Primer/Primer Surfacer Coating	4.8
Primer Sealer	4.6
Topcoat System	5.0
Basecoat/Clearcoat	5.0
Three or Four Stage Topcoat System	5.2
Specialty Coatings	7.0
Anti-Glare/Safety Coating	7.0

In addition to these VOC content limits, the regulation also establishes VOC content limits for surface preparation/cleaning products (6.5 pounds VOC per gallon of plastic parts cleaning compounds and 1.4 pounds of VOC per gallon of other surface cleaning/preparation products). The rule also requires the use of gun cleaners designed to minimize solvent evaporation during the cleaning, rinsing, and draining operations with recirculation of solvent during the cleaning operation and collection of spent solvent. Spent and fresh solvent must be stored in closed containers. Coating application must be done using High Volume, Low Pressure guns or electrostatic application systems. As an alternative to the VOC content limits, a facility may use add-on control systems, such as incinerators or carbon adsorbers, which would reduce VOC emissions by at least 90 percent. Facilities that use less than 20 gallons of coatings per year total are exempted from the coating application and gun cleaner equipment requirements.

Refinishing facilities are required to keep monthly records of coating purchases and the VOC contents of these coatings. Facilities are also required to use coatings in accordance with the coating manufacturer's specifications. Compliance with the rule must be met by March 15, 1996. The EPA approved the rule on July 25, 1996 (61 FR 38577). The emission reduction estimates for this rule are adequately documented and acceptable.

d. Coke Oven NESHAP. The coke oven NESHAP, 40 CFR part 63, subpart L, promulgated on October 27, 1993 (58 FR 57911), control emissions from coke oven doors, off-takes, lids, and charging. The emission control requirements of the rule must be met by the end of 1995. The emission reduction estimates are adequately documented and acceptable.

e. Hazardous Organic NESHAP—SOCMI. The SOCMI NESHAP, 40 CFR part 63, subpart F, promulgated April 22, 1994, (59 FR 19454) affects processes which produce one or more of the 396 designated SOCMI chemicals using one or more designated HAPs as a reactant or producing HAPs as a byproduct or co-product. Under EPA policy memorandum, "Credit Toward the 15 Percent Rate-Of-Progress Reductions from Federal Measures," May 6, 1993, 5 percent emission reduction from 1990 base line levels can be claimed from this rule. The State's emission reduction estimates are acceptable.

f. TSDF RACT Phase I and II. Under RCRA, EPA is taking action to control VOC emissions in three phases. Phase I regulations were promulgated by the EPA in June 1990 and became effective in December 1990. Phase II regulations were promulgated on December 6, 1994. The effective date for the Phase II regulations was suspended until December 6, 1996 (see 61 FR 59932, November 25, 1996). The Phase II compliance date is December 8, 1997. Although final compliance with the Phase II regulation will occur after November 15, 1996, States can take emission reduction credit for Phase II TSDF regulations toward the 15 percent ROP plan pursuant to EPA policy memorandum, "Credit Toward the 15 Percent Rate-Of-Progress Reductions from Federal Measures," May 6, 1993. Illinois' emission reduction estimates for these federal rules are acceptable.

g. Marine Vessel Loading Controls. The State's rule requires a 95 percent reduction in VOC emissions resulting from the loading of gasoline and crude oil into marine vessels at all marine terminals in the Chicago and Metro-East St. Louis ozone nonattainment areas which load gasoline or crude oil into tank ships and barges. The rule applies between May 1 and September 30 each year beginning in 1996, and requires that vessel cargo compartments be closed to the atmosphere during loading using: (1) Devices to protect tanks from underpressurization and overpressurization; (2) level-monitoring and alarm systems designed to prevent overfilling; and (3) devices for cargo gauging and sampling. VOC capture must be achieved with either (1) a vacuum-assisted vapor collection system, or (2) certification of vessel vapor-tightness. Piping used in the transfer of gasoline or crude oil must be maintained and operated to prevent visible liquid leaks, significant odors, and visible fumes. Owners and operators must use leak inspection procedures similar to those used at petroleum refineries.

Based on IEPA's records, there are five affected facilities in the Chicago ozone nonattainment area and six affected facilities in the Metro-East St. Louis ozone nonattainment area. To calculate VOC emission reduction for this source category, the IEPA assumed that vapor recovery and emissions control systems can reduce VOC emissions by 90 percent. The rule was adopted on October 20, 1994, and was approved by the EPA on April 3, 1995 (60 FR 16801). The emission reduction credits claimed are adequately documented and acceptable.

h. Tightening of RACT Standards and Cutoffs. Based on an April 1993, Science Applications International Corporation (SAIC) report titled, "Technical Document for Reasonably Available Control Technology for Illinois to Assist in Achieving 15 Percent Reduction in Ozone Nonattainment Areas," the IEPA determined that the VOC content limits for coatings could be lowered for the following source categories: Automobile/Truck Coating; Paper Coating; Fabric Coating; Metal Furniture Coating; Flexographic/Rotogravure Printing; Miscellaneous Surface Coating; Can Coating; Metal Coil Coating; Vinyl Coating; Miscellaneous Metal Coating; and Large Appliance Coating. After further consideration, the IEPA determined that no additional tightening of existing coating VOC

content limits could be justified at this time for automobile/truck coating and flexographic/rotogravure printing.

The State's tightened RACT coating limits are similar to those used in the South Coast Air Quality Management District of California. The tightened limits were adopted by the Illinois Pollution Control Board on April 20, 1995, and were approved by EPA on February 13, 1996 (61 FR 5511). The tightened SOCMI air oxidation requirements were adopted on October 20, 1994, and were approved by EPA on September 27, 1995 (60 FR 49770). The 15 percent ROP documentation indicates that for the Chicago area an estimated 8.00 TPD emission reduction has occurred from sources covered under the tightened RACT coating limit rule, and 4.05 TPD emission reduction has occurred from sources covered under the tightened SOCMI air oxidation rule. In the Metro-East area, 0.39 TPD were claimed, while no emission reductions occurred due to the SOCMI air oxidation rule. The emission reductions claimed are acceptable.

i. Plant Shut-downs. Facilities or plant units which have been shut-down since 1990 were identified through: (1) Facility responses to permit renewals; (2) responses to Annual Emission Report (AER) requests; (3) direct field inspections; and (4) requests from the facilities themselves to have their source permits withdrawn due to shut-down. Facility closings and emission reductions were verified through review of Emission Inventory System (EIS) records, permit file data, and field reports.

To further support the estimated emission reductions, the IEPA has provided the EPA with a list of closed facilities. The IEPA maintains a plant shut-down file which documents the methods of verification.

The shut-down credits were calculated using 1990 emissions projected to 1996 using the Emissions Growth Assessment System (EGAS) growth factors for specific source units. The projected 1996 emissions were used because these emissions had already been built into the projected 1996 emissions used to calculate the emission targets under the ROP plans.

Emission reductions from the plant shut-downs are made permanent through the closing of source permits and, therefore, are acceptable. The source permits for these facilities will not be reissued by the IEPA. If these sources wish to restart, they will have to go through new source review and will be controlled through new source emission control requirements.

j. Improved Rule Effectiveness. Illinois' Title V program, the CAAPP, covers most source facilities in the two ozone nonattainment areas. The IEPA submitted the CAAPP to the EPA in November 1993, and the EPA gave the program interim approval on March 7, 1995 (60 FR 12478). The program became effective in 1996.

A primary emphasis of the CAAPP is rigorous recordkeeping, reporting, and monitoring. The CAAPP regulations include recordkeeping, reporting, and monitoring requirements not covered under existing regulations or emphasizes existing regulations for such requirements. Sources must submit progress reports to the IEPA at a minimum of every 6 months and the permittees must certify no less frequently than annually that the facilities are in compliance with the permit requirements. Source owners or operators must also promptly report any deviances from permit conditions to the IEPA. The CAAPP requirements contain significant civil and criminal penalties for source owners or operators failing to comply with the permit requirements, including the recordkeeping, reporting, and monitoring requirements.

The IEPA used EPA's rule effectiveness evaluation questionnaire, and, based on the requirements of the CAAPP regulations, determined that the CAAPP requirements should lead to a rule effectiveness of 95 percent for all source facilities covered by the CAAPP. The IEPA determined the VOC emission reduction credit for this rule effectiveness improvement by considering the "current" rule effectiveness for each facility or source category used to develop the 1990 base year emissions inventory (80 percent for most facilities, with some facilities starting at 92 percent based on prior study results). The IEPA documented the rule effectiveness improvement findings in a report titled "Impact of CAAPP on Inventory RE."

In comments on a draft version of the ROP plan, the EPA had indicated to the IEPA that recent changes in Title V requirements and guidelines to allow more source flexibility could jeopardize the anticipated improvement in rule effectiveness since some of the changes in EPA policy could relax compliance monitoring. Particularly, the increased flexibility would allow sources to switch from enhanced monitoring procedures to less stringent Compliance Assurance Monitoring (CAM) procedures. The IEPA, however, views this increased source flexibility as having minimal impact on the rule effectiveness to be obtained from the CAAPP, in light of the overall requirements sources are still subject to under CAAPP. It is pointed out that the EPA engineers who are technically supporting the compliance assurance monitoring procedures in EPA's revised Title V policy agree with a rule effectiveness estimate of 95 percent for programs like the CAAPP. The EPA agrees with this view and accepts the estimated emission reduction claimed.

k. HAP Early Reduction Program. This program, promulgated on November 21, 1994 (59 FR 59924), allows an existing source subject to an applicable section 112(d) standard to be granted a 6-year compliance extension upon commitment by the owner or operator of the source that the source has achieved a reduction of 90 percent or more of HAP by 1994. Emission reductions are determined by comparing the post-control emissions with verifiable and actual emissions in a base year not earlier than 1987, except that 1985 or 1986 may be used as a base year if the emissions data are based on information received before November 15, 1990. In the Metro-East St. Louis nonattainment area, only one applicable facility has committed to the early reduction program. Under the program, such commitments are federally enforceable. The reduction in VOC from this facility due to the program, therefore, is creditable.

3. Area Sources

a. Stage II Vapor Recovery. On August 13, 1992, Illinois adopted Stage II vapor recovery rules, which require the return of gasoline vapors to underground storage tanks during automobile refueling. Full phase-in of the requirements occurred on November 1, 1994. EPA approved these rules on January 12, 1993 (58 FR 3841).

The IEPA has monitored the effectiveness of the Stage II regulations and the status of service station compliance. The Stage II controls have been established at most service stations in the Chicago nonattainment area and have been certified to reduce VOC emissions by at least 95 percent. The emission reduction estimates derived from this observation are acceptable.

b. Architectural Coating. EPA is in the process of adopting a national rule applicable to manufacturers of AIM coatings. EPA proposed this rule on June 25, 1995 (61 FR 32729). Based on EPA policy memoranda, the State has assumed that an emission reduction credit of 20 percent could be taken for this source category. Even though the final rule has not been promulgated, and the compliance with the rule is not expected until 1998, the EPA is allowing States to take credit for 20

percent emission reduction credit for this source category, relative to 1990 emission levels. See "Credit for the 15 Percent Rate-Of-Progress Plans for Reductions from the AIM Coating Rule," March 22, 1995, and "Update on the Credit for the 15 Percent Rate-Of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule," March 7, 1996. The State has calculated emission reductions for architectural coatings separate from the traffic marking and maintenance coating provisions of the AIM rule. The State's emission reduction estimates for architectural coatings are acceptable.

c. Traffic Marking and Maintenance Coating. The State has chosen to rely on the Federal AIM rule (now expected to be implemented in 1998) for emission reductions in this source category. Although EPA policy memoranda,"Credit for the 15 Percent Rate-Of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coating Rule," March 22, 1995, and "Update on the Credit for the 15 Percent Rate-Of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule," March 7, 1996, indicated that the State can assume a 20 percent emission reduction for this source category, the State notes that a more appropriate method for determining the emission reduction for traffic marking and maintenance coatings would involve consideration of the VOC content limit (150 grams VOC/liter coating) proposed in EPA's draft AIM rule. Data supplied by the Illinois Department of Transportation indicates that the median VOC content in traffic/maintenance coatings in the State of Illinois in 1990 was 413 grams/liter coating (this median VOC content level is assumed to apply to both ozone nonattainment areas in the State). Comparing the proposed limit to this median VOC content level indicates that a 63.7 percent reduction in VOC emissions would occur if the proposed VOC content limit were attained. This leads to VOC reduction estimates of 3.73 TPD for the Chicago area and 0.62 TPD for the Metro-East St. Louis area. These estimates are acceptable.

d. Underground Gasoline Storage Tank Breathing Controls. The State rule, adopted by the State on September 15, 1994, requires the installation of Pressure/Vacuum relief-control valves (P/V valves) on gasoline storage tank vents by March 15, 1995. The P/V valves must remain closed against tank pressures of at least 3.5 inches water column and tank vacuums of at least 6 inches water column. Gasoline storage tank owners must maintain records of malfunctions and repairs and must register installation of the P/V valves with the IEPA prior to March 15, 1995. The P/V valves must be tested annually and the owners must keep records of the tests. EPA approved this rule on March 23, 1995 (60 FR 15233).

The IEPA estimates that this rule will reduce gasoline breathing emissions by 90 percent. This emission reduction estimate is acceptable as are the emission reduction credits claimed for the Chicago and Metro-East St. Louis areas.

e. Consumer and Commercial Solvents. The March 23, 1995 **Federal Register** contained EPA's list of affected product categories and schedule for regulation of consumer and commercial solvent contents as required by section 183(e) of the Act. The EPA intends to regulate the solvent contents in 24 product categories. The **Federal Register** action states that the EPA expects the regulation to achieve a 25 percent reduction in VOC emissions from the regulated product categories. This regulation was scheduled to be promulgated in 1996. Under EPA policy memorandum "Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act," June 22, 1995, EPA will grant an emission reduction credit for this source category even though emission reductions are not expected to occur until after 1996.

The IEPA cites an EPA study which states that the best estimate of VOC emissions for consumer and commercial products is 8.03 pounds per person per year. The study further states that the Federal regulation of consumer and commercial product solvents is expected to reduce these emissions by 1 pound per person per year. Using the 1996 projected populations and the ratio of 6.3 pounds VOC per person per year used for this source category in the 1990 base year emissions inventory to the 8.03 pounds per person per year specified in the EPA study, the IEPA has determined that the Federal rule gives an 8.10 tons VOC per day reduction in the Chicago ozone nonattainment area and a 0.58 tons VOC per day reduction in the Metro-East St. Louis ozone nonattainment area. The emission reduction credits are acceptable.

III. Public Comments and Response

During the 30-day public comment period for the July 14, 1997, proposed rulemaking, EPA received two comment letters adverse to approval of the Chicago and Metro-East area 15 percent plans: an August 13, 1997, letter from the American Lung Association of Metropolitan Chicago, Citizens for a Better Environment (Wisconsin), Citizens Commission for Clean Air in the Lake Michigan Basin, the Hoosier Environmental Council, the Illinois Chapter of the Sierra Club, and the Michigan Environmental Council (ALA et al); and an August 6, 1997 letter from a concerned citizen. The following discussion summarizes the comments and EPA's response to those comments.

A. Post-1996 Federal Measures

Comments: ALA et al indicate that Illinois should not be allowed to take credit for certain federal control measures which were not implemented by November 15, 1996, including Federal Non-Road Small Engine Standards, TSDF RACT Phase II, AIM coating, and Consumer and Commercial Products Solvent Control. According to the commenters, section 182(b)(1) of the Act clearly requires States to submit plans that demonstrate a 15 percent emission reduction before November 15, 1996. The commenters also state the policy memoranda regarding credit for post-1996 measures cited in the July 14, 1997, proposed rulemaking provide no good basis for thwarting the clear intent and requirements of the Clean Air Act, and were issued without formal public comment.

Response: Section 182(b)(1)(A) of the Act requires States to submit their 15% SIP revisions by November 15, 1993. Section 182(b)(1)(C) of the Act provides the following general rule for creditability of emissions reductions toward the 15 percent requirement: "Emissions reductions are creditable toward the 15 percent required, to the extent they have actually occurred, as of [November 15, 1996], from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under Title V." In addition, section 182(b)(1)(D) identifies specific control measures which cannot be creditable toward the 15 percent plan, including pre-1990 FMVCP, 1990 RVP, RACT fix-ups, and I/M fix-ups.

Between 1992 and 1996, EPA issued a series of policy memoranda indicating its intention to implement several federal measures before November 15, 1996, and provided emission reductions estimates from these measures for States to use in their 15 percent plans. However, several federal measures have been significantly delayed. By the time it was realized that some federal measures would not be implemented by November 1996, several States had already completed and submitted their

15 percent plans relying on the federal measures.

Section 182(b)(1)(C) is ambiguous as to whether emission reductions from federal measures expected to occur by November 1996 are creditable now that the deadline has passed. Read literally, section 182(b)(1)(C) provides that although the 15 percent SIPs are required to be submitted by November 1993, emissions reductions are creditable as part of those SIPs only if "they have actually occurred, as of [November 1996]". This literal reading renders the provision internally inconsistent. Accordingly, EPA believes that the provision should be interpreted to provide, in effect, that emissions reductions are creditable "to the extent they will have actually occurred, as of [November 1996], from the implementation of [the specified measures]" (the term "will" is added). This interpretation renders the provision internally consistent.

Moreover, section 182(b)(1)(C) of the Act explicitly includes as creditable reductions those resulting from "rules promulgated by the Administrator." This provision does not state the date by which those measures must be promulgated, i.e., does not indicate whether the measures must be promulgated by the time the 15% SIPs were due (November 1993), or whether the measures may be promulgated after this due date.

Because the statute is silent on this point, EPA has discretion to develop a reasonable interpretation, under *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). EPA believes it is reasonable to interpret section 182(b)(1)(C) of the Act to credit reductions from federal measures as long as those reductions were expected to occur by November, 1996, even if the federal measures are not promulgated by the November 1993 due date for the 15 percent SIPs.

EPA's interpretation is consistent with the Congressionally mandated schedule for promulgating regulations for consumer and commercial products, under section 182(e) of the Act. This provision requires EPA to promulgate regulations controlling emissions from consumer and commercial products that generate emissions in nonattainment areas. Under the schedule, by November 1993—the same date that the States were required to submit the 15% SIPs—EPA was to issue a report and establish a rulemaking schedule for consumer and commercial products. Further, EPA was to promulgate regulations for the first set of consumer and commercial products by November 1995. It is reasonable to conclude that Congress anticipated that reductions from these measures would be creditable as part of the 15% SIPs.

Since all the federal measures Illinois relied on were expected to occur by November 1996, these measures are creditable for purposes of the 15 percent plan. It is not intended under section 182(b)(1)(C) of the Act for EPA to disapprove 15 percent plans which claim credit for federal measures which were not implemented as was expected during plan development. To interpret the Act otherwise would unfairly punish the State for delays in federal rule implementation for which the State had no power to control.

In addition, all the post-1996 federal measures for which Illinois has claimed credit are close to being implemented since the measures either have been promulgated or have been proposed. The following table indicates the post-1996 federal measures included in Illinois' 15 percent plans, the statutory provisions which require the measures' promulgation, and the status of the measures' implementation:

Federal measure	Statutory requirement	Status
Non-road Engines 25 hp and below (Phase I)	Act Section 213(a)(2)	Phase I standards published July 3, 1995 (60 FR 34582). Final Compliance date MY 1997, except Class V engine families, which must comply January 1, 1998.
TSDF RACT and RCRA Phase II Control	RCRA Section 3004(n)	Final rule published December 6, 1994 (59 FR 62896). Final Compliance Date December 8, 1997 (61 FR 59932).
AIM Coatings	Act Section 183(e)(3)	Proposed rule published June 25, 1996 (61 FR 32729).
Traffic and Maintenance Coatings	Act Section 183(e)(3)	Proposed rule published June 25, 1996 (61 FR 32729).
Consumer and Commercial Products	Act Section 183(e)(3)	Proposed rule published April 2, 1996 (61 FR 14531).

To exclude credit for these mandated federal measures would mean the State would have to develop and submit a new 15 percent plan and adopt substitute State measures. This would force the State to achieve more than a 15 percent emission reduction once the reductions from the mandated federal measures occur. EPA believes this over compliance with the 15 percent requirement would not be supported by the intent of the Act and would be unreasonably burdensome for the State, especially since the State is already obligated to secure substantial additional VOC reductions in the Chicago area to meet post-1996 ROP requirements.

The fact that EPA cannot determine precisely the amount of credit available for federal measures not yet promulgated does not preclude granting the credit. The credit can be granted as long as EPA is able to develop reasonable estimates of the amount of VOC reductions from the measures EPA expects to promulgate. EPA believes that it is able to develop reasonable estimates, particularly because EPA has either already proposed or promulgated the measures at issue. Many other parts of the SIP, including State measures, typically include estimates and assumptions concerning VOC amounts, rather than actual measurements. For example, EPA's document to estimate emissions, "Compilation of Air Pollutant Emission Factors," January 1995, AP–42), provide emission factors used to estimate emissions from various sources and source processes. AP–42 emission factors have been used, and continue to be used, by States and EPA to determine base year emission inventory figures for sources and to estimate emissions from sources where such information is needed. Estimates in the expected amount of VOC reductions are commonly made in air quality plans, even for those control measures that are already promulgated. Moreover, the fact that EPA is occasionally delayed in its rulemaking is not an argument against granting credits from these measures. The measures are statutorily required, and States and citizens could bring suit to enforce the requirements that EPA promulgate them. If the amount of credit that EPA allows the State to claim turns out to be greater than the amount EPA determines to be appropriate when EPA promulgates the federal measures, EPA intends to take appropriate action to require correction of any shortfall in necessary emissions reductions that may occur.

The above analysis focuses on the statutory provisions that include

specific dates for 15 percent submittal (November 1993) and implementation (November 1996). These dates have expired, and EPA has developed new dates for submittal and implementation. EPA does not believe that the expiration of the statutory dates, and the development of new ones, has implications for the issue of whether reductions form federal measures promulgated after the date of the 15 percent SIP approval may be counted toward those 15 percent SIPs. Although the statutory dates have passed, EPA believes that the analysis described above continues to be valid.

B. Rule Effectiveness Improvements

Comments: ALA et al indicate that the rule effectiveness improvement credit is an "extraordinarily large paper reduction," and that neither Illinois nor EPA have adequately demonstrated that 95 percent rule effectiveness has been or will be achieved in light of changes to Title V monitoring requirements under the upcoming CAM rule. The commenters also note that the emission reduction credit given for rule effectiveness improvements in the Chicago area is comparable to the emission reduction credit given for reformulated gasoline in the Milwaukee ozone nonattainment area. The commenters find their concerns substantiated by a recent University of Southern California study which found that industrial sources in Houston have been emitting VOC hundreds of times more than what has been reported. Also, the commenters claim that neither Illinois nor EPA could provide the commenters a complete list of Illinois sources subject to non-CTG RACT requirements, or compliance information related to these sources, even after the commenters submitted a Freedom of Information Act (FOIA) request to the IEPA. The commenters recommend that credit should be allowed for only 85 percent rule effectiveness for most sources until the actual changes are verified through the 1996 update to Illinois' emission inventories.

Response: The CAAPP program realizes VOC emission reductions through improving the implementation of existing VOC add-on control requirements in the Chicago and Metro-East areas. CAAPP requires more stringent record keeping, reporting, compliance certification, and monitoring requirements, and provides more severe enforcement penalties than the existing State rules. These provisions, in turn, assure higher rates of compliance, and, correspondingly, lower emissions from the sources.

As was indicated in the July 14, 1997, direct final rule, IEPA's rule effectiveness evaluation is reported in the April 1995 document, "Impact of Clean Air Act Permit Program on Inventory Rule Effectiveness," included in the State submittal. One of the elements of the CAAPP program considered in the Illinois rule effectiveness evaluation was Title V enhanced monitoring. After IEPA completed the study, however, EPA decided to promulgate more flexible Title V monitoring requirements known as CAM.

The original enhanced monitoring program would have required many affected facilities to install expensive Continuous Emission Monitoring Systems (CEMS) or develop other monitoring directly correlated with emission values. After consultation with stakeholders, EPA decided that such requirements would be overly prescriptive and excessively burdensome for many industries to install and operate CEMS and on State and local agencies in implementing their operating permit programs. On October 22, 1997, the EPA promulgated the final CAM rule (62 FR 54899), which requires monitoring of operating parameters of add-on control equipment to assure compliance. The CAM rule is much less burdensome to administer by State and Local agencies than the original enhanced monitoring program, allowing agencies to direct resources in assuring compliance more effectively. Furthermore, the CAM rule covers more sources than the original enhanced monitoring proposal. The rule also provides State and local agencies an additional enforcement tool to address persistent control device operation problems through a Quality Improvement Plan (QIP). A QIP is a comprehensive two-step evaluation and correction process that will require the facility owner to prepare a formal plan and a schedule for correcting control device problems. Such activities may include significant repairs to or even replacement of control devices. The QIP provisions are intended to provide compliance assurance benefits equivalent to the direct monitoring provisions contained in the original enhanced monitoring. Finally, sources already subject to more stringent monitoring requirements are not provided any additional flexibility under CAM, and CAM does not affect the stringency of any other record keeping, reporting and compliance certification requirements required under CAAPP. For these reasons, the EPA finds that the CAM rule does not negatively impact Illinois' estimate of rule effectiveness improvement from CAAPP.

EPA is not required under the Act to withhold 15 percent plan credit from control measures until the actual reduction is verified. Rather, EPA interprets section 182(b)(1) of the Act to allow States to rely on reasonable estimates of emission reductions when developing the 15 percent plans. The State's report "Impact of the CAAPP on Inventory Rule Effectiveness," represents a reasonable estimate of rule effectiveness improvement due to CAAPP. It should also be noted that Illinois' rule effectiveness improvement estimate is consistent with EPA's Regulatory Impact Analysis (RIA) for the new ozone NAAQS, which found 95 percent rule effectiveness to be the most representative value for proposed Act control assumptions (See appendix A of the RIA for the July 18, 1997 ozone NAAQS). To the extent that future verification of the rule effectiveness improvements from CAAPP demonstrates less emission reductions than anticipated, Illinois will be expected to make up the shortfall.

The Milwaukee area 15 percent plan is not an appropriate basis from which to judge the reasonableness of the Chicago 15 percent plan's rule effectiveness improvement credit. This is because the two plans are based on vastly different emission baselines (see EPA's March 22, 1996, approval of the Milwaukee 15 percent ROP plan (61 FR 11735)). There is significantly more industrial activity and vehicle miles traveled in the Chicago area compared to the Milwaukee area, and, correspondingly, control measures implemented in the Chicago area achieve a higher aggregate emission reduction than similar control measures in Milwaukee. The 1990 base-year emission inventory for the Milwaukee area is 559.9 TPD of VOC, while the 1990 inventory for the Chicago area is 1,363.4 TPD. The commenters note that the emission reduction estimate for improved rule effectiveness in Chicago (26.3 TPD), is comparable with the emission estimate of reformulated gasoline in Milwaukee (34.06 TPD accounting for both reformulated gasoline and enhanced I/M). However, the reformulated gasoline program in Chicago alone secures a 112.79 TPD emission reduction. Given this disparity, the EPA finds the emission reduction estimates in the Milwaukee and Chicago 15 percent plans are incomparable for purposes of the determining the adequacy of either plan.

Finally, in regard to the commenters' concern regarding non-CTG sources,

EPA contacted IEPA to determine the status of the FOIA request for a complete list of non-CTG sources in the Chicago area. IEPA has indicated that it responded by sending two lists to Citizens for a Better Environment, a January 25, 1996, list of non-CTG sources with Maximum Theoretical Emissions (MTE) of 100 TPY of VOC and above, and a May 16, 1996, list of sources which emit greater than or equal to 100 TPY of VOC. IEPA also provided to the American Lung Association of Metropolitan Chicago a list of non-CTG sources with a Potential To Emit (PTE) of greater than or equal to 25 TPY of VOM, and Maximum Theoretical Emissions (MTE) of less than 100 TPY of VOC. These lists should have been sufficient to meet the commenters' requests. If the commenters' would like additional information about these lists, the commenters should contact the IEPA.

C. Plant Closures

Comments: ALA et al indicated that it is unclear how the emission reduction credits associated with plant shutdowns were calculated, and that Illinois should receive only credit equal to the extra emissions that were built into the 1996 projections specifically for the individual facilities that have shut down. The commenters also note that EPA should make it clear that no market-based credits can be attributed to these shutdowns once the reductions have been credited toward a SIP. This prohibition should apply to New Source Review (NSR) offset credits and any credits or allowances that are transacted as part of Illinois' proposed VOC cap and trade program.

Response: Each plant shutdown emission estimate represents the projected 1996 VOC emission estimate used in calculating the State's overall emission reduction requirement under the 15 percent plan. Section 182(b)(1) requires the 15 percent emission reduction to account for source growth, so IEPA had factored into its 15 percent calculation what emissions would be in 1996 had no 15 percent control strategies occurred. (See *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans* for more detailed discussion on the growth projection requirement). Because IEPA used projected 1996 emissions from the closed plants when calculating the emission reduction needed for 15 percent reduction, the IEPA claimed those 1996 projections as creditable emission reductions in the 15 percent plan. The projected 1996 emissions were calculated using EGAS growth factors for specific emission units. These same growth factors were used to determine the plant closure emission reductions. Therefore, Illinois has received plant closure credit equal to the emission projections built into the 15 percent requirement calculation.

As for the concern regarding the double-counting of emission reductions from plant closures in other VOC control programs, the State's NSR rules prohibit source closure reductions which are credited toward ROP to be used to meet NSR offset requirements. Illinois adopted a VOC trading program on November 20, 1997, as part of its post-1996 ROP plan. Under the rules, no shutdown emissions reduction claimed in the 15 percent plan can be used as credits in the trading program.

D. Stage II Gasoline Vapor Recovery

Comments: A comment from a citizen indicates that emission reductions associated with the Stage II vapor recovery rule are being overestimated because of low levels of cooperation with the rule. This comment was made based on visits to five gasoline dispensing stations in the Chicago nonattainment area and finding four of the stations have either "no controls" or "breaks in the existing controls." Specifically, out of the five stations the commenter visited, the commenter contends that one station has all boots, one station has "no vapor controls," one station has "no boots," and two stations have "some broken or missing boots."

Response: The IEPA has indicated that the four stations in question have been inspected according to an annual inspection schedule and use Stage II equipment which do not need boots to work effectively. The "boot" the commenter refers to is the device used in conjunction with a particular Stage II control system called the "vapor balance system." The vapor balance system collects vapors by using the displacement pressure between the vehicle tank and the station's underground tank during vehicle refueling. For the vapor balance system to work effectively, a tight seal must be made at the interface between the gasoline dispensing nozzle and the vehicle fuel inlet. The boot, or bellow, is the device fitted onto the nozzle which creates the tight seal during refueling.

Another type of Stage II system, known as a "vacuum assist system" draws in vapors during refueling by using a vacuum-generating device. Because of this design, vacuum assist systems can recover vapors effectively without a tight seal at the nozzle/fillpipe interface. Therefore, boots are not needed for assist systems, and the lack of a boot is by itself no indication that the gasoline dispensing nozzle has no Stage II control.

The four stations considered by the commenter to be out of compliance are all registered with the IEPA to use vacuum assist systems, while the one station considered by the commenter to be in compliance uses a vapor balance system. The commenter apparently assumes that all Stage II systems utilize balance systems with booted nozzles and used their existence as evidence of a Stage II vapor recovery system, or more importantly, that their absence indicates no vapor recovery system. Both vapor balance and vacuum assist systems are required under Illinois' Stage II rules to be certified by CARB to have a 95 percent control efficiency. The IEPA has conducted inspections of the five stations between December 1996 and January 1997, in accordance with an annual Stage II inspection program, and has found that all five stations use Stage II equipment which meet the CARB certification requirement. Therefore, unless the IEPA discovers compliance violations at the stations at future inspections, the EPA assumes the stations to be in compliance with Stage II controls.

In addition, it should be noted that the IEPA has built into its Stage II emission reduction estimates the assumption that not all gasoline dispensing stations in the Chicago nonattainment area may be in compliance at all times; malfunctions in the Stage II equipment can occur. Therefore, IEPA used EPA guidance to determine the in-use efficiency of its overall Stage II program. (See "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Stations," November 1991). Under the Technical guidance, the State's throughput exemption level of 10,000 gallons per month, combined with an annual inspection frequency yields a program efficiency of 84 percent. Illinois has applied the in-use efficiency of 84 percent when calculating the emission reduction estimate for this source category.

Because the four stations the commenter believed to be out of compliance use Stage II equipment which were found to be in compliance at the time of the most recent IEPA inspection, and that equipment malfunctions are taken into account in IEPA's emission reduction estimate for the Stage II program, the EPA finds IEPA's estimate of Stage II emission reductions is reliable.

IV. EPA Rulemaking Action

The EPA is approving, through final rulemaking action, Illinois' 15 percent ROP and 3 percent contingency plan SIP revisions for the Chicago and Metro-East St. Louis ozone nonattainment areas, and the Metro East St. Louis TCM work trip reductions; transit improvements; and traffic flow improvements.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: December 5, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraphs (p), (q), and (r) to read as follows:

§ 52.726 Control Strategy: Ozone.

* * * * *

(p) Approval—On November 15, 1993, Illinois submitted 15 percent rate-of-progress and 3 percent contingency plans for the Chicago ozone nonattainment area as a requested revision to the Illinois State Implementation Plan. These plans satisfy sections 182(b)(1), 172(c)(9), and 182(c)(9) of the Clean Air Act, as amended in 1990.

(q) Approval—On November 15, 1993, Illinois submitted 15 percent rate-of-progress and 3 percent contingency plans for the Metro-East St. Louis ozone nonattainment area as a requested revision to the Illinois State Implementation Plan. These plans satisfy sections 182(b)(1) and 172(c)(9) of the Clean Air Act, as amended in 1990.

(r) Approval—On November 15, 1993, Illinois submitted the following transportation control measures as part of the 15 percent rate-of-progress and 3 percent contingency plans for the Metro-East ozone nonattainment area: Work trip reductions; transit improvements; and traffic flow improvements.

[FR Doc. 97–32641 Filed 12–17–97; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–195; RM–9126]

Radio Broadcasting Services; Haiku, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 293C to Haiku, Hawaii, as that community's first local FM transmission service, in response to a petition for rule making filed on behalf of Native Hawaiian Broadcasting. *See* 62 FR 47786, September 11, 1997. Coordinates used for Channel 293C at Haiku, Hawaii, are 20–55–03 and 156–19–33. With this action, the proceeding is terminated.

DATES: Effective January 26, 1998. A filing window for Channel 293C at Haiku, Hawaii, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process

should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–195, adopted December 3, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Haiku, Channel 293C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33047 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–193; RM–9125]

Radio Broadcasting Services; Kaunakakai, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 272C to Kaunakakai, Hawaii, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Native Hawaiian Broadcasting. *See* 62 FR 47406, September 9, 1997. Coordinates used for Channel 272C at Kaunakakai, Hawaii, are 21–05–30 and 157–01–24. With this action, the proceeding is terminated.

DATES: Effective January 26, 1998. A filing window for Channel 272C at Kaunakakai, Hawaii, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–193, adopted November 26, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Kaunakakai, Channel 272C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33045 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD28

Endangered and Threatened Wildlife and Plants; Final Rule To List Three Aquatic Invertebrates in Comal and Hays Counties, TX, as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines three aquatic invertebrate species known only from Comal and Hays counties, Texas, to be endangered species under the Endangered Species Act of 1973, as amended (Act). The invertebrates to be listed are Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle (*Stygoparnus comalensis*). The primary threat to these species is a decrease in water quantity and quality as a result of water withdrawal and other human activities throughout the San Antonio segment of the Edwards Aquifer. This action implements Federal protection provided by the Act for these three invertebrates.

EFFECTIVE DATE: January 20, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758.

FOR FURTHER INFORMATION CONTACT: Ruth Stanford, Ecologist (see **ADDRESSES** section) (512/490–0057; facsimile (512/490–0974).

SUPPLEMENTARY INFORMATION:

Background

The Service designates Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle (*Stygoparnus comalensis*) as endangered under the authority of the Act (16 U.S.C. 1531 *et seq.*). These three aquatic invertebrate species are restricted in distribution to spring sites in Comal and Hays counties, Texas, and in the case of Peck's cave amphipod and Comal Springs dryopid beetle, the associated aquifer. Peck's cave amphipod is known from Comal Springs and Hueco Springs, both in Comal County. The Comal Springs riffle beetle is known from Comal Springs and San Marcos Springs (Hays County). The Comal Springs dryopid beetle is known from Comal Springs and Fern Bank Springs (Hays County).

The water flowing out of each of these spring orifices comes from the Edwards Aquifer (Balcones Fault Zone—San Antonio Region), which extends from Hays County west to Kinney County. Comal Springs are located in Landa Park, which is owned and operated by the City of New Braunfels, and on private property adjacent to Landa Park. Hueco Springs and Fern Bank Springs are located on private property. The San Marcos Springs are located on the property of Southwest Texas State University.

Peck's cave amphipod is a subterranean, aquatic crustacean in the family Crangonyctidae. The Comal Springs riffle beetle is an aquatic, surface-dwelling species in the family Elmidae. The Comal Springs dryopid beetle is the only known subterranean member of the beetle family Dryopidae. Elmid and dryopid beetles live primarily in flowing, uncontaminated waters.

The first recorded specimen of the amphipod *Stygobromus* (=*Stygonectes*) *pecki* (Holsinger 1967) was collected by Peck at Comal Springs in June 1964. Reddell collected a second specimen at the same place in May 1965. In 1967, Holsinger named the species *Stygonectes pecki*, in Peck's honor, selecting the 1965 specimen as the type specimen. Later he included all the nominal *Stygonectes* species in the synonymy of the large genus *Stygobromus*. The Service has used "cave amphipod" as a generic common name for members of this genus, and this name was simply transliterated as "Peck's cave amphipod" without reference to a particular cave.

Over 300 specimens of Peck's cave amphipod have been collected since its description. Most specimens were netted from crevices in rock and gravel near the three largest orifices of Comal Springs on the west side of Landa Park in Comal County, Texas (Arsuffi 1993, Barr 1993). Barr collected one specimen from a fourth Comal spring run on private property adjacent to Landa Park and one specimen from Hueco Springs, about 7 kilometers (km) (4 miles (mi)) north of Comal Springs (Barr 1993). Despite extensive collecting efforts, no specimens have been found in other areas of the Edwards Aquifer.

Like all members of the exclusively subterranean genus *Stygobromus*, this species is eyeless and unpigmented, indicating that its primary habitat is a zone of permanent darkness in the underground aquifer feeding the springs. Above ground, individuals are easy prey for predators, but they usually take shelter in the rock and gravel crevices and may succeed in reentering the spring orifice. Barr (1993) got most specimens in drift nets at spring orifices and found them less often as she moved downstream, supporting the notion that they may be easy prey and do not likely survive for long outside the aquifer.

The Comal Springs riffle beetle is a small, aquatic beetle known from Comal Springs and San Marcos Springs. It was first collected by Bosse in 1976 and was described in 1988 by Bosse *et al.* The closest relative of *H. comalensis* appears to be *H. glabra*, a species that occurs farther to the west in the Big Bend region (Bosse *et al.* 1988).

Adult Comal Springs riffle beetles are about 2 millimeters (mm) (⅛ inch (in)) long, with females slightly larger than males. Unlike the other two organisms listed here, the Comal Springs riffle beetle is not a subterranean species. It occurs in the gravel substrate and shallow riffles in spring runs. Some riffle beetle species can fly (Brown 1987), but the hind wings of *H. comalensis* are short and almost certainly non-functional, making the species incapable of this mode of dispersal (Bosse *et al.* 1988).

Larvae have been collected with adults in the gravel substrate of the spring headwaters and not on submerged wood as is typical of most *Heterelmis* species (Brown and Barr 1988). Usual water depth in occupied habitat is 2 to 10 centimeters (cm)(1 to 4 in) although the beetle may also occur in slightly deeper areas within the spring runs. Populations are reported to reach their greatest densities from February to April (Bosse *et al.* 1988). The Comal Springs riffle beetle has been collected from spring runs 1, 2, and 3 at Comal Springs in Landa Park (springs j, k, and l in Brune 1981) and a single specimen was collected from San Marcos Springs 32 km (20 mi) to the northeast.

The Comal Springs dryopid beetle is a recently discovered species. It was first collected in 1987 and described as a new genus and species in 1992 by Barr (California State University) and Spangler (National Museum of Natural History, Smithsonian Institution). Adult Comal Springs dryopid beetles are about 3.0–3.7 mm (⅛ inch) long. They have vestigial (non-functional) eyes, are weakly pigmented, translucent, and thin-skinned. This species is the first subterranean aquatic member of its family to be discovered (Brown and Barr 1988; Barr, *in litt.* 1990; Barr and Spangler 1992).

Collection records for the Comal Springs dryopid beetle are primarily from spring run 2 at Comal Springs, but they have also been collected from runs 3 and 4 at Comal and from Fern Bank Springs about 32 km (20 mi) to the northeast in Hays County. Collections have been from April through August. Most of the specimens have been taken from drift nets or from inside the spring orifices. Although the larvae of the Comal Springs dryopid beetle have been collected in drift nets positioned over the spring openings, they are presumed to be associated with air-filled voids inside the spring orifices since all other known dryopid beetle larvae are terrestrial. Unlike Peck's cave amphipod, the Comal Springs dryopid beetle does not swim, and it may have a smaller range within the aquifer.

The exact depth and subterranean extent of the ranges of the two subterranean species (Comal Springs dryopid beetle and Peck's cave amphipod) are not precisely known because of a lack of methodologies available for studying karst aquifer systems and the organisms that inhabit such systems. Presumably an interconnected area, the subterranean portion of this habitat, provides for feeding, growth, survival, and reproduction of the Comal Springs dryopid beetle and Peck's cave amphipod. However, no specimens of these species have appeared in collections from 22 artesian and pumped wells flowing from the Edwards Aquifer (Barr 1993) suggesting that these species may be confined to small areas surrounding the spring openings and are not distributed throughout the aquifer. Barr (1993) also surveyed nine springs in Bexar, Comal, and Hays counties considered most likely to provide habitat for endemic invertebrates and found *Stygoparnus comalensis* only at Comal and Fern Bank springs and *Stygobromus pecki* only at Comal and Hueco springs.

Although these species are fully aquatic and two of the three require flowing water for respiration, the absolute low water limits for survival are not known. They survived the drought of the middle 1950's, which resulted in cessation of flow at Comal Springs from June 13 through November 3, 1956. Hueco Springs is documented to have gone dry in the past (Brune 1981, Barr 1993) and, although no information is available for Fern Bank Springs, given its higher elevation, it has probably gone dry as well (Glenn Longley, Edwards Aquifer Research and Data Center, personal communication, 1993). San Marcos Springs has not gone dry in recorded history.

These invertebrates were not extirpated by the only recorded temporary cessation of spring flow. However, given that they are fully aquatic and that no water was present in the springs for a period of several months, they were probably negatively impacted. These species are not likely adapted to surviving long periods of drying (up to several years in duration) that may occur in the absence of a water management plan for the Edwards Aquifer that accommodates the needs of these invertebrates. Stagnation of water may be a limiting condition, particularly for the Comal Springs dryopid beetle and Peck's cave amphipod.

Stagnation of water and/or drying within the spring runs and the photic (lighted) zone of the spring orifices would probably be limiting for the Comal Springs riffle beetle because natural water flow is considered important to the respiration and therefore survival of this invertebrate species. Elmid and dryopid beetles have a mass of tiny, hydrophobic (unwettable) hairs on their underside where they maintain a thin bubble of air through which gas exchange occurs (Chapman 1982). This method of respiration loses its effectiveness as the level of dissolved oxygen in the water decreases. A number of aquatic insects that use dissolved oxygen rely on flowing water to obtain oxygen.

Previous Federal Action

In a petition dated September 9, 1974, the Conservation Committee of the National Speleological Society requested the Service to list *Stygobromus* (=*Stygonectes*) *pecki*. The species was included in a notice of review published on April 28, 1975 (40 FR 18476). A "warranted but precluded" finding regarding several species in that petition was made on October 12, 1983, and published on January 20, 1984 (49 FR 2485). A warranted but precluded finding means that available information indicates listing the species as threatened or endangered is appropriate but that the listing is precluded by higher priority actions. The same determination has been repeated for Peck's cave amphipod in subsequent years. The species was included as a category 2 candidate in comprehensive notices of review published on May 22, 1984 (49 FR 21664), January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804). Category 2 candidates were those species for which data in the Service's possession indicated that listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not known or on file to support proposed rules. *Stygobromus pecki* was elevated to category 1 status in the 1994 notice of review (59 FR 58982). Category 1 candidates were those species for which the Service had on file substantial information on biological vulnerability and threats to support a proposal to list. As published in the **Federal Register** on February 28, 1996 (61 FR 7596), candidate category 2 status was discontinued and only category 1 species are currently recognized as candidates for listing purposes.

In a petition dated June 20, 1990, and received June 21, 1990, Mr. David Whatley, then Director of the City of New Braunfels Parks and Recreation Department, requested that the Service list five invertebrate taxa, including Peck's cave amphipod and four insects. The Service treated this as a second petition for the amphipod. A notice of finding published April 29, 1991 (56 FR 19632), announced that the petition presented substantial information and that listing the Comal Springs riffle beetle and the Comal Springs dryopid beetle may be warranted. Formal status review was initiated for those species. Both species became candidates for listing in the 1994 notice of review (59 FR 58982).

Peck's cave amphipod, Comal Springs riffle beetle, and Comal Springs dryopid beetle were proposed for listing on June 5, 1995 (60 FR 29537). The Act requires that a final determination on a proposed listing be made within one year of the proposal. However, a congressionally-imposed moratorium on final listing actions combined with a recision of funding for the Service's listing program prohibited timely publication of this final rule.

Summary of Comments and Recommendations

In the June 5, 1995, proposed rule (60 FR 29537) and associated **Federal Register** notices all interested parties were requested to submit factual reports or information to be considered in making a final listing determination. Appropriate Federal and State agencies, local governments, scientific organizations, and other interested parties were contacted and requested to comment.

A public hearing request came from Mr. David Langford, Executive Vice President of the Texas Wildlife Association, by letter dated June 22, 1995. The hearing was held on July 24, 1995 at the New Braunfels Civic Center in New Braunfels, Texas. Legal notices of the public hearing, which invited general public comment, were published in The New Braunfels Herald-Zeitung, the San Marcos Daily Record, the Uvalde Leader-News, the Medina Valley-Times, and the San Antonio Express-News. Sixteen people attended the public hearing and one person provided oral testimony.

The Service received 1 oral and 24 written comments on the proposal. Of the letters and oral testimony received, nine supported the proposed action, seven opposed it, and nine did not clearly state support or opposition.

The Service solicited formal scientific peer review of the proposal from six professional biologists during the public comment period and received comments from two reviewers. Their comments are either incorporated into this listing decision as appropriate, or are addressed below.

Written and oral comments presented at the public hearing and received during the comment period were incorporated into this final rule where appropriate. Comments not incorporated are addressed in the following summary. Comments of a similar nature or point are grouped and summarized. Where differing viewpoints around a similar issue were made, the Service has briefly summarized the general issue.

Comment 1: Threats to the species are greatly exaggerated and inconsistent with available data. No real or immediate threat exists that would justify listing these invertebrates.

Service Response: The primary threat to these species is loss of water in their habitat at Comal Springs and other springs where they occur. This threat is discussed in detail in Factor A of this rule.

Comment 2: Samples of all three of the species were collected after the springs had ceased flowing in the immediately preceding years.

Service Response: Spring flow did not cease from all outlets in 1990, and only spring run 1 at Comal saw significant loss of water. During brief periods of very low spring flow the spring runs probably retain sufficient subsurface moisture to allow the Comal springs riffle beetle to survive. Furthermore, when periods of low spring flow are brief and the spring runs are not completely dry, the subsurface water level likely remains higher and closer to the spring openings. These conditions may allow the survival of these species, whereas a period of extensive, long-term cessation of spring flow likely would not. Because these invertebrates are fully aquatic and require relatively well-oxygenated water, a reduction or cessation of spring flows, even if standing water remains around the spring orifices, may negatively impact the species. Loss of water entirely, within their habitat, would result in the extirpation of these aquatic species.

Comment 3: It was noted that the Edwards Aquifer Authority (Authority) was created by S.B. 1477 to regulate withdrawal of water from the aquifer. The Authority withstood legal challenges with the passage of H.B. 3189, which was passed with the cooperation and guidance of the Department of Justice and implementation is anticipated. The commenter further stated that implementation of S.B. 1477 and H.B. 3189 will regulate water withdrawal,

thus eliminating the primary threat, and the need to list the species.

Service Response: Some of the legal issues regarding the establishment of the Authority have been resolved since the time the proposed rule was published and the elected board is in effect at this time. However, an aquifer management plan that would provide for protection of these species and their habitat is not yet in place. Further progress of this board could be beneficial in the future and, if threats are reduced or removed, could result in downlisting or, possibly, delisting the species.

Comment 4: The City of New Braunfels has obtained surface water to meet base demand which will eliminate pumping in the immediate area of the springs and substantially diminish threats to the species.

Service Response: As discussed in Factor A, all of the springs where these species occur are affected by water withdrawal throughout the aquifer's artesian zone to the west. Therefore, a management plan for the entire aquifer, not just the area near the springs, is necessary to moderate threats to the species.

Comment 5: Service treatment of this complex and dynamic issue is incomplete and erroneous. The Service ignores Texas Natural Resources Conservation Commission (TNRCC) rules and proposed amendments to address water quality.

Service Response: The Service acknowledges the extreme complexity of issues regarding the quality and quantity of water in the Edwards Aquifer. The TNRCC rules deal primarily with water quality issues. The more significant issue, however, is maintaining adequate spring flows and the likelihood that a water management plan will be in effect in the foreseeable future that will provide protection for these invertebrates, as discussed in Factor A.

Comment 6: If currently listed species are provided adequate spring flow, then species that have survived previous cessation of spring flow will receive adequate protection without the need to list.

Service Response: While there are species within the Comal and San Marcos ecosystems that are presently listed as threatened or endangered, none of these listed species are assured adequate spring flow. Furthermore, some of the techniques, such as spring flow augmentation, under consideration by some for providing spring flow, will not adequately provide for the invertebrates addressed in this final rule. For example, the Comal Springs riffle beetle occurs in the spring runs. If water is "augmented" into this area after the springs cease flowing, the spring orifices will act as recharge features. The water would return to the aquifer rather than remaining in the spring runs. In addition, if augmentation is attempted through subsurface modifications of the aquifer, the habitat of the two subterranean species could be negatively impacted.

Comment 7: In 1991, the Service reported that these invertebrates were endemic to Comal Springs. Now each of the invertebrates is known from one other spring and each is known from all of the upper springs at Comal. This establishes a potentially wide range for the species. The subterranean habits of two of the species and the fact that they are found at springs as much as 20 miles apart suggests a much wider distribution in the aquifer that would obviate the need to list them as endangered.

Service Response: Status surveys that were conducted for each of these species following the petition to list them found only one new location for each species. Locations in more than one spring run at Comal Springs is not surprising given the proximity of the spring runs. As stated previously, extensive surveys for the species at springs throughout Bexar, Comal, and Hays counties and examination of numerous well samples have found each of the species at Comal Springs and in very low numbers at one additional spring system each. The species were not found at most of the locations surveyed.

Disjunct distributions (e.g., those that are separated by 20 miles) are common in nature and can arise from many evolutionary and ecological processes. Unfortunately, these species are not sufficiently studied to allow us to give a precise explanation for the disjunct distribution, or to determine with certainty whether it is disjunct. Information in the Background section discusses the fact that specimens of the subterranean species have not been found in well samples throughout the aquifer area, in spite of extensive sampling. The Service believes this is a good indication that the species are not widely distributed underground. We do believe that efforts to collect the species in any appropriate habitat where researchers were granted access were sufficient to determine that, in all probability, the species do not exist throughout the underground portions of the aquifer.

Comment 8: Listing is not warranted until highly variable and interruptible spring flow is considered as part of the historical cycle to which these species are adapted to survive.

Service Response: These species exhibit no morphological characteristics or behaviors indicating an ability to survive extended drying of their habitat. The Comal Springs riffle beetle lacks the ability to fly that many other riffle beetles have, suggesting that it is adapted to continuous and reliable spring flows (although flow may still be variable). The more frequent and severe drying that is expected at current and increasing rates of withdrawal from the aquifer will create a condition to which these species are not adapted to survive.

Comment 9: As late as 1991, the Service made a warranted but precluded finding for Peck's cave amphipod. The proposed listing gives no explanation of the change in position from "warranted but precluded" to "proposed for listing." This is ironic since potential threats to the species have been substantially addressed during this 4-year period.

Service Response: A warranted but precluded finding means that the best available information indicates that listing the species is appropriate but that other pending listing actions are more urgently needed and given a higher priority. Many of those other listing actions have now been completed. Before publishing the proposed listing, the Service reviewed the most current information available and determined that the threats to the species are still significant. The Service acknowledges and commends the efforts that so many individuals, agencies, and organizations have put into looking for ways to manage the Edwards Aquifer in a manner that will both protect the endemic species and provide for human water users. However, significant aquifer issues remain unresolved.

Comment 10: Spring flow may be irrelevant to the suitability of habitat in the aquifer for the subterranean species.

Service Response: The Service recognizes that the Peck's cave amphipod and the Comal Springs dryopid beetle are fully aquatic and show morphological adaptations to a subterranean existence. However, neither of these species has shown up in well samples and both have only been collected near the spring orifices, a key feature of their habitat is the water/spring orifice boundary. Reduced spring flows will alter the position and the nature of this boundary and may have a negative effect on these species. Further information is discussed in the Background section.

Comment 11: The Service's failure to define a range or location of habitat for these species is tantamount to an

admission that the Service does not know enough about the species to warrant a conclusion that the species' habitat is threatened by drought.

Service Response: The best available information indicates that the range of each species is limited to a small area near each spring opening where the species have been found. The range of each of the species is both small in size and probably disjunct in distribution. Further information on each species' habitat is presented in the Background section.

Comment 12: Until more is known about the proposed species, and some real harm is shown as a consequence of variable and interruptible spring flows, they are not endangered species.

Service Response: The Service must make determinations for listing of species based on "the best scientific and commercial data available" at the time of listing. Existing knowledge indicates that these species require a reliable supply of clean water. The species have survived past dry periods, but models and predictions cited in the proposal and in this final rule all agree that cessation of spring flow is likely to be more frequent and of longer duration given present pumping levels, as well as those outlined in S.B. 1477. Although S.B. 1477 limits total water withdrawal from the aquifer, the limits may currently be too high to assure long-term spring flow. The Texas Water Development Board (1992) models indicate that at the proposed pumping limit of 450,000 acre-feet, and given recharge levels and patterns similar to those that occurred from 1934 to 1990, Comal Springs could spend 10 to 20 years below 100 cubic feet per second (cfs), and could stop flowing entirely for several years at a time (Texas Water Development Board, personal communication). Negative impacts to the habitat in spring run 1 at Comal Springs, including drying, occur as flows approach 100 cfs.

Comment 13: Studies show that dissolved oxygen is high even at the lowest spring flows. Dissolved oxygen does not appear to be a determinative factor in the decision whether to list the species.

Service Response: The primary factor threatening the long-term survival of these species is availability of a sufficient quantity of water to maintain essential characteristics of their habitat. Although water quality, including the need for certain levels of dissolved oxygen, may be an important factor in their survival, the magnitude of the threat from total loss of water is viewed as the greater threat.

Comment 14: There is no economic advantage to protecting these invertebrates, and putting the life of virtually unknown species ahead of human welfare does not make sense.

Service Response: Like these invertebrates, humans depend on reliable supplies of clean water, and thus protecting our water resources is vital to protecting human health. While the Service cannot consider the economic consequences of species listings when making listing determinations, we believe that protecting these species will have a positive effect to humans in that it will ensure the persistence of the water resource for future generations and will maintain a healthy ecosystem. In addition, continuing spring flow is economically important both in the vicinity of the springs for water recreation businesses and downstream as far as the Gulf of Mexico, where inflow of fresh water into the bays and estuaries is vital to recreational and commercial fisheries.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle (*Stygoparnus comalensis*) should be classified as endangered species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to these three invertebrate species are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

The main threat to the habitat of these aquatic invertebrates is a reduction or loss of water of adequate quantity and quality, due primarily to human withdrawal of water from the San Antonio segment of the Edwards (Balcones Fault Zone) Aquifer and other activities. Total withdrawal from the San Antonio region of the Edwards Aquifer has been increasing since at least 1934, when the total well discharge was 101,900 acre-feet (Edwards Underground Water District 1989). In 1989, the total well discharge was the highest on record at slightly more than 542,000 acre-feet (Longley 1991, Edwards Underground Water District 1992a). Between 1989 and 1995, total well discharge has ranged from 327,000 acre-feet in 1992 to 489,000 acre-feet in 1990 (U.S. Geological Survey, San Antonio, 1996).

There is an integral connection between the water in the aquifer west of the springs and the water serving as habitat for these species. Water in the Edwards Aquifer flows from west to east or northeast and withdrawal or contamination of water in the western part of the aquifer can have a direct effect on the quantity and quality of water flowing toward the springs and at the spring openings. Prior to wells being drilled into the aquifer, almost all of the water entering the aquifer eventually exited at springs (Guadalupe-Blanco River Authority 1988).

The Texas Water Commission (TWC) (1989) classified the San Antonio segment of the Edwards Aquifer as a critical area in terms of its potential for groundwater problems related to overdrafting. They also ranked Bexar, Comal, and Hays counties among the top 23 counties in Texas for number of active groundwater public supply systems. Human population in the region is expected to increase (Technical Advisory Panel 1990, Edwards Underground Water District 1993), which will result in increased demand for water from the aquifer.

The Texas Water Development Board has applied its model (1992) of the Edwards Aquifer to determine the maximum pumping level that would allow Comal Springs to continue to flow, assuming historic recharge (Technical Advisory Panel 1990). They found that during a drought similar to that of the 1950's, the maximum pumpage that would allow spring flow at Comal Springs is about 250,000 acre-feet per year. "At this pumping level, Comal Springs could be expected to maintain some annual flow although they may flow on an intermittent basis during a recurrence of the drought of record" (Technical Advisory Panel 1990). The Panel also stated that in the year 2000, if pumping continues to grow at historical rates and a drought occurs, Comal Springs would go dry for a number of years (Technical Advisory Panel 1990).

Wanakule (1990) states that "the present problem facing the Edwards Aquifer is the threat of overdrafting of the annual average recharge rate." McKinney and Watkins (1993) evaluated the Texas Water Development Board model and other models and concluded that, without limiting withdrawal to about 200,000 acre-feet per year, Comal Springs will likely go

dry for extended periods during even a minor drought. The recent creation of the Authority may help to alleviate this threat to some degree (see Factor D for further discussion).

The Texas Water Development Board model runs indicate that at the proposed pumping limit of 450,000 acre-feet, and given recharge levels and patterns similar to what occurred from 1934 to 1990, Comal Springs could spend 10 to 20 years below 100 cfs, and could stop flowing entirely for several years at a time (Texas Water Development Board, personal communication, 1997). A model run with the same general parameters but a withdrawal of 400,000 acre-feet shows the same pattern with some increase in spring flow, but still extended periods with no spring flow (Texas Water Development Board, personal communication, 1997).

In 1984 and 1990, some of the higher-elevation Comal Springs ceased flowing and water levels in the index well (J–17) in San Antonio dropped to within 3.7 meters (m) (12 feet (ft)) of the historic low of 186.7 m (612.5 ft) that occurred in 1956 (Wanakule 1990). During the drought conditions in the summer of 1996, spring flows at Comal Springs dropped to a low of 83 cfs. During the entire year of 1996, spring flow stayed below 200 cfs for about 252 days and below 100 cfs, the approximate flow at which spring run 1 stops flowing, for about 59 days. Because these invertebrates require relatively well-oxygenated water, a reduction or cessation of spring flows, even if standing water remains around the spring orifices, may negatively impact the species. Complete loss of water would likely result in the extirpation of these aquatic species.

In addition to a loss of water, a decrease in the water level in the aquifer could lead to decreased water quality at the springs. The Balcones Fault Zone—San Antonio Region is bounded on the south and east by a "bad water" interface across which the groundwater quality abruptly deteriorates to greater than 1000 mg/l total dissolved solids. Crossing the bad water interface, groundwater goes from fresh to saline or brackish. Lowered water levels resulting from groundwater pumpage and/or decreased recharge may at some point result in deterioration of water quality in the fresh water section of the aquifer through movement of the bad water interface. The Comal and San Marcos Springs are less than 305 and 62 m (1,000 and 200 ft), respectively, from the bad water interface (TWC 1989, Edwards Underground Water District 1992b). Although the data are inconclusive at present, even a small movement of the water may negatively impact the species.

Other possible effects of reduced spring flow exist. These include changes in the chemical composition of the water in the aquifer and at the springs, a decrease in current velocity and corresponding increase in siltation, and an increase in temperature and temperature fluctuations in the aquatic habitat (McKinney and Watkins 1993).

Another threat to the habitat of these species is the potential for groundwater contamination. Pollutants of concern include, but are not limited to, those associated with human sewage (particularly septic tanks), leaking underground storage tanks, animal/feedlot waste, agricultural chemicals (especially insecticides, herbicides, and fertilizers) and urban runoff (including pesticides, fertilizers, and detergents).

Pipeline, highway, and railway transportation of hydrocarbons and other potentially harmful materials in the Edwards Aquifer recharge zone and its watershed, with the attendant possibility of accidents, present a particular risk to water quality in Comal and San Marcos Springs. Comal and San Marcos Springs are both located in urbanized areas. Hueco Springs is located alongside River Road, which is heavily traveled for recreation on the Guadalupe River, and may be susceptible to road runoff and spills related to traffic. Fern Bank Springs is in a relatively remote, rural location and its principal vulnerability is probably to contaminants associated with leaking septic tanks, animal/feedlot wastes, and agricultural chemicals.

Of the counties containing portions of the San Antonio segment of the Edwards Aquifer, the potential for acute, catastrophic contamination of the aquifer is greatest in Bexar, Hays, and Comal counties because of the greater level of urbanization compared to the western counties. Although spill or contamination events that could affect water quality do happen to the west of Bexar County, dilution and the time required for the water to reach the springs may lessen the threat from that area. As aquifer levels decrease, however, dilution of contaminants moving through the aquifer may also decrease.

The TWC reported that in 1988 within the San Antonio segment of the Edwards Aquifer, Bexar, Hays, and Comal counties had the greatest number of land-based oil and chemical spills in central Texas that affected surface and/or groundwater with 28, 6, and 4 spills, respectively (TWC 1989). As of July, 1988, Bexar County had between 26 and 50 confirmed leaking underground storage tanks, Hays County had between 6 and 10, and Comal County had between 2 and 5 (TWC 1989) putting them among the top 5 counties in central Texas for confirmed underground storage tank leaks. The TWC estimates that, on average, every leaking underground storage tank will leak about 500 gallons per year of contaminants before the leak is detected. These tanks are considered one of the most significant sources of groundwater contamination in the state (TWC 1989).

The TWC (1989), using the assessment tool DRASTIC (Aller, *et al.* 1987), classified aquifers statewide according to their pollution potential. The Edwards Aquifer (Balcones Fault Zone—Austin and San Antonio Regions) was ranked among the highest in pollution potential of all major Texas aquifers. The project's objective was to identify areas sensitive to groundwater pollution from a contaminated land surface based on the hydrogeologic setting. The area of particular concern was the Edwards Aquifer recharge zone and its watershed.

The TWC (1989) also reviewed and reported known and potential risks to Texas aquifers, such as from sanitary landfills, hazardous waste disposal facilities, industrial waste and sewage disposal wells, commercial feedlots, and graveyards. They found the following: "Based on this statewide assessment of potential and actual ground-water contaminants, waste disposal practices being employed and existing regulations which are available for contamination detection and mitigation, it was concluded that there are still conditions that exist or practices being used that are cause for concern. For the most part, the state presently has in place regulations that will effectively reduce future pollution, however past practices may return to haunt us."

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

No threat from overutilization of this species is known at this time.

C. Disease or Predation

While individuals of these three species may be preyed upon by various predatory insects or fish, no information indicates that this is a substantial threat.

D. The Inadequacy of Existing Regulatory Mechanisms

Invertebrates are not included on the Texas Parks and Wildlife Department's (TPWD) list of threatened and endangered species and are provided no protection by the State. The TPWD

regulations do not contain provisions for protecting habitat of any listed species.

Traditionally, the State of Texas has had no authority to regulate withdrawal of groundwater from an aquifer. After a lawsuit filed against the Service by the Sierra Club (*Sierra Club* v. *Babbitt*, formerly *Sierra Club* v. *Lujan*), the Texas State Legislature passed a bill (S.B. 1477) authorizing the creation of the Authority and granted the Authority the power to regulate groundwater withdrawal from the Edwards Aquifer. The bill limits groundwater withdrawal from the aquifer to 450,000 acre-feet per year initially, reducing it to 400,000 acre-feet per year by January 1, 2008. However, Texas Water Development Board models indicate that, at these proposed withdrawal limits, the upper-elevation spring runs at Comal Springs could go dry frequently and for significant periods of time (as happened in 1996) and significant negative impacts to the species could occur before continuous minimum springflows are in place.

One goal of the bill is to provide continuous minimum spring flow, as defined by Federal statute, at Comal and San Marcos Springs by the year 2012. This minimum flow is to protect species that are designated as threatened or endangered under Federal or State law, but does not protect unlisted species. In addition, an evaluation of the Texas Water Development Board models used to set these withdrawal limits shows that flow at Comal Springs will drop below 100 cfs and will likely go dry for extended periods in time of severe drought and probably during minor droughts (McKinney and Watkins 1993, TWDB 1992). McKinney and Watkins (1993) believe it is unlikely that spring flow in Comal Springs of at least 100 cfs for 80 percent of the time, except during severe drought, can be met with a pumping limit greater than 200,000 acre-feet per year. In addition, when the flow drops to 96 cfs, spring run 1 at Comal Springs has already dried substantially (Thornhill, deposition in Sierra Club v. Lujan). Finally, efforts to maintain minimum spring flow at Comal and San Marcos Springs would not necessarily be sufficient to maintain flow at Hueco and Fern Bank Springs, which lie at higher elevations.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

The effect of natural droughts in south central Texas will increase in severity due to the large increase in human groundwater withdrawals (Wanakule 1990). These species' very limited habitat is likely to be lost through drying or decreased volume of spring flow during minor or severe drought.

At present, competition is not known to be a significant threat to these species. However, two exotic snail species, *Thiara granifera* and *Thiara tuberculata*, are common in the spring runs and, as grazers, may compete for food. Another exotic species, the giant ramshorn snail (*Marisa cornuarietis*), is present in two of the spring runs and may colonize the other runs at low flow levels. *Marisa* can have a tremendous impact on vegetation, that in turn may affect the habitat for surface-dwelling grazers like the riffle beetle.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in making this final rule. Based on this evaluation the preferred action is to list the Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle (*Stygoparnus comalensis*) as endangered. Endangered status is determined appropriate for these three invertebrates given that threats are significant and could result in extinction of these species throughout all or a significant portion of their range. The immediate nature of these threats precluded determining these species to be threatened species.

Critical Habitat

Critical habitat is defined in section 3 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 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, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for Peck's cave amphipod, the Comal Springs riffle beetle, and the Comal Springs dryopid beetle. Service 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: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Designation of critical habitat would provide no benefits to these species beyond those provided by listing and the subsequent evaluation of activities under section 7 of the Act. Section 7 prohibits Federal agencies from jeopardizing the continued existence of listed species or destroying or adversely modifying listed species' designated critical habitat.

In the Service's section 7 regulations at 50 CFR part 402, the definition of "jeopardize the continued existence of" includes "to reduce appreciably the likelihood of both the survival and recovery of the listed species," and "destruction or adverse modification" is defined as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Both of these definitions refer to actions that reduce the survival and recovery of a listed species. Any action that would appreciably diminish the value, in quality or quantity, of spring flows (habitat) on which the species depend would also reduce appreciably the likelihood of survival and recovery of the three species. Because these species are endemic to such highly localized areas, actions that affect water quality and quantity at the springs will be fully evaluated for their effects on the three species through analysis of whether the actions would be likely to jeopardize their continued existence. The analysis for possible jeopardy applied to these species would therefore be identical to the analysis for determining adverse modification or destruction of critical habitat. Therefore, there is no distinction between jeopardy and adverse modification for activities impacting the springs on which these species depend.

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 public awareness and conservation actions by Federal, State, and local agencies, private

organizations, and individuals. The Act provides for cooperation with the States and requires that recovery actions be carried out for all species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Conservation and management of the Peck's cave amphipod, Comal Springs riffle beetle, and Comal Springs dryopid beetle are likely to involve protection and conservation of the Edwards Aquifer and spring flow at Comal, Hueco, San Marcos, and Fern Bank Springs. It is also anticipated that listing will encourage research on critical aspects of the species' biology.

Section 7(a) of the Act, as amended, 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 any is being 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 the Service on any action that is likely to jeopardize the continued existence of a proposed species. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such 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 the Service. Federal actions that may require consultation include projects that would affect the quality or quantity of water within the San Antonio segment of the Edwards Aquifer or otherwise significantly affect the outlets or water output of Comal Springs in New Braunfels, Texas; San Marcos Springs in San Marcos, Texas; Hueco Springs in Comal County, Texas; and Fern Bank Springs in Hays County, Texas. Examples of these types of activities include projects that would involve withdrawal of water from the aquifer; permits for municipal wastewater discharge; agricultural irrigation; use of pesticides and herbicides; Environmental Protection Agency National Discharge Elimination System permits; section 18 exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act; Corps of Engineers permits for stream crossings; and Department of Housing and Urban Development projects.

The Act and 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, or collect, or to attempt any of these), 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 listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued 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, and/or for incidental take in connection with otherwise lawful activities. It is anticipated that few trade permits would ever be sought or issued because these species are not known to be in trade.

It is the policy of the Service (July 1, 1994; 59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of listing on proposed and ongoing activities within a species' range. The purpose of this guidance is not only to identify activities that would or would not likely result in take of individuals, but activities that in combination will ultimately affect the long-term survival of these species. This guidance should not be used to substitute for local efforts to develop and implement comprehensive management programs.

The Service believes that, based on the best available information, activities that could potentially harm these invertebrates and result in "take" include, but are not limited to:

(1) Collecting or handling of the species;

(2) Activities that may result in destruction or alteration of the species' habitat including, but not limited to, withdrawal of water from the aquifer to the point at which habitat becomes unsuitable for the species, alteration of the physical habitat within the spring runs, or physical alteration of the spring orifices or of the subsurface pathways providing water to the springs;

(3) Discharge or dumping of chemicals, silt, pollutants, household or industrial waste, or other material into the springs or into areas that provide access to the aquifer and where such discharge or dumping could affect water quality;

(4) Herbicide, pesticide, or fertilizer application in or near the springs containing the species; and

(5) Introduction of non-native species (fish, plants, other) into these spring ecosystems.

The Service believes that a wide variety of activities would not harm these species if undertaken in the vicinity of their habitats and thus would not constitute taking. In general, any activity in the contributing, recharge, or artesian zones of the Edwards aquifer that would not have potential for the cumulative or acute/catastrophic negative effects on water quantity or quality within the aquifer should not harm these species. Inquiries concerning the possible effects of specific activities, copies of regulations regarding listed wildlife, or inquiries regarding prohibitions and permits should be directed to the Service's Austin Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, 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 of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

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List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, the Service amends 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. Section 17.11(h) is amended by adding the following, in alphabetical order under Crustaceans and Insects, respectively, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
CRUSTACEANS							
*	*	*	*	*	*	*	
Stygobromus (=Stygonectes) pecki.	Amphipod, Peck's cave.	U.S.A. (TX)	Crangonyctidae	E	.....	NA	NA
*	*	*	*	*	*	*	
INSECTS							
*	*	*	*	*	*	*	
Stygoparnus comalensis.	Beetle, Comal Springs dryopid.	U.S.A. (TX)	Dryopidae	E	.....	NA	NA
*	*	*	*	*	*	*	
Heterelmis comalensis.	Beetle, Comal Springs riffle.	U.S.A. (TX)	Elmidae	E	.....	NA	NA
*	*	*	*	*	*	*	

Dated: October 21, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–33041 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D. 121297A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic migratory group Spanish mackerel in or from the exclusive economic zone (EEZ) in the southern zone to 1,500 lb (680 kg) per day. This trip limit reduction is necessary to protect the Atlantic migratory group Spanish mackerel resource.

DATES: Effective 6:00 a.m., local time, December 16, 1997, through March 31, 1998, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The Councils recommended and NMFS implemented an adjusted quota and commercial trip limits for Atlantic migratory group Spanish mackerel from the southern zone. As set forth at 50 CFR 622.44(b)(2), the adjusted quota is 3.25 million lb (1.47 million kg). In accordance with 50 CFR 622.44(b)(1)(ii)(C), after 75 percent of the adjusted quota of Atlantic migratory group Spanish mackerel from the southern zone is taken until 100 percent of the adjusted quota is taken, Atlantic migratory group Spanish mackerel in or from the EEZ in the southern zone may not be possessed on board or landed from a vessel in a day in amounts exceeding 1,500 lb (680 kg). The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42'45.6" N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary.

NMFS has determined that 75 percent of the adjusted quota for Atlantic migratory group Spanish mackerel from the southern zone was taken by December 15, 1997. Accordingly, the 1,500–lb (680–kg) per day commercial trip limit applies to Atlantic migratory group Spanish mackerel in or from the EEZ in the southern zone effective 6:00 a.m., local time, December 16, 1997, through March 31, 1998, unless changed by further notification in the **Federal Register**.

Classification

This action is taken under 50 CFR 622.44(b)(2) and is exempt from review under E.O. 12866.

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

Dated: December 15, 1997.

Gary C. Matlock,

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

[FR Doc. 97–33099 Filed 12–15–97; 3:12 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 100897D]

RIN 0648–AK44

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

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

ACTION: Final specifications for the 1998 summer flounder, scup, and black sea bass fisheries; final rule, technical amendment; notifications of commercial quota harvest.

SUMMARY: NMFS issues the final specifications for the 1998 summer flounder, scup, and black sea bass fisheries. The intent of this document is to comply with implementing regulations for the summer flounder, scup, and black sea bass fisheries that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of these species. NMFS announces that no quota is available in several states for specified 1998 fisheries as follows: the State of Delaware is notified that no commercial summer flounder or Summer period commercial scup quotas are available in 1998; the State of New Hampshire is notified that no Summer period commercial scup quota is available for 1998. NMFS advises vessel and dealer permit holders that no commercial quotas are available for landing those species in those States during the specified time periods.

DATES: The amendments to §§ 648.14(u)(1), 648.100(a), 648.143(a), and § 648.144(a)(1)(i) are effective January 1, 1998. The final specifications for the 1998 summer flounder, scup, and black sea bass fisheries and notifications of commercial quota harvest are effective January 1, 1998, through December 31, 1998.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment (EA), Regulatory Impact Review, and the Final Regulatory Flexibility Analysis (FRFA) are available from: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (978) 281–9221.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°15.3' N. latitude, the latitude of Cape Hatteras Light, NC, northward to the U.S./Canada border. Implementing

regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

Pursuant to §§ 648.100 (summer flounder), 648.120 (scup), and § 648.140 (black sea bass), the Administrator, Northeast Region, NMFS (Regional Administrator), implements certain measures for the fishing year to ensure achievement of the appropriate target fishing mortality (F) or exploitation rate for each fishery, as specified in the FMP. The management schedule adopted in Amendment 7 to the FMP for summer flounder established a target F equal to that which results in the maximum yield per recruit (F_{max}), currently 0.24, in 1998 and thereafter. The target exploitation rate for scup for 1998 is 47 percent, the rate corresponding to F = 0.72. For black sea bass, the FMP specifies a target exploitation rate for 1998 of 48 percent, corresponding to F = 0.73. The annual measures contained in this final rule are unchanged from the proposed 1998 specifications that were published in the **Federal Register** on October 20, 1997 (62 FR 54427). Some regulatory clarifications are described in the section Changes From the Proposed Rule of this document. The management measures are summarized below by species. Detailed background information regarding the development of this rule was provided in the proposed specifications for the 1998 summer flounder, scup, and black sea bass fisheries (October 20, 1997, 62 FR 54427), and is not repeated here. NMFS will publish in the **Federal Register** at a later date the 1998 recreational management measures for summer flounder, scup, and black sea bass.

Summer Flounder

This rule will implement the following measures for summer flounder in 1998: (1) Total Allowable Landings (TAL) of 18.52 million lb (8.40 million kg); (2) a coastwide commercial quota of 11.11 million lb (5.04 million kg); and (3) a coastwide recreational harvest limit of 7.41 million lb (3.36 million kg). The TAL is unchanged from 1997, despite the most recent assessment for summer flounder (Stock Assessment Workshop (SAW) 25, August 1997) that indicates that the FMP measures have yet to reduce F below 1.0. However, the allocation of the TAL has been revised.

SAW–25 recommended that additional measures should be considered to minimize commercial and recreational discard mortality. To address these concerns, this rule specifies that 15 percent of a state's commercial quota allocation must be set aside for a bycatch fishery and that a state must implement trip limits with the objective of keeping its fishery open all year. Since the FMP does not specifically include a provision for a bycatch allocation, the measure must be enacted by the states. Therefore, this provision was made mandatory under the Atlantic Coastal Fishery Cooperative Management Act (Atlantic Coastal Act) and was adopted as a compliance criterion by the Commission's Summer Flounder, Scup, and Black Sea Bass Board. The commercial quota is allocated among the states based on historical catch shares specified in the FMP.

The bycatch allocation is effectively a 15-percent reduction in the commercial quota for the directed summer flounder fishery. The bycatch quota allocation will extend the season and will reduce discard waste in the fishery. When combined with anticipated commercial quota deductions due to overages in the 1997 fishing year, this provision will increase the probability of achieving F_{max}. Based on commercial landings as of November 8, 1997, there will be an estimated quota overage in 1997 of 273,156 lb (123,901 kg) (3.3 percent) if there are no further late reports during 1997 and all states are closed with no additional overages. Recent approval of Amendment 10 to the FMP (62 FR 63872, December 3, 1997) means that a minimum mesh size requirement throughout the net will be implemented effective on June 3, 1998, further reducing F on sublegal fish.

In 1997, the State of Delaware was closed to the landing of summer flounder by Federal permit holders as a result of deductions to the 1997 quota for quota overages in 1996 (62 FR 10473, March 7, 1997). As a result of those deductions and further quota reductions as published in the **Federal Register** on July 15, 1997 (62 FR 37741), the 1997 commercial quota allocation to the State of Delaware was -5,662 lb (-2,568 kg). The final 1998 quota for Delaware, when added to its 1997 quota, is not sufficient to offset this negative allocation. Consequently, Delaware will have no commercial quota for 1998. To prevent landings in Delaware by Federal permit holders, the State is closed to the landing of summer flounder by Federal permit holders for 1998. The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of their permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours January 1, 1998, landings of summer flounder in Delaware by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1998 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are also advised that they may not purchase summer flounder from Federally permitted vessels that land in Delaware for the remainder of the calendar year, or until additional quota becomes available through a transfer. No landings of summer flounder in Delaware have been reported for 1997 by Federally permitted dealers or by the State of Delaware. If landings should be reported for 1997, the commercial quota for the State of Delaware will be adjusted pursuant to § 648.100(d)(2).

The commercial quotas for all coastal states for 1998 are presented in Table 1. These quota figures are preliminary and will be adjusted for overages in the 1997 fishing year, as required by § 648.100(d)(2).

TABLE 1.—1998 STATE SUMMER FLOUNDER COMMERCIAL QUOTAS

State	Share (%)	1998 quota (pounds)	1998 quota (kg) [1]
ME	0.04756	5,284	2,397
NH	0.00046	51	23
MA	6.82046	757,841	343,751
RI	15.68298	1,742,583	790,422
CT	2.25708	250,791	113,757
NY	7.64699	849,680	385,408
NJ	16.72499	1,858,363	842,939
DE	0.01779	[2] (3,685)	(1,671)
MD	2.03910	226,570	102,770

TABLE 1.—1998 STATE SUMMER FLOUNDER COMMERCIAL QUOTAS—Continued

State	Share (%)	1998 quota (pounds)	1998 quota (kg) [1]
VA	21.31676	2,368,569	1,074,365
NC	27.44584	3,049,589	1,383,270
Total		11,105,636	5,037,432

[1] Any differences expressed in the conversion of pounds to kilograms are due to rounding.
[2] Numbers in parentheses are negative.

Scup

The most recent assessment for scup (SAW–25, August 1997) indicates that F has been above 1.0 for the period 1984–96. SAW–25 examined 1996 total catch and estimated that a 34-percent reduction from that exploitation level would result in a Total Allowable Catch (TAC) of 7.275 million lb (3.3 million kg) and would likely reduce F to below 1.0. The TAC is allocated to the commercial (78 percent) and recreational (22 percent) sectors. Then, a discard estimate is deducted from each TAC to establish the allowed harvest. This rule establishes for 1998 (1) a coastwide TAC of 7.275 million lb (3.3 million kg), (2) a commercial TAC of 5.675 million lb (2.6 million kg), (3) a commercial discard estimate of 1.103 million lb (0.50 million kg), (4) a commercial quota of 4.572 million lb (2.07 million kg), (5) a recreational TAC of 1.6 million lb (0.73 million kg), (6) a recreational discard estimate of 0.048 million lb (0.02 million kg), and (7) a recreational harvest limit of 1.553 million lb (0.70 million kg). This rule also implements a 20,000 lb (9,072 kg) commercial trip limit for the Winter I season, which is to decrease to 1,000 lb (453.6 kg) when 85 percent of the Winter I quota is harvested, and an 8,000 lb (3628.7 kg) trip limit in Winter II, with no decrease. The commercial quota represents a 24-percent reduction from the 1997 quota of 6.0 million lb (2.7 million kg). The commercial quota, allocated to the seasonal periods as specified in the FMP, is shown in Table 2:

TABLE 2.—PERIOD ALLOCATIONS OF COMMERCIAL SCUP QUOTA

Period	Percent	TAC [1]	Discards [2]	Quoto allocation	
				(LB)	(KG) [3]
WINTER I	45.11	2,559,992	497,563	2,062,429	935,502
SUMMER	38.95	2,210,413	429,619	1,780,794	807,755
WINTER II	15.94	904,595	175,818	728,777	330,568
TOTAL	100.00	5,675,000	1,103,000	4,572,000	2,073,824

[1] Total Allowable Catch, in pounds.
[2] Discard estimates, in pounds.
[3] Kilograms are as converted from pounds.

The 1998 commercial quota for the Summer period (1,780,794 lb; 807,755 kg), apportioned among the states according to the percentage shares specified in § 648.120(d)(3), is presented in Table 3. The quota figures for both the Winter and Summer periods are preliminary and will be adjusted for overages in 1997, as required by § 648.120(d) (5) and (6).

TABLE 3.—SUMMER PERIOD (MAY–OCTOBER) COMMERCIAL SCUP QUOTA SHARES

State	Share (percent)	1998 allocation	
		(LB)	(KG) [1]
Maine	0.13042	2,322	1,053
New Hampshire	0.00004	1	0
Massachusetts	15.49117	275,866	125,131
Rhode Island	60.56588	1,078,554	489,224
Connecticut	3.39884	60,526	27,454
New York	17.05295	303,678	137,746
New Jersey	3.14307	55,972	25,388
Delaware	0.00000	0	0
Maryland	0.01288	229	104
Virginia	0.17787	3,167	1,437
North Carolina	0.02688	479	217
Total	100.00000	1,780,794	807,755

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Section 648.121(b) requires the Regional Administrator to monitor the Summer period state commercial quotas and determine the date when a state's commercial quota is harvested. NMFS is required to publish notification in the **Federal Register** advising a state and notifying vessel and dealer permit holders that, effective upon a specific date, a state's Summer period commercial quota has been harvested and that no Summer period commercial quota is available for landing scup in that state for the remainder of the period. The amount of commercial quota that is allocated for the Summer period to the State of New Hampshire is 1 lb (less than 1 kg) and to the State of Delaware is 0 lb (0 kg). Therefore, the Regional Administrator has determined that no commercial quota is available for landings in those states for the Summer period. The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of their permit, not to land scup in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours May 01, 1998, until 2400 hours, October 31, 1998, landings of scup in New Hampshire or Delaware by vessels holding commercial Federal fisheries permits are prohibited, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are also advised that they may not purchase scup from Federally permitted vessels that land in New Hampshire or Delaware for the Summer period, or until additional quota becomes available through a transfer.

Black Sea Bass

The most recent assessment for black sea bass (SAW–25, August 1997) estimated that F has generally exceeded 1.0 for the period 1984–96. SAW–25 examined 1996 total catch and estimated that a 33-percent reduction in landings from the 1996 level (9.0 million lb; 4.1 million kg) would be necessary to reduce F below 1.0. As a result, this rule would implement the following specifications: (1) A commercial quota of 3.025 million lb (1.4 million kg) and (2) a recreational harvest limit of 3.148 million lb (1.43 million kg). This rule will also increase the minimum commercial fish size to 10 inches (25.4 cm), consistent with measures being implemented by the Commission and proposed by the South Atlantic Fishery Management Council in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP). Additionally, the catch threshold level that would trigger the minimum mesh size requirement will increase from 100 to 1,000 lb (45.4 to 453.6 kg).

This rule also implements trip limits for all commercial gear types for each of the four quarterly quotas. In Quarter 1 (Q1), the trip limit will be 11,000 lb (4,990 kg); in Q2, 7,000 lb (3,175 kg); in Q3, 3,000 lb (1,361 kg), and in Q4, 4,000 lb (1,814 kg). While the trip limits could, in theory, prevent quarterly closures, the limits impact only approximately 5 percent of the trips in this fishery. NMFS remains concerned about the cost of enforcement compared to the effectiveness of these trip limits. However, no change to the trip limits are made at this time since the states are implementing these limits for January 1, 1998, as compliance criteria under the Commission requirements. Changes at this time would result in differing limits for state-permitted and Federally-permitted vessels, compounding the concerns about the measure. Such an inconsistency would be confusing to the industry and would prevent effective enforcement. NMFS recommends continued oversight of these trip limits to monitor their enforceability, their impact on the fishery and their effectiveness at achieving the conservation goals of the FMP. NMFS expects that the Council will carefully examine the impacts of these trip limits as part of the annual specification process for 1999.

The 1998 commercial quota, apportioned by quarter according to the percentage shares specified in § 648.140(d)(1), and the trip limits associated with those quarters are presented in Table 4:

TABLE 4.—1998 BLACK SEA BASS QUARTERLY COASTWIDE QUOTAS AND QUARTERLY TRIP LIMITS

Quarter	Percent	Pounds	(kg) [1]	Trip limits	
				lbs	(kg)
1. (Jan-Mar)	38.64	2,385,247	1,081,930	11,000	4,990
2. (Apr-Jun)	29.26	1,806,220	819,288	7,000	3,175
3. (Jul-Sep)	12.33	761,131	345,243	3,000	1,361
4. (Oct-Dec)	19.77	1,220,402	553,565	4,000	1,814
Total	100.00	6,173,000	2,800,026		

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Changes From the Proposed Rule

In the proposed rule, Table 4 specified the quarterly coastwide allocations and trip limits for the commercial black sea bass fishery. The table erroneously identified Quarter 2 as comprising the months of April through May. Instead, Quarter 2 comprises the months of April through June, and the table is corrected to read as such in this final rule.

This document corrects the language specified in § 648.100(a), established by the final rule implementing Amendment 7 to the FMP, that set the target F for summer flounder for 1998 and beyond as F = 0.23 and specified that the allowable levels of fishing in 1996 and 1997 may not exceed 18,518,830 lb (8.4 million kg), unless such fishing levels have an associated F of 0.23. The stated management strategy of Amendments 2 and 7 to the FMP defines overfishing for summer flounder as fishing in excess of F_{max} level. F_{max} is a biological reference point that corresponds to the level of F that produces the maximum yield per recruit. As a reference point, F_{max} may change based on changes in the summer flounder stock. Although F_{max} corresponded with an F of 0.23 when the final rules implementing Amendments 2 and 7 to the FMP were developed, F_{max} is currently 0.24. As a result, while F = 0.23 was F_{max} at that time, the section must be corrected to implement the intent of the Council in Amendments 2 and 7 that the target is F_{max}, and not 0.23. Thus, the final rule, technical amendment contained in this action changes the wording of the target F for 1998 and beyond for summer flounder to be the fishing mortality rate that yields the maximum yield per recruit (F_{max}), rather than a numerical term that varies slightly over time.

Comments and Responses

A total of 24 letters from the public, one (1) letter from the Commonwealth of Massachusetts, Division of Marine Fisheries (MA–DMF), and one (1) letter from the Commonwealth of Massachusetts, Marine Fisheries Commission (MA–MFC) were received during the comment period for this action, which ended on November 17, 1997. Three form letters were submitted by several individuals. Several of the letters contained comments on the FMP in general or offered suggestions for future management that are not within the scope of this action. Only comments relevant to the proposed specifications that were received by NMFS prior to the close of business on the date specified as the close of comments were considered for this rulemaking.

Summer Flounder

Comment: One letter from the public and two form letters signed by 15 people supported a commercial quota of 19 million lb (8.6 million kg) for the 1998 summer flounder fishery. They noted that this quota was examined under Option 4 in the 1997 stock assessment (SAW–25) report.

Response: SAW–25 examined a range of landings projections, including Option 4, which was examined at the request of industry participants. Option 4 projected a TAL of 31.7 million lb (14.4 million kg) and a commercial quota of 19 million lb (8.6 million kg), as noted by the commenters. This option provides a median F of 0.65 for 1998, indicating that this option has over 96 percent probability of resulting in F that will be in excess of F_{max} for summer flounder in 1998. Both the Council and NMFS found that a TAL of this level does not have a reasonable likelihood of achieving the target F for 1998 and is not in compliance with the FMP or with NMFS policy, which is to be cautious in the face of uncertainty.

Comment: One letter from the public and one form letter signed by 8 individuals stated that the 15-percent bycatch provision should be in addition to the recommended quota, not included within the recommended amount.

Response: The TAL for summer flounder specified by this rule has a 50-percent probability of achieving F = 0.35. The target F for 1998 is 0.24. The most recent assessment for summer flounder (SAW–25) noted that F for summer flounder has not yet been reduced below 1.0. As a consequence, SAW–25 recommended a reduction in the TAL to 13.889 million lb (6.30 million kg). SAW–25 also noted the need to reduce discard and discard mortality in both the commercial and recreational fisheries. The provision to include a 15 percent bycatch fishery within the TAL of 18.518 million lb (8.40 million kg) is both a serious attempt to address discards, and, in effect, a 15-percent reduction in the commercial quota allocated to the directed fishery. The bycatch quota allocation will extend the season and reduce waste due to discards following the end of the directed fishery. The inclusion of the 15-percent bycatch provision within the TAL is one of the factors that provide a reasonable likelihood that the TAL will achieve the F rate specified in the FMP. To add the 15 percent to the present quota would merely create additional landings, and hence additional mortality on the stock, and lessen the likelihood that the TAL will achieve the target F.

Comment: One comment letter signed by 7 individuals stated that 15 percent of any other catch should be allowed for summer flounder bycatch, so that scallop, squid, croaker, dogfish and other fisheries could land a bycatch and not throw the summer flounder overboard. This summer flounder should not be counted against the quota.

Response: This suggestion would violate several provisions of the FMP and would undermine the integrity of the commercial quota. The regulations governing summer flounder at § 648.100(d)(2) specifically state that all summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Additionally, in the EEZ, any fishery participant, regardless of the species targeted, may land summer flounder for sale provided that the participant complies with the requirements of the FMP, including, but not limited to, the possession of a vessel moratorium permit. Most states also have vessel permit requirements.

Comment: The MA–DMF and MA–MFC question whether a 15-percent bycatch provision will result in a reduction in discards and waste sufficient to compensate for the fact that the adopted TAL is 4.63 million lb (2.1 million kg) in excess of a TAL of 13.889 million lb (6.30 million kg), the level specified by SAW–25 as having a 50-percent probability of achieving F 0.24 in 1998.

Response: The 15-percent bycatch provision is not the only measure that increases the likelihood that the TAL of 18.518 million lb (8.4 million kg) will achieve F_{max} in 1998. Anticipated deductions due to overages in the 1997 fishing year will also increase the probability of achieving F_{max}. Based on commercial landings to date, there will be an estimated quota overage in 1997 of 273,156 lb (123,901 kg) (3.3 percent) if there are no further late reports during 1997 and all states are closed with no additional overages. On June 3, 1998, the measure requiring a minimum mesh size throughout the net approved as part of Amendment 10 will become effective thereby further reducing F on sublegal fish.

SAW–25 notes that, in the retrospective analysis of the summer flounder virtual population analysis (VPA) for terminal catch years 1990–1996, the pattern of estimation of F for 1994–1995 alters the pattern noted in the last assessment. The last assessment noted that F was underestimated in the terminal catch years 1991–1993. SAW–25 concluded that the reversal in terminal year F estimates may be due to improved accuracy of catch estimates in 1995 and 1996, more accurate indices of stock size due to revised aging, and improved monitoring and estimation of discards. NMFS agrees that there have been substantive improvements in quota monitoring and prevention of quota overages over the past year. Since there is no reason to expect that these factors will change, this pattern could likely hold for the 1997 stock estimates. A greater stock size in 1997 would increase the projected stock size in 1998, which means more fish being available for harvest at a given F. This, in turn, increases the probability that the proposed TAL of 18.518 million lb (8.4 million kg) would achieve F_{max} in 1998.

Scup

Comment: One comment letter signed by 7 individuals states that scup landings have already been reduced by the 5.5 inch (14.0 cm) mesh size requirement in summer flounder and by the 6 inch (15.2 cm) mesh size requirement in the multispecies fisheries, and therefore, it is wrong that these scup, when caught in these nets, must be discarded.

Response: Any vessel fishing with a net that meets or exceeds the 4.5 inch (11.4 cm) diamond minimum mesh requirement for the scup fishery and is issued a valid scup moratorium permit may retain all scup of legal size. Other provisions may limit fishing activity, for instance, if landings are prohibited due to quota attainment. Data do not indicate that scup landings have decreased due to the 1993 (Federal) implementation of the summer flounder minimum mesh size.

Comment: MA–DMF and MA–MFC comment that the minimum mesh size

should be required throughout the net, so that the scup requirement is consistent with the summer flounder requirement in Amendment 10.

Response: Amendment 8 to the FMP, which implemented comprehensive management measures for the scup fishery, authorizes the Council to recommend to the Regional Administrator measures necessary to assure that the specified exploitation rate will not be exceeded. Among the measures the Council may recommend is a minimum mesh size. However, this mesh may be applied to the codend of the net only. There is no mechanism in the scup regulations by which the Council, or NMFS, could implement mesh throughout the net for scup. Such a mechanism would have to be established through an amendment to the FMP.

Comment: MA–DMF and MA–MFC commented on concerns expressed in SAW–25 concerning the inadequacy of the input data. Specifically, exploratory VPA estimates of fishing mortality in 1996 were used to set a TAC for 1998, an approach which these agencies feel is inappropriate. The comments state it is unjustifiable to cut landings when the target F may have been achieved in 1997. MA-MFC urged a "different approach" to management other than just cutting landings. Further, the agencies maintain that discard levels of scup are high in the offshore small mesh (squid) fishery and that measures must be implemented to reduce them prior to quota reductions.

Response: SAW–25 utilized the best available data to complete an assessment of the scup stock. There were concerns about the data that SAW–25 noted, and NMFS believes that these concerns should not logically be interpreted that landings cannot be reduced. Although the agency is concerned about the issue of discards, SAW–25 notes that there are serious limitations in the data used to estimate and characterize commercial discards and landings and that there is not an obvious solution. The commenter did not elaborate what "different approach" to management might be appropriate for this fishery, so NMFS cannot respond further.

Black Sea Bass

Comment: One comment letter signed by 7 individuals states that black sea bass landings have already been reduced by the 5.5 inch (14.0 cm) mesh requirement in summer flounder and by the 6 inch (15.2 cm) mesh requirement in the multispecies fisheries, and, therefore, it is wrong that these fish, when caught in that net, must be discarded.

Response: Any vessel fishing with a net that meets or exceeds the 3.5 inch (8.9 cm) diamond or the 4.0 inch (10.2 cm) square minimum mesh requirement for the black sea bass fishery and being issued a valid black sea bass moratorium permit may retain all black sea bass of legal size. Other provisions may limit fishing activity, for instance if landings are prohibited due to quota attainment. Data do not indicate that black sea bass landings have decreased due to the 1993 (Federal) implementation of the summer flounder minimum mesh size.

Comment: One member of the public and the MA-MFC advocated a 12-inch (30.5 cm) minimum fish size for black sea bass, instead of the 10-inch (25.4 cm) minimum fish size.

Response: A 12-inch (30.5 cm) minimum fish size for black sea bass would certainly compound any benefits to the resource and stock rebuilding, and NMFS commends any state, such as Massachusetts, that implements that minimum size. However, both the Commission and the South Atlantic Fisheries Management Council (by way of the Snapper/Grouper FMP) voted to increase the minimum black sea bass size to 10 inches (25.4 cm). There are benefits associated with consistency for both industry participants and law enforcement. Additionally, length frequency data from the NMFS weighout data (Maine to Virginia) and the North Carolina winter trawl fishery data indicate that a 12-inch (30.5 cm) minimum fish size would decrease dramatically the amount of fish that could be legally landed. This decrease in landings would increase discards unless gear restrictions were also modified. Gear modifications were not considered by the Council.

Comment: One member of the public supports the 1,000 lb (454 kg) threshold for triggering minimum mesh size in the black sea bass fishery because it will require the directed black sea bass fishery to use appropriate gear and still allow an incidental catch to be harvested from other fisheries.

Response: NMFS agrees.

Comment: One member of the public supports black sea bass trip limits as a method to extend a quota. MA–DMF and MA–MFC feel that the trip limit for the second quarter is too high and advocate a 2,000 lb (907.2 kg) trip limit instead.

Response: NMFS agrees that trip limits could, in theory, extend a quota and prevent quarterly closures. However, NMFS remains concerned about the adopted limits since they impact only approximately 5 percent of the trips in this fishery. NMFS' primary concern focuses on the cost of enforcement compared to the effectiveness of these trip limits. NMFS determined to make no changes to the trip limits at this time since the states are implementing these limits by January 1, 1998, as Commission compliance criteria. Changes at this time would result in differing limits for state and Federal vessels, compounding agency enforcement concerns.

Classification

These proposed specifications have been determined to be non-significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule would not have a significant economic impact on a substantial number of small entities. The reasons for this certification are based on an assessment of this action under NMFS's long standing Regulatory Flexibility Act guidelines discussed in the proposed rule. Although not required to do so, because a full examination of the economic impact of this rule is important, NMFS prepared an IRFA. NMFS received no comments on the IRFA or the determination that would result in a change to the finding of no significant impact. Editorial corrections were made to the IRFA at the request of Council staff. Therefore, the IRFA is adopted as final with these corrections.

NMFS considered several alternatives in the development of the specifications contained in this rule. Two other alternatives were considered for the 1998 summer flounder specifications: a TAL of 13.889 million lb (6.30 million kg), and a TAL 22.046 million lb (10.00 million kg). For the first alternative, landings would be substantially reduced in 1998 without significant long-term benefit to either the commercial or recreational fishing industries or the stock. The second non-preferred alternative (22.046 million lb/10 million kg TAL) represents an increase of almost 19 percent from the 1997 level. Based on stochastic projections, this alternative would have a 1 percent probability of achieving the target F of 0.24 in 1998. Thus, while this alternative would minimize significant economic impacts on small entities, it would not accomplish the stock rebuilding objectives of the FMP.

For scup, two alternatives, other than the preferred alternative, were considered for the 1998 specifications

using varying discard estimates: commercial quotas of 3.626 million lb (1.64 million kg) and 5.675 million lb (2.57 million kg). The recreational harvest limit was 1.553 million lb (0.70 million kg) for each alternative. The first alternative assigns 2.049 million lb (0.929 million kg) to the discard estimate, and would set the coastwide commercial quota at 3.626 million lb (1.64 million kg). This alternative implies that the effects of the mesh and minimum size regulations are minimal or nonexistent, and assigns a larger percentage of the TAC to discards. To minimize significant economic impacts on small entities, the Council did not adopt this alternative. Conversely, the second alternative sets a discard level of 0 lb (0 kg) and a commercial quota of 5.675 million lb (2.57 million kg). This assumption is unrealistic given the nature of the scup fishery. As such, this alternative would not accomplish the stock rebuilding objectives of the FMP.

In black sea bass, two alternative TALs were considered. The first is a TAL of 4.519 million lb (2.05 million kg). This alternative would accelerate stock rebuilding, but at the expense of the commercial and recreational fishing industries. The second alternative considered would set the TAL equal to the total landings for 1996. This landing limit has no probability of achieving the target in 1998 set forth in Amendment 9 to the FMP. Therefore, it would not accomplish the stock rebuilding objectives of the FMP. The Council also considered other management measures for black sea bass. For further information on these alternatives, please consult the FRFA. Copies of the FRFA are available (see **ADDRESSES**).

This action adopts final 1998 specifications for the summer flounder, scup, and black sea bass fisheries and implements associated management measures. Generally, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. This action establishes year-long quotas which are used to close the fishery when a quota is harvested. Closures must be taken immediately to conserve fishery resources. The minimum fish size requirement for black sea bass implements a measure for Federal permit holders that has been adopted by the Commission as a compliance criteria with an effective date of January 1, 1998. Since this measure has already been adopted by the states for an effective date of January 1, 1998, it is not practical to delay the effectiveness beyond that. The change in the possession limit that triggers the minimum net mesh size requirement relieves a restriction by allowing a bycatch fishery to be prosecuted that would otherwise be restricted by the requirement to change to a larger mesh at a lower threshold. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(d)(1), waives the 30-day delayed effectiveness period with respect to such provisions. For the technical regulatory change, the AA finds good cause to waive prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B). The technical change corrects the regulation's wording of the target F for summer flounder for 1998 and beyond to reflect accurately the stated management strategy of the FMP which defines overfishing for summer flounder as fishing in excess of F_{max} level. As such, the AA finds that prior notice and comment are unnecessary. Further, there is no requirement to delay the effective date of this technical change under 5 U.S.C. 553(d) as it is not a substantive rule.

List of Subjects in 50 CFR Part 648

Fisheries, Reporting and record keeping requirements.

Dated: December 12, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraph (u)(1) is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(u) * * *

(1) Possess 1,000 lb (453.6 kg) or more of black sea bass, unless the vessel meets the minimum mesh requirement specified in Sec. 648.144(a).

* * * * *

3. In § 648.100, paragraph (a) is revised to read as follows:

§ 648.100 Catch quotas and other restrictions.

(a) *Annual review.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve a fishing mortality rate (F) of 0.30 in 1997, and the F that produces the maximum yield per recruit (F_{max}) in 1998 and thereafter, provided the allowable levels of fishing in 1997 may not exceed 18,518,830 lb (8,400 mt), unless such fishing levels have an associated F of F_{max}: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

* * * * *

4. In § 648.143, the first sentence of paragraph (a) is revised to read as follows:

§ 648.143 Minimum sizes.

(a) The minimum size for black sea bass is 10 inches (25.4 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) which fish for or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3′ N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canada border.

* * *

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5. In § 648.144, paragraph (a)(1)(i) is revised to read as follows:

§ 648.144 Gear restrictions.

(a) * * *

(1) * * * (i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 1,000 lb or more (453.6 kg or more) of black sea bass per trip, must fish with nets that have a minimum mesh size of 4.0 inches (10.2 cm) diamond or 3.5 inches (8.9 cm) square (inside measure) mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the center of the head rope, excluding any turtle excluder device extension.

* * * * *

[FR Doc. 97–33076 Filed 12–15–97; 4:14 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 870520118–7251–02; I.D. 050197A]

RIN 0648–AJ00

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Standard Allowances for Ice and Slime; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulations, which were published in the **Federal Register** November 12, 1997 (62 FR 60667), pertaining to the fisheries of the exclusive economic zone off Alaska and the Individual Fishing Quota program (IFQ). This action corrects regulations by correcting the conversion factor for Product Code 55, Pacific halibut.

DATES: December 12, 1997.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on November 12, 1997 (62 FR 60667) that implemented standard allowances for ice and slime found on unwashed Pacific halibut and sablefish landed in the IFQ fisheries and incorporated them into conversion factors for halibut and product recovery rates for sablefish. This final rule becomes effective December 12, 1997.

Need for Correction

As published, the conversion factor for Product Code 55, gutted halibut, head off, with ice and slime, contained a typographical error. NMFS is correcting this error as follows and makes no substantive changes.

Dated: December 11, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, the following correction is made to the final rule amending 50 CFR part 679, which was the subject of FR Doc 97–29707. This document is corrected as follows:

§ 679.42 [Corrected]

On page 60670, in the third column of the table under § 679.42(c)(2)(iii), correct the "Conversion Factor" for "Product Code" 55 from "0.90" to "0.98."

[FR Doc. 97–33074 Filed 12–17–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 243
Thursday, December 18, 1997

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966 and 980

[Docket No. FV98–966–1 PR]

Tomatoes Grown in Florida and Imported Tomatoes; Proposed Rule to Change Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would increase the minimum grade requirements for Florida and imported tomatoes. The grade requirements would be changed from U.S. No. 3 to U.S. No. 2. The proposed rule would help the Florida tomato industry meet domestic market needs, increase returns to producers, and provide consumers with higher quality tomatoes. Application of the increased grade requirements to imported tomatoes is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by January 20, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 301 Third Street, N.W., Suite 206, Winter Haven, Florida 33881; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 125 and Marketing Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in certain designated counties in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 8e of the Act specifies that whenever certain specified commodities, including tomatoes, are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the order, tomatoes produced in the production area and shipped to fresh market channels outside the regulated area are required to meet grade, size, inspection, and container requirements. These requirements are specified in § 966.323 of the handling regulations issued under the order. These requirements apply during the period October 10 through June 15 each year. The regulated area includes the portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico. That is, the entire State of Florida, except the panhandle. The production area is part of the regulated area. Specialty packed red ripe tomatoes, yellow meated tomatoes, and single and double layer place packed tomatoes are exempt from container net weight requirements.

Under § 966.323, all tomatoes, except for pear shaped, paste, cherry, hydroponic, and greenhouse tomatoes, must be inspected as specified in the United States Standards for Grades of Fresh Tomatoes (7 CFR part 51.1855 through 51.1877; standards). Such tomatoes also must be at least 2 $^{8}/_{32}$ inches in diameter, and sized with proper equipment in one or more of the following ranges of diameters.

Size designation	Inches minimum diameter	Inches maximum diameter
Medium	2 $^{8}/_{32}$	2 $^{17}/_{32}$
Large	2 $^{18}/_{32}$	2 $^{25}/_{32}$
Extra large	2 $^{24}/_{32}$	

These size designations and diameter ranges are the same as specified in § 51.1859 of the standards. All tomatoes in the Medium size designation are required to grade at least a U.S. No. 2, while tomatoes in the larger size designations are only required to grade

at least a U.S. No. 3. Section 966.52 of the order provides authority for the establishment and modification of regulations applicable to the handling of particular grades, sizes, and size designations of tomatoes.

This rule would increase the minimum grade requirements from U.S. No. 3 to U.S. No. 2 for all tomatoes regardless of size. This change in grade requirements was recommended by the Florida Tomato Committee (Committee) on September 5, 1997, by a vote of 10 in favor and 2 opposed. The grade requirement change would eliminate shipments of U.S. No. 3 grade tomatoes from the regulated area. The opponents of this change stated that there were good markets for U.S. No. 3 tomatoes in years of short supply, and when crop quality was down due to adverse weather conditions. The members in favor countered stating that during normal seasons U.S. No. 3 grade tomatoes comprised a small share of total shipments and that such shipments had a price depressing effect on the higher quality tomatoes shipped during those seasons.

At the same meeting, the Committee unanimously recommended an increase in the diameter size requirement for Florida tomatoes from 2 $^{8}/_{32}$ inches to 2 $^{9}/_{32}$ inches, that the size designations of Medium, Large, and Extra Large be changed to numeric size designations of 6×7, 6×6, and 5×6, respectively, and that the diameter size ranges for the designated sizes be increased slightly. These size ranges are different from those specified in § 51.1859 of the standards. The proposed minimum size and size designation changes were addressed in a separate rulemaking action. That action was published in the **Federal Register** on October 6, 1997 (62 FR 52047). Interested persons were invited to submit written comments until October 16, 1997. Subsequently, the period for comments was reopened until November 5, 1997, by a document published in the **Federal Register** on October 22, 1997 (62 FR 54809).

Based on an analysis of markets and demands of buyers, the Committee believes that increasing the minimum grade from U.S. No. 3 to U.S. No. 2 would improve the marketing of Florida tomatoes, and help the industry protect its markets from foreign competition. The increase in grade requirements is expected to prevent low-quality tomatoes from reaching the marketplace, and improve the overall quality of tomatoes in fresh market channels.

Tomatoes grading U.S. No. 3 must be well developed, may be misshapen, and cannot be seriously damaged by sunscald (7 CFR 51.1858). Tomatoes grading U.S. No. 2 have to be well developed, reasonably well-formed, and free from sunscald (7 CFR 51.1857). Sunscald is an injury which usually occurs on the sides or upper half of the tomato, but may occur wherever the rays of the sun strike most directly. Sunscald results in the formation of a whitish, shiny, blistered area on the tomato. The affected tissue gradually collapses, forming a slight sunken area that may become pale yellow, and wrinkle or shrivel as the tomato ripens. This detracts from the overall quality of the tomato.

The difference between tomatoes grading U.S. No. 3 and U.S. No. 2 with regard to development, shape, and sunscald is especially noticeable in smaller sized tomatoes, but also noticeable in larger sized tomatoes. U.S. No. 3 grade tomatoes are generally of very poor quality, and are not desired by the consumer.

The Committee indicated that when tomatoes of this quality are offered for sale to consumers in a normal season these tomatoes have an adverse affect on the demand and sale of other Florida tomatoes. The increase in grade requirements is expected to improve the quality of the tomato packs shipped from Florida.

The proponents of the change indicated that the marketplace is changing and that the Florida industry has been shipping fewer U.S. No. 3 grade tomatoes than it had in past seasons in response to those changes. During the last three shipping seasons, the quantity of U.S. No. 3 grade tomatoes shipped as a percentage of total shipments ranged from a low of 4.4 percent to a high of 7.6 percent.

At the meeting, the Committee discussed whether eliminating U.S. No. 3 tomatoes would diminish the quality of the U.S. No. 2 grade pack by handlers trying to commingle more U.S. No. 3 grade as U.S. No. 2 grade. The proponents acknowledged that some of the tomatoes currently being sold at the U.S. No. 3 grade could be reworked to make U.S. No. 2 grade. They stated, however, that they were interested in eliminating the true U.S. No. 3 grade which in normal seasons has tended to detract from the overall pack and depress prices for higher quality tomatoes.

The proposed grade increase is expected to improve the overall tomato pack, provide consumers with the quality of tomatoes desired, and, thus, encourage repeat purchases. In other words, the new grade requirements would allow handlers to respond better to market preferences which is expected to benefit producers and handlers of Florida tomatoes.

Section 8e of the Act requires that when certain domestically produced commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. The current import regulations are specified in 7 CFR 980.212. Similar to the order, regulations apply during the period October 10 through June 15 when the Florida handling requirements are in effect. Because this proposal would increase the minimum grade for domestic tomato shipments, this increase would be applicable to imported tomatoes.

Florida tomatoes must be packed in accordance with three specified size designations, and tomatoes falling into different size designations may not be commingled in a single container. These pack restrictions do not apply to imported tomatoes. Because pack requirements do not apply, different sizes of imported tomatoes may be commingled in the same container.

Current import requirements specify that all lots with a minimum diameter of 2 $^{17}/_{32}$ inches and larger shall meet at least a U.S. No. 3 grade. All other tomatoes shall meet at least a U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than 2 $^{17}/_{32}$ inches in diameter is required to grade at least U.S. No. 2. This proposed rule would change these requirements to reflect the size and size designation changes proposed in the October 6 and 22, 1997, issue of the **Federal Register** by requiring all lots of imported tomatoes to grade at least U.S. No. 2, regardless of size.

This change is expected to benefit the marketers of both Florida and imported tomatoes by providing consumers with the higher quality tomatoes they desire. The Department has contacted a few tomato importers concerning imports. The importers indicated that they will not have difficulty meeting the U.S. No. 2 grade requirements. Thus, the Department believes that the proposed increase will not limit the quantity of imported tomatoes or place an undue burden on exporters, or importers of tomatoes. The expected increase in customer satisfaction should benefit all tomato importers regardless of size.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products. Thus, this proposed rule would have small entity orientation, and would impact both small and large business entities in a manner comparable to those rules issued under marketing orders.

There are approximately 65 handlers of Florida tomatoes who are subject to regulation under the order and approximately 75 tomato producers in the regulated area. In addition, at least 170 importers of tomatoes are subject to import regulations and would be affected by this proposed rule. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Committee data indicates that approximately 20 percent of the Florida handlers handle 80 percent of the total volume shipped outside the regulated area. Based on this information, the shipment information for the 1996–97 season, and the 1996–97 season average price of $7.97 per 25 pound equivalent carton, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes also may be classified as small entities. Moreover, the Department believes that most importers may be classified as small entities.

Under § 966.52 of the Florida tomato marketing order, the Committee, among other things, has authority to increase the minimum grade requirements for tomatoes grown in the defined production area and handled under the order. This proposed rule would increase the minimum grade from U.S. No. 3 to U.S. No. 2. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the proposed grade increase would apply to imported tomatoes.

The Committee recommended the grade increase to improve the marketing of Florida tomatoes and follow the recent industry trend of shipping higher grade tomatoes. This trend is in response to a strong consumer demand for such tomatoes. The Committee noted that a tomato can be unattractive and still meet the requirements of the U.S. No. 3 grade, and that this can have a negative impact on the market for higher quality tomatoes.

According to the Committee, when supplies are not short or crop quality is not lowered due to adverse weather conditions, U.S. No. 3 grade tomatoes comprise a small share of total shipments. During the last three shipping seasons, the quantity of U.S. No. 3 grade shipped as a percentage of total shipments ranged from a low of 4.4 percent to a high of 7.6 percent. Thus, the increase in the minimum grade requirements is not expected to significantly impact the total number of Florida shipments. It is, however, expected to have a positive effect in the marketplace by providing a strong price base for the industry. As mentioned earlier, the Committee believes that U.S. No. 3's have a price depressing effect on higher grade shipments.

According to the Committee, during the 1996–1997 season, about 47.9 million 25 pound equivalents were shipped from Florida. Of that amount, only 4.9 percent were U.S. No. 3 grade. The value of all sales during that season totaled about $381.4. The value of the U.S. No. 3 grade tomatoes totaled about $16.6 million, or about 4.4 percent of total sales during that season. In 1995–96, the total of all tomatoes shipped was 47.3 million 25 pound equivalents. The U.S. No. 3 grade portion was 7.9 percent. That season, the value of all sales totaled about $369.7 million, and the U.S. No. 3's comprised 7.6 percent of the total value. The percentages for the 1994–95 season were similar with U.S. No. 3's making up about 6.8 percent of the total shipments, and the sales value of the U.S. No. 3 grade making up about 6.1 percent of the total value. That season, total industry shipments totaled about 55.5 million 25 pound equivalents, and the total value was about $388.3 million.

The Committee also noted that a recent voluntary elimination of U.S. No. 3 grade by the industry had been successful in strengthening the market and in supporting grower returns. This proposal is expected to continue those successes. Without an increase in grade requirements, the Committee believes that an erosion of market confidence and producer returns could occur.

The raising of the minimum grade from U.S. No. 3 to U.S. No. 2 is expected to impact all handlers uniformly, whether small or large, because all handlers, regardless of size, currently pack about the same percentage of U.S. No. 3 grade tomatoes. The benefits of the higher prices resulting from eliminating the U.S. No. 3's will be distributed evenly among all handlers, and are expected to be greater than the minimal costs expected to be incurred.

Direct costs to the industry associated with the minimum grade requirement increase would include sorting and packing line adjustments to operate under the new requirements. These costs are expected to be minimal relative to the benefits expected. Other costs would include possible losses from tomatoes not meeting the U.S. No. 2 grade requirements. These losses also are expected to be minimal when compared to marketplace benefits expected, and the fact that tomatoes lower in quality than U.S. No. 2 could continue to be shipped within the regulated area, as defined in the marketing order, or shipped for processing.

This proposal is expected to similarly impact importers of tomatoes as far as the grade increase is concerned. That is, tomatoes lower in grade than U.S. No. 2 could be marketed outside the United States. Additionally, the marketplace price and quality benefits expected for Florida growers and handlers as a result of this proposal would also benefit exporters and importers of tomatoes. Consumers would also benefit as a result of the higher quality product available in the marketplace. As mentioned earlier, the benefits of this rule are not expected to be disproportionately greater or lesser for small entities than for large entities.

The Committee discussed alternatives to this recommendation, including leaving the grade requirements unchanged. However, after thoroughly discussing the issue the majority of the Committee members agreed that the grade increase was necessary to improve pack appearance and effectively compete in the present market. During the discussion, most Committee members acknowledged that U.S. No. 3 grade tomatoes could be important to the market in years of short supply and lower than normal quality resulting from adverse weather conditions. However, those members also pointed out that during normal seasons U.S. No. 3 tomatoes were not popular in the marketplace, and that the lower grade had a price depressing effect on better grade tomatoes.

Mexico is the largest exporter of tomatoes to the United States. Over the last 10 years, Mexican exports to the United States averaged 32,527 containers of 25,000 pound equivalents per season (October 5–July 5) and comprised about 99 percent of all imported tomatoes to the United States during that time. Total imports during that period averaged 32,752 containers of 25,000 pound equivalents (October 5–July 5). Some of the imports from Mexico may have been transhipped to Canada. Small quantities of tomatoes are imported from Caribbean Basin countries. Domestic shipments for the past 10 years averaged 108,577 containers of 25,000 pound equivalents (October 5–July 5). Florida shipments comprised about 48 percent of the total shipments for the same period. This information is from AMS Market News Branch data that most closely approximates the Florida shipping season.

The grade increase is expected to benefit the marketers of both Florida and imported tomatoes by providing consumers with higher quality tomatoes. The Department has contacted a few tomato importers concerning imports. The importers indicated that they would not have undue difficulty meeting the higher grade requirements. Also, Department fresh products inspectors at the Port of Nogales, Arizona, the port were most Mexican produced tomatoes enter the United States, estimated that only 2 to 3 percent of the total tomato imports from Mexico were U.S. No. 3 grade. The remainder were U.S. No. 2 grade and higher. Thus, the Department believes that the proposed increase will not limit the quantity of imported tomatoes or place an undue burden on exporters, or importers of tomatoes. The expected increase in customer satisfaction and more positive marketplace atmosphere resulting from providing the desired quality should benefit all tomato importers regardless of size.

This action would not impose any additional reporting or record keeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 5, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Florida tomato handlers began shipping tomatoes in October. Thirty days is deemed appropriate because this rule, if adopted, needs to be in place as soon as possible to cover as much of the 1997–98 shipping season as feasible. In addition, handlers need time to adjust their sorting and packing line equipment to meet the higher grade requirements. Florida tomato handlers are aware of this issue, which has been widely discussed at various industry and association meetings and was recommended by a majority of the Committee. All comments received in a timely manner will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Parts 966 and 980

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR parts 966 and 980 are proposed to be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

PART 980—VEGETABLES; IMPORT REGULATIONS

1. The authority citation for 7 CFR parts 966 and 980 continue to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising paragraph (a)(1) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(a) *Grade, size, container, and inspection requirements*—(1) *Grade.* Tomatoes shall be graded and meet the requirements specified for U.S. No. 1, U.S. Combination, or U.S. No. 2 of the U.S. Standards for Grades of Fresh Tomatoes. When not more than 15 percent of the tomatoes in any lot fail to meet the requirements of U.S. No. 1 grade and not more than one-third of this 15 percent (or 5 percent) are comprised of defects causing very serious damage including not more than 1 percent of tomatoes which are soft or affected by decay, such tomatoes may be shipped and designated as at least 85 percent U.S. No. 1 grade.

* * * * *

3. Section 980.212 is amended by revising paragraph (b)(1) to read as follows:

§ 980.212 Import regulations; tomatoes.

* * * * *

(b) * * *

(1) From October 10 through June 15 of each season, tomatoes offered for importation shall be at least 2 8/32 inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter. All lots of tomatoes shall be at least U.S. No. 2 grade.

* * * * *

Dated: December 12, 1997.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–33004 Filed 12–17–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–289–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 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 Saab Model SAAB 2000 series airplanes. This proposal would require application of sealant to the auxiliary power unit (APU) firezone bulkhead. This proposal is prompted by issuance of mandatory continued airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent hazardous amounts of flame, fuel, and vapor from entering the passenger compartments due to unsealed openings in the firezone bulkhead, which could result in a fire outside the APU firezone compartment.

DATES: Comments must be received by January 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–289–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.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; 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 notice 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 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 97–NM–289–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. 97–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that hazardous amounts of flame, fuel, and vapor could enter the passenger compartment due to unsealed openings in the auxiliary power unit (APU) firezone bulkhead. Unsealed openings in the firezone bulkheads have been attributed to an oversight during manufacturing. This condition, if not corrected, could result in a fire outside the APU firezone compartment.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–53–024, dated December 2, 1996, which describes procedures for applying sealant to the firezone bulkhead in the APU area. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD No. 1–105, dated December 4, 1996, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, 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 bulletin described previously.

Cost Impact

The FAA estimates that 3 Model SAAB 2000 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, 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 $360, or $120 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 AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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:

SAAB Aircraft AB: Docket 97–NM–289–AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers –004 through –040 inclusive, certificated in any category.

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 hazardous amounts of flame, fuel, and vapor from entering the passenger compartment due to unsealed openings in the firezone bulkhead, which could result in an uncontrollable fire outside the auxiliary power unit (APU) firezone compartment, accomplish the following:

(a) Within 400 flight hours or 2 months after the effective date of this AD, whichever occurs later, apply sealant to the APU firezone bulkhead, in accordance with Saab Service Bulletin 2000–53–024, dated December 2, 1996.

(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, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

(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 Swedish airworthiness directive SAD No. 1–105, dated December 4, 1996.

Issued in Renton, Washington, on December 11, 1997.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32997 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–290–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 1000, 2000, 3000, and 4000 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 Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes. This proposal would require replacement of certain hinges on the forward, center, and aft cargo doors with improved hinges. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the cargo door hinges caused by stress corrosion or fatigue cracks, which could result in decompression of the airplane, and possible in-flight separation of the cargo door.

DATES: Comments must be received by January 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–290–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.

The service information referenced in the proposed rule may be obtained from Fokker Service B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2110; 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 notice 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 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 97–NM–290–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–103, Attention: Rules Docket No. 97–NM–290–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes. The RLD advises that it has received reports of fracturing of the cargo door hinges due to stress corrosion. Approximately one-half of the lugs of the fuselage-mounted hinge were cracked on one airplane. In addition, the RLD received one report of fatigue cracks in the cargo door hinge on a test article. These conditions, if not corrected, could result in failure of the cargo door hinges, which could result in decompression of the airplane, and possible in-flight separation of the cargo door.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin F28/52–110, dated April 7, 1993, which describes procedures for replacement of the hinges on the forward, center, and aft cargo doors with improved hinges made of a material that is less sensitive to stress corrosion. Accomplishment of the replacement is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 93–055 (A), dated April 23, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, 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 bulletin described previously, except as described below.

Differences Between the Proposal and the Related Service Bulletin

Operators should note that this AD proposes to require replacement of the hinges on the forward, center, and aft cargo doors within 12 months. The Fokker service bulletin described previously recommends that the replacement be accomplished within four years from the date of issuance of the service bulletin. However, the FAA has determined that, due to the safety implications and consequences associated with such cracking, a shorter compliance time of 12 months is necessary.

Cost Impact

The FAA estimates that 37 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 62 work hours per airplane to replace the forward cargo door hinge, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,740 per airplane. Based on these figures, the cost impact of this replacement proposed by this AD on U.S. operators is estimated to be $350,020, or $9,460 per airplane.

It would take approximately 62 work hours per airplane to replace the center cargo door hinge, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,650 per airplane. Based on these figures, the cost impact of this replacement proposed by this AD on U.S. operators is estimated to be $346,690, or $9,370 per airplane.

It would take approximately 46 work hours per airplane to replace the aft cargo door hinge, at an average labor rate of $60 per work hour. Required parts would cost approximately $6,470 per airplane. Based on these figures, the cost impact of this replacement proposed by this AD on U.S. operators is estimated to be $341,510, or $9,230 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 AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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:

Fokker: Docket 97–NM–290–AD.

Applicability: Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes; serial numbers 11003 through 11241 inclusive, 11991, and 11992; certificated in any category.

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 failure of the cargo door hinges caused by stress corrosion and/or fatigue cracks, which could result in decompression of the airplane, and possible in-flight separation of the cargo door; accomplish the following:

(a) Within 12 months after the effective date of this AD, replace the hinges on the forward, center, and aft belly cargo doors with improved hinges in accordance with Part 1, Part 2, and Part 3, as applicable, of the Accomplishment Instructions of Fokker Service Bulletin F28/52–110, dated April 7, 1993.

(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, FAA,

Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

(c) Special flight permits may be issued in accordance with §§ 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 Dutch airworthiness directive 93–055 (A), dated April 23, 1993.

Issued in Renton, Washington, on December 11, 1997.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32996 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

RIN 1212–AA87

PBGC Recoupment and Reimbursement of Benefit Overpayments and Underpayments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation proposes to amend its regulation governing recoupment of benefit overpayments in trusteed plans to stop the reduction of monthly benefits under its actuarial recoupment method once the amount of the benefit overpayment is repaid. The amendment also makes other related changes.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to reg.comments@pbgc.gov. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department in Suite 240 at the above address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. For TTY/TDD users, call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–325–4024.

SUPPLEMENTARY INFORMATION: Some participants and beneficiaries in PBGC-trusteed plans receive benefit payments in excess of their entitlements under Title IV of ERISA after plan termination and before the PBGC determines their benefit entitlements. Under the PBGC's current recoupment regulation, unless a participant or beneficiary elects to repay a benefit overpayment in a single payment, the overpayment is recouped through a permanent actuarial reduction in future benefit payments.

When overpayments are made, recipients are generally unaware that they are receiving amounts in excess of their entitlements. In effect, overpayments are unsolicited loans. Many participants and beneficiaries are unable to afford to repay the overpayment in a single payment and thus cannot avoid permanent actuarial reductions. Participant and beneficiary inquiries reflect their difficulty understanding why the PBGC would continue to reduce their monthly benefit beyond the time the PBGC has fully recouped the amount of the overpayment.

The PBGC proposes to revise the regulation to provide that recoupment will cease when the amount of the overpayment is repaid. This will help to minimize hardship to participants and beneficiaries as well as to cut down the number of participant and beneficiary inquiries about recoupment, thereby reducing burden both on them and the PBGC. The amendment also gives the PBGC flexibility to waive recoupment of *de minimis* amounts and to accept repayment ahead of the recoupment schedule, and modifies the rules governing calculation of net overpayments and underpayments.

E.O. 12866 and the Regulatory Flexibility Act

The PBGC has determined that this proposed rule is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

This rule affects only individuals. Therefore, the PBGC certifies that, if adopted, the amendment will not have a significant economic effect on a substantial number of small entities. Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

List of Subjects in 29 CFR Part 4022

Pension insurance, Pensions.

For the reasons set forth above, the PBGC proposes to amend 29 CFR Part 4022, subpart E as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D) and 1344.

2. In § 4022.81, paragraph (a) is amended by removing the last two sentences, adding a new phrase, and paragraphs (a)(1) and (a)(2) in their place, and revising paragraphs (c) and (d)(2) to read as follows:

§ 4022.81 General rules.

(a) *Recoupment of benefit overpayments.* * * *

Notwithstanding the previous sentence, the PBGC may, in its discretion—

(1) Decide not to recoup net overpayments that it determines to be *de minimis;* and

(2) Recover overpayments by methods other than recouping in accordance with the rules in this subpart. The PBGC will not normally do so unless net benefits paid after the termination date exceed those to which a participant or beneficiary is entitled under the terms of the plan before any reductions under subpart D.

* * * * *

(c) *Payments subject to recoupment or reimbursement.* The PBGC shall recoup net overpayments made on or after the latest of the proposed termination date, the termination date, or, if no notice of intent to terminate was issued, the date on which proceedings to terminate the plan are instituted pursuant to section 4042 of ERISA, and shall reimburse net underpayments made on or after the termination date.

(d) *Interest.* * * *

(2) *Receipt of both overpayments and underpayments.* If both benefit overpayments and benefit underpayments are made with respect to a participant, the PBGC shall compare the net overpayment or underpayment calculated without interest to the net overpayment or underpayment calculated with interest. (The interest calculation shall be made by charging or crediting interest from the first day of the month after the date of payment to the first day of the month in which recoupment begins.) Of these two net amounts, the PBGC shall use the one more favorable to the participant or

beneficiary in applying either §§ 4022.81 and 4022.82 or §§ 4022.81 and 4022.83, as applicable.

3. Section 4022.82 is amended by removing the words, "lump sum", in paragraph (a)(3) and adding, in their place, the words, "single payment", and by revising paragraph (a) introductory text and the heading of paragraph (b) to read as follows:

§ 4022.82 Method of recoupment.

(a) *Future benefit reduction.* Unless a participant or beneficiary elects otherwise under paragraph (b) of this section, the PBGC shall recoup overpayments of benefits in accordance with this paragraph. The PBGC shall reduce the amount of each future benefit payment to which the participant or any beneficiary is entitled by the fraction determined under paragraphs (a)(1) and (a)(2) of this section, except that benefit reduction will cease when the amount of the net benefit overpayment is recouped. Notwithstanding the preceding sentence, the PBGC may accept repayment ahead of the recoupment schedule. Recoupment under this section constitutes full repayment of the net benefit overpayment.

* * * * *

(b) *Single payment.* * * *

Issued in Washington, D.C. this 12th day of December, 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–33028 Filed 12–17–97; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI88

Veterans' Education: Effective Date for Awards of Educational Assistance to Veterans Who Were Voluntarily Discharged

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the educational-assistance and educational-benefit regulations of the Department of Veterans Affairs (VA). It proposes to establish effective dates of awards of educational assistance to certain voluntarily discharged veterans who are eligible for the Montgomery GI Bill—Active Duty (MGIB). The effective dates are intended to correspond with a statutory mandate for the effective dates. The proposed rule also clarifies that these veterans may not receive educational assistance for training that occurs before they pay the Federal government $1,200.

DATES: Comments must be received on or before February 17, 1998.

Applicability Dates: It is proposed that the effective dates be made retroactive from the effective dates of the statutory provisions. For more information concerning the proposed effective dates, see the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI88." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: This document clarifies 38 CFR part 21, subpart K, regarding the effective dates for awards of educational assistance to certain voluntarily discharged veterans.

Pub. L. 102–484 (sec. 4404, 38 U.S.C. 3018B) allows a veteran who was voluntarily separated under either 10 U.S.C. 1174a or 1175 before Oct. 23, 1992, to elect to receive educational assistance under the Montgomery GI Bill—Active Duty. The veteran was given until Oct. 23, 1993, to do so. The law also requires such a veteran to submit $1,200 to VA as a condition of receiving such educational assistance. However, the law does not specify a time limit for submitting the $1,200 and the proposed rule clarifies that there is no such time limit.

The effective date of an award also is affected by when VA received the $1,200. VA is required by 38 U. S. C. 5113 to make the effective dates of the award of educational assistance, to the extent feasible, correspond to the effective dates relating to awards of disability compensation. The provisions of 38 U.S.C. 5110 and 5111 contain the rules for determining the effective date of an award of disability compensation. The general intent of 38 U.S.C. 5110 is to allow the effective date of an award of compensation to be the day following the date of discharge if application is filed within one year after discharge. Otherwise, the earliest date of the award shall be the date of receipt of application. Further, 38 U.S.C. 5103 provides, as to benefit claims generally, that information or evidence necessary to complete the claim must be submitted within one year of the date requested by VA; otherwise, no benefits are payable based on that claim. Accordingly, when payment of the $1,200 must be made as a condition of receiving benefits, it is proposed to establish effective dates for educational assistance consistent with the provisions of 38 U.S.C. 5103 and 5110.

The Secretary of Veterans Affairs hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule will affect individual, not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Educational institutions, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 5, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out above, 38 CFR part 21, subpart K, is proposed to be amended as set forth below.

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30 and 36, unless otherwise noted.

2. In § 21.7131, paragraph (n) is added to read as follows:

§ 21.7131 Commencing dates.

* * * * *

(n) *Eligibility established under § 21.7045(c).* The effective date of an

award of educational assistance when the veteran has established eligibility under § 21.7045(c) is as follows:

(1) If the veteran is not entitled to receive educational assistance under 38 U.S.C. ch. 32 on the date he or she made a valid election to receive educational assistance under 38 U.S.C. ch. 30, the effective date of the award of educational assistance will be the latest of the following.

(i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section; or

(ii) October 23, 1992, provided that VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and any other evidence necessary to establish that the election is valid before the later of:

(A) October 23, 1993; or

(B) One year from the date VA requested the $1,200 or the evidence necessary to establish a valid election; or

(iii) The date VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and all other evidence needed to establish that the election is valid, if the provisions of paragraph (n)(1)(ii) of this section are not met.

(2) If the veteran is entitled to receive educational assistance under 38 U.S.C. ch. 32 on the date he or she made a valid election to receive educational assistance under 38 U.S.C. ch. 30, the effective date of the award of educational assistance will be the latest of the following:

(i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section; or

(ii) The date on which the veteran made a valid election to receive educational assistance under 38 U.S.C. chapter 30 provided that VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and any other evidence necessary to establish that the election is valid before the later of:

(A) One year from the date VA received the valid election; or

(B) One year from the date VA requested the $1,200 or the evidence necessary to establish a valid election; or

(iii) The date VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and all other evidence needed to establish that the election is valid, if the provisions of paragraph (n)(2)(ii) of this section are not met.

(Authority 38 U.S.C. 3018B)

[FR Doc. 97–32989 Filed 12–17–97; 8:45 am]
BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 96–238; DA 97–2178]

Accelerated Docket Procedures for Formal Complaints Filed Against Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On November 25, 1997, the Commission adopted its Report and Order in this docket promulgating new, streamlined rules for handling formal complaints filed with the Commission (the "Complaint R&O"). In the Complaint R&O, the Commission encouraged its staff to explore and use alternative approaches to complaint adjudication designed to ensure the prompt discovery of relevant information and the full and fair resolution of disputes in the most expeditious manner possible. By this Public Notice, additional comment is sought on issues relating to the possible alternative forms of complaint adjudication that, complementing the rules recently announced in the Complaint R&O, ultimately should redound to the benefit of telecommunications consumers by enhancing competition in the relevant markets. Specifically, comment is invited regarding the feasibility of creating an "Accelerated Docket" that would provide for a 60-day complaint adjudication process.

DATES: Written comments are due on or before January 12, 1998.

ADDRESSES: Comments should be sent to the Office of Secretary, Federal Communications Commission, 1919 M Street, N.W., suite 222, Washington, D.C. 20554. In addition, parties are asked to submit two copies each of their comments directly to: (1) The Enforcement Task Force, Office of General Counsel, Federal Communications Commission, Room 650–L, 1919 M Street, N.W., Washington, D.C. 20554 and (2) Enforcement Division, Common Carrier Bureau, Federal Communications Commission, Room 6120, 2025 M Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in response to this notice with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Jeffrey H. Dygert, Common Carrier Bureau, Enforcement Division, (202) 418–0960, or Glenn T. Reynolds, Common Carrier Bureau, (202) 418–1500.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's Public Notice in CC Docket No. 96–238, adopted on December 12, 1997 and released December 12, 1997. The full text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The complete text of the Public Notice may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20036 (202) 857–3800.

Summary of the Public Notice

1. On November 25, 1997, the Commission adopted its Report and Order in this docket promulgating new, streamlined rules for handling formal complaints filed with the Commission (the "Complaint R&O").[1] By this Public Notice, the Competition Enforcement Task Force (the "Task Force") and the Common Carrier Bureau (the "Bureau") seek additional comment on issues relating to the possible alternative, accelerated forms of complaint adjudication that would supplement or provide an alternative to the procedures set out in the Complaint R&O.

2. Specifically, the Task Force and the Bureau currently are evaluating whether the needs of some industry participants better could be met by an "Accelerated Docket" for complaint adjudication that would (1) provide for the presentation of live evidence and argument in a hearing-type proceeding and (2) operate on a 60-day time frame, or on some other schedule that is more compressed than that applicable more generally to complaint proceedings under the new procedures set out in the Complaint R&O.

3. The Accelerated Docket would serve as a hearing-style alternative to the normal process for resolution of formal complaints, administered by the Bureau's Enforcement Division, which relies primarily on the parties' presentation of arguments on paper. To the extent possible, Accelerated Docket proceedings would be governed by the requirements announced in the Complaint R&O. In accordance with the Commission's authority under sections 1, 4, 201–205, 208, 215, 218 and 220 of

[1] *See* Amendment of Rules Governing Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers, *Report & Order*, CC Docket No. 96–238, FCC 97–396 (rel. Nov. 25, 1997) (the "Complaint R&O").

the Communications Act, interested parties are invited to submit comments and recommendations as to how such a hearing-based process could be designed to ensure speedy, consistent and fair adjudication of complaints. Specifically, commenters should address the extent to which the rules set forth in the Complaint R&O could be applied to the Accelerated Docket. Additionally, where appropriate, comments should identify specialized procedures or requirements that may be necessary in the context of the alternative, hearing-style process under consideration. Commenters should restrict themselves to addressing the feasibility of using the below-discussed rules and requirements promulgated in the Complaint R&O and the extent to which different requirements may be necessary for the alternative docket. Comments should not attempt to revisit issues previously decided in this proceeding.

4. With reference to the Accelerated Docket discussed above, comment is invited on the following issues:

(i) Need for Accelerated Docket. Commenters are invited generally to discuss factors that may support the creation of a hearing-type, accelerated complaint process like that discussed herein. Thus, commenters should provide information about specific events, general industry trends or particular categories of disputes that might benefit from treatment under the Accelerated Docket. Additionally, comment is sought on whether the Accelerated Docket initially should be limited to issues of competition in the provision of telecommunications services. In particular, comments should offer suggestions and recommendations as to how the Commission can work cooperatively with state utility commissions on such enforcement matters to ensure that the respective interests of the Commission and the states are protected.

(ii) Minitrials. The Bureau and the Task Force are considering whether the requirements of speed and fairness would be served by conducting minitrials of complaints accepted onto the Accelerated Docket. Such a hearing-type proceeding would permit the parties to present evidence and argument to the fact-finder and would likely permit closer inquiry into factual issues and more effective credibility determinations than are possible on a paper record. As currently envisioned, these minitrials would cover a broader range of issues than those hearings likely to arise from the Bureau's newly expanded authority to designate issues for hearing before an ALJ. As with other complaints brought under Sections 206 through 209 of the Communications Act, these minitrials would not be subject to the on-the-record hearing requirements of the Administrative Procedure Act. *See Amendment of Rules Governing Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers.* Report and Order, CC Dkt No. 92–26, 58 FR 25569 (April 27, 1993). Under the 60-day process currently under consideration, such a hearing would need to be conducted no later than 45 days after the filing of the complaint. During the hearing, each side would be permitted to present evidence in support of their respective positions. Given the need for dispatch, one approach under consideration is to allot each side an equal amount of time within which to present its case and to cross-examine its opponent's witnesses. Comment is sought as to the feasibility and desirability of adjudicating complaints using this or a similar process.

(iii) Discovery. One of the key elements to streamlining the enforcement process is to maximize staff control over the discovery process. For the Accelerated Docket to be successful, discovery must be as targeted and focused as possible. As the Accelerated Docket is currently envisioned, its proceedings would be governed by the recently announced discovery rules unless otherwise noted. In this regard, comment is invited on how best to conduct discovery in connection with the 60-day complaint process currently under contemplation. Given the compressed time frame for Accelerated Docket proceedings, commenters should address whether parties should submit all discovery requests and disputes to the Task Force in advance of the initial status conference so that the Task Force may issue its decision on these issues at that conference. Should the parties exchange all documents relevant to the issues raised in the complaint and answer either when they file their initial pleadings, or at some other point before the initial status conference discussed below? If not all relevant documents, should the parties be required to exchange all documents that bear some closer relationship to the claims and defenses in the proceeding? Finally, given the short time frame available for discovery, what sanctions would be appropriate when a party fails to provide discovery as ordered by the Task Force, including the production of witnesses for depositions?

(iv) Pre-filing Procedures. Under the recently announced rules, a complaint must certify that it has discussed, or attempted to discuss, the possibility of a good faith settlement with the defendant carrier's representative(s) before filing the complaint. Comment is sought on whether a complainant seeking acceptance onto the Accelerated Docket should, as a precondition of such acceptance, have attempted to undertake informal settlement discussions under the auspices of the Task Force. Should adequate advance notice to the prospective defendant of the issues to be covered in these informal settlement discussions be one of the criteria considered in determining acceptance onto the Accelerated Docket? What other criteria should be applied by the Task Force and the Bureau in determining what complaints should be accepted onto the Accelerated Docket? To what extent, if any, would the Commission's *ex parte* rules be implicated by the Task Force's involvement in such pre-filing discussions between prospective parties to a potential complainant proceeding? If a complaint does not request expedited treatment, might an action be included on the Accelerated Docket at the defendant's request? Comment is also sought on whether, or in what circumstances, previously filed complaints should be designated for inclusion on the Accelerated Docket. What steps would be necessary to provide adequate protection to the confidential or propriety information of the parties engaged in such informal, pre-filing discussions?

(v) Pleading Requirements. The Commission's recently announced pleading requirements require greater diligence by complainants and defendants in presenting and defending against claims of misconduct. Pleadings submitted in Accelerated Docket proceedings would be required to meet these same standards. In light of these recently heightened requirements for pleading content, comment is invited on the reasonableness of requiring the answer to be filed within seven calendar days of a complaint, as likely would be necessary in the 60-day complaint process currently under contemplation.

(iv) Status Conferences. Under a hearing-type, 60-day process, an initial status conference would seem necessary no later than 15 calendar days after the filing of the complaint. Comment is sought as to the feasibility of holding a status conference at that time. The Bureau and the Task Force contemplate that the initial status conference for Accelerated Docket proceedings would proceed under the newly announced rules in the Complaint R&O. Thus, before the status conference, the parties would meet and confer about the following issues: (1) Settlement

prospects, (2) discovery, (3) issues in dispute, (4) a schedule for the remainder of the proceeding. The parties would be required to reduce to a joint, written statement their agreements and remaining disputes regarding these matters, and submit it to the Commission two days in advance of the status conference. The parties also would be required to agree to a joint statement of stipulated facts, disputed facts and key legal issues, which also would be submitted to the Commission two days before the status conference. Comment is invited on imposing these requirements for the initial status conference in a 60-day process. Additionally, comment is invited on the nature of the briefing schedule, if any, that the Task Force should set at the initial status conference.

(vii) Damages. Given the fact that adjudications of damages would be extremely difficult to complete within a 60-day time frame, commenters should address whether the Accelerated Docket should be restricted to bifurcated, liability claims, with damages claims to be handled separately under the procedures set out in the Complaint R&O.

(viii) Other Issues. Commenters are invited to address whether any other rules should be specifically tailored to accommodate a 60-day, hearing-type adjudication process.

(ix) Review by the Commission. To satisfy statutory requirements for the disposition of certain categories of complaints, it likely would be necessary in Accelerated Docket proceedings, for all briefing on any petition seeking review of an initial decision by the Task Force to be completed between 20 and 30 days of the decision's release. Also under consideration is the possibility of *en banc* oral argument before the Commission for Accelerated Docket proceedings in which the Commission does not summarily adopt the initial Task Force decision. Comment is sought on issues relating to this type of review process for initial decisions in the Accelerated Docket.

5. Comments should be filed on or before January 12, 1998. There will be no reply comments. Commenters should organize their comments under the numbered paragraph headings set out above. Interested parties must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. Additionally, commenters are asked to submit two copies each directly to: (1) The Enforcement Task Force, Office of General Counsel, Federal Communications Commission, Room 650–L, 1919 M Street, N.W., Washington, D.C. 20554 and (2) The Enforcement Division, Common Carrier Bureau, Federal Communications Commission, Room 6120, 2025 M Street, N.W., Washington, D.C. 20554.

6. Comments should be clearly labeled with CC Docket No. 96–238. Parties also should send comments to the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036. Comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

7. Parties are also asked to submit comments on diskette. Such diskette submissions will be in addition to, and not a substitute for, the formal filing requirements set out above. Parties submitting diskettes, should submit them to Jeffrey H. Dygert, Common Carrier Bureau, Enforcement Division, Room 6120, 2025 M Street, N.W., Washington D.C. 20554. Comments on diskette should be submitted in "read only" mode in WordPerfect 5.1 for Windows. The diskette should be clearly labelled with the party's name, proceeding and date of submission. The diskette should be accompanied by a cover letter.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Investigations, Penalties.

Federal Communications Commission.

A. Richard Metzger, Jr.,

Chief, Common Carrier Bureau.

[FR Doc. 97–33183 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–239, RM–9195]

Radio Broadcasting Services; Otter Creek, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Tony Downes proposing the allotment of Channel 240A to Otter Creek, Florida, as that community's first local broadcast service. There is a site restriction 9.8 kilometeres (6.1 miles) south west of the community. The coordinates for Channel 240A are 29–16–52 and 82–51–42.

DATES: Comments must be filed on or before February 2, 1998, and reply comments on or before February 17, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Tony Downes, 3092 SW Harbor Hills Road, Dunnellon, Florida 34431.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180..

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–239, adopted November 26, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33050 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–242, RM–9192]

Radio Broadcasting Services; Eastland and Baird, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Cowboy Broadcasting, LLC, licensee of Station KVMX (FM), Channel 236A, Eastland, Texas, requesting the substitution of Channel 236C3 for Channel 236A, the reallotment of Channel 236C3 from Eastland to Baird, Texas, and the modification of Station KVMX (FM)'s license to specify Baird as its community of license. Channel 237C3 can be allotted to Baird in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.3 kilometers (0.2 miles) north. The coordinates for Channel 237C3 are 32–23–45 NL and 99–23–44 WL. In accordance with the provision of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 236C3 at Baird.

DATES: Comments must be filed on or before February 2, 1998, and reply comments on or before February 17, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cliff Boyd, Cowboy Broadcasting, LLC., 1110 South Santa Fe Trail, Ducanville, Texas 75137 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–242, adopted December 3, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33049 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–243, RM–9194]

Radio Broadcasting Services; Belzoni and Tchula, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Team Broadcasting Company, Inc., permittee of Station WGNG (FM), Channel 292A, Belzoni, Mississippi, requesting the substitution of Channel 292C3 for Channel 292A; the reallotment of Channel 292C3 from Belzoni to Tchula and the modification of Station WGNG(M)'s authorization to specify Tchula as its community of license. Channel 292C3 can be allotted to Belzoni in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.0 kilometers (1.8 miles) southeast of the community. The coordinates for Channel 292C3 at Tchula are 33–09–43 NL and 90–12–34 WL. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 292C3 at Tchula.

DATES: Comments must be filed on or before February 2, 1998, and reply comments on or before February 17, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ruben C. Hughes, President, Team Broadcasting Company, Inc., 561 Golden Avenue, Mobile Alabama 36616 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–243, adopted December 3, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc.. (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts:

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33048 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–238, RM–9201]

Radio Broadcasting Services; Guymon, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Clear

Channel Radio Licenses, Inc., to allot Channel 258C1 to Guymon, OK, as the community's second local FM service. Channel 258C1 can be allotted to Guymon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–41–00 North Latitude; 101–29–06 West Longitude.

DATES: Comments must be filed on or before February 2, 1998, and reply comments on or before February 17, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Bodorff; Christopher L. Robbins, Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–238, adopted November 26, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33046 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 227 and 425

[I.D. 950214048–7291–03]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 17 and 425

RIN 1018–AD12

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List a Distinct Population Segment of Atlantic Salmon (Salmo Salar) as Threatened

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce and Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS), collectively the Services, withdraw the September 29, 1995, proposed rule (60 FR 50530) to list a distinct population segment (DPS) of Atlantic salmon (*Salmo salar*) in seven Maine rivers as threatened under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). This decision is based on an evaluation of the best scientific data available and consideration of ongoing and planned actions by State and Federal agencies and private entities including the development by the State of Maine of the Atlantic Salmon Conservation Plan for Seven Maine Rivers (Conservation Plan).

ADDRESSES: National Marine Fisheries Service, Northeast Region, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930; U.S. Fish and Wildlife Service, Region 5, Endangered Species Division, 300 Westgate Center Drive, Hadley, MA 01035.

FOR FURTHER INFORMATION CONTACT: Mary Colligan (NMFS) at 978/281–9116 or Paul Nickerson (FWS) at 413/253–8615.

SUPPLEMENTARY INFORMATION:

Background

Information on the life history, distribution and abundance of U.S. Atlantic salmon can be found in the proposed rule published in the **Federal Register** on September 29, 1995 (60 FR 50530).

Previous Federal Action

Atlantic salmon populations in the Dennys, Machias, East Machias, Narraguagus, and Pleasant rivers were designated as category 2 candidate species by the FWS on November 21, 1991 (56 FR 58804). Category 2 candidates, a designation discontinued in a Notice of Review published by the FWS on February 28, 1996 (61 FR 7596), were taxa for which information in possession of the FWS indicated that proposing to list as endangered or threatened was possibly appropriate but for which conclusive data on biological vulnerability and threats were not currently available. On October 1, 1993, the Services received a petition from RESTORE: The North Woods, the Biodiversity Legal Foundation, and Jeffrey Elliott to list anadromous Atlantic salmon throughout its known historical range in the United States. The Services published a notice of their 90-day finding on January 20, 1994 (59 FR 3067), stating that the petition presented substantial information indicating that the requested action may be warranted. A biological review team conducted a status review and prepared a draft report entitled "Status Review for Anadromous Atlantic Salmon in the United States, January 1995" (Status Review) (FWS and NMFS 1995). On March 17, 1995, the Services published a notice of their 12-month finding (60 FR 14410) stating that available biological evidence indicated that the species described in the petition did not meet the definition of a "species" under the Act. Consequently, the Services concluded that the petitioned action to list Atlantic salmon throughout its historical range within the United States was not warranted. However, the Services did find that sufficient information was available to support a listing action for a DPS comprised of seven river populations of Atlantic salmon in Maine (the seven rivers DPS) and stated that preparation of a proposed rule to list this DPS had begun.

On September 29, 1995, the Services published a proposed rule to list the seven rivers DPS of Atlantic salmon as threatened (60 FR 50530) (hereafter referred to as "the proposed rule"). Pursuant to section 4(d) of the Act, the proposed rule (60 FR 50530) offered the State of Maine an opportunity to develop a Conservation Plan to retain the lead for the species' recovery. The Services reopened their comment period on the proposed rule (60 FR 50530) on August 27, 1996 (61 FR 44032), to announce three public hearings which were held in Maine in September of that

year. The State prepared and circulated a draft Conservation Plan and sought public input at hearings also held in September 1996. The State submitted the final Conservation Plan to the Services on March 5, 1997, and made it available for public comment. The Services again reopened their comment period on May 23, 1997 (62 FR 28413), to invite comments on the Conservation Plan and on other information that had become available after the publication of the proposed rule (60 FR 50530).

Consideration as a "Species" Under the Act

The term "species" is defined by section 3(15) of the Act as including "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature." In the proposed rule (60 FR 50530), the Services stated that Atlantic salmon populations in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias and Dennys rivers (the seven rivers) comprised one DPS (the seven rivers DPS). Also in the proposed rule (60 FR 50530), Atlantic salmon populations in the Kennebec River, Penobscot River, St. Croix River, and Tunk Stream were designated as category 2 candidate species by the FWS and as candidate species by NMFS until investigations into the presence and persistence of native Atlantic salmon populations within these rivers could be conducted.

On February 7, 1996, the Services published a national policy (the Services' DPS policy) (61 FR 4722) to clarify their interpretation of the phrase "distinct population segment of any species of vertebrate fish or wildlife" for the purposes of listing, delisting, and reclassifying species under the Act. The policy identified the following three elements to be considered in deciding whether to list a possible DPS as endangered or threatened under Act: The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; the significance of the population segment to the species or subspecies to which it belongs; and the conservation status of the population segment in relation to the Act's standards for listing.

Discreteness of the Population Segment

According to the Services' DPS policy, a population segment may be considered discrete if it satisfies either one of the following conditions: it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or it is delimited by international governmental boundaries across which there is a significant difference in control of exploitation, management of habitat, or conservation status. Mitochondrial DNA and microsatellite DNA data obtained through an ongoing peer-reviewed genetic study by the U.S. Geological Survey—Biological Resources Division (USGS–BRD) demonstrate that North American Atlantic salmon stocks are reproductively isolated and genetically distinct from European stocks (King, *et al.* 1997). Differences within the North American complex are less clear, but due to differences in management and conservation programs between the United States and Canada, U.S. Atlantic salmon populations are considered to be discrete for the purposes of the Act. Management and conservation programs in the United States and Canada have similar goals, but differences in legislation and policy support the use of the United States/Canada international boundary as a measure of discreteness.

Significance of the Population Segment

The Services' DPS policy states that the consideration of the significance of the population segment to the taxon to which it belongs may include, but is not limited to, the following: Persistence of the discrete population in an ecological setting unusual or unique for the taxon; evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere; or evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A critical factor in determining the significance of river populations of Atlantic salmon is the persistence of a substantial component of native stock reproduction. Results of the USGS–BRD genetics study (King, *et al.* 1997) provide a range-wide survey of mitochondrial and nuclear DNA variation in Atlantic salmon. Composite mitochondrial DNA haplotypes revealed a strong discontinuity between North American and European salmon. Gene flow estimates for both mitochondrial and nuclear DNA at the inter-continental scale were less than one migrant per generation, strongly indicating a major discontinuity between North American and European populations. Pair-wise comparisons of microsatellite genotypes revealed evidence of some significant population subdivisions described by the researchers as worthy of management consideration. This is consistent with the Services' recommendation in the proposed rule (60 FR 50530) that Atlantic salmon populations should be managed on a river-by-river basis.

The DPS proposed for listing by the Services consisted of those seven river populations in Maine for which the greatest evidence of the persistence of historical, river-specific characteristics having evolutionary significance could be found. The results of the USGS–BRD genetics study (King, *et al.* 1997) together with phenotypic traits, life history and habitat characteristics suggest that the seven rivers DPS could be expanded in the future. Because the possibility exists that additional populations could be added to the seven rivers DPS in the future, and for purposes of future conservation activities, the Services are renaming the seven rivers DPS the Gulf of Maine DPS. Other Atlantic salmon populations will be added to the Gulf of Maine DPS if they are found to be naturally reproducing and to have historical, river-specific characteristics. The area within which populations meeting these criteria for addition to the DPS would most likely be found is from the Kennebec River north to, but not including, the St. Croix River.

The Services believe that the Atlantic salmon populations in Togus Stream, a tributary to the Kennebec River, and Cove Brook, a tributary to the Penobscot River, may warrant inclusion in the Gulf of Maine DPS. Further investigation of these and other extant river populations from the Kennebec River north to, but not including, the St. Croix River will continue in order to determine if they meet the criteria for inclusion in the DPS. Populations that resulted primarily from colonization by fish unintentionally released or by fish which escaped from commercial aquaculture operations will not be included in the Gulf of Maine DPS; populations that resulted from private or public hatchery stockings where the broodstock did not originate from populations within the range of the Gulf of Maine DPS also will not be included.

Summary of Comments and Responses

The Services held three public hearings in Maine in September 1996 to solicit comments on the proposed listing determination for the seven rivers DPS of Atlantic Salmon. Over 150 individuals attended the hearings, and the Services received additional written comments on the proposed rule (60 FR 50530) from the State, Federal, and local government agencies, Indian tribes, non-governmental organizations, the

scientific community, and other individuals. In accordance with policy published on July 1, 1994 (59 FR 34270), the Services requested scientific peer review of the proposed rule (60 FR 50530) and draft Status Review and received comments from 15 reviewers. In addition, on March 25, 1997, the Services sent available genetics information to 23 individuals for scientific peer review and received comments from 15 reviewers. The comment period on the proposed rule (60 FR 50530) was reopened in May 1997 to allow public review and comment on additional information, including the Conservation Plan, that had become available since the publication of the proposed rule (60 FR 50530). Following is a summary of the major issues identified in public comments and the Services' responses to those issues.

Issue 1: Accuracy and Sufficiency of Scientific Data

Comment: A few individuals stated that the biological data used was flawed and that, in fact, the salmon population is sufficiently large and growing. Other commenters stated that the stocks are declining and cited habitat degradation as a potential cause. The primary area of disagreement concerning the availability and assessment of data surrounded the issue of delineation of the DPS and, in particular, the role of genetic information in making that determination.

Response: The Act requires that listing determinations be made on the basis of a population's status which is determined by utilizing the best available scientific and commercial data, with consideration being given to State and foreign efforts to protect such species. Data on species distribution and abundance is provided each year by the U.S. Atlantic Salmon Assessment Committee (USASAC), and additional information specific to the seven watersheds is provided in field activity reports prepared jointly by the FWS and the Maine Atlantic Salmon Authority (ASA). To specifically address concerns raised over the delineation of the DPS and the role of genetic information in that determination, the Services sent out the genetics section of the draft Status Review and a State-prepared genetics report (Maine Atlantic Salmon Task Force 1996) for an additional peer review. Many of these reviewers stated a desire for additional information; however, many supported the Services' proposal given the existing information. Many reviewers acknowledged that the USGS–BRD genetics report (King, *et al.* 1997) contains the most comprehensive analysis ever conducted of U.S. Atlantic salmon populations. Some reviewers posed questions regarding the sampling and collection methodology and the statistical analysis of the results. These comments have been provided to the authors of the report to be addressed during preparation of the final report. The Services believe that, due to the nature of these comments, the results of the study will not be changed in a way which would affect the decision to withdraw the proposed rule (60 FR 50530).

Detailed assessments have been conducted in the Narraguagus River to document the extent to which Atlantic salmon mortality in the freshwater phase of the salmon's life cycle may be responsible for the declines in adult abundance first observed in the mid-1980's (FWS and NMFS 1995). One of the specific objectives of this research was to determine the abundance and age structure of the adult and juvenile Atlantic salmon populations. This study concluded that rearing habitats in the Narraguagus River, although not pristine, are in good condition and capable of supporting robust juvenile salmon populations. Macroinvertebrate population data also suggest that freshwater habitats are in good condition, with diversity and abundance indices similar to those obtained 20 years earlier (FWS and NMFS 1995). Water chemistry data indicate that the mainstem Narraguagus River has adequate water quality to support juveniles, and contaminant sampling data suggest that most chemicals used in blueberry culture and forestry are not detected in the fish or waters of the Narraguagus River (ASA 1997).

In 1992, native Atlantic salmon parr (young salmon in freshwater) were collected from the Dennys, Machias and Narraguagus rivers to be raised to maturity and used as broodstock. Adults that were produced by this program were released back into their rivers of origin in June and October 1996. Redd (spawning bed) counts on all three rivers indicated a surplus of redds relative to known returning sea run adults suggesting that reconditioned hatchery broodstock spawned successfully.

Issue 2: Delineation of the Seven Rivers DPS

Comment: Some commenters expressed the opinion that all Atlantic salmon in New England are artificial and have been affected so greatly by hatchery practices that no aboriginal Atlantic salmon remain. They stated that these populations did not qualify for consideration for protection under the Act due to this mixed heritage. Some commenters stated that the Services were abusing their authority under the Act by making such a proposal. Other commenters stated that protection under the Act should be considered for all stocks in rivers that historically contained Atlantic salmon.

Response: The Services' DPS policy (61 FR 4722) and its application to Atlantic salmon is explained in the section of this notice entitled "Consideration as a 'Species' Under the Act." The Services note that, in addition to the information presented in that section, the results of the recently completed USGS–BRD genetics study (King, *et al.* 1997) do not support the claim that Atlantic salmon have been homogenized by migration, stocking and/or aquaculture operations. Analysis of the most current information on genetics, life history and stock assessment provides very strong evidence that the North American Atlantic salmon population is discrete and significant.

Issue 3: Appropriateness of Listing at This Time

Comment: Some commenters urged the Services to delay the decision whether to list in order to allow more time for the river-specific rearing program to work, and some suggested that more time should be allowed for the Conservation Plan to be implemented. Others recommended that the Services immediately list Atlantic salmon and designate critical habitat.

Response: The Act requires the Services to make listing determinations based on the biological status of the species and consideration of State and international efforts being made to protect it. Although adult returns to the seven rivers remain low and average less than 10 percent of the escapement goal (the number of adult returns sufficient to fully seed the habitat), collection of fish and the subsequent stocking of their progeny, as explained in the proposed rule (60 FR 50530), has resulted in substantially higher juvenile counts. Also, projections of marine survival have improved steadily since 1994 (International Council for Exploration of the Seas (ICES) 1997). In addition, as explained in detail in the section of this notice entitled "Efforts to Protect Maine Atlantic Salmon," the Services have determined that protection efforts have substantially reduced the level of threat to the DPS. Consequently, the Services have concluded that the DPS is not likely to become endangered within the

foreseeable future and that, therefore, listing is not justified at this time.

Issue 4: Adequacy of Existing Conservation Measures and Regulatory Mechanisms

Comment: Many commenters expressed the opinion that existing regulations were more than adequate to provide protection to Atlantic salmon. Some asserted that the factor most responsible for the species' decline was marine survival and suggested that, since this was not a controllable factor, nothing was to be gained by listing the species. Other commenters expressed concern about the State of Maine acquiring management authority stating that Maine had a history of ineffective management of Atlantic salmon. They argued for increased Federal involvement through a listing action.

Response: The Services agree that there are a number of existing conservation measures and regulatory mechanisms in place to protect Atlantic salmon. Those conservation measures and regulatory mechanisms are discussed in more detail in the "Summary of Factors Affecting the Species" and the "Efforts to Protect Maine Atlantic Salmon" sections of this notice. It is important to note that the Services have been, and will continue to be, closely involved in the management of Atlantic salmon in Maine, as well as throughout the rest of New England. The Services do not agree that Maine has a history of ineffective management of Atlantic salmon. The Status Review does state that the recreational harvest of the 1970's was likely too high but that, subsequently, restrictions were placed on the fishery, and currently only catch and release fishing is permitted. The Services also reviewed past management measures to determine their role, if any, in the species' decline. Current management measures were reviewed for their ability to protect and assist with the recovery of Atlantic salmon populations. The Services have determined that existing State regulations and management measures, together with additional efforts outlined in the Conservation Plan, sufficiently protect the species during the portion of its life cycle spent in Maine waters and will facilitate its continued improvement.

Issue 5: Economic Ramifications of Listing Atlantic Salmon as Endangered

Comment: Many individuals stated that listing would add more government regulations that would cripple local economies. Concerns were raised over potential ramifications to forestry, aquaculture and agriculture. Other commenters cited economic benefits of successful salmon restoration.

Response: The Act does not allow the Services to consider economics in making listing determinations. The Act does require Federal agencies to consult with the Services on any action they undertake, fund or authorize which may affect a proposed or listed species. In the majority of cases, these consultations do not slow or halt project planning and construction. The Services agree that there are many benefits, including economic benefits, to Atlantic salmon restoration.

Issue 6: Effects of Agriculture on Atlantic Salmon

Comment: Commenters provided a broad range of views regarding the relationship between agricultural practices and Atlantic salmon. Some stated that agricultural practices do not threaten Atlantic salmon. Some of the same commenters expressed concern that listing Atlantic salmon would have negative effects on agriculture. Finally, a few commenters stated that erosion, pesticide run-off, and water withdrawal associated with agriculture are contributing to the decline of the species.

Response: The Services examined the potential impact of agricultural practices on Atlantic salmon in the draft Status Review and concluded that current agricultural practices do not pose a major threat to Atlantic salmon. In response to the proposed rule (60 FR 50530), the Governor of Maine formed a Task Force to address the decline of Atlantic salmon in the State. The Agriculture Working Group of the Task Force conducted an in-depth analysis of the relationship between agricultural practices and Atlantic salmon protection and recovery. This group identified a number of potential threats including water use, non-point source pollution and peat mining. The group also cited the increased interest in cranberry cultivation in the seven watersheds as a potential threat. The sections of this notice entitled "Summary of Factors Affecting the Species" and "Efforts To Protect Maine Atlantic Salmon" discuss ongoing and proposed actions to address threats from agriculture.

Issue 7: Effects of Recreational Fishing on Atlantic Salmon

Comment: Many commenters stated that recreational fishing does not threaten Atlantic salmon populations and some suggested that, if a listing resulted in the termination of a recreational fishery, the support of anglers for salmon recovery would be lost.

Response: In the proposed rule (60 FR 50530), the Services stated that multi-sea-winter fish (fish which have spent two or more winters at sea) could incur some mortality from catch and release fishing and that parr could be vulnerable to incidental hooking mortality or illegal harvest by trout anglers. The Services also expressed some concern over the potential for poaching. In the past the recreational harvest of Atlantic salmon had the potential to negatively impact species abundance, however, there is no legal harvest in Maine at this time. In the Conservation Plan, the State of Maine has imposed further restrictions on the catch and release fishery for Atlantic salmon to reduce or eliminate the potential for adverse impacts to salmon by restricting the season, area and gear to be used. In addition, the State has imposed restrictions on recreational trout fishing to address concerns over impacts from incidental catch. To improve compliance with these new regulations, the State has added two seasonal wardens and has recommended increased fines for violations.

During their review of the Conservation Plan, the Services requested that the State further define biological parameters for the catch and release fishery by identifying conditions under which a river may be closed and by describing monitoring or assessment efforts. The State has subsequently informed the Services that the Maine Technical Advisory Committee (TAC) is being requested to recommend to the ASA the appropriateness of catch and release fishing on each river. The ASA will then take this recommendation through a public hearing process and promulgate regulations. The TAC was advised to consider the following factors: Parr densities at index sites; sea temperature index developed for the North American Salmon Conservation Organization (NASCO); returns of adults or redd counts; availability of hatchery fry; and incidental mortality related to catch and release. The State has informed the Services that estimates of actual returns (numbers of adult salmon returning to their rivers of origin) would be compared to minimum biologically acceptable limits of spawners (spawning adult salmon) to determine the feasibility of catch and release for any given season. The Services are satisfied with this proposed plan of action and as members of the TAC will have an active role in the development of specific criteria.

Issue 8: Effects of Aquaculture on Wild Atlantic Salmon

Comment: There was a wide range of opinions expressed concerning the effects of aquaculture on wild Atlantic salmon populations. Some commenters felt that aquaculture has negative impacts, whereas others stated that aquaculture does not threaten wild salmon populations and could in fact aid restoration or rehabilitation of wild populations through breeding and stocking programs. Finally, some commenters expressed concern that listing would have negative impacts on the aquaculture industry.

Response: Through the Aquaculture Working Group of the Task Force, the Services and the aquaculture industry have identified industry practices that could impact wild populations. Strategies to mitigate or eliminate these potential impacts have been identified and are being implemented. The Maine Aquaculture Association is working with the University of Maine and representatives of the industry to develop a biosecurity code that will incorporate both a loss control code of practice and a fish health code. These codes will reduce the potential for genetic and health impacts to wild stocks. The Services will continue to monitor the development and implementation of these codes.

The aquaculture industry is conducting further investigations into marking of cultured stock and is experimenting with the commercial culture of sterile triploids. The aquaculture industry, in an effort to actively participate in salmon recovery, has accepted river-specific eggs for 2 years and is raising those eggs to smolts (sub-adults) and/or adults to be released back into their rivers of origin. The FWS has secured funds to construct weirs on three rivers that will aid in both wild stock management efforts and in culling aquaculture escapees.

Issue 9: Effects of Forestry on Atlantic Salmon

Comment: Comments on forestry ranged from identifying forestry as having a negative impact on salmon recovery to stating that there is no proven link between forestry and the decline of salmon. Those who stated that forestry negatively impacts Atlantic salmon cited non-point source pollution and habitat degradation. Concerns were also raised over the potential economic ramifications of listing to the forestry industry.

Response: In the draft Status Review and the proposed rule (60 FR 50530), the Services cited forestry as a predominant land use in the central and northern coastal Maine watersheds. The Services concluded that while past forestry practices may have adversely affected salmon and their habitat, the regulatory mechanisms currently in place are sufficient to ensure that ongoing practices do not pose a major threat to the species. The Conservation Plan identifies potential impacts from forestry to include non-point source pollution, alteration of stream temperatures and hydrology, direct disturbance to habitat, and blockage of fish passage by deposition of woody debris. The Conservation Plan outlines a number of existing protective measures which address potential threats from forestry. These measures are discussed in detail in the section of this notice entitled "Efforts to Protect Maine Atlantic Salmon."

Issue 10: Effects of Hydroelectric Operations on Atlantic Salmon

Comment: Many commenters stated that dams have played a major role in the reduction in range of Atlantic salmon and in the depressed levels of remaining populations. Others stated that dams are not responsible for the decline of salmon. Finally, a few expressed concern over the potential negative effects of a listing on the hydroelectric industry.

Response: In the draft Status Review and the proposed rule (60 FR 50530), the Services stated that the construction of dams was a major cause for the decline of U.S. Atlantic salmon. The rivers included in the seven rivers DPS do not have hydroelectric dams on them and, therefore, listing would not have impacted the hydroelectric industry.

Issue 11: Effects of Marine Survival on the Decline of Atlantic Salmon

Comment: A few commenters stated that natural fluctuations in the marine environment are responsible for the decline of salmon and that, because these fluctuations could not be affected by listing, listing is not necessary.

Response: As required by the Act, the determination as to whether a listing action is appropriate is based on the biological status of the species and consideration of State and international efforts to protect it. The Services considered all threats to the species including natural fluctuations in the marine environment in determining to propose the seven rivers DPS of Atlantic salmon as threatened and in deciding to withdraw the proposal.

Issue 12: Genetics Information

Comment: The Service received comments from 15 individuals who conducted a scientific peer review of the genetics information. Most reviewers agreed it was difficult with the information available at that time to draw any conclusion regarding the correct delineation of a DPS. One reviewer stated that the metapopulation paradigm was more relevant than the stock concept as it emphasizes the interconnections between population units within metapopulations and the multilayered nature of the relationships among them (the metapopulation theory, in part, proposes that the loss of the species at one site can be compensated through reoccupation of the site from adjacent sites). In contrast, another reviewer pointed out, as evidence against the metapopulation theory, that populations tend to stay extirpated. In general, many reviewers desired more information, but most stated that if "a substantial component of native genetic variation persists in the populations of the named rivers, they are presumably the last reservoirs of these genes, and hence deserving of the strongest possible protection." An additional reviewer agreed that there is no "pure" native race of Atlantic salmon remaining but the remnant of mixed populations that does exist is all that is left of the original diversity of New England salmon.

There was general agreement among reviewers that rivers south of Maine are not appropriate for listing because the original populations were extirpated, and current populations represent introductions of non-native stocks of mixed origin. One reviewer questioned the logic of excluding the Kennebec, Penobscot and St. Croix rivers from the DPS. This reviewer believed that, due to their size, these three rivers might become the last source of broodstock for stocking the seven rivers in the event the Atlantic salmon populations in the seven rivers DPS become extinct. Another reviewer argued that the populations in the Kennebec, Penobscot, and St. Croix rivers and Tunk Stream, which were designated as candidates by the Services in the proposed rule (60 FR 50530), should be included in the seven rivers DPS. Some felt that the differences between U.S. and Canadian populations were overstated or exaggerated.

Some comments specifically addressed the question of "significance" and one reviewer stated that additional analyses of selectively neutral genetic variation would probably not be helpful for determining how to conserve and manage any adaptive variation that may reside in the rivers of Maine. Also, another reviewer stated that neutral markers do not reveal much about

significance. One reviewer offered an operational test of evolutionary value and suggested that if a climatic warming trend occurred, the Ducktrap River might be an appropriate source of broodstock for restocking rivers in the central part of the present species' distribution. This reviewer suggested that, putting genetics and statistics aside, if it is likely that a river population would be singled out to be used in the future as a source for restocking other rivers, then it should probably be preserved. Many reviewers emphasized the fact that Maine Atlantic salmon are at the southern extent of the species' range. One reviewer stated the following: "The fact is that some salmon do continue to return to Maine's rivers in spite of all the difficulties put in their way. Furthermore, these fish hang on near the southern limits of the species' global range, in spite of the extreme nature of the environment and the challenges they must overcome." These reviewers believed that these facts supported the contention that Maine Atlantic salmon constitute a highly selected group (or DPS) uniquely suited to life in Maine's rivers.

Some reviewers believed that the effects of hatcheries and stocking were adequately addressed in the draft Status Review, while others commented that more detail was needed. Most reviewers agreed that past extensive stocking raised concerns but was not conclusive evidence of the disruption or replacement of locally adapted native strains. Some commenters cited the suggestion in the State-prepared genetics report's (Maine Atlantic Salmon Task Force 1996) that the situation with Atlantic salmon is analogous to that with the lower Columbia River coho salmon for which both DPS status and Evolutionary Significant Unit (ESU) status was rejected due to the effects of stock transfers and hatchery propagation. One reviewer stated that this comparison was not appropriate as Columbia River coho lie in the middle of the species' range surrounded by populations that are less genetically compromised. Maine Atlantic salmon, on the other hand, are at the edge of the species' range. One reviewer offered his view that if a historical ESU can be identified with reasonable confidence (as is the case with Maine Atlantic salmon) there should be a presumption that it still remains unless there is a preponderance of evidence to indicate that it does not.

Commenters on the most recent USGS–BRD genetics report (King, *et al.* 1997) generally were impressed with the volume of data contained and analyzed. All reviewers agreed that the results supported earlier studies clearly demonstrating a statistically significant genetic difference between North American and European populations of Atlantic salmon. There was no such consensus regarding the interpretation of results for populations within North America. Most reviewers agreed that delineation of U.S. and Canadian populations as two separate DPS's could not be justified based on these results; however, they pointed out that sampling of Canadian populations was too sparse to conclude that they were part of the same DPS.

Response: The Services' carefully reviewed all of the available information concerning to the genetics of Atlantic salmon. The Services' identified the seven rivers DPS as a "species" under the Act in accordance with the Services' DPS policy (61 FR 4722). The Services' DPS policy and its application to the delineation of the seven rivers DPS (and the Gulf of Maine DPS) are described in the "Consideration as a 'Species' Under the Act" section of this notice.

Issue 13: The Conservation Plan

Comments: Eleven letters of comment were received on the Conservation Plan. Seven of those were from State agencies and industries and organizations operating within the State which voiced enthusiasm and support for the Conservation Plan and encouraged the Services to accept the Conservation Plan and not list Atlantic salmon under the Act. The State's response included a list of ongoing actions under the Conservation Plan. Some concern was raised over funding for implementation of the Conservation Plan and for work on rivers not included in the seven rivers DPS originally proposed for listing. In addition, one commenter recommended that the FWS should closely monitor implementation of the Conservation Plan. One commenter, offered the opinion that the Conservation Plan lacks accountability and enforceability and is not biologically defensible.

Response: The Services have worked closely with the State during the development of the Conservation Plan and believe that a very critical part of the Conservation Plan is the detailed implementation schedule and monitoring plan for each river. Each party's ability to meet funding obligations under the Conservation Plan will be evaluated annually as part of the review process.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal list. Section 4 requires that listing determinations be based solely on the best scientific and commercial data available, without reference to possible economic or other impacts of such determinations. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. The information presented here primarily concerns new developments since the publication of the proposed rule (60 FR 50530) and indicates the ways in which implementation of the Conservation Plan is further reducing threats to the DPS.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Forestry

One of the predominant land uses of central and northern coastal Maine watersheds is the growing and harvesting of forest products. Forest management practices can cause numerous short and long-term negative impacts to Atlantic salmon as a result of increased runoff, decreased shade and increased water temperatures, deposition of woody debris and silt into waterways, and the use of insecticides or herbicides. In the proposed rule (60 FR 50530), the Services presented their finding that while historical forest practices have had harmful effects on Atlantic salmon in certain watersheds, numerous State and Federal laws now in existence prevent significant adverse impacts to Atlantic salmon and other aquatic species. The Conservation Plan offers further protection against potential impact to Atlantic salmon from forestry activities. Ongoing actions outlined in the Conservation Plan include: Formation of Project SHARE (Salmon Habitat and River Enhancement) addressing potential threats from forestry in 5 Downeast watersheds; establishment of riparian management zones; Champion International's adoption of self-imposed restrictive management standards for timber operations near streams and rivers; providing code enforcement training and shoreline technical assistance to help municipalities administer shoreline zoning standards; promoting best management practices in forests within the State through Maine's non-point source pollution management program; and finally, formation of several river coalitions to improve watershed protection.

Agriculture

Lowbush blueberry agriculture is another significant land use in eastern Maine watersheds. The associated extraction and diversion of water and application of herbicides, fungicides, and insecticides could adversely affect Atlantic salmon and their habitat. In the proposed rule (60 FR 50530), the Services concluded that current agricultural practices were not considered a major threat to Atlantic salmon due to protective measures in place. Cranberry production, a small but rapidly increasing component of Downeast Maine agriculture, requires land conversion, a large supply of water, and significant use of pesticides. Significant acreage is currently being converted to cranberry production.

The Conservation Plan identifies the following programs and management activities currently being implemented to reduce impacts to Atlantic salmon from agricultural practices: Integrated crop management practices and best management practices for blueberry and cranberry production developed by the Maine Cooperative Extension Service; the State management plan for pesticides and ground water, as well as a more specific plan to protect groundwater from hexazinone; and the non-point source pollution and coastal zone management programs which include best management practices to protect water quality. Additional activities proposed in the Conservation Plan are the development and implementation of total water use management plans for each watershed, the development of a non-point source pollution control program for the Sheepscot River, and the identification of wetlands with functions that maintain the integrity of salmon habitat.

Peat Mining

Many eastern Maine watersheds contain deposits of peat. Commercial peat mining has the potential to adversely affect salmon habitat through the release of peat fibers, arsenic, and other chemical residues present in peat deposits. There are no known current impacts to Atlantic salmon, but further study is recommended to determine possible impacts, if any, of peat mining on Atlantic salmon and their habitat. The Conservation Plan identifies additional actions which are being taken to eliminate potential impacts from peat mining including: Improving the permit review process; increasing standards for erosion control; and evaluating possible threats to Atlantic salmon from water quality changes.

Dams

In the proposed rule (60 FR 50530), the Services cited the historical impact of dams on Atlantic salmon but stated that there were no hydroelectric projects on any of the seven rivers which constitute the range of the seven rivers DPS. Portions of two other rivers, the Kennebec and the Penobscot, are heavily impacted by hydroelectric dams. The fact that naturally reproducing populations of Atlantic salmon are likely restricted to tributaries below the lowermost mainstem dam on each of these rivers is directly attributable to the impact of these dams. While expansion of the range of Atlantic salmon in these river systems may be limited at present, it does not appear that the continued persistence of the lower tributary populations is threatened by the presence of dams on the mainstems upstream of these lower tributaries. Beaver (*Castor canadensis*) dams and debris dams, which have been documented on many of the rivers within the seven rivers DPS, are typically partial, temporary obstructions to Atlantic salmon migration. The Conservation Plan identifies activities underway to address this threat which include breaching problematic beaver dams, removing debris dams, and expanding the beaver trapping season in certain areas. In addition, the Conservation Plan includes a commitment to identify and rectify fish passage problems at the Cooper's Mills Dam on the Sheepscot River.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The proposed rule (60 FR 50530) discussed protective measures against any potential impact from a commercial Atlantic salmon fishery either domestically or internationally. A quota agreement was reached in 1997 for the West Greenland fishery, and Canada announced the continuation of the moratorium in Newfoundland and further restrictions and a comprehensive management plan for Labrador. Reduced ocean harvest resulting from these actions should benefit salmon runs throughout North America during the next several years. The Conservation Plan does not attempt to deal with ocean harvest, as that is beyond the State's jurisdiction.

The Conservation Plan notes that there is no legal harvest of Atlantic salmon in Maine but that a catch and release fishery is permitted. As outlined in the Conservation Plan, the State is addressing potential threats from poaching and catch and release fishing by restricting seasons, locations and gear; increasing law enforcement by adding two seasonal wardens; modifying regulations on other targeted fisheries to reduce any impact to Atlantic salmon caught as bycatch; and agreeing, where necessary, to close cold water adult salmon holding areas to all fishing. In addition, any catch and release fishing will be permitted only after analyzing data from all phases of the species' life cycle to assess risks to the DPS. Furthermore, a monitoring and reporting program has been created for incidental take, and there is a recommendation to increase penalties for poaching. During 1997, additional seasonal restrictions were imposed, and seasonal wardens were employed to reduce poaching in the seven rivers.

C. Disease or Predation

The proposed rule (60 FR 50530) included a comprehensive list of potential predators of Atlantic salmon but concluded that the effects and magnitude of competition and predation in the riverine, estuarine, and marine environments are not known. The Conservation Plan proposes further investigation of predation issues such as impacts of seal (harbor seal (*Phoca vitulina*) and gray seal (*Halichoerus grypus*)) and cormorant (double-crested cormorant (*Phalacrocorax auritus*)) predation and food habits of American eels (*Anguilla rostrata*) collected in juvenile Atlantic salmon habitat. The Conservation Plan also proposes a change in the daily limits on chain pickerel (*Esox niger*) to reduce pickerel populations that prey on migrating salmon smolts.

While Atlantic salmon are susceptible to a number of diseases and parasites that can result in high mortality, furunculosis caused by a bacterium (*Aeromonas salmonicida*) is the only known source of disease-related mortality that has been documented in wild Atlantic salmon in New England. The Conservation Plan describes efforts that are being implemented to reduce threats from disease. These include: maintenance of the current State, Federal, and New England fish health inspection protocols; continued vaccinations of farmed fish prior to placement in sea cages; and enforcement of private insurance standards. It is also noted that a State/Federal/industry fish health advisory board has been established to monitor and improve the current fish health protocols as they relate to salmonid fish culture. Additional protection will be provided by an emergency disease eradication program involving action steps to be taken in the event of the

detection of exotic fish pathogens in public or private rearing facilities; expansion of an ongoing epidemiological monitoring program to determine the type, incidence and geographic distribution of salmonid pathogens in Maine; documentation, evaluation and compilation of industry husbandry practices into a fish health code of practices; and, finally, complete adoption of an industry code of practices to minimize escapes of farmed fish.

D. Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms governing aquaculture, forestry, agriculture, poaching, recreational fishing, and commercial harvest are discussed elsewhere in this section and in the "Efforts to Protect Maine Atlantic Salmon" section of this notice.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Scientific evidence suggests that low natural survival in the marine environment is a major factor contributing to the decline of Atlantic salmon throughout North America. Recent research indicates that major seasonal events influence survival of post-smolts (young salmon which have reached the ocean and are beginning to migrate). It appears that survival of the North American stock complex of Atlantic salmon is at least partly explained by sea surface water temperature during the winter months when Atlantic salmon concentrate at the mouth of the Labrador Sea and east of Greenland. The marine survival index improved in 1997 for the third consecutive year, suggesting the likelihood of improved adult returns during the next few years.

Research initiated by the USASAC, the ICES-North Atlantic Salmon Study Group (ICES–NASSG), and the ICES-North Atlantic Salmon Working Group (ICES–NASWG) has furthered our basic understanding of the marine ecology of Atlantic salmon. Natural mortality in the marine environment can be attributed to four general sources: predation, starvation, disease/parasites and abiotic factors. Scientists have discovered correlations between mortality in the marine environment and abiotic factors, particularly sea surface temperature (ICES 1997). Correlations between survival rates for Atlantic salmon from numerous North American rivers led these scientists to suspect that a critical source of mortality was acting upon all the stocks when they were mixed and sharing a common habitat (the ocean). These scientists further speculated that sea temperatures influenced Atlantic salmon survival and abundance at West Greenland and, therefore, homewater catches. Patterns of stock production were found to relate to the area of winter habitat available to North American post-smolts.

Recent research has pointed to the importance of the availability of suitable marine habitat as defined by sea surface temperature in the North Atlantic Ocean and particularly the Labrador Sea region (ICES 1997). A natural climatic phenomenon known as the North Atlantic Oscillation appears to regulate general sea surface temperature patterns in this region and influence the marine survival and growth of Atlantic salmon. The cyclic character of this naturally occurring climatic pattern could be responsible for widespread patterns of low survival in Atlantic salmon observed recently (ICES 1997). The ICES's 1997 report stated that estimates of pre-fishery abundance of non-maturing and maturing one-sea-winter (1SW) salmon for 1995 and 1996 suggest an end to the historically low values of non-maturing 1SW salmon and a clear increase in maturing 1SW salmon. The report concluded that the gradual upward trend of multi-sea-winter (MSW) returns to U.S. rivers is expected to continue.

Conclusion—Summary of Factors Affecting the Species

The proposed rule (60 FR 50530) concluded that there were basically three major factors which continue to threaten the continued survival of Atlantic salmon within the seven rivers DPS—poaching, low natural survival of fish during their first winter at sea, and potential impacts from Atlantic salmon aquaculture operations and fish hatcheries to the genetic integrity and disease vulnerability of the DPS. The tightening of recreational fishing regulations described in the Conservation Plan and the increased enforcement of these regulations through the addition of two seasonal wardens to the rivers of the seven rivers DPS reduce the threat of poaching. Threats to the genetic integrity and disease vulnerability of the DPS from aquaculture and fish hatcheries are also alleviated by existing fish health protocols, screening of outlets at freshwater hatcheries, development of a code for fish health and containment at freshwater rearing and sea cage sites, experimental rearing of sterile triploids, and the construction of weirs. These ongoing and proposed actions, together with the river-specific rearing program and projected improvements in the marine index, have improved the status of the DPS such that the Services are now able to conclude that the DPS is not likely to become endangered within the foreseeable future.

Efforts To Protect Maine Atlantic Salmon

The Services, New England States and private industries and organizations have a long history of working cooperatively for the protection, restoration, and rehabilitation of Atlantic salmon. In 1991 the FWS expressed concern about the status of Atlantic salmon and designated salmon in five rivers as category 2 candidate species. A prelisting strategy to advance the recovery of these stocks was developed in 1992 which included plans for stock assessment, habitat inventory, and procurement of river-specific broodstock for a fry stocking program. The Maine Wild Atlantic Salmon Stewardship Program was initiated by the FWS in 1994. Program activities include angler surveys, habitat surveys, and weir and trap installation and maintenance. Consistent with the Services' mandate to consider efforts being made to protect species in making listing determinations, the Services have considered the following Federal and State conservation efforts.

A. Federal Conservation Efforts

Narraguagus River Study

In 1991 the NMFS initiated an intensive juvenile population monitoring program on the Narraguagus River in Maine. Juvenile population estimates have been obtained annually at approximately 30 sites within the river. These data are then analyzed by the ASA and NMFS to refine models for estimating drainage-wide parr abundance, smolt recruitment, and adult return rates for wild Atlantic salmon. Accurate estimates of juvenile populations will continue to greatly enhance the ability to develop and refine effective management strategies. Cooperative research on Atlantic salmon production conducted by the Northeast Fisheries Science Center (NEFSC) and the ASA has examined, in detail, production from the spawner to the pre-smolt stage in the Narraguagus River. The NEFSC and ASA research has yielded a 7-year time series with accurate adult counts and basin-wide pre-smolt production indices (FWS and NMFS 1995). In 1997 the ASA and NEFSC monitored outmigration of Atlantic salmon smolts in the Narraguagus River with four rotary screw fish traps. More accurate estimates of smolt production increases

the reliability of estimates of marine survival rates. Research has confirmed that overwinter survival of pre-smolts is a critical phase in Atlantic salmon population dynamics (FWS and NMFS 1995). Refinements in these estimates may be critical to determining the mechanisms that influence this life history stage. Five traps were utilized in 1997 as part of a mark/recapture population study. This information provides a baseline for studying the correlation between environmental conditions and overwinter survival. In the future, if suspect relationships are found, then the probable causes of mortality can be investigated, and work can be undertaken to identify possible habitat rehabilitation or enhancement that could increase survival to the smolt stage.

Data is being obtained by the NEFSC and the ASA on smolt emigration mortality, movements and dispersal to provide more accurate estimates of parameters that might influence early marine survival and ocean movement patterns. Electrofishing is utilized to assess the survival of stocked fry, to track parr populations over time, and to collect parr for broodstock. A unique drainage-wide age 1+ parr population assessment method (Basin-wide Geographic and Ecological Stratification Technique, BGEST) has been developed for the Narraguagus River (FWS 1997). This drainage-wide approach was developed to overcome the difficulties of comparing population data from individual sites when those data do not account for juvenile salmon movements within each drainage.

River-Specific Stocking

In 1992 the ASA and the FWS implemented a Prelisting Recovery Plan for the Atlantic salmon populations in the seven rivers DPS (Baum et al. 1992). The highest priority identified in the Prelisting Recovery Plan was the development of river-specific broodstocks which could be utilized for restocking efforts in the rivers of concern. The management goal established for the seven rivers was to maximize the production of wild Atlantic salmon smolts by augmenting low wild juvenile populations with hatchery-produced fry. River-specific stocking was endorsed to protect the genetic integrity of remaining salmon stocks and to increase the adaptability and survival of stocked fry.

During the period 1992 to 1996, more than 4,000 wild-origin Atlantic salmon parr were collected from 6 Maine rivers and raised to maturity in freshwater. Each parr that survived to maturity resulted in the production of approximately 1,000 feeding fry for restocking. The survival rate from stocked fry to the parr stage is assumed to be between 5 and 10 percent which means that between 50 and 100 parr will replace each of the original parr collected (Baum, King, and Marancik 1996). Currently the majority of the nursery habitat in the Dennys, Narraguagus, and Machias rivers is utilized as a result of extensive fry stocking. Fry stocking began in 1996 in the East Machias and Sheepscot rivers. Two year classes of immature parr are being held to be used as broodstock for the Pleasant River. No collections have been made on the Ducktrap River. During 1995, approximately 1.5 million eggs were produced from river-specific broodstock. The resulting 790,000 fry were stocked in 5 rivers in May of 1996. More than 1.7 million eggs were taken from broodstock from 5 rivers during the 1996 spawning season which resulted in approximately 1.07 million fry for the 1997 stocking season.

Approximately 50,000 Machias River-origin eggs were transferred from Craig Brook National Fish Hatchery to a private hatchery operated by volunteers from the Pleasant River Fish and Game Conservation Association and the Downeast Salmon Federation. The 34,000 fry which resulted from this cooperative effort were stocked back into the Machias River. Experimentation continued with otolith and elastomer marking techniques. In addition to the stocking of fry, adult surplus broodstock have been released to supplement the river populations. Marked or tagged adults were released in the Narraguagus, Machias and Dennys rivers in June 1997. Additional adults were released in the Dennys, Machias and Narraguagus rivers in October 1997 to augment wild spawning stock. Age 2 smolts were also released in the Dennys and Machias rivers and were adipose fin clipped for identification when they return in 2 years as adults to spawn.

Adult salmon counts are obtained on the Narraguagus River by a permanent salmon trapping facility operated by the ASA since 1991 and supplemented by analysis of videos to document any additional adults that had jumped over the water control dam. A portable weir has been operated on the Dennys River since 1992 and on the Sheepscot River from 1994 to 1996. Angler data and redd counts also provide information useful in assessing adult abundance. Difficult weather conditions in 1995 resulted in poor visibility and incomplete, or absent, redd count data for most river reaches. Conditions were significantly better in 1996 and a total of 429 redds were counted in the 7 drainages, the highest number since 1991. Not all redds can be attributed to wild spawners, however, as captive broodstock were released to some of the rivers. Redd counts on rivers that did not receive releases of captive broodstock, with the exception of the Sheepscot River, were higher than at any other time since 1992.

Watershed Characterization Project

Staff of the ASA have worked with the USGS and the Maine Geological Survey to undertake a Sub-Watershed Characterization Study for the Narraguagus River. The study utilizes digital data to create an overview, maps, and data sheets for each sub-watershed which provide information on the land cover composition, erosion potential, hypsometric curve and Atlantic salmon habitat. This will lead to a better understanding of the relationships between flows, water depths and wetted habitat. For each of the 49 sub-watersheds, the percentage of total spawning and nursery habitat within that sub-watershed, land cover composition, wetland types, stream flow data, a hypsometric curve, surficial geologic statistics and an erosion indicator will be provided.

Habitat Protection

Staff from the ASA and FWS have worked with private organizations such as the National Fish and Wildlife Foundation and The Baker Conservation Trust to acquire parcels of land to protect Atlantic salmon habitat on the Ducktrap and Sheepscot rivers. The Coastal Mountains Land Trust acquired 123 acres and over 1 mile of Ducktrap River shoreline bordering spawning habitat. The Fish and Wildlife Foundation acquired 2 additional parcels totaling 10.3 hectares directly adjacent to spawning areas. The FWS, through its Partners for Wildlife Program, dedicated funds to restore two damaged areas on the Ducktrap River that are the sites of abandoned gravel quarries identified as sources of siltation and sedimentation directly upstream of spawning and rearing habitat. Funds were also contributed to this effort by the Natural Resources Conservation Service, and the Ducktrap Watershed Coalition. The gravel pit owner, the Ducktrap River Coalition, and campers from the 4–H Tanglewood Camp provided expertise and labor. Through a cooperative effort, a one-half-mile stretch of the Dyer River, lacking vegetated buffer and being used as a cattle wallow, is being restored and protected. This required working with the farmer to identify alternative drinking water for his cattle,

constructing a fence along the stream, planting to establish a vegetated buffer along the stream, and establishing pool and riffle habitat in the stream.

Habitat and Juvenile Assessments

With the recognition that knowledge of habitat quantity and quality is a prerequisite for effective management of Atlantic salmon populations, intensive habitat inventories have been undertaken in recent years. By the end of the 1997 field season, highly accurate computerized data sets will be compiled for all seven rivers. These data will be used to coordinate future redd counting, parr collecting, and fry stocking activities. The planning and logistics of stocking a large number (850,000) of fry in the 7 drainages has been facilitated by a geographic information system. These data are also being made available to other agencies and interested parties for land conservation and management. An atlas was produced for the Machias River for use during fry stocking. In addition, maps were produced for redd count activities on the Dennys, Machias, Narraguagus, Pleasant, and Sheepscot rivers. A separate pilot project was undertaken to consolidate data from multiple sources into an overview of the hydrological characteristics for each sub-basin within the Narraguagus River watershed. The next step will be to identify factors that could affect stream flow, water depth, and wetted habitat and to evaluate the potential of those factors to affect habitat suitability and production potential. River temperatures were monitored extensively, and investigations are ongoing to identify and understand the role of cold water refugia.

Surveys to locate and breach beaver dams and debris dams were conducted on each of the seven rivers. During the 1996 field season, a total of 85 obstructions were recorded on the 7 rivers and their tributaries. Seventy-four of these were located below spawning habitat and were breached or removed at least once in October of 1996. Breaching beaver dams and debris dams provided upstream passage to over 292 kilometers of river containing quality spawning and rearing habitat. Breaching is timed just prior to spawning in order to provide an adequate migration window for salmon. A significant number of redds have been counted upstream from breached dams indicating a degree of success from this management measure. This work was conducted again in 1997, and will continue in the future.

North American Salmon Conservation Organization

The NASCO is an international organization with the goal of promoting the conservation, restoration, enhancement, and rational management of Atlantic salmon stocks in the North Atlantic Ocean through international cooperation. In 1993 the West Greenland Commission adopted a 5-year scientifically-based quota-setting agreement (West Greenland Commission 1993). At the Thirteenth Annual Meeting of NASCO in 1996, the Commission was unable to agree upon a quota utilizing that agreement due to differing interpretations of agreement components. As a result, West Greenland unilaterally set a quota which was higher than the scientists advised. The United States was very concerned about this departure and met with the other NASCO parties prior to the Fourteenth Annual Meeting in 1997 to attempt to reach agreement. In 1997 the Commission adopted an addendum to the 1993 agreement which maintains the scientific method for setting quotas but allows for a reserve quota to be established in years of low abundance (West Greenland Commission 1997). Accordingly, a reserve quota of 57 tons, much lower than quotas for previous years, was set for the 1997 fishery including local use and subsistence fisheries. The events in 1997 add assurance that the United States will be able to successfully negotiate in the international forum to protect U.S. stocks on their migration.

B. State Conservation Efforts

The designation of some Atlantic salmon populations as candidate species under the Act and the subsequent receipt of a petition to list them as endangered prompted additional interest in the species. The forestry industry began Project SHARE, and other organizations such as the Sheepscot Valley Conservation Association, the Ducktrap River Coalition, and the Midcoast Atlantic Salmon Watershed Council were founded as a result of this interest.

Atlantic Salmon Authority

The ASA was formed by the Maine Legislature in September 1995 replacing the Atlantic Sea Run Salmon Commission (ASRSC) which had been in existence since 1945. The ASA is governed by the Atlantic Salmon Board which consists of nine members appointed by the Governor. The ASA has sole authority, except for those rights lawfully held by Maine's Native American Indian Tribes, and responsibility to manage the Atlantic salmon fishery in the State, including sole authority to introduce Atlantic salmon into Maine inland waters. Sole authority for the inland waters of the Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap and Sheepscot rivers was transferred to the ASA from the Task Force on July 1, 1997. The State-wide goal of the ASA is to protect, conserve, restore, manage, and enhance Atlantic salmon habitat, populations, and fisheries within historical habitat in Maine (Baum *et al.* 1997).

Management activities outlined in the 1995 ASRSC plan (Baum 1995) include restoration of self-sustaining runs of Atlantic salmon, increasing natural reproduction of existing Atlantic salmon populations, providing recreational angling opportunities and compatible non-consumptive uses of Maine's Atlantic salmon resources, improving fish passage for Atlantic salmon where there are natural and artificial barriers to migration, establishing partnerships which will benefit salmon restoration and management programs, and increasing public awareness and broadening support for attainment of the ASA's overall goal through development of a public education program. The Report of the Maine Atlantic Salmon Authority to the Joint Standing Committee on Inland Fisheries and Wildlife (Baum and Atlantic Salmon Board 1997), states: "Many of the challenges facing restoration and management of Atlantic salmon runs are found within the State of Maine, including the following: inadequate or incomplete information and biological data pertaining to salmon habitat and populations, upstream and downstream fish passage at hydroelectric dams, land-use practices, conflicts with other fishery programs, insufficient broodstock and inadequate numbers of juvenile salmon for restocking efforts."

The ASA is currently the sole management authority for Atlantic salmon management in the State, and staff work with the Division of Inland Fish and Wildlife and the Department of Marine Resources to address areas of overlap. The Chair of the ASA Board now has a seat on the board of the State's Land and Water Resources Council (Council). It is through this venue that the ASA can address activities conducted, funded or authorized by other State agencies to ensure that they do not negatively impact Atlantic salmon. This is a very positive step that recognizes the interrelationship of Atlantic salmon with other species and its dependence on a healthy ecosystem.

Conservation Plan

The Services' proposed rule (60 FR 50530) included a special 4(d) rule inviting the State of Maine to develop a conservation plan for the species. Following the publication of that proposed rule (60 FR 50530), the Governor of Maine issued an Executive Order on October 20, 1995, establishing the Task Force and charged it with preparation of a conservation plan for the protection and recovery of Atlantic salmon populations in the seven rivers. The Task Force included scientists, academics, State employees, Native American sustenance fishers, conservationists and private citizens. The Task Force was organized into the following six working groups: genetics, aquaculture, agriculture, forestry, recreational fisheries, and the four rivers group to address four rivers (Kennebec River, Penobscot River, St. Croix River and Tunk Stream) containing Atlantic salmon populations which had been identified by the Services in the proposed rule (60 FR 50530) as candidates for listing.

The stated intent of the Conservation Plan is to minimize human impacts on the Atlantic salmon and to restore the species with the involvement of the citizens who know and use the resources in the watersheds. The introduction to the Conservation Plan states that this collaborative approach to protection and rehabilitation of Atlantic salmon is vital to maintaining the commitment of Maine citizens to the conservation of the species.

The Conservation Plan identifies the following factors that affect juvenile, adult, and migratory smolt survival in rivers and streams: Stream hydrology, seasonal water temperatures, pH, dissolved oxygen, streambed characteristics, food availability, competition, predation, pollution, recreational angling, and illegal harvest. Factors influencing survival of salmon at sea include water temperature, food availability, competition, predation, and commercial fisheries. The Conservation Plan includes ongoing and proposed actions to reduce potential threats to Atlantic salmon and its habitat. These actions are discussed below.

1. Agriculture: The Conservation Plan identifies a wide range of agricultural activities that take place in the seven river watersheds including dairy, hay, silage corn, horse, sheep, beef cattle, and Christmas tree operations; production of vegetables, blueberries, and cranberries; landscape and horticultural operations; and peat mining. Wild blueberry culture is the primary form of agriculture in the five Washington County watersheds (Narraguagus, Pleasant, Machias, East Machias and Dennys rivers). The only active peat mine is located in the Narraguagus River watershed. Livestock production is the predominant form of agriculture in the Sheepscot River watershed.

The Conservation Plan groups agricultural activities that could affect Atlantic salmon habitat into three groups: Water use (including irrigation and use and disposal of process water), agricultural practices (non-point source pollution caused by crop production), and peat mining. The Conservation Plan identifies ongoing actions to address these potential threats: integrated crop management and best management practices for blueberry and cranberry production; a Coastal Zone Management program to protect water quality; a State pesticide management plan for protection of ground water; a State hexazinone management plan for protection of ground water; and soil and water conservation district programs offering technical support to farmers utilizing best management practices to reduce non-point source pollution.

The Conservation Plan proposes additional actions for enhanced protection: development and implementation of total water use management plans for each watershed; development of a watershed specific non-point source pollution control program for the Sheepscot River; targeted integrated crop management programs and promotion of best management practices to further reduce potential threats from pesticide use and non-point source pollution; identification of wetlands with functions important for maintaining the integrity of Atlantic salmon habitat; enhancement of the Board of Pesticide Control programs that evaluate and mitigate the threats to Atlantic salmon associated with pesticide use; improvement of the permit review process and standards for erosion control for peat mines; and evaluation of the threat to Atlantic salmon from water quality changes associated with peat mining. The Conservation Plan concludes that these new actions, implemented through cooperative efforts of watershed steering committees, in conjunction with existing programs, laws, and regulations, will protect Atlantic salmon habitat quantity and quality.

Interest in expansion of the cranberry industry in Maine increased during the development of the Conservation Plan, and all parties involved in the review of these proposals are working cooperatively, in compliance with the Conservation Plan, to examine these proposals for their potential effect on Atlantic salmon. The Services expect that new activities which could potentially impact Atlantic salmon will be proposed. These activities will be addressed using the collaborative and cooperative approach endorsed in the Conservation Plan. In monitoring the success of the Conservation Plan, the Services will assess how effectively new issues are being addressed.

2. Aquaculture: The Conservation Plan states that potential threats to salmon from aquaculture include: disease and parasite transmission from farmed fish to wild fish; reduction of survival fitness as a result of escaped farmed fish interbreeding with wild fish; disruption of the incubation of wild salmon eggs by redd superimposition (redd formation by an escaped farmed fish on top of a redd constructed by a wild fish); or competition for food and space in river habitats from escaped juvenile farmed fish. The Conservation Plan further noted that potential threats from poor husbandry practices in freshwater fish culture operations could affect wild salmon in the Sheepscot, Pleasant and East Machias rivers. Current actions addressing these potential threats identified in the Conservation Plan include: State, Federal and New England fish health inspection protocols; vaccination of farmed fish prior to stocking in sea cages; enforcement of private insurance standards; harvesting of farmed salmon (with the exception of commercial broodstock) prior to the onset of maturation; escape control measures including careful site selection, regular equipment maintenance and storm preparation procedures; minimization of seal-induced escapement through the use of predator nets and acoustic and visual deterrent devices; and minimization of farmed juvenile salmon escapes through screening of water intakes and discharges of freshwater culture facilities.

Additional proposed measures to enhance protection include: Development of an emergency disease eradication program; expansion of the ongoing epidemiological monitoring program; creation of a fish health code of practices and a code of containment (for culture in freshwater and sea cage sites); participation in a river-specific rearing program; construction and operation of weirs to aid in research and management and to cull aquaculture escapees; development of a marking system for farmed fish to assist in distinguishing them from wild fish at

the weirs; and research into seal behavior around cages.

The construction of weirs will allow the collection of data on returning adults, collection of broodstock, and exclusion of aquaculture escapees. The FWS has secured funding for the construction of three weirs on the Dennys, Machias and East Machias rivers, and currently the design of those weirs is being finalized. The weirs will be constructed with state-of-the-art technology and will operate continuously and effectively without compromising the ability of wild, river-specific Atlantic salmon to migrate upriver or out to sea.

3. Forestry: Forestry is the dominant land use in five of the seven watersheds. Forestry-related actions proposed in the Conservation Plan are designed to build upon present regulations and initiatives, and, therefore, provide incremental improvements to existing Atlantic salmon protection. These actions will help to reduce non-point source pollution, alteration of stream temperatures and hydrology, direct disturbance of salmon habitat, blockage of fish passage with poorly designed road crossings, and deposition of woody debris in streams.

The Conservation Plan identifies current efforts to address potential threats to Atlantic salmon and their habitat from forestry activities: Project SHARE, a private non-profit organization dedicated to conserving and enhancing Atlantic salmon habitat; Sustainable Forestry Initiative, a forestry industry effort to promote a wide range of values in forest management decisions; riparian management zones; Champion International's self-imposed, restrictive management standards for timber operations near streams and rivers; Maine's non-point source pollution control program; code enforcement training and local shoreland zoning technical assistance; and the Sheepscot Valley Conservation Organization and the Ducktrap River Coalition.

The Conservation Plan also identifies proposed actions to enhance protection which include: control of non-point source pollution by increased coordination among State agencies, municipalities, industry and local volunteers to increase compliance with prescribed best management practices through education and enforcement; protection of important habitat through conservation agreements; education of logging contractors and resource managers to raise awareness about the importance of maintaining riparian shade trees; increasing State enforcement of regulations and monitoring of harvesting activities near streams; the Maine Department of Environmental Protection (DEP), the Board of Pesticide Control and the ASA will review the geographic usage of pesticides in the seven watersheds and the DEP will target areas for in-stream assessment; the Board of Pesticide Control will work cooperatively with the Cooperative Extension Service and the Department of Agriculture Food and Rural Resources to update pesticide best management practices based on the latest research and to promote these practices in the seven river watersheds; and the Board of Pesticide Control will adjust State pesticide regulations to eliminate any threats to Atlantic salmon.

4. Recreational Fishing: The Conservation Plan states that until recently the greatest threat to Atlantic salmon was legal harvest through directed fishing but that currently only catch and release fishing is allowed. It states that mortality can occur from a directed catch and release fishery but cites new data from several reports that suggest a carefully designed and regulated catch and release fishery will have little impact on the species. The Conservation Plan states that poaching is a continuing problem. In addition, the Conservation Plan states that the number of Atlantic salmon killed each year as a result of recreational fishing for other freshwater and estuarine species is estimated to be very small. The Plan proposes additional steps to further minimize, if not eliminate, the risk of an accidental bycatch. To address these threats, no direct harvest of Atlantic salmon will be permitted and recreational fishing regulations will be enforced.

The ASA adopted new angling regulations, which became effective on June 30, 1997, in an effort to reduce the potential mortality of Atlantic salmon that are caught and released during periods of high water temperature. The Maine Department of Inland Fisheries and Wildlife also promulgated regulations to close specific areas of rivers from fishing for all species to protect Atlantic salmon. The Maine Department of Inland Fisheries and Wildlife and the Maine Department of Marine Resources have filled two new warden positions devoted to Atlantic salmon on the seven rivers. They will provide a law enforcement presence on the rivers and collect valuable information about habitat and angling trends which will be reported weekly. The Maine Land Use Regulation Commission is pursuing enforcement (fines and reparation) of two separate violations related to clearing vegetation in riparian areas along the Narraguagus River.

The Conservation Plan proposes additional protective actions, some of which have been implemented. These include: modifying the catch and release program for Atlantic salmon to further restrict dates, location and gear allowed; instituting a reporting and monitoring program to better estimate any incidental take; restricting anglers to the use of artificial lures only; requiring a minimum length for all trout of 8 inches in the mainstem and major tributaries of all 7 rivers; requiring a maximum length for brown trout (*Salmo trutta*) and landlocked salmon of 25 inches within the Sheepscot River and estuary; requiring a maximum length of 25 inches for landlocked salmon within all Washington County waters, except West and Grand lakes; eliminating size and bag restrictions on black bass (*Micropterus* sp.), a predator of juvenile Atlantic salmon, on the Dennys River and Cathance Stream; when justified, closing cold water adult Atlantic salmon holding areas to all fishing; and finally, increasing penalties for poaching.

5. Other Natural and Human Related Threats: The Conservation Plan identifies additional actions that could affect Atlantic salmon: Commercial harvest of suckers (*Castostomus commersoni*), eels, elvers (young eels), and alewives (*Alosa pseudoharengus*); interbreeding among wild Atlantic salmon, landlocked salmon, brown trout, and salmon which have escaped from inland hatcheries; predation on juveniles by splake (lake trout (*Salvelinus fontanilis*) x brook trout (*S. namaycush*)) and brown trout; predation by cormorants on migrating smolts; predation by seals on returning adults; beaver dam blockage of migration routes and flooding salmon habitat; residential development and gravel mining operations; and possibly restricted passage at the Cooper's Mills Dam on the Sheepscot River.

Current actions addressing these potential threats were identified as follows: Monitoring of the bycatch of commercial fisheries; placement of a moratorium on new eel weirs; stricter regulation of elver fisheries; enforcement of commercial fishing regulations; breaching of beaver dams in the fall; expansion of the beaver trapping season; enforcement of municipal shoreland zoning restrictions; development of municipal comprehensive plans and institution of local ordinances designed to steer development away from sensitive resources and to manage the effects of gravel mining and development; implementation of a surface water

ambient toxic monitoring program by the DEP; evaluation of the Dennys River Superfund site; and toxic removal action at Smith Junk Yard.

Additional actions proposed for enhancing protection include: Placing exclusion panels on elver nets; instituting a moratorium on commercial sucker harvesting in freshwater on the seven rivers; monitoring other salmonid populations that could interbreed with Atlantic salmon; screening the outlet of Meddybemps Lake to prevent the drop down of landlocked salmon during the spawning season; screening the outflows of hatcheries to prevent escapement of small salmon and trout; evaluating the impact of splake, brown trout, cormorant and seal predation; identifying and rectifying fish passage problems at Cooper's Mills Dam; evaluating the Eastern Surplus Superfund site at Meddybemps Lake; and instituting a moratorium on the disposal of toxic materials at Smith Junk Yard.

The Conservation Plan concludes that the key to successfully providing for the needs of Atlantic salmon, other fisheries resources, agriculture, and forestry is watershed planning. The Conservation Plan uses specific watershed councils, which include all interested stakeholders (State and Federal agencies, conservation groups, industries, towns, landowners, etc.), to guide and oversee Atlantic salmon conservation activities related to land use and other activities within each watershed. The Sheepscot River Watershed Council was organized in the spring of 1996 and immediately began addressing agricultural non-point source pollution within that watershed. The Ducktrap Coalition is addressing a variety of conservation issues within that watershed, and the Midcoast Atlantic Salmon Watershed Council was established to coordinate planning on the Ducktrap and Sheepscot rivers. Two new local watershed councils have been formed on the Sheepscot and Pleasant rivers.

Project SHARE has coordinated conservation efforts on the five Downeast rivers since 1994. Local angler groups are present on all of the rivers and are very active in salmon conservation. Project SHARE continues to provide support for Atlantic salmon conservation and serves as a valuable forum for exchanging ideas and resolving conservation issues. Specific examples of work Project SHARE has undertaken include: A temperature monitoring study on five rivers; the design of a prototype trap to improve collection at the Dennys River weir; repair of the fish ladder, gate, and screen at Meddybemps Lake; upgrading the Pleasant River Hatchery and Education Center; and training of land managers and foresters on salmon biology and management. Champion International, a significant landowner in five of the seven watersheds, has instituted riparian management standards that exceed the regulatory standards enforced by the State. The U.S. Environmental Protection Agency (EPA) is currently completing preliminary assessment work on the Eastern Surplus Superfund site at Meddybemps Lake, and the DEP is investigating the nearby Smith Junk Yard site for contaminants migrating into the Dennys River.

6. Monitoring and Implementation: The Conservation Plan is complex and will require the commitment from and cooperation of numerous State, private and Federal entities to succeed. The Services intend to conduct thorough monitoring of plan implementation. This oversight will be accomplished through membership in various groups and by inspecting projects, attending ASA and Project SHARE meetings, and remaining in contact with Maine officials. Beginning in 1998, the FWS will have additional staff to accomplish these tasks. The Services also anticipate relying on the expertise of the Technical Advisory Committee (TAC) of the ASA to continue to assess the salmon's status and needs.

The Conservation Plan recognizes that the continued rehabilitation of Atlantic salmon in the seven rivers will depend on partnerships between State and Federal agencies and private sector groups. The Council is responsible for the implementation and monitoring of the Conservation Plan and will supervise the Conservation Plan Coordinator, in consultation with the ASA. Because its members include the Commissioners from all the natural resource and development related agencies in Maine, the Council can affect State-wide policy and direct State agency actions. An Atlantic Salmon Committee has been formed under the Council, and the Chair of the ASA is as a full voting member of that Committee.

During the Services' second reopened comment period, the State of Maine submitted a report which provided an update on progress in implementation of the Conservation Plan. The Maine State Legislature approved and funded a Conservation Plan Coordinator at the State Planning Office and an Atlantic salmon biologist at the ASA. State agencies have been advised of their responsibilities under the Conservation Plan and are planning for the implementation of their respective responsibilities. The Conservation Plan contains a 5-year monitoring and implementation schedule that will allow the Conservation Plan Coordinator to assess progress toward achievement of goals. The Council, with the assistance of the Conservation Plan Coordinator, will provide annual reports of Conservation Plan activities and results from each watershed. Information for that report will be solicited from the ASA, State agencies, private organizations and watershed councils. Monitoring reports will be organized under the following four headings: habitat protection, habitat enhancement, species protection, and fishery management. The Services will make these reports available for public review and comment.

Finding and Withdrawal

Section 4(b)(1)(a) of the Act provides that the Secretaries of Interior and Commerce shall make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account those efforts being made by any State or foreign nation to protect such species. The Services have considered the current status of the seven rivers DPS of Atlantic salmon and have taken into account the efforts being made to protect the species including development of the Conservation Plan, the extent of implementation of the Conservation Plan to date, private and Federal efforts to restore the species, and international efforts to control ocean harvest through NASCO. The Services believe that ongoing actions, including those identified in the Conservation Plan, have substantially reduced threats to the species and that these ongoing actions, together with additional planned actions, will facilitate the continued rehabilitation of the seven rivers DPS. Consequently, the Services find that the seven rivers DPS of Atlantic salmon is not likely to become endangered in the foreseeable future and that, therefore, listing is not warranted at this time.

In addition, because the possibility exists that other populations of Atlantic salmon could be added to the seven rivers DPS in the future, and for purposes of future conservation activities, the Services are renaming the seven rivers DPS the Gulf of Maine DPS. Other populations of Atlantic salmon will be added to the Gulf of Maine DPS if they are found to be naturally reproducing and to have historical, river-specific characteristics. The area within which populations of Atlantic salmon meeting the criteria for inclusion in the DPS are most likely to

be found is from the Kennebec River north to, but not including, the St. Croix River. The Services believe that the populations in Togus Stream, a tributary to the Kennebec River, and Cove Brook, a tributary to the Penobscot River, may warrant inclusion in the Gulf of Maine DPS. Further investigation of these and other extant river populations from the Kennebec River north to, but not including, the St. Croix River will continue in order to determine if they meet the criteria for inclusion in the DPS.

The Conservation Plan was developed for the seven rivers DPS of Atlantic salmon originally proposed for listing by the Services. The Services will work with the State to determine the status of any other populations of Atlantic salmon which may be added to the DPS in the future and whether the Conservation Plan should be modified to address any threats faced by any added populations.

The Conservation Plan calls for annual reporting of plan implementation on a river-by-river basis. In order to inform interested citizens and to give them an opportunity for comment, the Services will make the annual reports available for review upon request and solicit comments through a notice in the **Federal Register** and news releases.

The Conservation Plan identifies numerous ongoing and planned actions for the protection and rehabilitation of the seven rivers DPS of Atlantic salmon. Modifications to the recreational fishery including the addition of wardens, shortened seasons and gear restrictions are already being implemented. The Services are seeking additional refinements to the catch and release program to further remove the likelihood of mortality including closure of some of the rivers when biological conditions warrant closure. The Services have received a commitment by the State that such modifications will be in place prior to the 1998 angling season. Efforts to minimize impacts from aquaculture include institution of the most stringent fish health regulations in the country, weir construction on several rivers, development of a code of practices, and continued research on marking and triploidy. The Services will continue to monitor the development of a code of practice for the aquaculture industry and its subsequent implementation and assessment. The United States remains active in the international forum for Atlantic salmon management, NASCO, and the parties have endorsed scientific establishments of quotas to protect U.S. fish during their migration. Numerous other tasks dealing with agriculture, forestry, recreational fishing for other species, outreach and education, were discussed in the "Factors Affecting the Species" and the "Efforts to Protect Maine Atlantic Salmon" sections of this notice. The development of river specific stocks, ongoing habitat assessment work, establishment of watershed councils, juvenile survival studies, and conversion of Craig Brook Hatchery further support the Services' finding that listing is not justified at this time.

Endangered Species Act Oversight

The process for listing Maine Atlantic salmon under the Act will be reinitiated if:

1. An emergency which poses a significant risk to the well-being of the Gulf of Maine DPS is identified and not immediately and adequately addressed;
2. The biological status of the Gulf of Maine DPS is such that the DPS is in danger of extinction throughout all or a significant portion of its range, or;
3. The biological status of the Gulf of Maine DPS is such that the DPS is likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

The circumstances described under 1, 2, and 3 above could be a result of: insufficient progress in implementation of the Conservation Plan; a failure to modify the Conservation Plan to address a new threat(s) or an increase in the severity of a threat(s); a failure to modify the Conservation Plan, if necessary, to address a threat(s) facing any other populations added to the Gulf of Maine DPS in the future; or the inability of the State of Maine to address a threat(s). A decision to reinitiate the listing process generally would be made shortly after the end of an annual reporting period; however, under circumstances involving an emergency threat, the decision would be made immediately following a determination by the Services that the emergency threat is not being adequately addressed. Appropriate notice will be provided to State officials should the Services decide to reinitiate the listing process.

References/Administrative Record

The complete citations for the references used in the preparation of this document can be obtained by contacting Mary Colligan or Paul Nickerson (see **ADDRESSES** section). Persons wishing to review the Administrative Record relating to this action may contact either individual to set up an appointment.

Authors: The primary authors of this notice are Mary Colligan and Paul Nickerson (see **ADDRESSES** section).

Authority: The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: December 12, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

Dated: December 12, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–33042 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 62, No. 243
Thursday, December 18, 1997

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

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on January 8 and 9, 1998 at the Best Western Hilltop Inn California Room 2300 Hilltop Drive, Redding, California. On January 8, the meeting will begin at 9:00 a.m. and adjourn at 5:00 p.m. The meeting on January 9 will resume at 8:00 a.m. and adjourn at 2:00 p.m. Agenda items to be covered include: (1) ecological and soci-economic considerations associated with the Northwest Forest Plan (green tree retention vs. thinning); (2) Tribal panel presentation on impacts from the Northwest Forest Plan; (3) subcommittee reports; and (4) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 530–842–6131, (FTS) 700–467–1309.

Dated: December 9, 1997

Jan Ford,

Acting Forest Supervisor.

[FR Doc. 97–33002 Filed 12–17–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Bexar-Medina-Atascosa Counties Water Conservation Plan and Environmental Impact Statement, Bexar, Medina, Atascosa Counties, Texas

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of record of decision.

SUMMARY: John P. Burt, State Conservationist, responsible Federal Officer for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Texas, is hereby providing notification that a Record of Decision to proceed with the Bexar-Medina-Atascosa Counties Water Conservation Plan is available. Single copies of this Record of Decision may be obtained from John P. Burt at the address shown below.

For further information contact John P. Burt, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501–7682, telephone 254–742–9800.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials)

Dated: December 8, 1997.

John P. Burt,

State Conservationist.

[FR Doc. 97–33082 Filed 12–17–97; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:30 p.m. on Thursday, January 22, 1998, at the Little Rock Hilton, 925 South University, Little Rock, Arkansas 72204. The purpose of the meeting is to provide orientation for new members, brief the Committee on Commission activities, and plan future Committee activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, December 10, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–33001 Filed 12–17–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Secretarial Business Development Mission to Turkey

SUMMARY: Secretary of Commerce William M. Daley will lead a business development mission to Turkey, one of Eurasia's most significant emerging markets, to promote expanded trade opportunities, advocate for U.S. business interests, advance significant commercial policy objectives, and support the inaugural meeting of the U.S.-Turkey Business Development Council.

This mission to one of the most rapidly growing Big Emerging Markets will advance the Secretary's priorities on behalf of American firms and workers, including: (1) Ensuring participation by U.S. firms in major Turkish projects; (2) reducing/eliminating non-tariff barriers to U.S. exports and investments; (3) securing compliance with trade agreements, especially those related to international arbitration; (4) advocating for acceptable terms for U.S. energy investment projects; and (5) strengthening Turkish government officials and business executives' favorable impression of U.S. technology, business practices and companies.

The Secretary's mission will focus on the energy sector, with particular

emphasis on power equipment and services and will include U.S. companies whose interests range from assessing opportunities in the Turkish market to expanding existing business relationships. The mission will begin in Ankara, the capital of Turkey, for meetings with Government officials, Turkish business representatives and U.S. companies currently active in Turkey. It will continue on to Istanbul. A key focus of the mission will be to explore ways U.S. firms may put their technologies and know-how to work in helping Turkey to execute pending power development projects, which will total billions of dollars. The mission also will seek to capitalize on opportunities in other sectors for mutually-beneficial trade and investment.

DATES: January 19–21, 1998.

ADDRESSES: (none).

FOR FURTHER INFORMATION CONTACT: Applications may be submitted any time after December 15th to Cheryl Bruner, Director of the Office of Business Liaison, or Eric Schwerin at (202) 482–1360, fax (202) 482–4054. All applications must be received by January 7, 1998. Applications received after January 7th will be considered on a space available basis.

SUPPLEMENTARY INFORMATION:

The Mission itinerary will be as follows:

January 18 (Sunday)—Mission arrival and orientation
January 19 (Monday)—Ankara
January 20 (Tuesday)—Ankara with departure for Istanbul
January 21 (Wednesday)—Istanbul—Mission concludes Wednesday evening

Overall Commercial Setting

Turkey, with its geographic relationship to Europe, the Middle East and the southern tier of the Newly Independent States, is a natural Big Emerging Market for U.S. business. Over the past decade, Turkey had the highest average GNP growth rate of any OECD country. Its large population, growing private sector, extensive infrastructure and building requirements, and a government commitment to liberalize the economy are expected to propel continued economic expansion into the 21st century.

Increased industrial and urban growth has created an overburdened physical infrastructure, and the continuing stress of rapid urbanization has generated a massive investment requirement to improve living conditions. Increasingly, the Turkish government has encouraged the local private sector and international investors to construct and operate urgently needed energy, transportation, and environmental infrastructure.

Privatization plans present significant opportunities for U.S. firms. Successive Turkish governments have recognized that privatization generates financial resources, reduces fiscal drain, and improves economic efficiency. Electricity generation, transportation and petroleum refining and distribution are among the sectors offering such opportunities.

Energy, Power Equipment and Services Commercial Setting

Recent legislative changes and the formation of a new centrist government may be opening the way for rapid private power development. This situation has led to the following developments which should create a strong equipment and services market in Turkey:

- The Turkish national power company held a tender for five new power plants with 5200 MW of capacity on a Build-Operate basis, at an estimated cost of $3.75 billion.
- The Turkish power company has tendered the Transfer of Operating Rights (TOR) for eight plants and announced the winning bidders on October 17. Renovation investments in these plants could amount to several hundred million dollars.
- The Turkish distribution monopoly has issued a TOR for 25 local distribution systems, with awards expected shortly.
- Turkish energy officials have informed energy companies that they will tender seven additional new plants in 1998.

These opportunities exist alongside important tender, contract and financing issues which often stand in the way of project realization. It is hoped that the Secretary's mission can assist in the resolution of such problems.

Goals for the Mission

Reaffirm U.S. Government commitment and support for Turkey's program of privatization of state enterprises and heighten U.S. private sector participation in Turkey's economic growth.

Increase sales of U.S. energy products and services to Turkey, particularly in the power equipment and services sector, by exposing representatives of qualified U.S. companies in the power equipment and services sector to currently expanding opportunities brought about by the construction of large new power plants, privatization of existing plants and distribution networks, and renovation and modernization of inefficient and environmentally-damaging plants. Increase sales of other U.S. products and services to Turkey.

Seek resolution of outstanding bilateral commercial issues and advocate U.S. interests regarding specific problems and opportunities in certain key areas: (1) Power generation and energy; (2) economic reforms; and (3) compliance with trade agreements, especially those related to international arbitration.

Scenario for the Mission

The Secretary's business development mission will visit the capital of Turkey, Ankara, and conclude in Istanbul. This mission will promote Turkey as a key emerging market that warrants the attention of a wide range of U.S. firms, from ready to export small or medium sized firms to large firms exploring new business opportunities.

Mission recruitment of 8 to 10 enterprises will focus on the energy, power equipment and services sectors. Mission recruitment will also draw on commercial opportunities for goods and services resulting from the privatization plans of the Turkish government and from other opportunities for U.S. firms in Turkey.

In his meetings with officials of the Government of Turkey, the Secretary will work to move our commercial dialogue forward, identifying issues that still impede U.S. companies' ability to do business in Turkey and encouraging steps to remove the obstacles. The timing of the trip to coincide with the inaugural meeting of the U.S.-Turkey Business Development Council will provide an exceptional venue for advancing cooperation between the U.S. and Turkish private sectors.

The program for the mission will include:

Embassy/consulate briefings on the commercial/economic environment
Meetings with Turkish Government Officials
Meetings with Turkish enterprises and trade associations
Meetings with American business executives based in Turkey

Company Participation Will Be Determined on the Basis of

Status as U.S.-owned or U.S.-based company with capacity to deliver relevant equipment or services to Turkey. The goods or services provided must either be produced in the United States or, if not, must be marketed in the name of a U.S. firm and have at least 51% U.S. content in the value of the finished product or service. The

company must not be owned or controlled, indirectly or directly by a foreign government.

Consistency of the company's goals with the scope and desired outcome of the mission as described herein.

Past, present and prospective business in Turkey.

Diversity of company size, type, location, demographics, and traditional under-representation in business.

An applicant's partisan political activities (including political contributions) are irrelevant to the selection process.

Other Trip Objectives and Events

In addition to the mission scenario described above, Secretary Daley will also support the inaugural meeting in Ankara of the U.S.-Turkey Business Development Council in order to establish an improved bilateral business and government cooperation for expanding commercial, trade and investment relations. The Secretary will seek to accomplish several commercial policy objectives in bilateral government to government meetings with Turkish officials in Ankara and with the press and private sector in Istanbul. Our bilateral policy agenda includes addressing IPR issues, investment barriers to U.S. companies, insuring compliance with international arbitration agreements, regulatory issues related to the privatization of telecommunications companies, Caspian pipeline construction and supply issues, and investment policies related to "Build-Operate" and "Build, Operate Transfer."

Dated: December 12, 1997.

Catherine Vial,

Acting Director, Energy Division/OEIM/BI/TD.

[FR Doc. 97–32966 Filed 12–17–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Opportunity to Apply to Serve on the Board

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Opportunity to Apply to Serve on the Board of the United States-India Commercial Alliance.

SUMMARY: The Department of Commerce is currently seeking applications for three individuals to serve on the U.S. section of the Board of the United States-India Commercial Alliance (USICA). On January 16, 1995, Ronald H. Brown, U.S. Secretary of Commerce, and Pranab Mukherjee, India's Minister of Commerce, signed terms of reference creating USICA. On October 17, 1996, Michael Kantor, U.S. Secretary of Commerce, and B.B. Ramaiah, India's Minister of Commerce, signed an agreement extending USICA for two years, until January 15, 1999. The purpose of USICA is to facilitate the further development of commercial relations, trade, and investment between U.S. and Indian private sector businesses. USICA is administered and its activities are coordinated by a Board composed of an equal number of private sector representatives from the United States and India. U.S. and Indian Board members are selected by the U.S. Secretary of Commerce and Indian Minister of Commerce, respectively. The work of the USICA, which includes trade missions, conferences, and roundtables bringing together business persons from the United States and India, currently is focused on four economic sectors: information technology, transportation and infrastructure, food processing and packaging ("agribusiness"), and power. Individual Board members generally concentrate their efforts on one of these sectors.

Further Information: Private sector representatives will be appointed to the Board for a two year term, or until January 15, 1999, if USICA is not extended beyond its current expiration date. Applications are now being sought for private sector members to serve for a term beginning February 9, 1998. Private sector members will serve at the discretion of the Secretary. They are expected to participate fully in defining the agenda for USICA and in implementing its work program. It is expected that private sector individuals chosen for the USICA Board will attend at least 75% of USICA meetings which will be held in the U.S. and India.

Private sector Board members are fully responsible for travel, living and personal expenses associated with their participation in USICA. The private sector Board members will serve in a representative capacity presenting the views and interests of the particular business sector in which they operate; private sector Board members are not special government employees.

USICA works on issues of common interest to encourage bilateral trade and investment, including, but not limited to, the following:

—Implementing trade/business development and promotion programs including trade missions, conferences, exhibits, seminars and other events, and

—Adopting sectoral or project oriented approaches to expand business opportunities and discussing concerns relating to expanding commercial opportunities

Selection: There are ten positions on the U.S. side of the USICA Board, of which three are currently vacant. This notice is seeking applications for those three positions.

Eligibility requirements. Applicants must be:

- A U.S. citizen residing in the United States or a permanent United States resident;
- A CEO or other top management level employee of a U.S. company or organization involved in commercial activities between the United States and India;
- A member of a leading business association; and
- Not a registered foreign agent under the Foreign Agents Registration Act of 1938 (FARA).

In reviewing eligible applicants, the Commerce Department will consider:

- The applicant's expertise in one of the following business sectors in which USICA is active: transportation and infrastructure, and food processing and packaging (agribusiness);
- Readiness to initiate and be responsible for USICA activities in the business sectors in which USICA is active;
- Ability to contribute in light of overall Board composition (for example, to ensure balance in representation of industry sectors):
- Diversity of company size, type, location, demographics or additional under-representation in business.

To be considered for membership, please provide the following: name and title of the individual requesting consideration; name and address of the company or organization sponsoring each individual; company's product or service line; size of the company; export experience and major markets; a brief statement of why each candidate should be considered for membership on the USICA Board; the particular segment of the business community each candidate would represent; a personal resume; and a statement that the applicant is not a registered foreign agent under FARA.

Deadline: In order to receive full consideration, requests must be received no later than: January 20, 1998.

ADDRESSES: Please send your requests for consideration to Richard D. Harding, Director, Office of South Asia and Oceania, U.S. Department of Commerce, Room 2308, 14th St. and Constitution

Ave., N.W., Washington, D.C. 20230, fax (202) 482–5330.

FOR FURTHER INFORMATION CONTACT: Richard D. Harding, Director, Office of South Asia and Oceania, U.S. Department of Commerce, Room 2308, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, telephone (202) 482–2955, fax (202) 482–5330.

Authority: 15 U.S.C. 1512.

Dated: December 12, 1997.

Peter Hale,

Acting Deputy Assistant Secretary for Asia and the Pacific.

[FR Doc. 97–33053 Filed 12–17–97; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120897A]

Endangered and Threatened Species; Revision of Species on Candidate Species List Under the Endangered Species Act

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

ACTION: Notice of modification to list of candidate species.

SUMMARY: NMFS revises its candidate species list in regard to Atlantic salmon (*Salmo salar*).

ADDRESSES: Comments and reliable documentation concerning this revision should be sent to the Chief of Endangered Species, NMFS, Office of Protected Resources, 1315 East-West Highway, F/PR3, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Nancy Chu or Terri Jordan at (301) 713–1401.

SUPPLEMENTARY INFORMATION: In a notice published today, NMFS and the U.S. Fish and Wildlife Service (FWS) renamed the Seven Rivers Distinct Population Segment (DPS) of Atlantic Salmon the Gulf of Maine DPS in order to allow future inclusion in the DPS those extant populations from the Kennebec River north to, but not including, the St. Croix River. NMFS believes that the populations previously identified in Togus Stream, a tributary to the Kennebec River, and Cove Brook, a tributary to the Penobscot River, and other extant river populations warrant further investigation and may warrant future inclusion in the Gulf of Maine DPS.

NMFS previously identified populations of Atlantic Salmon in the Kennebec River, Penobscot River, Tunk Stream, and St. Croix River as candidate species and included them in the July 14, 1997, candidate notice of review (62 FR 37560). With this notice, NMFS revises its List of Candidate Species to include the Gulf of Maine DPS of Atlantic salmon, which includes some of the populations previously identified as candidate species. In addition, NMFS notes that the proposed rule to list the Seven Rivers DPS as threatened under the ESA (60 FR 50530) was withdrawn in a notice published today.

Dated: December 15, 1997.

Hilda Diaz-Soltero,

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

TABLE 1.—Revised List of Candidate Species

Common name	Scientific name	Family	Area of concern
Atlantic salmon*.	Salmo salar.	Salmonidae.	Gulf of Maine DPS.

*This is a revision of the listing for "Atlantic Salmon" found in the table at 62 FR 37562, July 14, 1997.

[FR Doc. 97–33043 Filed 12–17–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120497A]

Marine Mammals; Scientific Research Permit No. 1016 (P167H)

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

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 1016 submitted by Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, CA 92109, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (562/980–4001).

SUPPLEMENTARY INFORMATION: On October 28, 1997, notice was published in the **Federal Register** (62 FR 55787) that an amendment of permit no. 1016, issued October 16, 1996 (61 FR 53901) had been requested by the above-name organization. The requested amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permittee currently has authorization to harass several species of stranded rehabilitated and permanently captive pinnipeds and small cetaceans in order to measure their interaction with fishing gear and to determine the effect of introducing an auditory stimulus (i.e., pinger) on responses. The research is authorized to be conducted over a five year period. The permit has been amended to authorize: the addition of 2 pinger trials and 2 net trials with 14 of the 18 California sea lions (*Zalophus californianus*) currently authorized to be involved in motivational state trials; and an increase in the number of California sea lions to be used in the naive trials from 30 to 40.

Dated: December 12, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–33075 Filed 12–17–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Soliciting Applications for Membership on Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Patent and Trademark Office is seeking five members for the Public Advisory Committee for Trademark Affairs. Member terms would begin on January 1, 1998. A member must be an organization that is representative of the intellectual property community, e.g., a bar group, a business organization or an academic institution. Organizations interested in membership should send a letter expressing that interest and containing the information set out in the

Supplementary information to the Patent and Trademark Office.

DATES: Submit applications on or before January 8, 1998.

ADDRESSES: Mail letters of request to participate in the Public Advisory Committee for Trademark Affairs to The Honorable Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, United States Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: David E. Bucher, Deputy Assistant Commissioner for Trademark Policy and Projects, at (703) 308–9100, ext. 20.

SUPPLEMENTARY INFORMATION: This Committee is chartered under the Federal Advisory Committee Act (Pub. L. 92–463). Its purpose has been, and continues to be, that of advising the Patent and Trademark Office (Office) on ways to increase the Office's efficiency and effectiveness and to provide a continuing flow of insights and perceptions from the private sector to the Office in the area of international and domestic trademark law.

The Office amended the charter of the Committee in 1996 to make the Committee more diverse and more representative of trademark owners, trademark practitioners and the Intellectual Property community as a whole. Accordingly, the Commissioner will select five representative organizations from among intellectual property organizations, bar groups, business-related organizations and academia. The five organizations whose members' terms will expire on December 31, 1997, are not precluded from responding to this notice. However, no member may serve more than two consecutive terms.

Each organization's letter to the Commissioner should explain the nature, size and characteristics of the organization and why this particular group is deserving of membership on this committee.

Selection of the organizations will be based on the following criteria: (1) members' familiarity with the operations of the Patent and Trademark Office relating to trademarks and trademark rules, trademark practices, and the administration of the trademark operations; (2) members' experience practicing before the Patent and Trademark Office in trademark matters; and (3) an indication of the organization's interest in trademark practices by programs such as established committees designed to improve trademark operations, or legal education activities regarding trademark practices.

Dated: December 12, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 97–33059 Filed 12–17–97; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for AmeriCorps*VISTA America Reads Projects—Nationwide

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter "the Corporation") announces the availability of funds for fiscal year 1998 for new AmeriCorps*VISTA (Volunteers in Service to America) program grants focusing on the America Reads initiative in all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. The program grants are authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). Project applications will be written to cover a 24-month period although grants will be awarded for a 12-month period with a renewal option. As part of this effort, the Corporation is soliciting applicants which are public or private non-profit organizations, including current AmeriCorps*VISTA project sponsors. Approximately 35–40 grants are expected to be awarded in April 1998 with AmeriCorps*VISTA members beginning service prior to the start of the 1998–99 school year.

DATES: Applications must be received by 5:00 p.m., Eastern Standard Time, January 28, 1998.

ADDRESSES: Application instructions and kits are available from AmeriCorps*VISTA, Corporation for National and Community Service, 1201 New York Ave., NW, Washington, DC 20525, (202) 606–5000, ext. 249, TDD (202) 565–2799, or TTY via the Federal Information Relay Service at (800) 877–8339. Applications should be submitted to the Corporation for National and Community Service, 1201 New York Avenue, NW, Mailstop 9207, Washington, DC 20525, Attn: Kathleen Dennis. The Corporation will not accept applications that are submitted via facsimile or e-mail transmission.

FOR FURTHER INFORMATION CONTACT: For further information, contact Kathleen Dennis at (202) 606–5000, Ext. 249.

SUPPLEMENTARY INFORMATION:

A. Background

AmeriCorps*VISTA is authorized under the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory mandate of AmeriCorps*VISTA is "to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups . . . (to) assist in the solution of (such) problems, and . . . to generate the commitment of private sector resources, to encourage volunteer service at the local level, and to strengthen local agencies and organizations to carry out the purpose (of the program)." (42 U.S.C. 4951)

AmeriCorps*VISTA carries out its legislative mandate by assigning individuals 18 years and older, on a full-time, year-long basis, to public and private non-profit organizations whose goals are in accord with AmeriCorps*VISTA's legislative mission. Each AmeriCorps*VISTA project must focus on the mobilization of community resources, the transference of skills to community residents, and the expansion of the capacity of community-based organizations to solve local problems. Programming should encourage permanent, long-term solutions to problems confronting low-income communities rather than short-term approaches for handling emergency needs.

AmeriCorps*VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success as well as to make the activities undertaken by AmeriCorps*VISTA members self-sustaining when the Corporation no longer provides resources.

B. Purpose of This Announcement

The goal of the America Reads initiative is to mobilize Americans from all walks of life to ensure that all children can read well and independently by the end of third grade. The America Reads initiative is a comprehensive, nationwide effort to create in-school, after-school, weekend, and summer tutoring programs in reading. Working to support the efforts of teachers and parents, this initiative calls on Americans in all fields—schools, libraries, religious organizations, universities, community

and national groups, and cultural organizations, as well as college students, business leaders, and senior citizens—to ensure that every child can read independently by the end of third grade.

AmeriCorps*VISTA's participation in the America Reads initiative will focus primarily on:

1. Initiation and/or expansion of community-based children's literacy programs in areas with a substantial percentage of children from low-income families;

2. Support of after-school, weekend, and in-school reading programs for children being served;

3. Recruitment, training, coordination and management of local volunteer tutors;

4. Mobilization of resources needed to support literacy programs;

5. Involvement of parents in family literacy activities to prepare them to effectively serve as first teachers of their children;

6. Introduction of, and support for, age-appropriate computer technology in areas under served by such technology;

7. Promotion of literacy partnerships among schools, libraries, youth-serving groups, businesses, public and private agencies, and other community organizations; and,

8. Sustainability of activities and programs developed or expanded through AmeriCorps*VISTA's efforts.

C. Eligible Applicants

Eligible applicants for AmeriCorps*VISTA program grants supporting the America Reads initiative must be public or private non-profit organizations. Such entities may include: local, State, regional or national literacy organizations; local and State education agencies, educational institutions, libraries, state or local governments, tribal or territorial governments, or organizations representing tribal populations. Current AmeriCorps*VISTA sponsoring organizations may apply without affecting the status of their existing projects. Priority consideration will be given to: (1) Entities planning or operating city, county, statewide, or multi-state America Reads initiatives; (2) local governments planning or operating area-wide America Reads initiatives; (3) volunteer centers engaged in recruiting trained literacy tutors for the America Reads initiative; and, (4) university service-learning centers coordinating work-study and other college students for the Initiative.

D. Scope of Grant

Each grant budget will support 20 or more AmeriCorps*VISTA members on a full-time basis for one year of service. (Although the project application will reflect two years of activity, grants will be awarded on a twelve-month basis with a renewal option subject to need, satisfactory performance, and the availability of Corporation resources.)

The amount of each grant will include: a monthly subsistence allowance for AmeriCorps*VISTA members which is commensurate with the cost-of-living of the assignment area and covers the cost of food, housing, utilities, and incidental expenses; an end-of-service cash stipend payment, accrued at the rate of $100 per month, for those members not selecting the AmeriCorps education award; and, relocation expenses for those AmeriCorps*VISTA members who must relocate in order to serve. The grant will also include funds for member in-service training, member supervision, and member/supervisor job-related transportation.

The average Federal cost per AmeriCorps*VISTA service year contained in the grant, i.e., total Federal cost divided by total number of members, will range from approximately $11,000 to $13,000 in the continental United States depending upon the location of the assignment(s). (Higher rates apply in Alaska and Hawaii.) Specific budget guidance is available in the project application kit; average allowance costs contained in the instructions should be used to prepare the budget submission.

The following costs will be covered by the Corporation outside of the grant budget: an AmeriCorps education award in the amount of $4725 for AmeriCorps*VISTA members who complete their year of service, health support for all AmeriCorps*VISTA members; a child care allowance for eligible AmeriCorps*VISTA members; pre-service orientation; and, travel from home of record to training to assignment for all AmeriCorps*VISTA members as well as travel home at the end of service.

Grant applicants should demonstrate their commitment to matching the Federal contribution toward the operation of the AmeriCorps*VISTA America Reads program grant by offsetting all, or part of, the costs of member supervision, transportation, and training, as well as the basic costs of the literacy program itself (e.g. books, reading specialists, etc.). This support can be achieved through cash or in-kind contributions.

Publication of this announcement does not obligate the Corporation to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the AmeriCorps*VISTA program.

E. Submission Requirements

To be considered for funding applicants must submit five copies, with original signatures on items 2 and 3, of the following:

(1) A one-page narrative summary description, single-spaced, single-sided in 10–12 point, of the proposed AmeriCorps*VISTA America Reads project including the name, address, telephone number, and contact person for the applicant organization as shown on the SF 424. The summary should include the major objectives and expected outcomes of the project. The summary will be used as a project abstract to provide reviewers with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the proposal.

(2) Application for Federal Assistance, SF 424, with a detailed narrative budget justification.

(3) AmeriCorps*VISTA Project Application, Form 1421, Parts A and B. All project information must be contained in the space provided on the application form except where additional sheets may be submitted for the Project Work Plan and/or Member Assignment Description(s).

(4) Current resume of potential AmeriCorps*VISTA supervisor(s), if available, or resume of the director of the applicant organization.

(5) List of members of the Board of Directors including their professional affiliations and/or literacy-related activities.

(6) Organizational chart illustrating the location of the AmeriCorps*VISTA project within the overall applicant organization.

Applicants must also submit one copy of the following:

(1) Current Articles of Incorporation.

(2) Proof of non-profit status, or an application for non-profit status and related documentation.

(3) CPA certification of accounting capability.

No additional attachments, such as annual reports or brochures, are to be included. Such attachments will not be read or given to reviewers. All applications and related materials must be complete at the time of submission.

F. General Criteria for AmeriCorps*VISTA Program Grant Selection

The general criteria for AmeriCorps*VISTA America Reads program grants are consistent with those established for the selection of all AmeriCorps*VISTA sponsors and projects. All of the following elements must be incorporated in the applicant's submission:

The proposed project must:

1. Address the needs of low-income communities and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951 et seq.) applicable to AmeriCorps*VISTA and all applicable published regulations, guidelines, and Corporation policies.

2. Lead to building organizational and/or community capacity to continue the efforts of the project once AmeriCorps*VISTA resources are withdrawn. This will be demonstrated through measurable goals and objectives, and the stated tasks of AmeriCorps*VISTA members which should be attainable within the time frame of the project.

3. Be designed to generate public and/or private sector resources, and to promote local, part-time volunteer service at the community level.

4. Describe in measurable terms the anticipated self-sufficiency outcomes at the conclusion of the project, including outcomes related to the sustainability of the project activities.

5. Clearly state how AmeriCorps*VISTA members will be trained, supervised, and supported to ensure the achievement of program goals and objectives as stated in the project work plan.

6. Be internally consistent, i.e., the problem statement which demonstrates need, the project work plan, the AmeriCorps*VISTA member assignment description, and all other components must be related logically to each other.

7. Ensure that AmeriCorps*VISTA and community resources needed to achieve project goals and objectives are available.

8. Have the management and technical capability to implement the project successfully.

9. Describe how the number of AmeriCorps*VISTA members requested is appropriate for the project goals/objectives, and how the skills requested are appropriate for the assignment(s).

10. Describe how AmeriCorps*VISTA assignments are designed to utilize the full-time AmeriCorps*VISTA member's time to the maximum extent.

G. Specific Criteria for AmeriCorps*VISTA America Reads Project Selection

The following elements related to the purpose of the America Reads initiative must be incorporated in the applicant's submission:

1. Project applications must contain clear and measurable outcome objectives for a 24-month period that address the overall objectives of the America Reads initiative. Proposed projects must show how the activities of AmeriCorps*VISTA members contribute to specific outcomes related to reading/literacy achievements for children, birth-through third grade. Outcome objectives should also address expectations for community volunteers, schools and teachers, parents, and the community at-large. It is expected that outcome objectives will reflect the evolution of the project over the 24-month period.

2. Project activities must provide a direct benefit to children that is valued by the school and/or community-based organization. Activities include the involvement of volunteers from the community in working with individual children, supporting classroom activities, supporting families, and serving as catalysts/organizers of community-level reading initiatives. Activities proposed must be well-designed and able to be successfully implemented, including the use of qualified professionals such as reading specialists in the provision of on-going training and support for the project, and special efforts where appropriate to meet the needs of children whose first language is other than English.

3. Applicant organizations must describe the specific approach that will be used to improve children's reading abilities, and must demonstrate the reliability and effectiveness of this approach.

4. Projects must include activities and mechanisms that provide for the involvement of families, parents, or guardians.

5. Projects must have systems for the evaluation and monitoring of project activities. Applicants must describe the systems that will be used to track progress toward the stated objectives, and the management procedures that will provide the feedback needed to make adjustments and improve program quality. Projects must also be prepared to cooperate with the Corporation for National Service and its evaluation partners in all Corporation monitoring and evaluation efforts.

6. Applicants should indicate how the proposed project complements and/or enhances children's literacy activities already underway in, or planned for, the community(ies) which will be served by the project. To the extent possible, projects should seek out opportunities to collaborate with other Corporation programs, as well as with other community partners such as literacy groups, youth-serving organizations, senior citizen groups, PTAs, churches, libraries, institutions of higher education, private volunteer organizations, etc.

7. Letters of support must be provided from participating schools and other organizations which will be collaborating in the overall project effort. Letters should reflect knowledge and endorsement of the specific objectives of the project, as well as any commitment of resources to the project if applicable.

H. Application Review

The Corporation for National and Community Service is looking for high-quality programs that are innovative, have potential to be replicated in other areas, and can be sustained with other support when the project period ends.

Proposal Evaluation

To ensure fairness to all applicants, the Corporation reserves the right to take action, up to and including disqualification, in the event that a proposal fails to comply with any requirements specified in this Notice.

1. Project Application/Narrative (70% as described below):

The project application allows the Corporation to assess the capacity of the applicant organization to implement the project and accomplish the purpose of the America Reads initiative. The overall quality of the application will be evaluated as follows:

a. Responsiveness to General Criteria for AmeriCorps*VISTA Program Grant Selection (30%)

b. Responsiveness to Specific AmeriCorps*VISTA America Reads Criteria (40%)

2. Organizational Capacity and Sustainability (20%)

The applicant organization's capacity to direct, manage, support, provide technical assistance, and assess the project, and enhance sustainability of the project's efforts, must be reflected in the Project Application.

3. Budget (10%)

Applicants must prepare the budget according to information contained in Item D above, and instructions about costs and allowance levels contained in the application kit. A detailed Budget Narrative must identify and justify each line item and cost. The Corporation will assess the cost-effectiveness of the

proposed project and the project's ability to leverage significant resources from private and/or public sources.

I. Geographic Diversity

In addition to evaluating the overall quality of the proposal and its responsiveness to the criteria noted above, the Corporation will also ensure that funded projects are geographically diverse, include projects in both urban and rural areas, and focus on the needs of low-income communities, including those in empowerment zones and enterprise communities.

Dated: December 15, 1997.

Stewart A. Davis,

Acting General Counsel.

[FR Doc. 97–33052 Filed 12–17–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–187–007]

Arkansas Western Pipeline Company, Notice of Proposed Changes in FERC Gas Tariff

December 12, 1997.

Take notice that on December 8, 1997, Arkansas Western Pipeline Company (AWP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of December 8, 1997:

Second Revised Sheet No. 7
Original Sheet No. 7A
Second Revised Sheet No. 8
Second Revised Sheet No. 29

AWP states that the filing sets forth the revisions to AWP;s tariff sheets that are necessary to comply with Order No. 587–C in Docket No. RM96–1–004.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32983 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–112–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

December 12, 1997.

Take notice that on December 4, 1997, Florida Gas Transmission Company (FGY), 1400 Smith Street, Post Office Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP98–112–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point in Gadsden County, Florida to accommodate interruptible natural gas deliveries to Chesapeake Utilities Corporation (Chesapeake). FGT makes such request under its blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

FGT proposes to construct, operate, and own an additional delivery point for Chesapeake at or near mile post 394.7 on FGT's existing 24-inch mainline. FGT states that the subject delivery point will include a tap, minor connecting pipe, electronic flow measurement equipment, and any other related appurtenant facilities necessary for FGY to transport and deliver up to 820 MMBtu per day and 206,158 MMBtu per year of natural gas to Chesapeake. FGT avers that the volumes proposed to be delivered to Chesapeake will be within Chesapeake's existing entitlement. It is stated that the end-use of the gas will be for commercial, industrial and residential uses.

It is stated that Chesapeake will reimburse FGT for the $60,000 estimated construction cost. FGT further states that Chesapeake will construct, own, and operate the meter and regulation station and any other necessary appurtenant facilities required for receiving the gas from FGT.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32973 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–86–000]

Koch Gateway Pipeline Company; Notice of Section 4 Filing

December 12, 1997.

Take notice that on December 10, 1997, Koch Gateway Pipeline Company (Koch Gateway), tendered for filing a section 4 filing pertaining to the termination of gathering services associated with the abandonment of South Texas facilities granted in FERC Docket No. CP97–337–001.[1]

Koch Gateway proposes no changes to its published tariff therefore no revised tariff sheets are included in this filing. Koch Gateway filed with the Commission a list of gathering customers affected by the abandonment.

Any persons desiring to be heard or to make any protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed as provided by Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not served to make protestants parties at the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32985 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Koch Gateway Pipeline Co., 81 FERC ¶61,228 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–51–000]

MIECO Inc.; Notice of Issuance of Order

December 12, 1997.

MIECO Inc. (MIECO) submitted for filing a rate schedule under which MIECO will engage in wholesale electric power and energy transactions as a marketer. MIECO also requested waiver of various Commission regulations. In particular, MIECO requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by MIECO.

On November 17, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MIECO should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, MIECO is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MIECO's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 12, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32969 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR98–3–000]

OXY USA, Inc. v. Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., BP Pipelines (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation and Unocal Pipeline Company; Notice of Complaint

December 12, 1997.

Take notice that on December 9, 1997, pursuant to the provisions of the Interstate Commece Act (ICA), 49 U.S.C. App. §§ 2, 3(1), 6(7), 8, 9, 13(1) and 15(1) and the Rules and Regulations of the Federal Energy Regulatory Commission, 18 CFR 343.2(c)(3), 385.206(a) and 385.207(a), OXY USA, Inc. (OXY) filed a complaint and petition for declaratory relief against Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., BP Pipelines (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company (collectively the TAPS Carriers).

OXY states that the TAPS Carriers have entered into two private agreements with the State of Alaska, a payor of TAPS transportation rates, under which the TAPS Carriers have agreed to pay rate rebates totaling $26,500,000.00 to the State and to no other shipper. The settlements concern resolution of the electrical, as built and management remediation case and resolution of the costs related to certain public communications and government relations activities. Also pursuant to the said agreements, the TAPS Carriers have the option of making future payments directly to the State in order to rebate to the State certain costs included in rates charged to all shippers.

OXY contends that the two settlements are in violation of Sections 2, 3(1), and 6(7) of the ICA, 49 U.S.C. App. §§ 2, 3(1), 6(7), and demands that it be awarded $923,186 as an equivalent pro rata rebate comparable to Alaska's, in reparation for the period commencing two years preceding the filing of this action, adjusted for costs through the entry of a final order in this case, plus costs of this action and reasonable attorneys fees, pursuant to Sections 8, 9 and 13(1) of the ICA, 49 U.S.C. App. §§ 8, 9 and 13(1). OXY also requests that the Commission, under Sections 13(1) and 15(1) of the ICA, 49 U.S.C. App. §§ 13(1) and 15(1), investigate these settlements and the practices of the TAPS Carriers pursuant thereto and that the Commission declare unlawful those provisions of the agreements that allow the TAPS Carriers in the future to make preferential and discriminatory rate rebates to the State of Alaska. Further, should the Commission determine that illegal rebates have been paid but that reparations should not be made to OXY, OXY requests that the Commission order a general refund of all such illegal rebates pursuant to Section 15(7) of the ICA, 49 U.S.C. App. § 15(7).

OXY states that copies of the complaint were served on each person the service list attached to the filing.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and procedure. All such motions or protests should be filed on or before January 8, 1998. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before January 8, 1998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32976 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–179–006]

Ozark Gas Transmission System; Notice of Tariff Filing

December 12, 1997.

Take notice that on September 30, 1997, Ozark Gas Transmission System (Ozark) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 43, with an effective date of November 1, 1997.

Ozark states that in compliance with Order No. 587–C, which approved GISB Standard 4.3.6, and the Commission's May 30, 1997 Order granting Ozark an extension of the time to comply with Order No. 587–C, this tariff sheet has been revised to include a reference to Ozark's web site. Ozark states that it has

established an HTML World Wide Web page that parties can access via the Internet at http://www.ozrkgas.com to retrieve certain information about the pipeline.

Ozark states that copies of the filing are being served on Ozark's customers and parties to the Docket No. RP97–197–000 proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 18, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32982 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94–29–003]

Paiute Pipeline Company; Notice of Compliance Filing

December 12, 1997.

Take notice that on December 4, 1997, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to be effective January 1, 1998.

Eighth Revised Sheet No. 10
Third Revised Sheet No. 21
Third Revised Sheet No. 63
Second Revised Sheet No. 63A
Seventh Revised Sheet No. 161

Paiute asserts that the purpose of this filing is to comply with the Commission's order issued August 1, 1996 in Docket No. CP94–29–000, et al.

Paiute states that the Commission's order, among other things, authorized Paiute to construct and operate certain pipeline loop and pressure regulating and measurement facilities, referred to as the Lake Tahoe Area expansion facilities. According to Paiute, the purpose of the expansion facilities is to expand the delivery capacity of Paiute's system between the Wadsworth Junction and the terminus of the North Tahoe Lateral to enable Paiute to deliver an additional 10,333 Dth/d to Southwest Gas Corporation—Northern California and an additional 2,455 Dth/d to Southwest Gas Corporation—Northern Nevada at its Incline Village delivery points. Paiute states that the Commission's order authorized Paiute to recover the cost of service associated with the expansion project by means of an incremental rate surcharge to be assessed to the two shippers. By its filing, Paiute proposes to establish the initial incremental rate and tariff sheets be permitted to become effective on January 1, 1998, in order to coincide with the expected in-service date of the expansion construction project.

Any person desiring to be heard or to protest this filing should file on or before January 2, 1998, a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32971 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–111–000]

Sea Robin Pipeline Company and Transcontinental Gas Pipe Line Corporation; Notice of Application

December 12, 1997.

Take notice that on December 3, 1997, Sea Robin Pipeline Company (Sea Robin), P.O. Box 2563, Birmingham, Alabama 35202–2563, and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251–1397, filed in Docket No. CP98–111–000 an abbreviated joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Transco performed under Sea Robin's Rate Schedule X–28 which was authorized in Docket No. CP79–433, all as more fully set forth in the application on file with the Commission and open to public inspection.

Sea Robin and Transco state that Sea Robin has provided transportation service of up to 4,690 Mcf per day on behalf of Transco pursuant to Sea Robin's Rate Schedule X–28 from Eugene Island Block 261, offshore Louisiana, to delivery points onshore at Erath, Louisiana. Such service was provided pursuant to a transportation agreement dated October 2, 1980, which primary term expired December 4, 1990, and the term of the agreement extended from year to year thereafter. Transco states that the abandonment of this Rate Schedule is appropriate since Transco has not nominated gas or received service under the agreement since March, 1992. The abandonment of the Rate Schedule will not require any abandonment of facilities. Sea Robin and Transco state that they are agreeable to the termination effective as of the date the Commission approves abandonment of Rate Schedule X–28.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest 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 Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to

intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Sea Robin and Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32972 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–008]

Tennessee Gas Pipeline Company, Notice of Compliance Filing

December 12, 1997.

Take notice that on December 10, 1997, Tennessee Gas Pipeline Company, (Tennessee) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Nineteenth Revised Sheet No. 30.

Tennessee states that this filing is in compliance with the Commission's November 25, 1997 Order in the above-referenced docket. Tennessee Gas Pipeline Company, 81 FERC ¶61,261 (1997) (November 25 Order).

Tennessee further states that in accordance with the November 25 Order, Tennessee requests that this tariff sheet be deemed effective November 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32981 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–122–000]

Texas Gas Transmission Corporation; Notice of Application

December 12, 1997.

Take notice that on December 8, 1997, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed an abbreviated application in Docket No. CP98–122–000 pursuant to section 7(b) of the Natural Gas Act, and Part 157 of the Commission's Regulations for an order granting permission and approval to abandon by removal an existing engine at its Slaughters Compressor Station in Webster County, Kentucky, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas proposes to abandon by removal a 41-year-old, seldom used Ingersoll-Rand SVG engine rated at 330 horsepower. Although the total rated horsepower for the Slaughters Compression Station will be slightly lower, this is of no significance because there still exists sufficient horsepower at the Dixie Storage Field to which the compressor engine was dedicated that will ensure that certificated injection and withdrawal capacities are met.

Texas Gas states that the costs associated with the removal of this engine are approximately $92,900.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1998, file with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32975 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–490–002]

Trailblazer Pipeline Company, Notice of Compliance Filing

December 12, 1997.

Take notice that on December 9, 1997, Trailblazer Pipeline Company, (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Substitute First Revised Sheet No. 112 and Substitute Original Sheet No. 112A, to be effective October 1, 1997.

Trailblazer states that the purpose of this filing is to comply with the OPR letter order issued November 26, 1997 in Docket No. RP97–490–001, which directed Trailblazer to file revised tariff sheets to delete tariff language contained in parentheses in Sections 6.3(c) and (d) of Trailblazer's General Terms and Conditions' definition of Secondary Points.

Trailblazer states that copies of the filing have been mailed to Trailblazer's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP97–490.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32984 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–118–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

December 12, 1997.

Take notice that on December 5, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismark, North Dakota 58501, filed a request with the Commission Docket No. CP98–118–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to utilize an existing tap to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Co. (Montana-Dakota) authorized in blanket certificate issued in Docket No. CP82–487–000, *et al.*, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to utilize an existing tap, located in Dawson County, Montana which would effectuate additional natural gas transportation deliveries to Montana-Dakota for ultimate use by additional end-use customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32974 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–926–000, et al.]

Interstate Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 11, 1997.

Take notice that the following filings have been made with the Commission:

1. Interstate Power Company

[Docket Nos. ER97–926–000, ER97–1601–000, ER97–1602–000, ER97–1671–000, ER97–1773–000, ER97–2348–000, ER97–2349–000, ER97–2457–000, ER97–2929–000, ER97–2932–000, and ER97–3215–000]

Take notice that on December 4, 1997, Interstate Power Company tendered for amendments in the above-referenced dockets.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc.

[Docket No. ER98–677–000]

Take notice that on November 25, 1997, Western Resources, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER98–751–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Bremen (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Bremen, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER98–752–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Brookston (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Brookston, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Energy Sales Network, Incorporated

[Docket No. ER98–753–000]

Take notice that on November 21, 1997, Energy Sales Network, Incorporated [hereafter ENERGY] petitioned the Commission for acceptance of ENERGY Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based prices; and the waiver of certain Commission regulations.

ENERGY intends to engage in wholesale electric power and energy purchases and sales as a marketer. ENERGY is not in the business of generating or transmitting electric power. ENERGY is a new corporation which is affiliated with MM Answering Services, Inc. of Bradford, Pennsylvania.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Company

[Docket No. ER98–754–000]

Take notice that on November 21, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission supplementary information regarding the termination of IPC's power sale agreement to the City of Banning, California.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Orange and Rockland Utilities, Inc.

[Docket No. ER98–755–000]

Take notice that on November 21, 1997, Orange and Rockland Utilities, Inc. ("Orange and Rockland") filed a Service Agreement between Orange and Rockland and Entergy Power Marketing Corp. ("Customer"). This Service Agreement specifies that Customer has

agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of November 4, 1997 for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Deseret Generation & Transmission Co-operative

[Docket No. ER98–756–000]

Take notice that on November 21, 1997, Deseret Generation & Transmission Co-operative on November 21, 1997, tendered for filing an executed umbrella non-firm point-to-point service agreement with Illinova Power Marketing, Inc. Under its open access transmission tariff. Deseret requests a waiver of the Commission's notice requirements for an effective date of November 21, 1997. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. Illinova Power Marketing, Inc. Has been provided a copy of this filing.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. PECO Energy Company

[Docket No. ER98–758–000]

Take notice that on November 21, 1997, PECO Energy Company (PECO) filed a Service Agreement dated November 13, 1997 with New Energy Ventures, L.L.C. (NEV) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NEV as a customer under the Tariff.

PECO requests an effective date of November 13, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to NEV and to the Pennsylvania Public Utility Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER98–759–000]

Take notice that on November 21, 1997, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with AIG Trading Corporation for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on December 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER98–760–000]

Take notice that on November 21, 1997, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with PanEnergy Power Services, Inc., for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on December 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER98–761–000]

Take notice that on November 21, 1997, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Duke/Louis Dreyfus Services for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on December 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. New Century Services, Inc.

[Docket No. ER98–762–000]

Take notice that on November 24, 1997, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Continental Energy Services LLC.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Kentucky Utilities Company

[Docket No. ER98–763–000]

Take notice that on November 24, 1997, Kentucky Utilities Company (KU), tendered for filing a non-firm transmission service agreement between KU and Constellation Power Source, Inc., and firm transmission agreements between KU and Cinergy Services, Inc., Williams Energy Services Company and KU and itself, under the Transmission Services Tariff.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER98–764–000]

Take notice that on November 24, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 35 to add three (3) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of November 21, 1997, to American Energy Solutions, Inc., DTE-CoEnergy, L.L.C., mc2, Inc., and Southern Energy Retail Trading and Marketing, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. New Century Services, Inc.

[Docket No. ER98–765–000]

Take notice that on November 21, 1997, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their

Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Avista Energy, Inc.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. PacifiCorp

[Docket No. ER98–766–000]

Take notice that on November 24, 1997, PacifiCorp, tendered for filing in accordance with Part 35 of the Commission's Rules and Regulations, a Service Agreement with Green Mountain Energy Resources, L.L.C. under PacifiCorp's FERC Electric Tariff, Fourth Revised Volume No. 3.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER98–767–000]

Take notice that on November 24, 1997, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Network Integration Service under the Pennsylvania Retail Pilot with Southern Energy Retail Trading and Marketing, Inc. and CNG Retail Services Corp. (dba Peoples Plus) pursuant to Ohio Edison's Open Access Tariff. These Service Agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Retail Pilot in accordance with the terms of the Tariff.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Sierra Pacific Power Company

[Docket No. ER98–768–000]

Take notice that on November 24, 1997, Sierra Pacific Power Company (Sierra), tendered for filing Service Agreements (Service Agreements) with Cook Inlet Energy Supply, LP for both Firm and Non-Firm Point-to-Point Transmission Service under Sierra's Open Access Transmission Tariff (Tariff):

Sierra filed the executed Service Agreements with the Commission in compliance with 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet Nos. 148 and 148A (Attachment E) to the Tariff, which is an updated list of all current subscribers. Sierra requests waiver of the Commission's notice requirements to permit an effective date of November 26, 1997 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Western Resources, Inc.

[Docket No. ER98–900–000]

Take notice that on November 26, 1997 Western Resources, Inc., tendered for filing certain revised pages to its FERC Electric Service, First Revised Volume No. 5. Western Resources states that the change is to permit Western Resources to curtail point-to-point transmission service in order to maintain system reliability on any system with which Western Resources is directly or indirectly interconnected. Western Resources has proposed that the change become effective on December 1, 1997.

Copies of the filing were served upon Western Resources' open access transmission customers and the Kansas Corporation Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Southern California Edison Company

[Docket No. ER98–921–000]

Take notice that on December 4, 1997, Southern California Edison Company (Edison) tendered for filing the Edison-Banning 1997 Restructuring Agreement (Restructuring Agreement) between Edison and the City of Banning, California (Banning), and a Notice of Cancellation of various agreements and rate schedules applicable to Banning. Included in the Restructuring Agreement as Appendices B, C, D, E, F, G, and H are: the Wholesale Distribution Access Tariff Service Agreement, Amendment No. 1 to the Edison-Banning Hoover Firm Transmission Service Agreement, Amendment No. 1 to the Edison-Banning Palo Verde Nuclear Generating Station Firm Transmission Service Agreement, Amendment No. 2 to the Edison-Banning Pasadena Firm Transmission Service Agreement I, Amendment No. 2 to the Edison-Banning 1995 San Juan Unit 3 Firm Transmission Service Agreement, Amendment No. 1 to the Amended Edison-Banning Sylmar Firm Transmission Service Agreement, and the Edison-Banning Pacific Intertie Firm Transmission Service Agreement.

The Restructuring Agreement is the result of negotiations between Edison and Banning to modify existing contracts to accommodate the emerging Independent System Operator (ISO)/ Power Exchange market structure. The Restructuring Agreement significantly simplifies the existing operational arrangements between Edison and Banning. In addition, the Restructuring Agreement provides for cancellation of existing bundled service arrangements and obligations between Edison and Banning. Edison is requesting that the Restructuring Agreement become effective on the date the ISO assumes operational control of Edison's transmission facilities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Southern California Edison

[Docket No. ER98–922–000]

Take notice that on December 4, 1997, Southern California Edison Company (Edison) tendered for filing the Edison-Azusa 1997 Restructuring Agreement (Restructuring Agreement) between Edison and the City of Azusa, California (Azusa), and a Notice of Cancellation of various agreements and rate schedules applicable to Azusa. Included in the Restructuring Agreement as Appendices B, C, D, E, F, G, and H are: the Wholesale Distribution Access Tariff Service Agreement, Amendment No. 1 to the Edison-Azusa Hoover Firm Transmission Service Agreement, Amendment No. 1 to the Edison-Azusa Palo Verde Nuclear Generating Station Firm Transmission Service Agreement, Amendment No. 3 to the Edison-Azusa Pasadena Firm Transmission Service Agreement, Amendment No. 2 to the Edison-Azusa 1995 San Juan 3 Firm Transmission Service Agreement, Amendment No. 1 to the Amended Edison-Azusa Sylmar Firm Transmission Service Agreement, and the Edison-Azusa Pacific Intertie Firm Transmission Service Agreement.

The Restructuring Agreement is the result of negotiations between Edison and Azusa to modify existing contracts to accommodate the emerging Independent System Operator (ISO)/ Power Exchange market structure. The

Restructuring Agreement significantly simplifies the existing operational arrangements between Edison and Azusa. In addition, the Restructuring Agreement provides for cancellation of existing bundled service arrangements and obligations between Edison and Azusa. Edison is requesting that the Restructuring Agreement become effective on the date the ISO assumes operational control of Edison's transmission facilities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Southern California Edison Co.

[Docket No. ER98–923–000]

Take notice that on December 4, 1997, Southern California Edison Company (Edison) tendered for filing the Authorized Representatives' Procedures For Post-Restructuring Operations And Accounting (Procedures), and a Notice of Cancellation of various rate schedules with the City of Colton. The Procedures address issues relating to the operation of the Independent System Operator (ISO) and Power Exchange.

To the extent necessary, Edison seeks waiver of the 60 day prior notice requirement and requests that the Commission assign to the Procedures an effective date concurrent with the date the ISO assumes operational control of Edison's transmission facilities, which is expected to be January 1, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Northwestern Public Service Company

[Docket No. ES98–14–000]

Take notice that on November 28, 1997, Northwestern Public Service Company (NWPS) filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue and to renew or extend the maturity of promissory notes to evidence short-term borrowings in a principal amount not exceeding $75,000,000. The proceeds from the notes will be used to provide funds for the conduct of its business.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Consumers Energy Company

[Docket No. ES98–15–000]

Take notice that on December 4, 1997, Consumers Energy Company filed an Application pursuant to Section 204 of the Federal Power Act seeking authority to issue loan guarantees during the period January 15, 1998 through December 31, 1999, in an aggregate principal amount of up to $25 million outstanding at any one time. The loans to be guaranteed would be to Michigan residents for financing various home energy efficiency measures, including new heating, ventilating and air-conditioning equipment.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Consolidated Edison Company of New York, Inc.

[Docket No. ES98–16–000]

Take notice that on December 4, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), filed an application for an order, pursuant to Section 204 of the Federal Power Act, authorizing Con Edison during the period from January 1, 1998, through December 31, 1999, to issue and sell unsecured evidences of indebtedness maturing not more than nine months after their date of issue up to an amount not in excess of $500 million at any one time.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Citizens Utilities Company

[Docket No. ES98–18–000]

Take notice that on December 5, 1997, Citizens Utilities Company (Citizens) filed an application under Section 204 of the Federal Power Act, requesting an order authorizing the assumption by Citizens as guarantor of obligations of a subsidiary company under a bank credit facility.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32970 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–15–000, et al.]

P.H. Rio Volcan, S.A., et al.; Electric Rate and Corporate Regulation Filings

December 12, 1997.

Take notice that the following filings have been made with the Commission:

1. P.H. Rio Volcan, S.A.

[Docket No. EG98–15–000]

Take notice that on December 4, 1997, P.H. Rio Volcan, S.A., a corporation organized under the laws of Costa Rica (Applicant), with its principal place of business at Santo Domingo de Heredia del Hotel Bouganville 200 Mts. al Este de la Iglesia Catolica (Primera Entrada Porton con Ruedas de Artilleria) Heredia, Costa Rica, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it intends to own and operate an approximately 17 megawatt (net), hydroelectric power production facility located in the District of Sarapiqui, Canton of Alajuela, Province of Alajuela, Costa Rica.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. The United Illuminating Company

[Docket No. ER98–769–000]

Take notice that on November 24, 1997, The United Illuminating Company (UI), tendered for filing for informational purposes all individual Purchase Agreements and Supplements to Purchase Agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2, as amended, during the six-month period May 1, 1997, through October 31, 1997.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. South Carolina Electric & Gas Company

[Docket No. ER98–770–000]

Take notice that on November 24, 1997, South Carolina Electric & Gas Company, tendered for filing proposed cancellation of Service Agreement FERC No. 28 with Southern Company Services, Inc., and Service Agreement FERC No. 37 with Carolina Power & Light Company.

Under the proposed cancellation, the contracts which expired effective May 21, 1997 and August 31, 1997, respectively, will be canceled.

Copies of this filing were served upon Southern Company Services, Inc., and Carolina Power & Light Company.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Central Power and Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; Southwestern Electric Power Company

[Docket No. ER98–771–000]

Take notice that on November 24, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) submitted for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that the filing has been served on the affected customers and on the Public Utility Commission of Texas.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Minnesota Company); Northern States Power Company (Wisconsin Company)

[Docket No. ER98–772–000]

Take notice that on November 25, 1997, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and LG&E Energy Marketing, Inc., (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on November 5, 1997.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota Company); Northern States Power Company (Wisconsin Company)

[Docket No. ER98–773–000]

Take notice that on November 25, 1997, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and NESI Power Marketing, Inc. (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on November 5, 1997.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER98–774–000]

Take notice that on November 25, 1997, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Dighton Power Associates Limited Partnership (Dighton Power). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Dighton Power's signature page would permit NEPOOL to expand its membership to include Dighton Power. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Dighton Power a member in NEPOOL. NEPOOL requests an effective date of December 1, 1997, for commencement of participation in NEPOOL by Dighton Power.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER98–775–000]

Take notice that on November 25, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with the Ak-Chin Electric Utility Authority.

A copy of this filing has been served on the Ak-Chin Electric Utility Authority and the Arizona Corporation Commission.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service Company

[Docket No. ER98–776–000]

Take notice that on November 25, 1997, Arizona Public Service Company (APS or Company), tendered for filing a Notice of Cancellation of Interruptible Transmission Service Agreement between Arizona Public Service Company (APS or Company) and Southern California Edison Company (Edison) (APS–FERC Rate Schedule No. 103).

APS requests that this cancellation become effective January 1, 1998.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER98–777–000]

Take notice that on November 25, 1997, Southern California Edison Company (Edison), tendered for filing a Notice of Cancellation of FERC Rate Schedule Nos. 246.34 and 340, and all supplements thereto.

Edison requests that this cancellation become effective October 31, 1997.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Long Island Lighting Company

[Docket No. ER98–778–000]

Take notice that on November 25, 1997, Long Island Lighting Company (LILCO) filed Service Agreements for Non-Firm Point-to-Point Transmission Service between LILCO and Williams Energy Services company (Transmission Customer).

The Service Agreement specifies that the Transmission Customer has agreed to the rates, terms and conditions of the LILCO open access transmission tariff filed on July 9, 1996, in Docket No. OA96–38–000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of November 12, 1997, for the Service Agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customer.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER98–779–000]

Take notice that on November 25, 1997, PECO Energy Company (PECO), filed under § 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, a Transaction Agreement dated October 30, 1997, with Enron Power Marketing, Inc. (Enron), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Transaction Agreement is for a term of fourteen (14) months.

PECO requests an effective date of November 1, 1997, for the Transaction Agreement.

PECO states that copies of this filing have been supplied to Enron and to the Pennsylvania Public Utility Commission.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER98–780–000]

Take notice that on November 25, 1997, PECO Energy Company (PECO), filed under § 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, a Transaction Agreement dated October 30, 1997, with NorAm Energy Management, Inc. (NEM), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Transaction Agreement is for a term of fourteen (14) months.

PECO requests an effective date of November 1, 1997, for the Transaction Agreement.

PECO states that copies of this filing have been supplied to NEM and to the Pennsylvania Public Utility Commission.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Union Electric Company

[Docket No. ER98–781–000]

Take notice that on November 25, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between UE and AIG Trading Corporation and Tenaska Power Services Company. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Union Electric Company

[Docket No. ER98–782–000]

Take notice that on November 25, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Market Based Rate Power Sales between UE and Morgan Stanley Capital Group Inc., and PacifiCorp Power Marketing, Inc. UE asserts that the purpose of the Agreements is to permit UE to make sales of capacity and energy at market based rates to the parties pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Union Electric Company

[Docket No. ER98–783–0000]

Take notice that on November 25, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between UE and AIG Trading Corporation, Morgan Stanley Capital Group Inc., and Tenaska Power Services Company. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER98–784–000]

Take notice that on November 25, 1997, PECO Energy Company (PECO), filed under § 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, a Transaction Agreement dated October 30, 1997, with Horizon Energy company (HORIZON ENERGY) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Transaction Agreement is for a term of fourteen (14) months.

PECO requests an effective date of November 1, 1997, for the Transaction Agreement.

PECO states that copies of this filing have been supplied to HORIZON ENERGY and to the Pennsylvania Public Utility Commission.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. The Empire District Electric Company

[Docket No. ER98–785–000]

Take notice that on November 25, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Aquilla Power Corp., providing firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Aquilla Power Corp., 10750 E 350 Highway, Kansas City, MO 64138.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–33040 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–60–000; and CP98–62–000]

Viking Voyageur Gas Transmission Company, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Viking Voyageur Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

December 15, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Viking Voyageur Pipeline Project.[1]

[1] Viking Voyageur Gas Transmission Company, L.L.C.'s application was filed with the Commission

Continued

This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Additionally, with this notice we are asking a number of Federal agencies (see appendix 2) with jurisdiction and/or special expertise with respect to environmental issues to cooperate with use in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their agencies' responsibilities.[2]

Summary of the Proposed Project

Viking Voyageur Gas Transmission Company, L.L.C. (Voyageur) proposes to build new natural gas pipeline and compression facilities to transport 1.4 billion cubic feet per day of natural gas from Noyes, Minnesota to Joliet, Illinois to move new natural gas supplies from western Canada markets to the Upper Midwest.

Voyageur requests Commission authorization, in Docket No. CP98–60–000, to construct and operate the following facilities:

- 773 miles of 42-inch-diameter pipeline extending from the border of the United States (U.S.) and Canada near Noyes, Minnesota in Kittson County to a point near Joliet, Illinois in Will County. Of the 773-mile-long mainline, about 359 miles would be located in Minnesota, 325 miles in Wisconsin, and 89 miles in Illinois;
- 22 new meter stations including one in Kittson County, Minnesota, four in Wood County, Wisconsin, two in Waushara County, Wisconsin, two in Dodge County, Wisconsin, one in Jefferson County, Wisconsin, three in Walworth County, Wisconsin, three in McHenry County, Illinois, one in Kane County, Illinois, one in Kendall County, Illinois, and four in Will County, Illinois;
- Four compressor stations each with 31,000 horsepower of compression in Kittson County, Minnesota, Otter Tail County, Minnesota, Polk County, Wisconsin, and Waushara County, Wisconsin. The two compressor stations in Minnesota and the compressor station in Polk County, Wisconsin would be built within the fenced property of existing Viking Gas Transmission Company compressor station sites;
- Associated pipeline facilities, including 48 new mainline valves and four pig launchers and five pig receivers, and permanent access roads for access to compressor stations and valves; and
- Two new operations and maintenance facilities in Walworth County, Wisconsin and Kendall County, Illinois.

The general location of Viking Voyageur's proposed project facilities is shown in appendix 1. If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

In addition, Voyageur requests in Docket No. CP98–62–000 a Presidential Permit to site, construct, operate, own, and maintain facilities at the international border between the U.S. and Canada near Noyes, Minnesota. Voyageur's pipeline would originate at the point of interconnection with the Canadian facilities of TransVoyageur Gas Transmission.

In Illinois and Wisconsin, several local distribution companies are considering building lateral pipelines to interconnect with Voyageur. Although these facilities would not be under the jurisdiction of the FERC, to the extent they can be identified they will be discussed in the EIS. The following is a list of the nonjurisdictional laterals currently under consideration:

Lateral pipeline	Pipeline diameter (inches)	Approximate length (miles)	State
Marshfield ..	6	1.9	WI
Wausau	12	65.0	WI
Wisconsin Rapids	6	0.2	WI
Steven Point	8	20.7	WI
Green Bay/ Sheboygan	30/24/12	191.8	WI
Madison	16	42.8	WI
Milwaukee	22	32.5	WI
Eagle	16	7.6	WI
Delavan	8	0.6	WI
Hampshire	16	0.11	IL
Plano	20	0.34	IL
Aux Sable ..	20	0.21	IL

Land Requirements for Construction

Approximately 670 miles (86 percent) of Voyageur's pipeline would be installed parallel to various existing utility rights-of-way. Where possible, Voyageur's right-of-way would overlap the existing rights-of-way as much as 85 feet during construction to minimize impacts. Voyageur's proposed route deviates from the existing rights-of-way in selected locations to avoid impact on homes, existing utility structures (meter stations, etc.), improve waterbody crossings, and for other environmental or engineering reasons.

Construction of the Viking Voyageur Pipeline Project would affect a total of about 12,851 acres. Of this total, about 10,321 acres would be disturbed by construction along the pipeline right-of-way. The aboveground facilities would affect about 72 acres of land during construction. Pipe storage, staging ares and warehouse sites would affect about 2,458 acres. All these acreage figures are subject to change.

Voyageur proposes to use a right-of-way width of 105 feet for construction, with provisions for additional temporary work areas as necessary for waterbody, highway and railroad crossings, and extra topsoil storage. Following construction and restoration of the right-of-way and temporary work spaces, Voyageur would retain a 30-to 50-foot-wide permanent pipeline right-of-way depending on whether the pipeline is co-located with other utilities or on new right-of-way. Total land requirements for the permanent right-of-way would be about 4,476 acres. About 72 acres would be retained for the operation of the new aboveground facilities. The remaining 8,303 acres of land affected by construction of the project would be restored and allowed to revert to its former use.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already

under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Voyageur. These issues are listed below. This is a preliminary list of issues and may be changed based on your comments and our analysis.

- Air Quality and Noise

—Effect on local air quality and noise environment as a result of construction.
—Effect on local air quality and noise environment as a result of operation of the compressor stations.

- Soils

—Temporary and permanent impacts on prime farmland soils.
—Mixing of topsoil and subsoil during construction.
—Compaction of soil by heavy equipment.
—Impacts on drain tiles and irrigation systems.
—Erosion control and right-of-way restoration.

- Water Resources

—Effect of construction on areas with shallow
—Effect of construction on crossings of 186 perennial waterbodies.
—Crossing of 14 rivers 100 feet wide or greater.
—Crossing the St. Croix River which is designated as a National Scenic Waterway containing federally listed endangered mussels, and the Rum River which is designated as a Minnesota State Wild and Scenic River.
—Crossing 21 trout streams, 7 exceptional resource waters, 4 outstanding resource waters, 2 Northern Pike spawning waters, and 1 wildlife/fish migration corridor.
—Potential for erosion and sediment transport to the waterbodies.
—Effect of construction on groundwater and surface water supplies.
—Impact on wetland hydrology.

- Biological Resources

—Short- and long-term effects of right-of-way clearing and maintenance on wetlands, forests, riparian areas, and vegetation communities of special concern.
—Effect on wildlife and fisheries habitats.
—Impact on federally threatened species such as the bald eagle and prairie bush clover, and federally endangered species such as the Karner blue butterfly, gray wolf, winged mapleleaf mussel, Higgins' eye pearly mussel, and the Indian bat.

- Cultural Resources

—Effect on historic and prehistoric sites.
—Native American concerns.

- Socioeconomics

—Effect of the construction workforce on demands for services in surrounding areas.
—Impact on property values.

- Land Use

—Impact on crop production.
—Impact on residential areas.
—Effect on public lands and special use areas including waterfowl production areas, state game refuge, state wildlife management areas, national and state scenic trails, state forest lands, state canoe rivers, state parks and recreation areas, public fishing areas, public hunting grounds, and forest preserves.
—Impact on future land uses and consistency with local land use plans and zoning.
—Visual effect of the aboveground facilities on surrounding areas.

- Reliability and Safety

—Assessment of hazards associated with natural gas pipelines.

- Cumulative Impact

—Assessment of the combined effect of the proposed project with other projects, including other natural gas transmission and distribution lines, which have been or may be proposed in the same region and similar time frames.

•Nonjurisdictional Facilities

—Assessment of the effects of the construction of lateral pipelines that would be entirely within state jurisdiction.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, affected landowners and other interested individuals, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received on the Draft EIS and will be used by the Commission in its decision-making process to determine whether to approve the project.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Send two copies to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, D.C. 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket Nos. CP98–60–000 and CP98–62–000; and
- Mail your comments so that they will be received in Washington, D.C. on or before January 20, 1998.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings the FERC will conduct in the project area. The locations and times for these meetings are listed below.

Schedure of Public Scoping Meetings for the Viking Voyageur Pipeline Project Environmental Impact Statement

Jan. 5, 1998 7:00 pm—Elgin, Illinois, Holiday Inn, 345 West River Road, 847–695–5000
Jan. 6, 1998 7:00 pm—Nekoosa, Wisconsin, Lake Arrowhead Clubhouse, 1195 Apache Lane, 715–325–2938
Jan. 7, 1998 7:00 pm—Dresser, Wisconsin, Trollhaugen Ski Area, Convention Center, 2232 100th Avenue, 715–755–2955
Jan. 8, 1998 1:00 pm—Crookston, Minnesota, Northland Inn, Highway 2, 218–281–5210
7:30 pm—Detroit Lakes, Minnesota, Holiday Inn, 1155 Highway 10 East, 218–847–2121.

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Voyageur representatives will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues

they believe should be addressed in the Draft EIS. A transcript of each meeting will be made so that your comments will be accurately recorded.

On the dates of the meetings, we will also be conducting limited site visits to the project area. Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs identified at the end of this notice for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing of timely motions to intervene in this proceeding has been extended to January 4, 1998. After that date, parties seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. As details of the project become established, representatives of Voyageur may also separately contact landowners, communities, and public agencies concerning project matters, including acquisition of permits and rights-of-way.

All commentors will be retained on our mailing list. If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EIS, you must return the Information Request (appendix 4). If you do not send comments or return the Information Request, you will be taken off the mailing list.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–33039 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

December 12, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 2347–022.

c. *Date filed:* November 5, 1997.

d. *Applicants:* Wisconsin Power & Light Company and Midwest Hydro, Inc.

e. *Name of Project:* Janesville Central.

f. *Location:* On the Rock River, in the City of Janesville, in Rock County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicants Contact:* Charles Alsberg, President, MIdwest Hydro, Inc., 116 State Street, P.O. BOX 167, Neshkoro, WI 54960, (920) 292–4628.

i. *FERC Contact:* Thomas F. Papsidero (202) 219–2715.

j. *Comment Date:* January 28, 1998.

k. *Description of Filing:* Application to transfer the license for the Janesville Central Project to Midwest Hydro, Inc.

l. This notice also consists of the following standard paragraphs: B, C1 & D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32977 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

December 12, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 2348–013.

c. *Date filed:* November 5, 1997.

d. *Applicants:* Wisconsin Power & Light Company and Midwest Hydro, Inc.

e. *Name of Project:* Beloit Blackhawk.

f. *Location:* On the Rock River, near the City of Beloit, in Rock County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicants Contact:* Charles Alsberg, President, Midwest Hydro, Inc., 116 State Street, P.O. Box 167, Neshkoro, WI 54960, (920) 292–4628.

i. *FERC Contact:* Thomas F. Papsidero (202) 219–2715.

j. *Comment Date:* January 28, 1998.

k. *Description of Filing:* Application to transfer the license for the Beloit Blackhawk Project to Midwest Hydro, Inc.

1. This notice also consists of the following standard paragraphs: B, C1 & D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32978 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

December 12, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 2373–008.

c. *Date filed:* November 5, 1997.

d. *Applicants:* Wisconsin Power & Light Company and Midwest Hydro, Inc.

e. *Name of Project:* Rockton.

f. *Location:* On the Rock River, in the Town of Rockton, in Winnebago County, Illinois.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicants Contact:* Charles Alsberg, President, Midwest Hydro, Inc., 116 State Street, P.O. BOX 167, Neshkoro, WI 54960, (920) 292–4628.

i. *FERC Contact:* Thomas F. Papsidero (202) 219–2715.

j. *Comment Date:* January 28, 1998.

k. *Description of Filing:* Application to transfer the license for the Rockton Project to Midwest Hydro, Inc.

l. This notice also consists of the following standard papragraphs: B, C1, & D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32979 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

December 12, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No.: 2536–109.

c. Date filed: October 31, 1997.

d. Applicants: Niagara of Wisconsin Paper Corporation and Consolidated Papers, Inc.

e. Name of Project: Little Quinnesec Falls.

f. Location: On the Menominee River in Marinette County, Wisconsin and Dickinson County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Douglas B. Clark, Attorney for Niagara of Wisconsin Paper Corporation and Consolidated Papers, Inc., Foley & Lardner, 150 E. Gilman Street, P.O. Box 1497, Madison, WI 53701–1497, (608) 258–4276.

i. FERC Contact: Thomas F. Papsidero (202) 219–2715.

j. Comment Date: January 22, 1998.

k. Description of Filing: Application to transfer the license for the Little Quinnesec Falls Project to Consolidated Papers, Inc.

1. This notice also consists of the following standard paragraphs: B, C1 & D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may became a party to the proceeding. Any comments, protests, or motions to intervene must

be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32980 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5936–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Spill Prevention, Control, and Countermeasure Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the Spill Prevention, Control, and Countermeasures Plan continuing Information Collection Request (ICR) to the Office of Management and Budget. The ICR expires on May 31, 1998 (ICR 0328.05, OMB No. 20050–0021). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 17, 1998.

ADDRESSES: Oil Program Center, 401 M Street, SW (5203G), Washington, D.C. 20460. Materials relevant to this ICR may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, by visiting the Public Docket, located at 1235 Jefferson Davis Highway (ground floor), Arlington, Virginia. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, (703) 603–8769. Facsimile number: (703) 603–9116. Electronic address: fleischman.hugo@epamail.epa.gov. Note that questions but not comments will be accepted electronically.

SUPPLEMENTARY INFORMATION:

Affected Entities

The Oil Pollution Prevention regulation applies only to non-transportation-related facilities that could reasonably be expected to discharge oil into or upon the navigable waters of the U.S., or adjoining shorelines, and that have a total underground buried oil storage capacity of more than 42,000 gallons; or a total aboveground oil storage capacity of more than 660 gallons in a single container.

The specific private industry sectors expected to be affected by this action include petroleum and coal products manufacturing (NAICS 324); petroleum bulk stations and terminals (NAICS 42271); crude petroleum and natural gas extraction (NAICS 211111); transportation (including pipelines), warehousing, and marinas (NAICS 482–486/488112–48819/4883/4889/492–493/71393); electric power generation, transmission, and distribution (NAICS 2211); other manufacturing (NAICS 31–33); gasoline stations/automotive rental and leasing (NAICS 4471/5321); heating oil dealers (NAICS 454311); coal mining, non-metallic mineral mining and quarrying (NAICS 2121/2123/213114/213116); heavy construction (NAICS 234); elementary and secondary schools, colleges (NAICS 6111–6113); hospitals/nursing and residential care facilities (NAICS 622–623); and crop and animal production (NAICS 111–112).

Title

"Spill Prevention, Control, and Countermeasure (SPCC) Plans," OMB Control Number 2050–0021. EPA Control Number 328.05. Expiration date: May 31, 1998.

Abstract

Under section 311 of the Clean Water Act, EPA's Oil Pollution Prevention regulation requires facilities to prepare and implement SPCC Plans to help "minimize the potential for oil discharges." This regulation is codified at 40 CFR part 112. The SPCC Plan must be "a carefully thought-out plan, prepared in accordance with good engineering practices." Preparation of the SPCC Plan requires that a facility's staff analyze how the facility will prevent oil discharges, thereby encouraging appropriate facility design and operations. The information in the SPCC Plan also promotes efficient response in the event of a discharge. Finally, proper maintenance of the SPCC Plan will promote important spill-reducing measures, facilitate leak detection, and generally ensure that the facility is at peak capability for deterring discharges. The specific activities and reasons for the information collection are described below.

New Plan

Preparation of the Plan, required under section 112.3, involves several tasks, mostly conducted by the facility's technical personnel. These tasks include: field investigations to understand facility design and possible failures and to predict the flow paths of spilled oil and the potential harm that the spilled oil would have on navigable waters; a regulatory review to ensure that personnel are fully aware of all requirements and limitations imposed in the rule; an evaluation of current spill prevention and control practices the facility employs; preparation of the Plan according to the specification of section 112.7, and certification by a Registered Professional Engineer (P.E.)

Modification of Plan

Under section 112.5(a) the SPCC Plan must be amended whenever there is a change in the facility's design, construction, operation, and maintenance that materially affects the facility's potential to discharge oil into navigable waters or onto adjoining shorelines. The amended Plan must also be certified by a P.E.

Triennial Review

Under section 112.5(b), owners or operators of regulated facilities must review and evaluate the Plan at least once every three years. This involves review of spill prevention and control procedures being implemented under the current Plan, as well as a regulatory review. Facility owners/operators must amend the SPCC Plan within six months of the review to include more effective

prevention and control technology if such technology will significantly reduce the likelihood of a spill event; and such technology has been field-proven at the time of the review. If amended, the Plan must also be certified by a P.E.

Oil Discharge

Under section 112.4, in the event of certain oil discharges, facility owner/operators must submit information to the Regional Administrator within 60 days. Discharges of oil that trigger the reporting requirements are a single spill event of more than 1,000 U.S. gallons into navigable waters; or two or more spills (in a twelve month period) of harmful quantities as defined in 40 CFR part 110.

Submitting a Plan after a discharge involves time to collect the required information, as well as time for review by management. The facility must also submit a copy of this information to the appropriate state agency in charge of water pollution control activities. After the Regional Administrator and the appropriate state agency have reviewed the Plan, the Regional Administrator may require amendment of the SPCC Plan. The amended Plan must be certified by a P.E. prior to implementation. Facilities may appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan.

Recordkeeping

Under section 112.3, the facility owner/operator must maintain a copy of the SPCC Plan at the facility, or under certain circumstances, at the nearest field office. The Plan must be available for review during normal working hours. In addition, facilities must maintain (and update) records of Plan-specific inspections as outlined under section 112.7(e).

Purpose of Data Collection

EPA does not collect the information required by the Oil Pollution Prevention regulation (i.e., the SPCC Plan) on a routine basis. Preparation, implementation, and maintenance of the SPCC Plan by the facility help prevent oil discharges, and mitigate environmental damage caused by such discharges. Therefore, the primary user of the data is the facility itself. For example:

(i) As facility staff accumulate the necessary data, they must analyze the facility's capability to prevent oil discharges, facilitate safety awareness, and promote appropriate modifications to facility design and operations;

(ii) Because facility staff keep the required information in a single document, they can respond efficiently in the event of a discharge;

(iii) To implement the Plan according to the specifications of section 112.7, the facility must meet certain design and operational standards that reduce the likelihood of an oil discharge;

(iv) Inspection records help facilities to promote important maintenance, facilitate leak detection, and demonstrate compliance with the SPCC requirements; and

(v) When facility staff review the Plan every three years, they ensure implementation of more effective spill prevention control technology.

EPA recognizes that the additional data would help to better demonstrate the effectiveness of the program and better understand the nature of the threat of oil pollution posed by facilities regulated under the SPCC program. As such, in 1995, EPA surveyed a random sample of potentially regulated facilities that produce, use, or store oil products. In July 1996, EPA published a report on the effectiveness of the SPCC program, using the data from the 1995 survey. In the 1996 report, EPA found that approximately 438,000 facilities were regulated under the SPCC program in 1996. The industries that make up the greatest proportion of potentially-regulated facilities are farms (37 percent) and oil production facilities (33 percent). The results of the EPA analysis indicate that facilities with larger storage capacity are likely to have a greater number of oil spills, larger volumes of oil spilled, and greater cleanup costs. Similar increases were found at facilities with more tanks and greater annual throughput. The results of the analysis also appear to indicate that there are no statistically significant relationships between certain other facility characteristics and spill risk. In particular, EPA did not identify a strong and stable relationship between the type of business conducted at a facility and the number of spills or volume of oil spilled. The analysis also revealed that the average age of a facility's tanks, the annual number of transfers, and the annual average tank turnover do not appear to be strongly related to oil spills. The report is available to the public for review at the Public Docket. EPA requests comments on that report.

Although the facility is the primary data user, EPA also uses the data in certain situations. EPA primarily uses SPCC plan data to ensure that facilities comply with the regulation, including design and operation specifications and inspection requirements. EPA reviews SPCC Plans when facilities submit the Plans because of oil discharges, and as part of EPA's inspection program. State and local governments also use the data, which is not necessarily available elsewhere and can greatly assist local emergency preparedness planning efforts. Coordination with state governments is facilitated when, after certain spill events, a facility sends a copy of the SPCC Plan and additional information on the spill to the relevant state agency.

As part of the Agency's efforts to reduce the overall paperwork burden on regulated facilities, EPA would like to solicit comments on how the Agency could best reduce the total paperwork burden hours for this rule while maintaining an effective level of environmental protection.

EPA would also like to solicit public comments to:

(i) 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;

(ii) 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;

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

(iv) 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.

Additionally, the Agency has recently proposed revisions to the SPCC rule to reduce the burden imposed on regulated facilities (cite FR date). Proposed revisions would give facility owners or operators flexibility to use alternative formats for SPCC Plans; allow the use of certain records maintained pursuant to usual and customary business practices, or pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to be used in lieu of records mandated by the SPCC requirements; reduce the information required to be submitted after certain spill events; and extend the period in which SPCC Plans must be reviewed and evaluated.

Burden Statement

This document first presents the estimated number of existing and new storage and production facilities regulated under the Oil Pollution Prevention Regulation. Next, the estimated burden hours and costs to

facilities to perform required actions are presented. Costs are composed of facility labor costs, the cost to use consultants, and any associated capital and operation and maintenance (O&M) expenditures. The cost to a facility to use consultants is listed as an O&M expenditure for purposes of this analysis. Finally, the estimated total annual burden hours and costs for all facilities to comply with the requirements of this regulation are presented. The burden hours shown for each action represent the hours in both the existing ICR and the corresponding hours in the ICR renewal, where there are differences. Costs have been updated to 1997 dollars.

To account for the role of consultants in the process of developing and updating SPCC Plans, EPA re-allocated a percentage of the burden for completing certain paperwork and recordkeeping activities (50 percent for large facilities, 25 percent for medium facilities, and five percent for small facilities) from facility personnel to consultants. The analysis assumes that the burden to a consultant to perform these activities would approximately be equal to that of facility personnel. In reality, a consultant may take slightly less time due to the expected economies of scale associated with performing similar tasks for different facilities (e.g., rule familiarization) but on average, especially when it comes to performing more physical activities (e.g., reviews/inspections, modifications) the burden is expected to remain relatively constant regardless of who performs the activity.

As of January 1998, approximately 451,000 existing facilities are assumed to be regulated under the SPCC program with approximately 4,500 new facilities joining the program in 1998. These numbers are based on the previous ICR estimate of approximately 446,500 existing and new facilities as of January 1996. A one percent annual growth in the number of facilities is assumed. For purposes of this ICR, all facilities were grouped into two distinct categories: production facilities (facilities whose operations and oil storage activities are exclusively limited to oil production) and storage facilities (all other SPCC-regulated facilities whose operations do not include oil production). This categorization of facilities reflects differences in the estimated burden of compliance activities depending on the nature of the facility's operations.

The current ICR assumes that storage facilities make up 65 percent of small facilities, 69 percent of medium facilities, and 98 percent of large facilities. Production facilities make up 35 percent of small facilities, 31 percent of medium facilities, and two percent of large facilities. These ratios, as well as the Agency's estimate concerning the number of regulated facilities, are based on the results of a 1995 survey of SPCC regulated facilities conducted by EPA. The results of this survey are available for public review at the Public Docket. The definitions of small, medium, and large facility are based on oil storage capacity and are defined as follows, based on the Agency's January 1991 "SPCC Facilities Study":

(i) Small facility—a facility that has aboveground storage capacity greater than 1,320 gallons (or 660 gallons in a single container), but less than or equal to 42,000 gallons;

(ii) Medium facility—a facility that has total (aboveground or underground) storage capacity greater than 42,000 gallons but less than or equal to one million gallons; and

(iii) Large facility—a facility that has total storage capacity greater than one million gallons.

An estimate of the number of existing and new storage and production facilities in 1998 are shown in Exhibits 1 and 2.

EXHIBIT 1.—ESTIMATED NUMBER OF EXISTING FACILITIES (1998)

	Small	Medium	Large	Total
Storage	231,406	57,697	13,188	302,290
Production	122,812	25,551	309	148,672
Total	354,217	83,248	13,497	450,963

EXHIBIT 2.—ESTIMATED NUMBER OF NEW FACILITIES (1998)

	Small	Medium	Large	Total
Storage	2,314	577	132	3,023
Production	1,228	256	3	1,487
Total	3,542	832	135	4,510

The facility cost estimates for each category of activities are based on 1997 hourly wage rates for managerial ($38.59), technical ($28.26), and clerical ($17.71) work. These wage rates include wages and salaries, benefit costs, and overhead costs and reflect private industry averages, which were estimated by the U.S. Bureau of Labor Statistics. The Agency recognizes that these wage rates may underestimate the actual wages received by some SPCC personnel but overestimate the actual wage rate received by other facility personnel. The Agency estimated wage rates for consultants using the 1994 Facility Response Plan Regulatory Impact Analysis (RIA). This RIA "loaded" the direct, private industry wages by a factor of 2.75 to develop wage rates for consultants. Consequently, this loading factor was applied to the direct labor rates for private industry managerial, technical, and clerical workers to estimate the following rates: managerial ($106.12), technical ($77.72), and clerical ($48.70).

Each exhibit represents separate burden estimates for small, medium, and large storage and production facilities. Exhibits 3 through 8 summarize the estimated facility burden associated with performing each separate task associated with an SPCC Plan. Not all of the activities will be performed on an annual basis by all facilities. For the purposes of estimating respondent burden, EPA assumes that consultants are retained by some facilities to assist in the following activities: preparation of a new plan; modification of an existing plan; and conducting a triennial review. Again, EPA assumed that a large facility would use outside consultants about 50 percent of the time, a medium facility would use outside consultants about 25 percent of the time, and a small facility

would use outside consultants about five percent of the time to perform the above activities.

New Plan

Exhibit 3 presents the estimated burden and costs for a facility to perform the activities associated with preparing an SPCC Plan. All new facilities must prepare and implement an SPCC Plan.

EXHIBIT 3.—ESTIMATED BURDEN HOURS AND COSTS—PREPARATION OF NEW PLAN

Type of Facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total [1]
Storage:							
Small	5.7	23.8	3.8	33.3	0	$86	$1,044
Medium	4.5	33.0	4.5	42.0	0	672	1,858
Large	3.0	38.0	4.0	45.0	0	2,141	3,402
Production:							
Small	5.7	26.6	3.8	36.1	0	93	1,132
Medium	4.5	34.5	4.5	43.5	0	696	1,924
Large	3.0	38.5	4.0	43.5	0	2,165	3,440

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Modification of Plan

Exhibit 4 presents the burden hours and costs for a facility to revise an SPCC Plan after any modification that materially affects the facility's potential to discharge oil into navigable waters. An estimated ten percent of facilities will need to modify their SPCC Plans each year.

EXHIBIT 4.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—MODIFICATION OF PLAN

Type of facility	Burden Hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total [1]
Storage:							
Small	0.0	4.3	1.0	5.2	$0	$12	$150
Medium	0.0	3.4	0.8	4.1	0	61	170
Large	0.0	2.3	0.5	2.8	0	123	195
Production:							
Small	0.0	4.3	1.0	5.2	0	12	150
Medium	0.0	3.4	0.8	4.1	0	61	170
Large	0.0	2.3	0.5	2.8	0	123	195

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Triennial Review

Exhibits 5 and 6 present the estimated burden hours and costs for a facility to complete a triennial review, with and without amendment. As a result of the review process, the facility may need to amend its Plan, incurring additional costs. Annual burdens and costs per facility are one-third of the values in Exhibits 5 and 6. An estimated three percent of all existing facilities will need to amend their Plans each year.

EXHIBIT 5.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—TRIENNIAL REVIEW—NO AMENDMENT

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total [1]
Storage:							
Small	1.0	2.4	0.5	3.8	$0	$10	$122
Medium	0.8	3.4	0.8	4.9	0	78	216
Large	0.5	4.0	0.5	5.0	0	240	381
Production:							
Small	1.0	3.3	0.5	4.8	0	12	151
Medium	0.8	4.1	0.8	5.6	0	90	249
Large	0.5	4.5	0.5	5.5	0	264	419

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

EXHIBIT 6.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—TRIENNIAL REVIEW—AMENDMENT

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total [1]
Storage:							
Small	1.0	6.7	1.9	9.5	$0	$23	$281
Medium	0.8	6.8	1.5	9.0	0	140	386
Large	0.5	6.3	1.0	7.8	0	363	577
Production:							
Small	1.0	7.6	1.9	10.5	0	26	311
Medium	0.8	7.5	1.5	9.8	0	151	419
Large	0.5	6.8	1.0	8.3	0	387	615

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Oil Discharge

Exhibit 7 presents estimated burden hours and costs for a facility to submit information to the Regional Administrator in the event of certain discharges of oil into navigable waters. It is assumed that the probability of a facility having such a spill in any given year is 0.15 percent.

EXHIBIT 7.—ESTIMATED BURDEN HOURS AND COSTS—OIL DISCHARGE

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total [1]
Storage:							
Small	1.0	1.0	0.0	2.0	$0	$0	$67
Medium	1.0	1.0	0.0	2.0	0	0	67
Large	1.0	1.0	0.0	2.0	0	0	67
Production:							
Small	1.0	1.0	0.0	2.0	0	0	67
Medium	1.0	1.0	0.0	2.0	0	0	67
Large	1.0	1.0	0.0	2.0	0	0	67

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Recordkeeping

Exhibit 8 presents the burden hours and costs for a facility to perform Plan maintenance and Plan-specific recordkeeping activities. All regulated facilities are subject to these requirements.

EXHIBIT 8.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS-RECORDKEEPING

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total [1]
Storage:							
Small	0.0	2.0	0.5	2.5	$0	$0	$65
Medium	0.0	4.5	0.5	5.0	0	0	136
Large	0.0	9.5	0.5	10.0	0	0	277
Production:							
Small	0.0	3.0	0.5	3.5	0	0	94
Medium	0.0	3.0	0.5	3.5	0	0	94
Large	0.0	3.0	0.5	3.5	0	0	94

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Annual Expected Facility Burden

The total annual burden per facility reflects the sum of the annual burdens incurred by the facility for each category of activities outlined above. The estimated annual burden for an existing facility is shown in Exhibit 9. Exhibit 10 presents the estimated annual burden for a new facility.

EXHIBIT 9.—ESTIMATED BURDEN HOURS AND COSTS PER FACILITY-EXISTING FACILITIES

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total
Storage:							
Small	0.3	3.3	0.8	4.3	$0	$5	$123
Medium	0.3	6.0	0.8	7.1	0	33	227
Large	0.2	11.1	0.7	12.0	0	94	426
Production:							
Small	0.3	4.6	0.8	5.7	0	6	161
Medium	0.3	4.7	0.8	5.8	0	37	195
Large	0.2	4.7	0.7	5.6	0	102	255

EXHIBIT 10.—ESTIMATED BURDEN HOURS AND COSTS PER FACILITY—NEW FACILITIES

Type of facility	Burden hours				Cost		
	Managerial 38.59	Technical 28.26	Clerical 17.71	Total burden hours	Capital	O&M	Total
Storage:							
Small	5.7	26.2	4.4	36.3	$67	$87	$1,192
Medium	4.5	37.8	5.1	47.4	67	678	2,078
Large	3.0	47.7	4.6	55.3	67	2,153	3,765
Production:							
Small	5.7	30.0	4.4	40.1	67	94	1,308
Medium	4.5	37.8	5.1	47.4	67	702	2,102
Large	3.0	41.7	4.6	49.3	67	2,177	3,620

Total Annual Expected Facility Burdens

The total annual burdens for all existing facilities and all new facilities are shown in Exhibits 11 and 12. The approximately 451,000 existing facilities will incur a combined burden of about 2.42 million hours and 72 million. In addition, around 4,500 new facilities will incur a combined burden of about 180,137 hours at a cost of 6.6 million. The total annual reporting and recordkeeping burden to the regulated community as a result of the SPCC Program is estimated to be approximately 2.6 million hours at a cost of about 78.6 million.

EXHIBIT 11.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—ALL EXISTING FACILITIES

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total
Storage:							
Small	73,626	755,173	177,623	1,006,422	$0	$1,091,079	$28,418,284
Medium	14,511	346,051	48,033	408,595	0	1,891,286	13,080,463
Large	2,218	146,152	9,517	157,887	0	1,233,329	5,617,205
Production:							
Small	39,075	562,489	94,268	695,832	0	677,170	19,749,279
Medium	6,426	121,312	21,272	149,010	0	939,632	4,992,377
Large	52	1,468	223	1,743	0	31,375	78,810

EXHIBIT 12.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—ALL NEW FACILITIES

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total
Storage:							
Small	13,194	60,580	10,170	83,944	$155,042	$201,558	$2,757,678
Medium	2,597	21,832	2,928	27,357	38,657	391,318	1,198,967
Large	396	6,294	600	7,290	8,836	283,996	496,585
Production:							
Small	7,002	36,879	5,398	49,279	82,284	115,801	1,605,988
Medium	1,150	9,668	1,297	12,115	17,119	179,422	537,095
Large	9	129	14	152	207	6,730	11,189

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed at 40 CFR part 9.

Send comments regarding these matters, or any other aspects of information collection, including suggestions for reducing the burden, to the address listed above under **ADDRESSES** near the top of this document.

Dated: December 11, 1997.

Elaine F. Davies,

Deputy Director, Office of Emergency and Remedial Response.

[FR Doc. 97–33078 Filed 12–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5936–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Class V Underground Injection Control Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Class V Underground Injection Control Study, EPA ICR #1834.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 17, 1998.

ADDRESSES: To obtain a copy of the ICR without charge please contact the Office of Ground Water and Drinking Water, EPA Headquarters, 401 M Street SW, Washington, DC 20460 or contact the persons listed below.

FOR FURTHER INFORMATION CONTACT: Safe Drinking Water Hotline, (800) 426–4791, e-mail: hotline-sdwa-group@epamail.epa.gov; or Anhar Karimjee, (202) 260–3862, fax (202) 260–0732, e-mail: karimjee.anhar@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which own, operate or use Class V underground injection wells, or collect, record, or know of information on their existence and/or their location including, but not limited to: State Environmental Water Quality Agencies, State Oil and Gas Divisions, State Energy Divisions, State Departments of Health, State Agricultural Agencies, State Coastal Commissions or Oceanic Divisions, State Mining and Minerals Divisions, and State Hazardous Waste Divisions.

Title: Class V Underground Injection Control Study, EPA ICR #1834.01.

Abstract: The purpose of this information collection is to gather data on Class V underground injection wells. The collection will be conducted by EPA's Office of Ground Water and Drinking Water (OGWDW) as required by section 2c of the EPA's modified consent decree with the Sierra Club (*Sierra Club* v. *Carol M. Browner*, Civil Action No. 93–2644 NHJ, 1997) in order to comply with section 1421 of the Safe Drinking Water Act (42 U.S.C. 300h). These wells may pose a risk to underground sources of drinking water (USDWs) and therefore EPA is collecting information necessary to determine whether a national regulation is appropriate.

The collection will involve two components. First, a small number of initial site visits for agricultural drainage wells, storm water drainage wells, large capacity septic systems, and certain industrial wells will be conducted to count the number of those well types in certain geologic settings. This data will then be used to create a mathematical model that will eventually be used to estimate the number of wells in existence on a national scale. Once the model is created, additional site visits will be conducted to calibrate the model.

The second component of the collection, for fourteen other well subclasses (electric power return flow wells, direct heat return flow wells, heat pump/AC return flow wells, aquaculture wells, wastewater treatment effluent, aquifer recharge wells, aquifer storage and recovery wells, saltwater intrusion barrier wells, subsidence control wells, mining, sand and other backfill wells, spent brine recovery wells, solution mining wells, in-situ fossil fuel recovery wells and aquifer remediation wells), involves general data collection from State and local agencies on the number of wells in existence and their location on a county level. EPA may also, for some well subclasses in some States, ask for additional information such as permitting requirements, contamination incidents and injectate constituents. The site visits and the data collection component will provide EPA with an estimation of the number of wells, which will provide, in part, the basis for determining whether national regulations for the well subclasses are necessary, and if so, the extent of the regulations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: It is estimated that this information collection will involve a total cost burden to the Respondents of $72,073 and a total hour burden to the Respondents of 2,019 hours. There will be no capital, start-up or operation and maintenance costs but the collection will involve a one time response, from 2,369 respondents, of approximately 0.85 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

Dated: December 12, 1997.

Elizabeth A. Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–33081 Filed 12–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5936–6]

Clean Air Act Advisory Committee; Mobile Sources Technical Review Subcommittee; Notification of Public Advisory Subcommittee Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet on January 14, 1998, from 9:30 am to 4 pm (Eastern Standard Time) at the Doubletree Hotel National Airport, 300 Army-Navy Drive, Arlington, VA 22202, Ph: 703/416–4100. This is an open meeting and seating will be on a first-come basis. During this meeting, the subcommittee will hear progress reports from its workgroups and be briefed on and discuss other current issues in the mobile source program.

Members of the public requesting technical information should contact:

Philip A. Lorang, Designated Federal Officer, U.S. EPA—NVFEL, 2565 Plymouth Road, Ann Arbor, MI 48105, Ph: 734/668–4374, Fax: 734/741–7821, email: lorang.phil@epamail.epa.gov

or

John T. White, Alternate Designated Federal Officer, U.S. EPA—NVFEL, 2565 Plymouth Road, Ann Arbor, MI 48105, Ph: 734/668–4353, Fax: 734/741–7821, email: white.johnt@epamail.epa.gov.

Further information can also be obtained by visiting the FACA website for the Mobile Sources Technical Review Subcommittee and its workgroups at: http://transaq.ce.gatech.edu/epatac/index.htm. Members requesting administrative information should contact:

Jennifer Criss, Management Officer, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, FACA Help Line: 734/668–4518, Fax: 734/741–7821, email: criss.jennifer@epamail.epa.gov.

Written comments of any length (with at least 20 copies provided) should be sent to the subcommittee no later than January 4, 1998.

The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Michael Shields,

Acting Director, Office of Mobile Sources.

[FR Doc. 97–33077 Filed 12–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5935–9]

Draft General NPDES Permit for Shore-Based Seafood Processors Operating in Kodiak, Alaska (General NPDES Permit No. AK–G52–8000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft general NPDES permit.

SUMMARY: The Director, Office of Water, EPA Region 10, is proposing to issue a general National Pollutant Discharge Elimination System (NPDES) permit no. AK–G52–8000 for shore-based seafood processors operating in Kodiak, Alaska, pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.* The proposed general NPDES permit authorizes discharges to St. Paul Harbor and Near Island Channel. The existing ten shore-based facilities are engaged in the processing of fresh, frozen, and canned seafood, surimi and fish powder. Discharges authorized by the proposed general permit include processing wastes, process disinfectants, and other wastewater, including cooling water, boiler water, freshwater pressure relief water, refrigeration condensate, water used to transfer seafood to a facility, and live tank water. One facility discharges treated domestic and sanitary wastewater to St. Paul Harbor. The proposed permit authorizes discharge of wastewater to waters of the United States in and contiguous to the State of Alaska.

The processing facilities are required to collect and route all seafood processing wastes and wastewater to a treatment system consisting of 1 mm screens or equivalent technology. All seafood solid wastes are collected and transported to the by-product recovery facility in Kodiak. One facility processes fish wastes into fish powder at their location.

The proposed general permit contains the same effluent guideline limitations as the previous individual permits. Separate monitoring of the surimi and fish powder waste streams are new additions to the proposed general permit.

The proposed general NPDES permit for seafood processors in Kodiak, Alaska, does not authorize discharges of petroleum hydrocarbons, toxic pollutants, or other pollutants not specified in the permit.

DATES: The issuance date of this public document is December 18, 1997. The expiration date of this public document is on or before January 20, 1998.

Public Comments: Interested persons may submit written comments on the draft general NPDES permit to the attention of Florence Carroll at the address below. All comments should include the name, address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated. Comments must be submitted to EPA on or before the expiration date of the public document.

After the expiration date of the public document, the Director, Office of Water, EPA Region 10, will make a final determination with respect to issuance of the general permit. The tentative requirements contained in the draft general permit will become final conditions if no substantive comments are received during the public comment period. The permit is expected to become effective on March 12, 1998.

Persons wishing to comment on State Certification of the proposed general NPDES permit should submit written comments within this 30-day comment period to the State of Alaska, Alaska Department of Environmental Conservation (ADEC), 410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801–1795.

Comments should be addressed to the attention of Alaska Water Quality Standards Consistency Review.

Persons wishing to comment on the State Determination of Consistency with the Alaska Coastal Management Program should submit written comments within this 30-day comment period, to the State of Alaska, Office of Management and Budget, Division of Governmental Coordination, P.O. Box 110030, Juneau, Alaska 99811–0030. Comments should be addressed to the attention of Alaska Coastal Management Program Consistency Review.

Public Hearing: No public hearings have been scheduled. Persons requesting a public hearing should submit their request to Florence Carroll at the address below. Notice of a public

hearing will be published in the **Federal Register**. Notices will also be mailed to all interested persons receiving copies of the proposed general permit.

Appeal of Permit: Within 120 days following the service of notice of EPA's final permit decision under 40 CFR 124.15, any interested person may appeal the general permit in the Federal Court of Appeal in accordance with section 509(b)(1) of the Clean Water Act. Persons affected by a general permit may not challenge the conditions of the permit as a right of further EPA proceedings. Instead, they may either challenge the permit in court or apply for an individual NPDES permit and then request a formal hearing on the issuance or denial of an individual permit.

Administrative Record: The complete administrative record for the draft general permit is available for public review; contact Florence Carroll at the telephone number below in the EPA Region 10. Copies of the draft general NPDES permit and fact sheet are available upon request from the Region 10 Public Information Center at the following telephone number: 1–800–424–4EPA(4372)if calling from Idaho, Oregon, and Washington and 1–206–553–1200 if calling from Alaska and all other states.

ADDRESSES: Public comments should be sent to: Environmental Protection Agency Region 10, NPDES Compliance Unit (OW–133), Attn: Florence Carroll, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Florence Carroll, of EPA Region 10, at the address listed above or telephone (206) 553–1760.

Regulatory Flexibility Act: After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: December 5, 1997.

Roger K. Mochnick,

Assistant Director, Office of Water.

[FR Doc. 97–32921 Filed 12–17–97; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

December 12, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0806.

Expiration Date: 05/31/98.

Title: Universal Service—Schools and Libraries Universal Service Program.

Form No.: FCC Forms 470 and 471.

Respondents: Business or other for profit.

Estimated Annual Burden: 50,000 respondents; 12 hours per response (avg.); 600,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: On May 8, 1997, the Commission adopted rules in CC Docket 96–45 providing discounts on all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. The following forms will be used to implement these requirements and obligations: a. *FCC Form 470 "Description of Services Requested and Certification."* Schools and libraries ordering telecommunications services, Internet access, and internal connections under the universal service discount program must submit a description of the services desired to the Administrator. Schools and libraries may use the same description they use to meet the requirement that they generally face to solicit competitive bids. The Administrator will then post a description of the services sought on a website for all potential competing service providers to see and respond to as if they were requests for proposals (RFPs). 47 CFR 54.504(b)(2), 47 CFR 54.504(b)(3). Pursuant to section 254(h) of the 1996 Act, schools and libraries must certify under oath that: (1) The school or library is an eligible entity under section 254(h)(4); (2) the services requested will be used solely for educational purposes; (3) the services will not be sold, resold, or transferred in consideration for money or any other thing of value; and (4) if the services are being purchased as part of an aggregated purchase with other entities, the identities of all co-purchasers and the portion of the services being purchased by the school or library. 47 CFR 54.504(b)(2). For schools ordering telecommunications services at the individual school level (i.e. primarily non-public schools), the person ordering such services should certify to the Administrator the percentage of students eligible in that school for the national school lunch program (or other comparable indicator of economic disadvantage ultimately selected by the Commission). This requirement arises in the context of determining which schools are eligible for the greater discounts being offered to economically disadvantaged schools. For schools ordering telecommunications services at the school district level, the person ordering such services for the school district should certify to the Administrator the number of students in each of its schools eligible for the national school lunch program (or other comparable indicator of economic disadvantage). Schools and libraries must also certify that they have developed a technology plan that has been approved by an independent entity or the Administrator. The technology plan should demonstrate that they will be able to deploy any necessary hardware, software, and wiring, and to undertake any necessary teacher training required to use the services ordered pursuant to the section 254(h) discount effectively. 47 CFR 54.504(b)(2). (No. of respondents: 50,000; hours per response: 6 hours; total annual burden: 300,000). b. *FCC Form 471 "Services Ordered and Certification."* Schools and libraries that have ordered telecommunications services, Internet access, and internal connections under the universal service discount program must file FCC Form 471 with the Administrator. This form requires schools and libraries to indicate whether funds are being requested for an existing contract, a master contract or whether it wishes to terminate service. Form 471 requires schools and libraries to list all services that have been ordered and the corresponding discount to which it is entitled. The school or library must also estimate its funding needs for the current funding year and for the following funding year. 47 CFR 54.504(b)(2). All schools and libraries planning to order services eligible for

universal service discounts must file FCC Forms 470 and 471. The purpose of this information is to help determine which schools are eligible for the greater discounts. Schools and libraries must certify to the Administrator that they have developed an approved technology plan via Form 470. Copies of the forms may be obtained via e-mail from: <washtemp@neca.org>. Obligation to respond: Required to obtain benefits.

OMB Control No.: 3060–0807.

Expiration Date: 05/31/98.

Title: 47 CFR 51.803 and Supplemental Procedures for Petitions Pursuant to Section 252(e) of the Communications Act of 1934, as amended.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 50 respondents; 40.8 hours per response (avg.); 2040 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Any interested party seeking preemption of a state commission's jurisdiction based on the state commission's failure to act shall notify the Commission as follows: (1) File with the Secretary of the Commission a detailed petition, supported by an affidavit, that states with specificity the basis for any claim that it has failed to act; and (2) serve the state commission and other parties to the proceeding on the same day that the party serves the petition on the Commission. Within 15 days of the filing of the petition, the state commission and parties to the proceeding may file a response to the petition. See 47 U.S.C. 252 and CFR 51.803. In a Public Notice (DA 97–2540), the Commission sets out procedures for filing petitions for preemption pursuant to section 252(e)(5) of the Communications Act of 1934, as amended. Section 252(e)(5) provides that "[i]f a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission." (1) *Filing of Petitions for Preemption.* Each party seeking preemption should caption its preemption petition, "Petition of [Petitioner's Name] pursuant to Section 252(e)(5) of the Communications Act (the Act)." In addition, on the date of the petition's filing, the petitioner should serve a copy of the petition by hand delivery on the Common Carrier Bureau, and send a copy to the Commission's contractor for public service records duplication. Section 51.803(a)(2) of the Commission's rules requires each party seeking preemption pursuant to section 252(e)(5) to "ensure that the state commission and the other parties to the proceeding or matter for which preemption is sought are served with the petition * * * on the same date that the petitioning party serves the petition on the Commission." Therefore, each section 252(e)(5) petitioner should state in its certificate of service the steps it is taking to comply with this requirement (e.g., hand delivery or overnight mail). Petitions seeking preemption must be supported by affidavit and state with specificity the basis for the petition and any information that supports the claim that the state has failed to act. See 47 CFR 51.803. Each petitioner should append to its petition the full text of any State commission decision regarding the proceeding or other matter giving rise to the petition as well as the relevant portions of any transcripts, letters, or other documents on which the petitioner relies. Each petitioner should also provide a chronology of that proceeding or matter that lists, along with any other relevant dates, the date the petitioner requested interconnection, services, or network elements pursuant to section 251 of the Act, the dates of any requests for mediation or arbitration pursuant to section 252(a)(2) or (b)(1), and the dates of any arbitration decisions in connection with the proceeding or matter. (*No. of respondents:* 50; *hours per response:* 40 hours; *total annual burden:* 2000). b. *Submission of Written Comments by Interested Third Parties.* Interested third parties may file comments on a preemption petition in accordance with a public notice to be issued by the Commission. (*No. of respondents:* 2; *hours per response:* 20 hours; *total annual burden:* 40 hours). All of the requirements would be used to ensure that petitioners have complied with their obligations under the Communications Act of 1934, as amended. Obligation to respond: Mandatory.

OMB Control No.: 3060–0791.

Expiration Date: 11/30/2000.

Title: Accounting for Judgments and Other Costs Associated with Litigation, CC Docket No. 93–240.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 1 respondents; 36 hours per response (avg.); 36 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In CC Docket No. 93–240, the Commission adopted accounting rules that would: require carriers to account for adverse federal antitrust judgments and post-judgment settlements of federal antitrust claims below the line in Account 7370, a nonoperating account for special charges. With regard to settlements of such lawsuits, there will be a presumption that carriers can recover the portion of the settlement that represents the avoidable costs of litigation, provided that the carrier makes a required showing. To receive recognition of its avoided costs of litigation, a carrier must demonstrate, in a request for special relief, the avoided costs of litigation by showing the amount corresponding to the additional litigation expenses discounted to present value, that the carrier reasonably estimates it would have paid if it had not settled. Settlement costs in excess of the avoided costs of litigation are presumed not recoverable unless a carrier rebuts that presumption by showing the basic factors that indicated the carrier to settle and demonstrating that ratepayers benefited from the settlement. A carrier requesting recovery of the avoided costs of litigation must accompany its request with clear and convincing evidence that, without the settlement, it would have incurred the expenses it estimates. The evidence will vary according to the circumstances. Among the data a carrier may provide are any avoidable cost estimates provided by the law firm representing the carrier, an estimate of attorney hours needed to complete the case along with the hourly rates for the attorneys involved, information regarding the discovery remaining to be completed, the amount of trial time scheduled by the judge, and information regarding the number of witnesses or documents that would have been introduced at trial, including any pretrial statements filed with the court, costs of expert witnesses, travel time, saved in-house counsel replacement costs, and any other material the carrier considers relevant. The avoided costs of litigation of a pre-judgment settlement would include the anticipated costs of litigating until a judgment. The avoided cost of litigation of a post-judgment settlement would anticipate a successful appeal in the particular case. A fundamental

requirement of Title II of the Communications Act of 1934, as amended, is that "all charges for and in connection with interstate communication service, shall be just and reasonable." This provision safeguards consumers against rates that are unreasonably high and guarantees carriers that they will not be required to charge rates that are so low as to be confiscatory. Carriers under the Commission's jurisdiction must be allowed to recover the reasonable costs of providing service to ratepayers, including reasonable and prudent expenses and a fair return on investment. Obligation to respond: Mandatory.

OMB Control No.: 3060–0760.

Expiration Date: 05/31/98.

Title: Access Charge Reform, CC Docket No. 96–262 (First Report and Order); Second Order on Reconsideration and Memorandum Opinion and Order; and Third Report and Order.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 14 respondents; 129,001 hours per response (avg); 1,806,018 total annual burden hours (for all collections approved under this control number).

Estimated Annual Reporting and Recordkeeping Cost Burden: $33,000.

Frequency of Response: On occasion; one-time requirement.

Description: In CC Docket No. 96–262, the Commission adopted a Third Report and Order. In the Third Report and Order, FCC adopts, consistent with principles of cost causation and economic efficiency, that where price cap LECs use general purpose computers and other general support facilities (GSF) to provide nonregulated billing and collection services to interexchange carriers, such GSF costs should not be allocated to these LECs' regulated access and interexchange categories but, instead, should be allocated to their nonregulated billing and collection categories. In the Third Report and Order, the Commission requires affected price cap LECs to make certain exogenous adjustments to their respective price cap indices (PCIs) and related basket indices. LECs affected by this Order are those price cap LECs that use regulated assets to provide nonregulated billing and collection services to interexchange carriers. For the purposes of estimating the information collection burdens for the Third Report and Order, we assume all price cap LECs are affected by the Order. Such LECs must determine the amount of GSF costs that they allocated to their respective access and interexchange categories during 1996 and then calculate the amount of such costs that would have been allocated to those categories during that year if the rule changes adopted in the Third Report and Order had been in effect at that time. Once that difference is determined, each affected price cap LEC is required to make an exogenous adjustment to its PCIs and related basket indices to prevent the earlier misallocation of these costs from continuing to inflate the rates charges for regulated services. Separate from the possible tariff filing burden described below, we estimate that it would take each of these price cap LECs four hours to complete the steps necessary to determine the amount of the exogenous price cap index (PCI) and related basket adjustments required by the Third Report and Order. Because we assume this particular burden applies to all 14 price cap LECs, we estimate the total burden to be 56 hours. Under the Third Report and Order, affected price cap LECs are required to make tariff revision filings on or before December 17, 1997, to implement these exogenous price cap adjustments. Because most of these 14 price cap LECs have not yet made such filings, there should be little or no additional tariff filing burden associated with these LECs' compliance with the Third Report and Order. For the four price cap LECs that have already made access reform tariff filings under other orders, we estimate that there will be an additional tariff filing burden of 1272 hours for these LECs as a group. Incremental burden associated with the Third Report and Order in this proceeding is as follows: *No. of respondents:* 14; *hours per response:* 94.8; *total annual burden:* 1328.

Obligation to respond: Mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–33044 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Alternative Dispute Resolution

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Policy statement.

SUMMARY: The FDIC has adopted a Statement of Policy to further its commitment to the use of Alternative Dispute Resolution for resolving appropriate disputes in a timely and cost efficient manner and to comply with the spirit of the Administrative Dispute Resolution Act of 1996, Pub. L. 104–320.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: James D. Hudson, Counsel (202) 736–0581, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The Board of Directors of the FDIC has adopted a Statement of Policy on Alternative Dispute Resolution. The text of the Policy Statement follows:

Statement of Policy on Alternative Dispute Resolution

The Federal Deposit Insurance Corporation (FDIC) has been and continues to be committed to the use of Alternative Dispute Resolution (ADR) for resolving appropriate disputes in a more timely, less costly manner than litigation or administrative adjudication. The FDIC hereby adopts this policy to reiterate its commitment to ADR, to express its full support for ADR and to set forth a framework for the continuing and expanding use of ADR. The Corporation views ADR not as an end in itself, but rather, as an additional tool to accomplish its business efficiently, economically and productively. To that end, the FDIC believes that its ADR policy should be dynamic and continually developing.

The FDIC fully supports the cost-effective use of ADR, including negotiation, mediation, early neutral evaluation, neutral expert fact-finding, mini-trials and other hybrid forms of ADR in appropriate instances. The purpose of this policy is to use ADR in appropriate instances to resolve disputes at the earliest stage possible, by the fastest and least expensive method possible and at the lowest possible organizational level consistent with applicable delegations of authority.

The Deputy General Counsel for Corporate Operations (or his/her designee) serves as the Dispute Resolution Specialist for the Corporation. In addition, an ADR Steering Committee, composed of the Dispute Resolution Specialist (or his/her designee) and representatives from each Division and Office, was established by the Board of Directors in 1994 to coordinate and encourage appropriate

and cost-effective conflict management practices in all aspects of FDIC operations and programs. The Dispute Resolution Specialist, working with the ADR Steering Committee, shall report to the Board of Directors on an annual basis regarding the Corporation's ADR efforts, implementation of this policy, and any revisions or actions necessary.

It is the responsibility of all FDIC employees to implement this policy and to practice and promote cost-effective dispute resolution in FDIC programs and other areas of Corporation operation. All management and employees of the FDIC are hereby directed to take the necessary steps to implement this policy and to cooperate to the fullest extent with the ADR Steering Committee and the Dispute Resolution Specialist (and his/her designee) to promote effective and appropriate use of ADR at the Corporation in furtherance of this policy.

The FDIC welcomes and encourages input on the use of ADR and comment on current and potential uses of ADR from both within and outside the Corporation.

By order of the Board of Directors.

Dated at Washington, DC, this 9th day of December, 1997.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 97–33038 Filed 12–17–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act; Property Availability; State Road 33 South, Lake County, Florida

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as State Road 33 South, located in the City of Groveland, Lake County, Florida, is affected by section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notice of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the FDIC until March 18, 1998.

ADDRESSES: Copies of detailed descriptions of this property, including maps, may be obtained from or are available for inspection by contacting the following person: Mr. Richard Espinoza, Federal Deposit Insurance Corporation, Northeast Service Center, 101 East River Drive, East Hartford, CT. 06108, (860) 291–4051; Fax (860) 291–4077.

SUPPLEMENTARY INFORMATION: The State Road 33 South property (a.k.a. 11804 State Road 33 South) consists of approximately 100 acres of undeveloped land divided into two tracts in a rural area approximately two miles south of the city limits of the City of Groveland, FL. The legal description of the site is Tracts 1, 2, 15, 16, 34, 47, 48, 49, 50, 63 and 64 in Section 6, Township 23 South, Range 25 East, Groveland Farms, according to the plat thereof as recorded in Plat Book 2, Pages 10 and 11, Public Records of Lake County, FL. The State Road 33 South property is predominately wetlands and contains dense vegetation. This property is within the State of Florida's Green Swamp Area of Critical Concern and is adjacent to Mill Stream Swamp which is managed by the St. John's River Water Management District for natural resource conservation purposes. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before March 18, 1998 by the Federal Deposit Insurance Corporation at the appropriate address stated above.

Eligible Entities

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and,

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Form of Notice

Written notices of serious interest must be submitted in the following form:

NOTICE OF SERIOUS INTEREST

RE: State Road 33 South

Federal Register Publication Date: December 18, 1997.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 170(h)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the FDIC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: December 12, 1997.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 97–33006 Filed 12-17-97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of

a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Shore Financial Corporation, Onley, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Shore Bank, Onley, Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First United Bancshares, Inc., El Dorado, Arkansas; to merge with Citizens National Bancshares of Hope, Inc., Hope, Arkansas, and thereby indirectly acquire Citizens National Bank of Hope, Hope, Arkansas, and Peoples Bank and Loan Company, Lewisville, Arkansas.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. FNB Financial Services, Inc. ESOP, Durant, Oklahoma; to acquire .3 percent of the voting shares of FNB Financial Services, Inc., Durant, Oklahoma, and thereby indirectly acquire The First National Bank in Durant, Durant, Oklahoma.

Board of Governors of the Federal Reserve System, December 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–33087 Filed 12–17–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Gold Banc Corporation, Inc., Leawood, Kansas; to acquire Midwest Capital Management, Inc., Kansas City, Missouri, and thereby indirectly engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; agency transactional services for customer investments including securities brokerage, riskless principal transactions and private placement services, pursuant to §§ 225.28(b)(7)(i), (ii), and (iii) of the Board's Regulation Y; investment transactions as principal, including underwriting and dealing in government obligations and money market instruments, pursuant to § 225.28(b)(8)(i) of the Board's Regulation Y; investing and trading activities, i.e. engaging as principal in financial futures, pursuant to § 225.28(b)(8)(ii)(B) of the Board's Regulation Y; providing management consulting advice, pursuant to § 225.28(b)(9)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–33086 Filed 12–17–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

S. Ashraf Imam, Ph.D., University of Southern California: Based on an investigation report forwarded to the Office of Research Integrity (ORI) by the University of Southern California (USC) as well as information obtained by ORI during its oversight review, ORI found that Dr. Imam, an Associate Professor in the Department of Pathology, USC, engaged in scientific misconduct by including plagiarized material in a grant application submitted to the National Cancer Institute (NCI), National Institutes of Health (NIH).

Specifically, Dr. Imam's NIH grant application contained extensive paraphrasing of the text of another researcher's independent grant application to a state agency. Dr. Imam had been given that application by a colleague in confidence. The colleague was a reviewer on the state grant application and requested that Dr. Imam evaluate it and return the application to him.

The other researcher's application was subsequently funded. Dr. Imam paraphrased or copied into his NIH application all of the other researcher's specific aims, the background on proposed methods, the experimental design and research plan, and most of the references; only the preliminary results sections of Dr. Imam's application were different.

Dr. Imam has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has agreed, for the three (3) year period beginning December 8, 1997, to exclude himself voluntarily from:

(1) any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 CFR Part 76 (Debarment Regulations); and

(2) serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research

Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal, J.D.,

Acting Director, Office of Research Integrity.

[FR Doc. 97–33035 Filed 12–17–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request, Proposed Projects

Title: IRS Project 1099.

OMB No.: New Collection.

Description: A voluntary program which provides States' Child Support Enforcement agencies upon there request access to all of the earned and unearned income information reported to IRS by employers and financial institutions. The IRS 1099 information is used to locate noncustodial parents and to verify income and employment, which has proven essential to accurately establishing and enforcing child support obligations.

Respondents: State, Local, or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE 1099 Request Records	43	12	1	1,032

Estimated Total Annual Burden Hours: 1,032.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 15, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–33083 Filed 12–17–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0517]

Changes in Medical Device Tracking and Postmarket Surveillance Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing the following meeting: Changes in medical device tracking and postmarket surveillance authority under the Food and Drug Administration Modernization Act of 1997. The topic to be discussed is postmarket controls, including tracking and/or surveillance of devices.

Date and Time: The meeting will be held on January 15, 1998, 9 a.m. to 3 p.m.

Location: The meeting will be held at the University of Maryland Auditorium, 9640 Gudelsky Dr., Rockville, MD.

Contact: Casper E. Uldriks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4692, FAX 301–594–4610.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number) and written material and requests to make oral presentations to the contact person by January 5, 1998. Written comments may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, by January 5, 1998.

If you need special accommodations due to a disability, please contact Casper E. Uldriks at least 7 days in advance of the meeting.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

The agency is interested in discussing the statutory changes concerning tracking and postmarket surveillance under the Food and Drug Administration Modernization Act of 1997 and whether the agency should develop additional criteria to use to determine whether tracking or postmarket surveillance requirements should be ordered by FDA. The agency would like to supplement the statutory criteria with additional nonbinding criteria to help determine which devices may need to be added or removed from the list of devices subject to tracking and/or postmarket surveillance requirements. FDA intends to publish its revised lists by February 19, 1998, the effective date of the new law.

By way of example, additional criteria that would support a tracking order might include the likelihood of a recall, or the likelihood of irreversible clinical outcomes. Additional criteria that might not support a tracking order, for example, might include current, standard clinical practices that mitigate risk. Additional criteria that would support a postmarket surveillance order might include, for example, the use of a new technology or the need to assess a new public health issue based on measurable outcomes. Additional criteria that would not support a

postmarket surveillance order, for example, might be whether there are alternative postmarket data collection mechanisms to obtain the same kind of information about the device. The agency could use such criteria to guide its decision whether to impose tracking or postmarket surveillance in a particular case.

The agency requests that comments or presentations be provided concerning the statutory requirements for medical device tracking and postmarket surveillance and related proposed risk assessment criteria which may be useful to the agency to determine whether tracking orders or postmarket surveillance orders should be issued for devices that meet the basic statutory requirements of section 519(e) or 522 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i(e) or 360l). The agency would like to encourage comments, discussion and proposals from the industry, the professional community, consumers, and any other interested parties or organizations. Written comments may be submitted in advance of the meeting to the Dockets Management Branch (address above).

To help focus discussion, FDA requests answers to the following questions:

(1) What factors (or criteria) should lead FDA to order tracking and/or postmarket surveillance?

(2) What factors (or criteria) should lead FDA not to order tracking and/or postmarket surveillance?

(3) Under what circumstances should FDA order both tracking and postmarket surveillance for a device?

(4) Under what circumstances should FDA order tracking but not postmarket surveillance, or vice versa?

Electronic Access

Additional information regarding the public meeting may be found on the Internet on the home page for the Center for Devices and Radiological Health under the "New Items on the Internet" section at www.cdrh.fda.gov. This will be an informal meeting conducted in accordance with 21 CFR 10.65.

Dated: December 15, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–33090 Filed 12–15–97; 3:02 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0500]

Telectronics Pacing Systems, Inc.; Premarket Approval of Telectronics Guardian™ ATP II Model 4211 Implantable Cardioverter Defibrillator System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Telectronics Pacing Systems, Inc., Englewood, CO, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Guardian™ ATP II Model 4211 Implantable Cardioverter Defibrillator System. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 3, 1997, of the approval of the application.

DATES: Petitions for administrative review by January 20, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Doris J. Terry, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION: On July 8, 1994, Telectronics Pacing Systems, Inc., Englewood, CO 80112, submitted to CDRH an application for premarket approval of the Guardian™ ATP II Model 4211 Implantable Cardioverter Defibrillator System. The Guardian™ ATP II Model 4211 Implantable Cardioverter Defibrillator System is indicated for use in patients who are at high risk of sudden death due to ventricular fibrillation and/or ventricular tachyrhythmias and who have experienced one of the following situations:

- survival of at least one episode of cardiac arrest (manifested by a loss of consciousness) due to a ventricular tachyrhythmia
- recurrent, poorly tolerated sustained ventricular tachycardia (VT). Note: The clinical outcome for hemodynamically stable, sustained-VT patients is not fully known. Safety and effectiveness studies have not been conducted.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On July 3, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 20, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information,

identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 31, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–32968 Filed 12–17–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–265]

Agency information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement without change of a previously approved collection for which approval has expired; *Title of Information Collection:* Independent Renal Dialysis Facility Cost Report Form and Supporting Regulations 42 CFR 413.198, 413.20; *Form No.:* HCFA–265; *Use:* The Medicare Independent Renal Dialysis Facility Cost Report provides for determinations and allocation of costs to the components of the Renal Dialysis facility in order to establish a proper basis for Medicare payment. *Frequency:* Annually; *Affected Public:* Business or other for profit; *Number of Respondents:* 2,472; *Total Annual Responses:* 2,472; *Total Annual Hours:* 484,512.

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Oregon Medicaid Reform Demonstration: Phase II Adult Interview, Phase II Child Interview, Survey of Agency Providers; *Form No.:* HCFA–R–221; *Use:* These survey instruments will be used to evaluate the Oregon Medicaid Reform Demonstration. The Phase II Adult and Phase II Child interviews are designed to collect information on health status, access to care and past health insurance status for adults and children participating in Phase II of the Oregon Health Plan (OHP). The survey of Agency providers is designed to collect information on the experience under OHP of agencies that traditionally treat disabled and elderly Medicaid beneficiaries. *Frequency:* One Time; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Governments; *Number of Respondents:* 4,150; *Total Annual Responses:* 4,150; *Total Annual Hours:* 1,730.

3. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Health Maintenance Organizations & Competitive Medical Plans National Data Reporting Requirements and Supporting Regulations 42 CFR 417.100, .940, .126, .478, .162; *Form No.:* HCFA–906; *Use:* This form captures information which governs qualification of new Health Maintenance Organizations (HMOs) and the eligibility of Competitive Medical Plans (CMPs), employer compliance, recovery of Federal loan and loan guarantees, financial disclosure, and continuing regulation of qualified HMOs and CMPs which provide health care services to beneficiaries for a fixed fee which is paid on a periodic basis. *Frequency:* Other; Annually, Quarterly; *Affected Public:* Federal Government, Business or other for-profit, Not-for-profit institutions, State, local or Tribal Government; *Number of Respondents:* 313; *Total Annual Responses:* 953; *Total Annual Hours:* 3,130.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 11, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–33064 Filed 12–17–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Document Identifier: HCFA–179

Agency information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Transmittal and Notice of Approval of State Plan Material and Supporting Regulations in 42 CFR 430.10–430.20 and 440.167; *Form No.:* HCFA–179 (OMB #0938–

0193); *Use:* The HCFA–179 is used by State agencies to transmit State plan material to HCFA for approval prior to amending their State plan. The State Plan is the method in which States inform staff of State policies, standards, procedures and instructions; *Frequency:* On occasion; *Affected Public:* State, local and tribal government; *Number of Respondents:* 57; *Total Annual Responses:* 1,254; *Total Annual Hours:* 1,254.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 12, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–33067 Filed 12–17–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–53]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Imposition of Cost Sharing Charges Under Medicaid and Supporting Regulations contained in 42 CFR 447.53; *Form No.:* HCFA–R–53 (OMB# 0938–0429); *Use:* The information collection requirements contained in 42 CFR 447.53 require the States to include in their Medicaid State Plan their cost sharing provisions for the medically and categorically needy. The State Plan is the method in which States inform staff of State policies, standards, procedures and instructions; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours:* 2,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 10, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–33071 Filed 12–17–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Form #HCFA–855]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHSS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 C.F.R., Part 1320. The Agency cannot reasonably comply with the normal clearance procedures because a statutory deadline imposed by the Balanced Budget Act of 1997 (Pub. L. 105–33). Without this information, HCFA would not be able to properly implement the requirements set forth in the statute.

HCFA is requesting OMB review and approval of this collection by 12/31/97, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below, by 12/29/97.

During this 180-day period HCFA will pursue OMB clearance of this collection as stipulated by 5 CFR. 1320.5.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare and Other Federal Health Care Program Providers/Supplier Enrollment Application; *Form No.:* HCFA–855, HCFA–855C, HCFA–855R, HCFA–855S; *Use:* This information is needed to enroll providers and suppliers into the Medicare program by identifying them, and verifying their qualifications and eligibility to participate in Medicare, and to price and pay their claims.; *Frequency:* Initial Enrollment/Recertification; *Affected Public:* Business or other for-profit, individuals or households, not-for-profit institutions, and Federal Government; *Number of Respondents:* 225,000; *Total Annual Responses:* 225,000; *Total Annual Hours:* 435,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web

Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designee referenced below, by 12/29/97: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: December 12, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–33066 Filed 12–17–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: November 1997

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of November 1997, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ARBAUGH, CHARLES B, W PALM BEACH, FL	12/18/1997
BARNARD, KEITH L, BROOKLYN, NY	12/18/1997
BONANNO, STEVEN, BROOKLYN, NY	12/18/1997
BONE, DONALD RAY, LITTLE ROCK, AR	12/18/1997
BORGES, ALFREDO LAZARO JR, EGLIN AFB, FL	12/18/1997
CABRERA, JUAN, PLANDOME HEIGHTS, NY	12/18/1997
CHERKAS, MARK W, YARDLEY, PA	12/18/1997
FOLSE, NADINE M, RACELAND, LA	12/18/1997
FOSTER, RAMONA, CAROLINA, RI	12/18/1997
FRAZIER, JAMES, OAK PARK, MI	12/18/1997
GONZALEZ, PEDRO LEONARDO, MIRAMAR, FL	12/18/1997
HOWARD, LINDA J, CHEPACHET, RI	12/18/1997
HUDSON, LOVEY LEE, JACKSONVILLE, AR	12/18/1997
IRVING, LEWIS M JR, BRIDGETON, NJ	12/18/1997
LAMBERT, DIANNA, BRYAN, TX	12/18/1997
LAWRENCE, THOMAS JAMES, WAYNESVILLE, MO	12/18/1997
LEE, STEVEN K, LAFAYETTE HILL, PA	12/18/1997
MCDONALD, J T, LITTLE ROCK, AR	12/18/1997
MCKENZIE, MARIE, WHEATLEY HGHTS, NY	12/18/1997
MER, EVGENYA, SHARON SPRINGS, NY	12/18/1997
OVERTON, PAMELA SALERNO, NEW HAVEN, CT	12/18/1997
RODRIQUEZ, SONIA, NEW YORK, NY	12/18/1997
ROWELL, GEORGE P, DELANO, CA	12/18/1997
SCHUSTER, STANLEY, ANN ARBOR, MI	12/18/1997
STAGGER, ROBERT W, UPPER SANDUSKY, OH	12/18/1997
STEVEN LEE, INC, LAFAYETTE HILL, PA	12/18/1997
TAING, SOPHY, POMONA, CA	12/18/1997
TARAWALY, TEJAN, OREGON, WI	12/18/1997
THOMAS, SHARMAINE, AUSTIN, MN	12/18/1997
VIDU, DORIAN M, CLEVELAND, OH	12/18/1997
WEATHERLY, BILLY WAYNE, FORREST CITY, AR	12/18/1997
YANEZ-LEMIRE, FAITH, GOFFSTOWN, NH	12/18/1997
ZWEIG, MARK ALAN, BOSSIER CITY, LA	12/18/1997
PATIENT ABUSE/NEGLECT CONVICTIONS	
BLOOM, RICHARD M, BROOKLINE, MA	12/18/1997
BUTLER, HENRY, NOBLE, IL	12/18/1997
CACIOPPO, DINO T, SAN LEANDRO, CA	12/18/1997
CICHON, DANIEL FRANK, OSHKOSH, WI	12/18/1997
COLLINS, ANN, BEVERLY, MA	12/18/1997
CROWLEY, JENNIFER LENAE, SWISHER, IA	12/18/1997
FREDERICK, JANENE L, ST LOUIS, MO	12/18/1997
GRIFFIN, MICHAEL JAMES, OSAWATOMIE, KS	12/18/1997
LOPEZ, ADAM, LOVINGTON, NM	12/18/1997

Subject, city, state	Effective date
NIVEN, CAROL, TRIADELPHIA, WV	12/18/1997
OBAS, JULIUS O, BOSTON, MA	12/18/1997
REITER, SUE ELLEN, OTTUMWA, IA	12/18/1997
SHELTON, MALCOLM, TN COLONY, TX	12/18/1997
THOMAS, ANNAMAE, BRONX, NY	12/18/1997
THOMPSON, DENNIS, KNOXVILLE, TN	12/18/1997
WASHINGTON, DONNA LYNNETTE, FORT WORTH, TX	12/18/1997
CONVICTION FOR HEALTH CARE FRAUD	
ADAMS, RONALD J, MANSFIELD, MA	12/18/1997
DOLAN, DAVID W, LIVONIA, MI	12/18/1997
KATZ, ARNOLD S, HUNTINGDON VALLEY, PA	12/18/1997
LAZAR, CALVIN, BURTON, MI	12/18/1997
MARTIN, CEDRIC, NEW ORLEANS, LA	12/18/1997
NASSER, GEORGE J, CAIRO, IL	12/18/1997
SLATTON, TOSCNELLIS, HARVEY, IL	12/18/1997
SPERL, LOIS A, WABASHA, MN	12/18/1997
UEBERALL, MARC, NEW YORK, NY	12/18/1997
WEINSTOCK, SANFORD, WESTLAND, MI	12/18/1997
CONVICTION—OBSTRUCTION OF AN INVESTIGATION.	
HARRELL, WILLIAM, CENTRALIA, IL	12/18/1997
CONTROLLED SUBSTANCE CONVICTIONS	
EVANS, LEONARD M, MONTGOMERY, PA	12/18/1997
MADEY, EDWARD V, LOS ANGELES, CA	12/18/1997
SARGENT, WENDELL A, STREATOR, IL	12/18/1997
LICENSE REVOCATION/SUSPENSION/SURRENDER	
ARBETTER, STEPHEN, MILFORD, MA	12/18/1997
ARTHUR, GREGORY L, BRONX, NY	12/18/1997
BAILEY, SUSAN, SOUTH BOSTON, VA	12/18/1997
BALOGH, LASZLO, SAN DIEGO, CA	12/18/1997
BERNARD, MARTINO, YONKERS, NY	12/18/1997
BIETER, THOMAS, MINNEAPOLIS, MN	12/18/1997
BLOOM, CHARLES, HINCKLEY, MN	12/18/1997
BODMER, MERAL O, SELINSGROVE, PA	12/18/1997
BOMPUS, LUCY J, BLUEFIELD, VA	12/18/1997
CANDELARIO, WALTER, MIDLOTHIAN, VA	12/18/1997
CHRISTENSEN, KAREN, MCGREGOR, MN	12/18/1997
CRAWFORD, JODI ANN, NORFOLK, VA	12/18/1997
DELGADO, ALEXANDER, UTICA, NY	12/18/1997
DIN, GLORIA JEAN, RICHMOND, VA	12/18/1997
DOWNS, TINA MARIE, KALAMAZOO, MI	12/18/1997
ELGABRI, TAREK H, BARRINGTON, RI	12/18/1997
EMBLOM, JOHN W, BUFFALO, MN	12/18/1997
ERICKSEN, MICHAEL, DULUTH, MN	12/18/1997
ESSEN, JAMES A, ZIM, MN	12/18/1997
FINLAY MEDICAL LABORATORY, W NEW YORK, NJ	12/18/1997
FORD, MICHELLE GARRETT, LYNCHBURG, VA	12/18/1997
FRANZ, JOSEPH W, TEMECULA, CA	12/18/1997
FREISTAT, ERIC T, CAMP HILL, PA	12/18/1997
FRIEDENSON, HARVEY, MINNEAPOLIS, MN	12/18/1997
GAGNER, KATHRYN L, NEW HOPE, PA	12/18/1997
GALLUP, JOSEPH, TAYLOR, MI	12/18/1997
GERMAIN, TRESA M, SOMERSET, WI	12/18/1997
GLOVER, MICHAEL W, GRAND RAPIDS, MI	12/18/1997
GOLTZ, JEFFREY I, OXON HILL, MD	12/18/1997
GOTTESMAN, ALBERT, GREAT NECK, NY	12/18/1997
GRAFF, RUSSELL GARDEI, GRAND RAPIDS, MI	12/18/1997
GREY, DAVID FRANCIS, VENTURA, CA	12/18/1997
HARRIS, ANGELA V, CAPRON, VA	12/18/1997
HASS, PATSY A, NORTH TAZEWELL, VA	12/18/1997
HUANG, PAKY, YONKERS, NY	12/18/1997
HUH, MOON HO, ELMHURST, NY	12/18/1997
JOHNSON, MARGARET M, ST LOUIS, MN	12/18/1997
KAMARA, KADIATU, ALEXANDRIA, VA	12/18/1997
KIM, SAMUEL, WASHINGTON, DC	12/18/1997
KLICKSTEIN, MURRAY, SALEM, MA	12/18/1997
KOECKE, DAVID A, FREDERICKSBURG, VA	12/18/1997

Subject, city, state	Effective date
KOVACH, CYNTHIA P, VIRGINIA BEACH, VA	12/18/1997
LANGE, PAUL A, WASHINGTON, DC	12/18/1997
LEE, STEVEN, MINNEAPOLIS, MN	12/18/1997
LEMING, LYNN G, HAVANA, IL	12/18/1997
LEWIS, DAWN E, PHILADELPHIA, PA	12/18/1997
LINT, TERRY W, BLANCHARD, MI	12/18/1997
LITTLEJOHN, EDWARD, WINONA, MN	12/18/1997
LOEWEN, BRENDA S, OWATONNA, MN	12/18/1997
LUGAR, NINA B, COVINGTON, VA	12/18/1997
MAGRI, MICHAEL B, GOODE, VA	12/18/1997
MAMZELLIS-HEIM, CAROLANN, SPRINGFIELD, VA	12/18/1997
MARSHALL, PAMELA A, STAFFORD, VA	12/18/1997
MCLEOD, RUTH, PLYMOUTH, NH	12/18/1997
MONTGOMERY, LINDA, VIRGINIA BEACH, VA	12/18/1997
MUNZ, JOHN, CIRCLE PINES, MN	12/18/1997
MURN, MELANIE C, SHOREWOOD, MN	12/18/1997
NASIR, IQBAL, BINGHAM FARMS, MI	12/18/1997
NEENAN, CHERYL ANN, SAN DIEGO, CA	12/18/1997
PALMA, JORGE M, E PROVIDENCE, RI	12/18/1997
PARKER, LILA SOPHIA, WESTLAND, MI	12/18/1997
PARRISH, LOUIS, NEW YORK, NY	12/18/1997
PASCHKE, RICHARD E, GRAND RAPIDS, MI	12/18/1997
PEDERSEN, BRIAN CHARLES, CHAPPAQUA, NY	12/18/1997
PIERCE, MICHELE ANN, HAMPTON, VA	12/18/1997
PISCITELLO, JAMES J, GREENDALE, WI	12/18/1997
POKRZYWINSKI, JOHN, ST PAUL, MN	12/18/1997
PONISCHIL, WOLFGANG SIEGFRIED, E LANSING, MI	12/18/1997
PROBASCO, ROBIN J, VIRGINIA BEACH, VA	12/18/1997
QUILL, DIANNA M, MANASSAS, VA	12/18/1997
RAFKIN, MYRON D, WOLLASTON, MA	12/18/1997
REED, HOMER B C, HOPKINTON, MA	12/18/1997
RITTELMEYER, PAUL V, ARLINGTON, VA	12/18/1997
ROE, SARAH DALTON, ROCKY MOUNT, VA	12/18/1997
RUSSELL, GEORGE BRENT, KALAMAZOO, MI	12/18/1997
SCHMIDT, MARY ANN, POWHATAN, VA	12/18/1997
SCHOEFIELD, ANNA, SOUTH BOSTON, VA	12/18/1997
SCHUFT, LESTER E, HUTCHINSON, MN	12/18/1997
SERRANO, CARIDAD, SUNNYSIDE, NY	12/18/1997
SHAW, STEVEN K, CLEARFIELD, PA	12/18/1997
SHAW, WILLIAM JAMES, HAVERILL, MA	12/18/1997
SHELOR, FRANCES SHEPPARD, HARDY, VA	12/18/1997
SMITH, PAULETTE DOMINICK, HARVEY, LA	12/18/1997
SNYDER, RICHARD, JACKSON, MI	12/18/1997
SORDELETT, STARR S, HOPEWELL, VA	12/18/1997
SPIVEY, VICKIE E, COURTLAND, VA	12/18/1997
STEPHENS, BEATRICE BEARDEN, DETROIT, MI	12/18/1997
STURM, REGINA FOSTER, HAMPTON, VA	12/18/1997
SWEENEY, MICHAEL, VIENNA, VA	12/18/1997
TAEFI, PARVIZ, GRAND ISLAND, NY	12/18/1997
TAYLOR, CLARK E, HARBOR SPRINGS, MI	12/18/1997
TESTERMAN, AMY T, SUTHERLIN, VA	12/18/1997
THOMPSON, GREG R, HAMPSTEAD, NH	12/18/1997
THOMPSON, LINDA G, WASHINGTON, PA	12/18/1997
TOOT, BYRON V, IRVINE, CA	12/18/1997
TRICARICO, MICHAEL ANTHONY, ROCKY HILL, NJ	12/18/1997
WEISSMAN, MICHAEL GARY, WELLESLEY, MA	12/18/1997
WHEELER, CHARLES A JR, LEOMINSTER, MA	12/18/1997
WHITE, TONY F, NEWPORT NEWS, VA	12/18/1997
WITT, LINDA, LISBON, ME	12/18/1997
WORDELL, WILLIAM A, WHITE RIVER JUNCTION, VT	12/18/1997
ZALUZEC, DANIEL J, FREDERICKSBURG, VA	12/18/1997
FEDERAL/STATE EXCLUSION/SUSPENSION	
BERGEN MEDICAL ASSOCIATES, INC, JERSEY CITY, NJ	12/18/1997
CARPIO, STEPHEN H, E NORTHPORT, NY	12/18/1997
FHS PHARMACY, BRONX, NY	12/18/1997
HARUTHUNIAN, ASPET, PORT WASHINGTON, NY	12/18/1997
HUGHES, JOHN, E NORTHPORT, NY	12/18/1997
JARAVATA, BLANCA, STONYBROOK, NY	12/18/1997
MONEMVASITIS, GEORGE, BROOKLYN, NY	12/18/1997
NIEDZIELSKI, LUELLA, LAKE GROVE, NY	12/18/1997
SALEMA, JOSEPH, WENONAH, NJ	12/18/1997
WESTCHESTER SURGICAL SUPPLY, LARCHMONT, NY	12/18/1997

Subject, city, state	Effective date
OWNED/CONTROLLED BY CONVICTED EXCLUDED	
BASS ORTHOPEDIC LAB, EGLIN AFB, FL	12/18/1997
BASS ORTHOPEDIC, INC, EGLIN AFB, FL	12/18/1997
CENTRAL ORTHOPEDIC OF MIAMI, HIALEAH, FL	12/18/1997
CHILDREN'S HOME CARE MEDICAL, LARCHMONT, NY	12/18/1997
NORTH DELTA MEDICAL TRANS, INC, MANGHAM, LA	12/18/1997
NORTHEAST CAB COMPANY, ALTON, IL	12/18/1997
QUIRANTES INTERPRISE, HIALEAH, FL	12/18/1997
FAILURE TO GRANT IMMEDICARE ACCESS	
FREILICH, IRA W, ALTAMONTE SPGS, FL	11/30/1997
DEFAULT ON HEAL LOAN	
ADAMS, RICK, GLEN ROCK, NJ	12/18/1997
ADONIZIO, CHARLES P, WILKES-BARRE, PA	12/18/1997
ALFORD, GEORGE R, HOUSTON, TX	12/18/1997
BARBATO, BEVERLY V, CAPE CORAL, FL	12/18/1997
BEHLKE, RICHARD T, SCRANTON, PA	12/18/1997
BELL, JEFFREY S, EAGAN, MN	12/18/1997
BERRY, SHELLIE J, CANTON, TX	12/18/1997
BLISSENBACH, DAVID A, DUBLIN, OH	12/18/1997
BOLINGER, MARK A, HADDONFIELD, NJ	12/18/1997
BROOKS, SHARON L, MILWAUKEE, WI	12/18/1997
CHAMBERLAIN, RONALD W, LAKE ST LOUIS, MO	12/18/1997
CHASTEN, CLARK M, CAMDEN, NY	12/18/1997
CLARK, JOHN E, WASHINGTON, DC	12/18/1997
CRAWFORD, KENNETH ANTHONY, PRIMGHAR, IA	12/18/1997
DIPPIE, MARY BETH MATTHEWS, QUITMAN, TX	12/18/1997
ENOGWE, FELIX G, NEWARK, NJ	12/18/1997
FANIZZI, THOMAS, BRIGHTWATERS, NY	12/18/1997
FERNANDEZ, ENRIQUE A, NEW YORK, NY	12/18/1997
GARCIA, JAVIER, SAN ANTONIO, TX	12/18/1997
KRALJ, MLADEN M, CHICAGO, IL	12/18/1997
LANDSIEDEL, RANDY J, JASPER, TX	12/18/1997
LEARY, PAUL T, KINNELON, NJ	12/18/1997
LOPEZ, BRENT K, HOUSTON, TX	12/18/1997
MANZONI, JANET M (CAVALIERI), MORGANVILLE, NJ	12/18/1997
MARGAS, LILLIAN E, HICKSVILLE, NY	12/18/1997
MAYS, DEWEY O III, DAYTON, OH	12/18/1997
MAZUR, BONNIE L (PANICO), LINWOOD, NJ	12/18/1997
MCDONALD, NATALIE A, MINEOLA, NY	12/18/1997
MEYER, CHARLES D, BRICK, NJ	12/18/1997
MITTET, DAVID J, DILWORTH, MN	12/18/1997
MOSCOVITZ, BENJAMIN H, FAR ROCKAWAY, NY	12/18/1997
MOSER, DAVID R, EL PASO, TX	12/18/1997
MOSS, MARK ERIC, ROCHESTER, NY	12/18/1997
MURPHY, STEPHEN J, CHICAGO, IL	12/18/1997
NICOLL, DOLORES L, NEW YORK, NY	12/18/1997
O'HEA, JOHN M, MEDFORD, NJ	12/18/1997
PENNY (HARGREAVES), PATRICIA E, DOYLESTOWN, PA	12/18/1997
PICARD (ALLEN), KAREN KAYE, CHESTERFIELD, MO	12/18/1997
RIBERDY (DUFFY), JEAN M, BENSALEM, PA	12/18/1997
RODMAN, KAREN D, INDIANAPOLIS, IN	12/18/1997
SARVER, PAUL A, ADA, MI	12/18/1997
SAVELLI, CHRISTINE A, BETHLEHEM, PA	12/18/1997
SCHUERHOLZ, DONNA J, DEERFIELD BEACH, FL	12/18/1997
SCOTT, ANNETTE E, ALEXANDRIA, VA	12/18/1997
SPALDING, MARSHA D, NACOGDOCHES, TX	12/18/1997
TORAN, ALEV A, NEW YORK, NY	12/18/1997
WUERTZ, CHRISTOPHER, ST LOUIS, MO	12/18/1997
ZITA, GINO, TRENTON, NJ	12/18/1997
ZUCKER, RONALD G, LONG BEACH, NY	12/18/1997

Dated: December 10 , 1997.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General, OI.

[FR Doc. 97–33060 Filed 12–17–97; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office for Protection From Research Risks; Submission for OMB Review; Comment Request; Protection of Human Subjects: Assurance Identification/Certification Declaration

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office for Protection from Research Risks (OPRR), 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** of August 22, 1997 (62 FR 44701) 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: Protection of Human Subjects: Assurance Identification/Certification/ Declaration. *Type of Information Collection Request:* Extension. *OMB Control Number:* 0925–0418. *Expiration Date:* 12/31/97. *Need and Use of Information Collection:* The Federal Policy for the Protection of Human Subjects was promulgated on June 18, 1991 (56 FR 28003) and requires applicant and awardee institutions receiving Federal funds to initiate procedures to report, disclose, and keep required records for the protection of human subjects of research. Optional Form 310, Protection of Human Subjects: Assurance Identification/ Certification/Declaration is necessary for the implementation and administration of the reporting and recordkeeping requirements set forth in the Federal Policy. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; Business or other for-profit; Not for-profit institutions; Federal Government; State, local or tribal government. *Type of Respondents:* Researchers. The annual reporting burden is as follows: Estimated number of Respondents: 3,831. *Estimated Number of Responses per Respondent:* 56.8. *Average burden hours per response:* 0.755; and *Estimated total Annual Burden Hours Requested:* 164,428. The annualized cost to respondents is estimated at: $2,096. There are not 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 will have 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 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, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Michele Russell-Einhorn, Director of Regulatory Affairs, Office for Protection from Research Risks, 6100 Executive Blvd., Suite 3B–01, Rockville, MD. 20892–7507, or call non-toll-free-number (301) 435–5649 or E-mail your request, including your address to:<einhornm@od.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: December 10, 1997.

Gary B. Ellis,

Director, OPRR.

[FR Doc. 97–33016 Filed 12–17–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed information requests, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of each proposed collection of information. To request a copy of these documents, contact the SAMHSA Reports Clearance Officer on (301) 443–8005.

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: The 1997 Sample Survey of Mental Health Organizations and General Hospitals with Separate Psychiatric Services—Revision of the Inventory of Mental Health Organizations and General Hospital Mental Health Services (IMHO/ GHMHS). The survey will be conducted in two phases. Phase I will be a brief two page inventory consisting of two forms—one for all organizations that provide mental health treatment services and the other for all managed behavioral health care organizations. Phase II will be a sample survey of 3,800 organizations drawn from the universe of organizations providing mental health treatment services identified in the first phase. The sample survey will use a more comprehensive, but very similar form to the one used in the 1994 IMHO/GHMHS. The organizational data to be collected include ownership and management, client/patient

demographics, revenues and expenditures, and staffing. The dataset produced will be used to provide national statistical estimates and will be the basis of the National Directory of Mental Health Services. The annual burden estimate is as follows:

	Number of respondents	Annual number of responses per respondent	Average hours per response	Annual burden hours
Phase I	10,559	1	0.23	2,478
Specialty Mental Health Organizations	(3,235)	(1)	(00.20)	(647)
General Hospitals with Psychiatric Services	(1,374)	(1)	(00.25)	(343)
General Hospitals to be screened for Psychiatric Services	(4,080)	(1)	(00.25)	(1,020)
Community Residential Organizations	(1,275)	(1)	(00.25)	(319)
Managed Care Organizations	(595)	(1)	(00.25)	(149)
Phase II (Sample Survey)	3,229	1	2.0	6,939
Specialty Mental Health Organizations	(2,267)	(1)	(02.0)	(4,534)
General Hospitals with Psychiatric Services	(962)	(1)	(02.5)	(2,405)
Total	13,788			9,417

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 12, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–33011 Filed 12–17–97; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration (SAMHSA) 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 SAMHSA Reports Clearance Officer on (301) 443–8005.

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

Community Mental Health Services (CMHS) Block Grant Application, FY98—Revision—The ADAMHA Reorganization Act 42 U.S.C. 300x1–9 established the Community Mental Health Services Block Grant program which authorized block grants to States to provide community based mental health services. Under provision of the law, States may receive allotments only after an application is approved by the Secretary. Further, the Act requires States to submit to the Secretary a plan for providing comprehensive community mental health services to adults with a serious mental illness and to children with a serious emotional disturbance and an annual implementation report on the block grant fund activities for the previous year. This block grant program is administered by SAMHSA's Center for Mental Health Services (CMHS). The proposed application reflects the criteria, assurances, and requirements set forth in Pub. L. 102–321. The revision includes the consolidation of the criteria for application and reduced respondent burden.

The annual burden estimates are as follows:

	Number of respondents	Number of responses per respondent	Average burden per response	Annual burden hours
States and Territories	59	1	210	12,390

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 12, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–33014 Filed 12–17–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration

(SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–8005.

Proposed Project: 1998 Inventory of Mental Health Services in Juvenile Justice Facilities—New—This survey will gather information for the first time about the availability of mental health services in the universe of approximately 3,100 juvenile justice facilities nationwide. State and national information will be collected about the organization of mental health services, characteristics of youth receiving these services, and mental health staffing patterns and costs.

The total annual burden estimate is shown below.

	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total annual burden (hours)
Juvenile Justice Facilities	3,100	1	1.5	4,650

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel J. Chenok, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

Dated: December 12, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–33012 Filed 12–17–97; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–8005.

Proposed Project

Protection and Advocacy for Individuals with Mental Illness (PAIMI) Final Rule—Information collection requirements in the Final Rule for the protection and advocacy programs serving individuals with mental illness. The development of regulations and issuance of the Final Rule meets the directive under Pub. L. 102–173, "Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991" (PAIMI Act), 42 U.S.C. 10826(b), requiring the Secretary to promulgate final regulations to carry out the Act. 45 CFR Subchapter 51 of the Final Rule contains information collection requirements.

The PAIMI Act (Pub. L. 99–319) authorized funds to support activities on behalf of individuals with mental illness. Recipients of this formula grant program are required by law to annually report their activities and accomplishments to include the number of individuals served, types of facilities involved, types of activities undertaken and accomplishments resulting from such activities. This summary must also include a separate report prepared by the PAIMI Advisory Council descriptive of its activities and assessment of the operations of the protection and advocacy system. The annual burden estimate is as follows:

	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Section 51.8(a)(2) Program Performance Report:	56	1	35.0	*1,960
Part I			(33.0)	
Part II			(2.0)	
Section 51.8(a)(8) Advisory Council: Report	56	1	10.0	*560
Section 51.10 Remedial Actions:				
Corrective Action Plan	6	1	8.0	48
Implementation Status Report	6	3	2.0	36
Section 51.23(c) Reports, materials and fiscal data to Advisory Council	56	1	1.0	56
Section 51.25(b)(2) Grievance Procedure	56	1	0.5	28
Total	124			2,688

*Burden hours associated with the Annual Performance Report and Advisory Council Report are approved under OMB Control No. 0930–0169.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel J. Chenok, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

Dated: December 12, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–33013 Filed 12–17–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW116753]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

December 10, 1997.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW116753 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW116753 effective September 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 97–33061 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–98–1430–01; N–59348]

Termination of Recreation and Public Purposes Classification; Nevada

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes Classification N–59348 in its entirety and provides for opening the land to disposal by exchange to Perma Bilt, pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 CFR 2200).

EFFECTIVE DATE: December 18, 1997.

FOR FURTHER INFORMATION CONTACT: Cheryl Ruffridge, Las Vegas Field Office, Bureau of Land Management, 4765 Vegas Drive, Las Vegas, NV 89108, (702) 647–5064.

SUPPLEMENTARY INFORMATION: On February 16, 1996, a Notice of Realty Action (NORA) was published for the Clark County School District for a senior high school under the Recreation and Public Purposes Act (43 CFR 2740) for the following described land comprising 40 acres:

Mount Diablo Meridian, Nevada

T. 20 S., R. 59 E.,
Sec. 12, S½NE¼SE¼, N½SE¼SE¼.

The senior high school was not constructed and the proponent relinquished the parcel on July 3, 1996, Perma Bilt has requested the parcel in an exchange. The lands are segregated for exchange purposes by notation to the public land records and will remain closed to other forms of dispostion.

Pursuant to Recreation and Public Purpose Act of July 25, 1979 (43 CFR 2740), classification of the above described lands, serial number N–59348, is hereby terminated in its entirety. And in accordance with section 206 of the Federal Land Policy and Management Act of October 21, 1976, (43 CFR 2200), and the Federal Land Exchange Facilitation Act of August 20, 1988, (43 CFR parts 2090 and 2200), the land will remain closed to all other forms of appropriation including the mining and mineral laws, pending disposal of the land by exchange.

Dated: December 12, 1997.

Joel I. Mur,

Acting Assistant District Manager, Non-Renewable Resources.

[FR Doc. 97–33068 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–067–7123–6683]

Establishment of Supplementary Rule for Parking/Camping Restrictions Along California State Hwy. 78 in the Imperial Sand Dunes.

AGENCY: Bureau of Land Management.

ACTION: Establishment of supplementary rule.

SUMMARY: The primary purpose of this supplementary rule is to prohibit parking or camping within 25 feet of California State Hwy. 78 where it passes through the Imperial Sand Dunes. This rule would reduce the potential of serious injury or death to both campers and drivers as they recreate in or pass through this area of the Imperial Sand Dunes.

1. No person may park a vehicle or camp within 25 feet of California State Hwy. 78 where it passes through the Imperial Sand Dunes. This prohibition will extend along both sides of Hwy. 78 from the intersection of Hwy. 78 and the Coachella Canal easterly to the intersection of Hwy. 78 and the Glamis Flats off ramp.

Background: In the past, hundreds of off highway vehicle (OHV) enthusiasts have parked immediately adjacent to Hwy. 78 during the winter and spring months. They car-camp out of sedans, trucks and RV's. By camping along this stretch of the highway, they expose themselves and their children to a high potential of being struck by traffic along the highway. Campers step out into the line of traffic in their normal meandering around their campsite, when they work on their vehicles or in the process of loading or unloading their trailers and trucks. In addition, they pose a serious hazard to passing motorists who must swerve to try to avoid hitting them. Hwy. 78 is a major truck route through Imperial County and traffic travels at 65 MPH in this area. The chances of a serious accident due to a blown tire, sleepy driver or other vehicle or driver malfunction is greatly increased with such large crowds lining the side of the highway.

EFFECTIVE DATE: Effective upon date of publication and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Chief Area Ranger Robert Zimmer, Bureau of Land Management, El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243; (760) 337–4407.

SUPPLEMENTARY INFORMATION: The authority for this restriction is provided in 43 CFR 8365.1–6. Violation of this restriction is punishable by a fine not to exceed $100,000.00 and/or imprisonment not to exceed 12 months.

Dated: December 10, 1997.

Terry Reed,

Area Manager.

[FR Doc. 97–33072 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Adaptive Management Work Group

AGENCY: Bureau of Reclamation, DOI.

ACTION: Notice of public meeting.

SUMMARY: The Glen Canyon Adaptive Management Work Group (AMWG) will conduct an open public meeting to discuss administrative and program related issues. The meeting will discuss the following agenda items: Review of the previous meeting minutes, administrative operating procedures, payment for attendance at subgroup meetings (Solicitor Report), budget, report from the Technical Work Group (1999 program, management objectives, approach to beach/habitat building flow trigger criteria, annual report to Congress, and request to study beach/habitat building flow releases above 45,000 cubic feet per second), November 1997 high flows from Glen Canyon Dam, 1998 beach/habitat building flow, update on the Glen Canyon Dam temperature control device, endangered species, cultural resources/Programmatic Agreement, the 1999 Annual Operating Plan process, the 1997–1998 Annual Report, and the Grand Canyon Monitoring and Research Center Report.

DATES AND LOCATION: The AMWG public meeting will be held at the following time and location:

Phoenix, Arizona—January 15–16, 1998. The two-day meeting will begin at 9:30 a.m. the first day and conclude at 4:00 p.m. on the second day. The meeting will be held at the LaQuinta Inn, 2510 W. Greenway Road, Phoenix, Arizona.

Anyone wishing to present written or oral comments (limited to 10 minutes) at the meeting must provide written notice to Mr. Steven Lloyd, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102 no later than noon on Friday, January 9, 1997, telephone (801) 524–3690, faxogram (801) 524–5499, or E-mail: slloyd@uc.usbr.gov. Time will be provided on the meeting agenda for public comments. Written comments will be provided the AMWG members at the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Magnussen, designated Federal official for the AMWG, telephone (202) 208–4081, faxogram (202) 208–3887, E-mail: smagnussen@usbr.gov.; Mr. Bruce Moore, telephone (801) 524–3702, faxogram (801) 524–5499, E-mail: bmoore@uc.usbr.gov.; or Mr. Steven Lloyd, telephone (801) 524–3690, faxogram (801) 524–5499; E-mail: slloyd@uc.usbr.gov.

Dated: December 12, 1997.

R. Steve Richardson,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 97–33008 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Technical Work Group

AGENCY: Bureau of Reclamation, DOI.

ACTION: Notice of public meetings.

SUMMARY: The Glen Canyon Technical Work Group (TWG) was formed as an official subcommittee of the Glen Canyon Adaptive Management Work Group (AMWG) on September 10, 1997. The TWG members were named by the members of the AMWG and will provide advice and information to the AMWG. The AMWG will use this information to form recommendations to the Secretary of the Interior for guidance of the Grand Canyon Monitoring and Research Center science program and other direction as requested by the Secretary. All meetings are open to the public; however, seating is limited and is available on a first come, first served basis. The agenda for each meeting will be as follows: Monitoring and research plans for fiscal year 1999, maintenance and beach/habitat-building flows (BHBF), study of BHBF higher than 45,000 cubic feet per second, review of management objectives, resource management questions and objections, budget, and temperature control device.

DATES AND LOCATION: The TWG public meetings will be held at the following times and location:

Phoenix, Arizona—There will be three two-day public meetings on January 20–21, 1998, February 17–18, 1998, and March 17–18, 1998. Each one of the two-day meetings will begin at 9:30 a.m. on the first day and conclude at 4:00 p.m. on the second day. The meetings will be held at the LaQuinta Inn, 2510 W. Greenway Road, Phoenix, Arizona.

Time will be allowed on the agenda for any organization or individual wishing to make formal oral comments (limited to 10 minutes) at the meetings, but written notice must be provided to Mr. Bruce Moore, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524–3702, faxogram (801) 524–5499, E-mail at: bmoore@uc.usbr.gov at least five (5) days prior to the meetings. Any written comments received will be provided to the TWG members at the meetings.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, telephone (801) 524–3702, faxogram (801) 524–5499, E-mail at: bmoore@uc.usbr.gov.

Dated: December 12, 1997.

R. Steve Richardson,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 97–33009 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Technical Work Group

AGENCY: Bureau of Reclamation, DOI.

ACTION: Notice of public meeting.

SUMMARY: The Glen Canyon Technical Work Group (TWG) was formed as an official subcommittee of the Glen Canyon Adaptive Management Work Group (AMWG) on September 10, 1997. The TWG members were named by the members of the AMWG and will provide advice and information to the AMWG. The AMWG will use this information to form recommendations to the Secretary of the Interior for guidance of the Grand Canyon Monitoring and Research Center science program and other direction as requested by the Secretary. All meetings are open to the public; however, seating is limited and is available on a first come, first served basis. The agenda for the meeting will discuss beach/habitat building flow monitoring and research and program cost estimates.

DATE AND LOCATION: The TWG public meeting will be held at the following time and location:

Phoenix, Arizona—January 14, 1997. The meeting will begin at 12:00 p.m. and conclude at 5:00 p.m. The meeting will be held at the LaQuinta Inn, 2510 W. Greenway Road, Phoenix, Arizona.

Time will be allowed on the agenda for any organization or individual wishing to make formal oral comments (limited to 10 minutes) at the meeting, but written notice must be provided to Mr. Bruce Moore, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524–3702, faxogram (801) 524–5499, E-mail at: bmoore@uc.usbr.gov at least FIVE (5) days prior to the meeting. Any written comments received will be provided to the TWG members at the meeting.

FOR FURTHER INFORMATION CONTACT:

Bruce Moore, telephone (801) 524–3702, faxorgram (801) 524–5499, E-mail at: bmoore@uc.usbr.gov.

Dated: December 12, 1997.

R. Steve Richardson,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 97–33010 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Prospective Grant of Exclusive Patent Licenses

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I). The Bureau of Reclamation (Reclamation) is contemplating the granting of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 4,806.264, titled "Method of Selectively Removing Selenium Ions From an Aqueous Solution". The exclusive license is to be granted to Rust Environmental & Infrastructure Inc., having a place of business in Salt Lake City, Utah. The patent rights in this invention has been assigned to the United States of America.

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. While the primary purpose of this notice is to announce Reclamation's intent to grant an exclusive license to practice the patent listed above, it also serves to publish the availability of this patent for licensing in accordance with law. The prospectus license may be granted unless Reclamation receives written evidence and argument which 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.

DATES: Written evidence and arguments against granting the prospective license must be received by March 18, 1998.

ADDRESSES: Inquiries, comments, and other materials relating to the contemplated license may be submitted to Donald E. Ralston, Bureau of Reclamation, Research and Technology Transfer, MS–7621, 1849 C Street, NW., Washington, DC 20240.

A copy of the above-identified patent may be purchased from the NTIS Sales Desk by telephoning 1–800–553–NTIS or by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Donald E. Ralston by telephone at (202) 208–5671.

SUPPLEMENTARY INFORMATION: The invention relates to removal techniques of selenium from water. The patent, a method of selectivity removing selenium ions from an aqueous solution containing selenium ions, comprises contacting the solution with an amount of ferrous ion effective to reduce the selenium ions to elemental selenium. The contacting is preferably conducted at a pH of about 9 and the ferrous ions are preferably provided in situ in the form of ferrous hydroxide. The method may further comprise removing ferric oxides to which the ferrous ions are oxidized, these ferric oxides containing the elemental selenium produced by the reduction of the selenium ions, and separating the ferric oxides from the elemental selenium by adding a strong acid thereto.

Properly filed competing applications received by Reclamation in response to this notice will be considered as objections to the grant of the contemplated license.

Dated: December 1, 1997.

Stanley L. Ponce,

Director, Research and Technology Transfer.

[FR Doc. 97–33069 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Prospective Grant of Exclusive Patent Licenses

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I). The Bureau of Reclamation (Reclamation) is contemplating the granting of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 5,089,141, titled "Chemical Process for Removing Selenium From Water". The exclusive license is to be granted to Rust Environmental & Infrastructure Inc., having a place of business in Salt Lake City, Utah. The patent rights in this invention has been assigned to the United States of America.

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. While the primary purpose of this notice is to announce Reclamation's intent to grant an exclusive license to practice the patent listed above, it also serves to publish the availability of this patent for licensing in accordance with law. The prospective license may be granted unless Reclamation receives written evidence and argument which 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.

DATES: Written evidence and arguments against granting the prospective license must be received by March 18, 1998.

ADDRESSES: Inquiries, comments, and other materials relating to the contemplated license may be submitted to Donald E. Ralston, Bureau of Reclamation, Research and Technology Transfer, MS–7621, 1849 C Street, N.W., Washington, D.C. 20240.

A copy of the above-identified patent may be purchased from the NTIS Sales Desk by telephoning 1–800–553–NTIS or by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Donald E. Ralston by telephone at (202) 208–5671.

SUPPLEMENTARY INFORMATION: The invention relates to removal techniques of selenium from water. The patent addresses a chemical process for selectively removing organoselenium compounds and selenate from water supplies. The process utilizes a combination of transition metal selected from the group consisting of nickel and copper and an electropositive metal selected from the group consisting of magnesium and aluminum to effectively remove selenium whether present in water as organic or inorganic compounds or in ionic or non-ionic form.

Properly filed competing applications received by Reclamation in response to this notice will be considered as objections to the grant of the contemplated license.

Dated: December 1, 1997.

Stanley L. Ponce,

Director, Research and Technology Transfer.

[FR Doc. 97–33070 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Wayne National Forest; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision; correction.

SUMMARY: This notice announces a correction to a November 26, 1997 **Federal Register** notice (62 FR 63187) which announced the decision of the Office of Surface Mining Reclamation and Enforcement (OSM) on a request by Edward and Madeiline Blaire and Buckingham Coal Company, Inc. (Buckingham) for a determination of valid existing rights (VER) under section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The required correction pertains to part VII. of the notice, entitled "Appeals."

FOR FURTHER INFORMATION CONTACT: Peter Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2867. E-mail address: pmichael@osmre.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** notice published on November 26, 1997 (62 FR 63187), Part VII in the decision stated:

> Any person who is or may be adversely affected by this decision may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390 *et seq.* [1988]. Notice of intent to appeal must be filed within 30 days from the date of publication of this notice of decision in a local newspaper with circulation in Perry County, Ohio.

However, 43 CFR 4.1391 states, in relevant part:

> The request for review shall be filed within 30 days of the date of publication of notice in the **Federal Register** that a determination has been made for any person who has not received a copy by certified mail or overnight delivery service.

Accordingly, any person who is or may be adversely affected by the VER decision in this matter may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390 *et seq.* [1988]. Notice of intent to appeal must be filed within 30 days of the date of publication of the notice of decision in the **Federal Register**, which was on November 26, 1997, by any person who has not received a copy by certified mail or overnight delivery service.

Dated: December 12, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–33015 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,715]

Brandon Apparel Group, Incorporated, Columbus, Wisconsin; Notice of Negative Determination on Reconsideration

On October 31, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner presented new evidence that the collection of information regarding company sales and imports was incomplete for the time period relevant to the investigation. The notice was published in the **Federal Register** on November 26, 1997 (62 FR 63193).

The Department initially denied TAA to workers of Brandon Apparel Group, Columbus, Wisconsin because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm were engaged in employment related to the production of children's sports apparel. The layoffs at the Columbus plant were attributed to the corporate decision to close the subject plant and transfer all production to an affiliated domestic facility. Corporate-wide sales, production and imports increased from 1995 to 1996. Company imports, however, decreased as a percentage of company sales during this time.

On reconsideration, the Department requested that Brandon Apparel provide data for the January through July time periods of 1996 and 1997. Information provided by the company shows that corporate-wide sales and production increased from January through July 1997, compared to the January through July 1996 time period. During the same time period company imports declined.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Brandon Apparel Group, Columbus, Wisconsin.

Signed at Washington, D.C., this 9th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33023 Filed 12–17–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 29, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 29, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

PETITIONS INSTITUTED ON 12/01/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,032	Everbnte (IBEW)	Milwaukee, WI	11/17/97	Neon Signs.
34,033	Northern Technologies (Wrks)	Pocahontas, AR	11/12/97	Electrical Connectors.
34,034	AST Research (Wrks)	Fort Worth, TX	11/18/97	Computers.
34,035	Garfield Sportswear (UNITE)	Garfield, NJ	09/11/97	Ladies' Coats.
34,036	Con Agra (AFGM)	Buffalo, NY	11/17/97	Flour and Flour by-Products.
34,037	Barry Callebaut USA, Inc (Wrks)	Pennsauken, NJ	11/17/97	Cocoa/Chocolate.
34,038	Alltrista Zinc Products (Comp)	Greeneville, TN	11/19/97	Casts, Rolls and Slit Zinc Strip.
34,039	F.R. Gross, Inc. (Wrks)	Warren, PA	11/06/97	Fabricated Structural Steel.
34,040	Butler Design Service (Wrks)	Aurora, CO	11/12/97	Drafting Services—Telecommunications.
34,041	Jam Enterprises (Comp)	El Paso, TX	11/04/97	Cloth Cutting Service.
34,042	Rotorex Company, Inc (IUE)	Walkersville, MD	10/28/97	Machined Shafts, Cylinders, Rollers.
34,043	Hogg's Factory (Wrks)	Malden, MO	11/14/97	Fleece Shirts.
34,044	Brown Shoe Group (Wrks)	Fredericktown, MO	11/17/97	Dress, and Sport Shoes.
34,045	ITT Automotive ()	Archbold, OH	11/17/97	Gas and Bake Line Tubing.
34,046	Manchester Knitted Fash. (Comp)	Manchester, NH	11/20/97	Men's, Ladies', Children's tops and bottom.
34,047	John Wiley and Sons, Inc (Wrks)	Colorado Sprgs, CO	11/20/97	Publish Legal Books.
34,048	Dresser Rand Co (IUE)	Painted Post, NY	11/18/97	Air Compressors.
34,049	Buehler Lumber Co (Wkrs)	Ridgway, PA	11/18/97	Cherry Panels.
34,050	Bazflex USA (Comp)	Gainesville, TX	11/18/97	Shoe Soles.
34,051	Franke Contract Group (Wrks)	North Wales, PA	11/21/97	Kitchen Equipment Supplier.
34,052	Matsushita Microwave Oven (Wrks)	Franklin Park, IL	11/18/97	Home Electronic Applicances.
34,053	Frontier Corp (Wrks)	Rochester, NY	11/07/97	Telecommunication Service.
34,054	Identity Headwear USA (Wrks)	Maysville, MO	11/20/97	Sport Caps.
34,055	TRW—Auto Electronics (ICWU)	Auburn, NY	11/10/97	Switches for Automobiles.
34,056	Crown Pacific (Comp)	Gilchrist, OR	11/18/97	Lumber.
34,057	Oldham Co (The) (Comp)	Burt, NY	11/19/97	Saw Blades.
34,058	Aquarius Manufacturing (Owner)	El Paso, TX	11/10/97	Living Room and Den Furniture.
34,059	Alcoa Fujikura Ltd (UAW)	Campbellsburg, KY	11/18/97	Automotive Wiring Harness.
34,060	General Motors (Wrks)	Albany, GA	11/17/97	Alternators and Parts.
34,061	Oxford of Alma (Comp)	Alma, GA	11/19/97	Ladies' Dresses and Pants.

[FR Doc. 97–33025 Filed 12–17–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,479]

G.E. Medical Systems Milwaukee, Wisconsin; Notice of Negative Determination Regarding Application for Reconsideration

By application dated November 3, 1997, the X-Ray Lodge No. 1916 of the International Association of Machinists requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance. The denial notice, applicable to workers of G.E. Medical Systems producing medical diagnostic imaging equipment in Milwaukee, Wisconsin, was signed on October 9, 1997 and published in the **Federal Register** on November 5, 1997 (62 FR 59882).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners assert that products produced by workers of the subject firm are now being produced in foreign countries by their suppliers and add that a large percentage of the subject firm sales come from the offshore market.

The TAA petition investigation for workers of the subject firm showed that the criterion (2) of the Group Eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. Sales and production at the subject firm increased in 1996 compared to 1995 and in January-April of 1997 compared to the same time period in 1996.

The petitioner's assertion regarding company sales of imported diagnostic imaging equipment was addressed in the negative determination applicable to workers of G.E. Medical Systems in Milwaukee.

As specified in the group eligibility requirements of criterion (3) of Section 222 of the Trade Act of 1974, as amended, the Department must establish that increased imports of articles like or directly competitive with articles produced at the workers' firm, contributed to worker separations.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 11th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33019 Filed 12–17–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,939]

KD Industries, Division of Lees Manufacturing, Blountsville, Alabama; Notice of Termination of Certification

This notice terminates the Determination Regarding Eligibility to Apply for Worker Adjustment Assistance issued by the Department on November 18, 1997, applicable to all workers of KD Industries, Division of Lees Manufacturing, located in Blountsville, Alabama. The notice will soon be published in the **Federal Register.**

At the request of the State agency, the Department reviewed the worker certification. The workers produce children's sleepwear and sportswear. Findings on review show that on June 17, 1997, the Department issued a certification of eligibility applicable to all workers of KD Industries, Incorporated, Division of Lees Manufacturing Company, Incorporated, Blountsville, Alabama, TA–W–33,492. Workers separated from employment with the subject firm on or after May 2, 1996 through June 17, 1999, are eligible to apply for worker adjustment assistance.

Based on this new information, the Department is terminating the certification for petition number TA–W–33,939. Further coverage for workers under this certification would serve no purpose, and the certification has been terminated.

Signed in Washington, DC this 4th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33026 Filed 12–17–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,513; TA–W–33,513Y; TA–W–33,513Z; TA–W–33,513AA]

Levi Strauss and Company, Goodyear Cutting Facility and El Paso Field Headquarters 1440 Goodyear El Paso, Texas, Fayetteville, Arkansas; Harrison, Arkansas; Dallas CF Regional Office Dallas, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1997 (62 FR 48888). The certification was subsequently amended to include the subject firm workers at El Paso Field Headquarters in El Paso, Texas. The amendment was issued on September 14, 1997, and published in the **Federal Register** on September 30, 1997 (62 FR 51155).

At the request of the State agency and the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations will occur at the Levi Strauss and Company production facilitates located in Fayetteville and Harrison, Arkansas. The company also reports layoffs at the Dallas CF Regional Office in Dallas, Texas. The workers at these three locations are engaged in employment related to the production of men's, women's and youth's denim jeans and jackets. Based on this new information, the Department is amending the certification to cover the subject firm' workers in Fayetteville and Harrison, Arkansas, and Dallas, Texas.

The intent of the Department's certification is to include all workers of Levi Strauss and Company who were adversely affected by increased imports of men's, women's and youth's denim jeans and jackets.

The amended notice applicable to TA–W–33,513 is hereby issued as follows:

All workers of Levi Strauss and Company, Goodyear Cutting Facility and El Paso Field Headquarters, El Paso, Texas (TA–W–33,513), Fayetteville, Arkansas (TA–W–33,513Y), Harrison, Arkansas (TA–W–33,513Z), and Dallas, Texas (TA–W–33,513AA) who were engaged in employment related to the production of men's, women's and youth's denim jeans and jackets who became totally or partially separated from employment on or after May 13, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 9th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33020 Filed 12–17–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—01733]

C & B Farms Clewiston, Florida; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on May 27, 1997 in response to a petition filed on behalf of workers at C & B Farms, located in Clewiston, Florida. The workers harvest watermelon.

In a letter dated December 8, 1997, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 11th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33018 Filed 12–17–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of

the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Acting Director of OTAA not later than December 29, 1997.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than December 29, 1997.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Signed at Washington, D.C. this 9th day of November, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Conaway Winter (Wkrs)	Birch Tree, MO	08/25/97	NAFTA–1,893	Children's shoes.
Jostens (Wkrs)	Princeton, IL	08/25/97	NAFTA–1,894	Rings.
Chrysler (Co.)	Belvidere, IL	08/25/97	NAFTA–1,895	Automobiles.
Electrohome (Co.)	Carthage, MO	08/26/97	NAFTA–1,896	Display monitors, printed wiring boards.
SMS Textile Mills (Wkrs)	Allentown, PA	08/26/97	NAFTA–1,897	Elastic and spanex fabrics.
Frolic Footwear (Wkrs)	Jonesboro, AR	08/22/97	NAFTA–1,898	Footwear.
Remington Apparel (Co.)	Graham, TX	08/27/97	NAFTA–1,899	Men's neckwear.
Perfect Circle—Sealed Power Division (UAW).	Rochester, IN	08/11/97	NAFTA–1,900	Cylinder liners (piston sleeves).
Ergodyne Corporation (Wkrs)	Pence, WI	08/27/97	NAFTA–1,901	Gloves, tennis elbows and wrist braces.
General Electric (IUE)	Ft. Wayne, IN	08/25/97	NAFTA–1,902	Electric motors and transformers batteries.
Bassett Walker (Co.)	North Wilkesboro, NC	08/26/97	NAFTA–1,903	T-shirts, sweatsuits.
Thomson Consumer Electronics (IBEW).	St. Bloomington, IN	08/11/97	NAFTA–1,904	Television assembly.
Thomas and Betts (Wkrs)	Sanford, ME	08/26/97	NAFTA–1,905	Terminal blocks and plastic molds.
Prewash and Pressing Services (Co.)	El Paso, TX	09/02/97	NAFTA–1,906	Prewash, stonewash & press denim jeans.
Dana Design Limited (Co.)	Bozeman, MT	09/02/97	NAFTA–1,907	Backpacks.
Dana Design Limited (Co.)	Livingston, MT	09/02/97	NAFTA–1,907	Backpacks.
Dana Design Limited (Co.)	Lewistown, MT	09/02/97	NAFTA–1,907	Backpacks.
Dana Design Limited (Co.)	Belgrade, MT	09/02/97	NAFTA–1,907	Backpacks.
Malone Manufacturing (Wkrs)	Malone, NY	09/03/97	NAFTA–1,908	T-shirts and sweat pants.
Union City Body (UAW)	Union City, IN	09/03/97	NAFTA–1,909	Delivery vans.
Heinz Bakery Products (BCTW)	Buffalo, NY	09/03/97	NAFTA–1,910	Frozen unbaked sweet goods.
Dorn Textiles (Wkrs)	New York, NY	09/03/97	NAFTA–1,911	Woven fabric.
Collegiate Sportswear (Wkrs)	Kingston, TN	09/03/97	NAFTA–1,912	Sports jerseys.
Fisher Rosemount Petroleum (Co.)	Statesboro, GA	09/04/97	NAFTA–1,913	Magnetic flow meters.
Forsyth Sales (Co.)	Greensboro, NC	09/05/97	NAFTA–1,914	Supplied and repaired sewing machines.
Whisper Soft Mills (Wkrs)	Wallace, NC	09/04/97	NAFTA–1,915	Sheets sets, wall borders, tablecloths.
Irwin Manufacturing (Co.)	Alma, GA	09/05/97	NAFTA–1,916	Infant bedding.
Seymour Housewares (Wkrs)	Mooresville, NC	09/05/97	NAFTA–1,917	Laundary sorters, ironing board covers.
Elkin Valley Apparel (Wkrs)	Elkin, NC	09/15/97	NAFTA–1,918	Ladies sportswear.
Applied Molded Products (URC)	Watertown, WI	09/09/97	NAFTA–1,919	Fiberglass reinforced plastics.
Hillsboro Glass (GMP)	Hillsboro, IL	09/05/97	NAFTA–1,920	Amber glass bottles.
Kimberly Clark (UPIU)	Oconto Falls, WI	07/09/97	NAFTA–1,921	Tissue paper, bath tissue.
Solomon Company (The) (Co.)	Leeds, AL	09/11/97	NAFTA–1,922	Men's dress slacks.
Sew More (Wkrs)	Albermarle, NC	09/05/97	NAFTA–1,923	T-shirts, sweatshirts.
Echo Bay Management (Wkrs)	Englewood, CO	09/17/97	NAFTA–1,924	Administrative duties supporting mining.
Nukote International (Wkrs)	Franklin, TN	09/17/97	NAFTA–1,925	Ink ribbon & ink jet cartridges.
General Electric Company (Wkrs)	Salem, VA	09/18/97	NAFTA–1,926	Material handling production.
Dana Corporation (Wkrs)	Reading, PA	09/19/97	NAFTA–1,927	Truck side rails, ford pick-up frames.
Lummi Casino (Wkrs)	Bellingham, WA	09/10/97	NAFTA–1,928	Gambling services.
Trutom (US) Limited (Wkrs)	Albany, NY	09/15/97	NAFTA–1,929	Specialized testing services.
Anvil Knitwear (Wkrs)	Gibson, NC	09/12/97	NAFTA–1,930	T-shirts and tanktops.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Stanley Works (The) (USWA)	York, PA	09/17/97	NAFTA–1,931	Hand saws, hacks saws, hand tools.
Trans World Airlines (IAMAW)	Kansas City, MO	09/22/97	NAFTA–1,932	Repair and maintenance on aircraft.
CAE Screenplates (Co.)	Glens Falls, NY	09/22/97	NAFTA–1,933	Stainless steel screen plates.
Great American Products (Wkrs)	Broadview, IL	09/22/97	NAFTA–1,934	Pewter castings.
Jansport (Wkrs)	Burlingtion, WA	09/23/97	NAFTA–1,935	Backpacks.
Ace Metal Fabricators (IBT)	Bronx, NY	09/22/97	NAFTA–1,936	Alarm boxes, door covers, brackets.
Ace Sprayfinishing (IBT)	Bronx, NY	09/22/97	NAFTA–1,936	Alarm boxes, door covers, brackets.
Sweetheart Cup (IBEW)	Springfield, MO	09/24/97	NAFTA–1,937	Paper cups.
Sweetheart Cup (IBEW)	Riverside, CA	09/24/97	NAFTA–1,937	Paper cups.
California Curves (Wkrs)	Temecula, CA	09/25/97	NAFTA–1,938	Wooden television and speaker cabinets.
Cabot Oil and Gas (Co.)	Carlton, PA	09/29/97	NAFTA–1,939	Oil and gas.
Elf Atochem North America (ICWU)	Tacoma, WA	09/29/97	NAFTA–1,940	Sodium chlorate.
F. W. Woolworth (Wkrs)	Berwyn, IL	09/30/97	NAFTA–1,941	Retail store.
General Motors (UAW)	Danville, IL	09/30/97	NAFTA–1,942	Automobile iron castings.
Graham Chemical (Wkrs)	Jamaica, NY	10/03/97	NAFTA–1,943	Dental anesthetics.
Fleetwood Metals Industries (USWA)	Tecumseh, MI	09/30/97	NAFTA–1,944	Metal stamping for automobile dashboards.
Simpson Industries (IAM)	Jackson, MI	09/24/97	NAFTA–1,945	Automotive components, brake drums, etc.
Braden Manufacturing (Wkrs)	Ft. Smith, AR	10/04/97	NAFTA–1,946	Gas turbine.
Simpson Industries (Co.)	Gladwin, MI	09/22/97	NAFTA–1,947	Isolators and dampers.
Texas Instruments (Wkrs)	Central Lake, MI	10/02/97	NAFTA–1,948	Thermal overload motor devices.
Almark Mills (Co.)	Dawson, GA	10/03/97	NAFTA–1,949	T-shirts, boxers, shorts.
Fiskars (Wkrs)	Fergus Falls, MN	10/06/97	NAFTA–1,950	Surge protection products.
Wolverine World Wide (Wkrs)	Kirksville, MO	10/07/97	NAFTA–1,951	Men's & women's boots & shoes.
JLG Industries (Wkrs)	McConnellsburg, PA	10/06/97	NAFTA–1,952	Electrical wiring harnesses.
General Binding (Co.)	Sparks, NV	10/03/97	NAFTA–1,953	Rotary and flat files.
Taylor Togs (Co.)	Micaville, NC	10/07/97	NAFTA–1,954	Blue jeans.
Taylor Togs (Co.)	Green Mountain, NC	10/07/97	NAFTA–1,954	Blue jeans.
Best Manufacturing (Co.)	Salisbury, NC	10/07/97	NAFTA–1,955	Tee shirts and sweatshirts.
Stroh Brewery Company (The) (IAM)	St. Paul, MN	10/08/97	NAFTA–1,956	Beer.
Lees Manufacturing (Co.)	Cannon Falls, MN	10/09/97	NAFTA–1,957	Children's sleepwear and sportswear.
Oregon Woodworking (Co.)	Bend, OR	10/08/97	NAFTA–1,958	Door jambs.
Bourns (Wkrs)	Riverside, CA	10/01/97	NAFTA–1,959	Pressure transducers.
Loralie Originals (Wkrs)	Redding, CA	09/25/97	NAFTA–1,960	Women's formalwear.
DQ Investment Corporation (Co.)	San Diego, CA	10/01/97	NAFTA–1,961	Data base information.
Basler Electric (Wkrs)	Corning, AR	10/09/97	NAFTA–1,962	Class II transformer.
Apparel Brands (Co.)	Wrightsville, GA	10/10/97	NAFTA–1,963	Men's and ladies uniform pants & shorts.
Payless Cashways (Wkrs)	Wichita Falls, TX	10/08/97	NAFTA–1,964	Retail sales of building materials.
Robinson (Wkrs)	Parsons, TN	10/13/97	NAFTA–1,965	Sportswear
Hamburg Shirt—Bernstein and Sons (Co.).	Hamburg, AR	10/08/97	NAFTA–1,966	Knit and woven shirts.
University Technical Services (Wkrs)	San Diego, CA	10/10/97	NAFTA–1,967	Electricity generation.
Frolic Footwear (Wkrs)	Walnut Ridge, AR	10/13/97	NAFTA–1,968	Women's shoes.
Timberline Lumber (Wkrs)	Kalispell, MT	10/02/97	NAFTA–1,969	Studs and stud products.
Tru Stitch Footwear (UFCW)	Malone, NY	10/14/97	NAFTA–1,970	Soft moccasin and boot style slippers.
Reef Gear (Wkrs)	Marine City, MI	10/14/97	NAFTA–1,971	Output and input gear.
Fedco Automotive Components (Wkrs)	Buffalo, NY	10/15/97	NAFTA–1,972	Heater cores for automobile industry.
Oneita Industries (Co.)	Fayette, AL	10/16/97	NAFTA–1,973	T-shirts.
Dana Corporation (USWA)	Reading, PA	10/08/97	NAFTA–1,974	Truck frame.
Lehigh Furniture (Co.)	Marianna, FL	10/16/97	NAFTA–1,975	Wooden bedroom furniture.
International Paper (UPIU)	Erie, PA	10/17/97	NAFTA–1,976	Pulp and high grade paper products.
Rockwell Automation (IUE)	Ashtabula, OH	10/21/97	NAFTA–1,977	AC electric motors.
Bonita Packing (Wkrs)	Bonita Springs, FL	10/21/97	NAFTA–1,978	Tomatoes.
Kysor Michigan Fleet—Scott (UAW)	Scottsburg, IN	10/21/97	NAFTA–1,979	Auxiliary fuel tanks.
Woodgrain Millwork (Wkrs)	Lakeview, OR	10/20/97	NAFTA–1,980	Moulding.
Carolyn of Virginia (Co.)	Bristol, VA	10/20/97	NAFTA–1,981	Ladies robes and dusters.
Ellen B. Sport (Co.)	Whitehall, IL	10/17/97	NAFTA–1,982	Nightware and dresses.
Sterling Stainless Tube (Wkrs)	Englewood, CO	10/21/97	NAFTA–1,983	Automotive antenna components.
Veratec (UPWI)	Lewisburg, PA	10/22/97	NAFTA–1,984	Carded non-woven goods.
Cornelius Farms (Co.)	Florida City, FL	10/23/97	NAFTA–1,985	Green beans.
Bose (Wkrs)	Westboro, MA	10/22/97	NAFTA–1,986	Audio products and components.
Maine Yankee Atomic Power (UWUA)	Wiscasset, ME	10/22/97	NAFTA–1,987	Electric power.
Henchel (Wkrs)	Potosi, MO	10/23/97	NAFTA–1,988	Cap.
A.O. Smith (Wkrs)	Upper Sandusky, OH	10/28/97	NAFTA–1,989	Fractional horsepower electric motors.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Cason Manufacturing (Co.)	Stephenville, TX	10/27/97	NAFTA–1,990	Women's skirts and pants.
Hantke and Ford Printers (Wkrs)	Los Angeles, CA	10/01/97	NAFTA–1,991	Printing blister and skin cards.
Trade Apparel (Wkrs)	El Paso, TX	10/28/97	NAFTA–1,992	Jean pants.
Banner Packaging (Wkrs)	Shelbyville, TN	10/27/97	NAFTA–1,993	Poultry baas.
Cooper Industrial (IBEW)	Weatherly, PA	10/27/97	NAFTA–1,994	Aircraft power supplies.
Lenworth Aminco (Wkrs)	Meadville, PA	10/28/97	NAFTA–1,995	Accounting dept. for automotive racking.
Fonda Group (UPW)	Three Rivers, MI	10/23/97	NAFTA–1,996	Paper plates, cups, bowls.
Hamilton Beach-Proctor Silex (Co.)	Mt. Airy, NC	10/28/97	NAFTA–1,997	Small electrical appliance.
Tennessee River (Co.)	Russelville, AL	10/30/97	NAFTA–1,998	T-shirts, sweat shirts/pants.
Pacific Refining (Wkrs)	Hercules, CA	10/07/97	NAFTA–1,999	Asphalt.
Jetricks (Wkrs)	Selmer, TN	10/29/97	NAFTA–2,000	T-shirts, sports shirts
Lockheed Martin (IUPPE)	Liverpool, NY	10/31/97	NAFTA–2,001	Projection screens.
NGC Corporation (OCAW)	Houston, TX	10/31/97	NAFTA–2,002	Natural gas.
Packwood Lumber (UBC)	Packwood, WA	10/31/97	NAFTA–2,003	Dimensional lumber.
Electra Sound (Wkrs)	Parma, OH	10/31/97	NAFTA–2,004	Engine controls modules.
Active Transportation (IBT)	Louisville, KY	11/03/97	NAFTA–2,005	Transporation of motor vehicles.
Gary Peterson Logging (Co.)	Cascade, ID	10/23/97	NAFTA–2,006	Logging.
Brownsville Products (Wkrs)	Brownsville, TX	11/03/97	NAFTA–2,007	Metal.
Shenandoah Knitting Mills (Wkrs)	Edinburg, VA	11/03/97	NAFTA–2,008	Knitting machines.
Dublin Garment (Co.)	Dublin, VA	11/03/97	NAFTA–2,009	Uniforms, shirts, pants.
American Tissue (Wkrs)	Tomahawk, WI	11/04/97	NAFTA–2,010	Tissue porducts.
Alcatel Telecommunications Cable (IUE).	Roanoke, VA	11/07/97	NAFTA–2,011	Fiber optics.
American Standard Apparel-Bertha's Boy (Wkrs).	Williamsport, PA	11/06/97	NAFTA–2,012	Women's, men's and children's apparel.
SRAM Corporation (Wkrs)	Elk Grove, IL	11/06/97	NAFTA–2,013	Bicycle shifters.
Alcoa Fujikura (Co.)	Campbellsburg, KY	11/10/97	NAFTA–2,014	Automotive wire harness assemblies.
Carrier Technology (Wkrs)	Syracuse, NY	11/10/97	NAFTA–2,015	Drawings.
Umbro North America (Co.)	Fairbluff, NC	11/07/97	NAFTA–2,016	Soccer apparel, shorts and jerseys.
Marion Power Shovel Company (The) (USWA).	Marion, OH	11/10/97	NAFTA–2,017	Mining equipment.
Aluminum Conductor (USWA)	Vancouver, WA	11/12/97	NAFTA–2,018	Aluminum conductor, cable products.
Barbee Mill (WCIW)	Renton, WA	11/12/97	NAFTA–2,019	Softwood dimensional lumber.
Green Veneer (Wkrs)	Mill City, OR	11/10/97	NAFTA–2,020	Plywood.
San Antonio Garment and Finishers (Co.).	San Antonio, TX	11/07/97	NAFTA–2,021	Men's levi docker pants.
Mapa Pioneer (USWA)	Willard, OH	11/13/97	NAFTA–2,022	Natural rubber gloves.
Tyco International (Co.)	Ocala, FL	11/10/97	NAFTA–2,023	Disposable medical devices.
TRI Americas (Wkrs)	El Paso, TX	11/17/97	NAFTA–2,024	Men's pants.
Louisiana Pacific (Co.)	Hyden Lake, ID	11/14/97	NAFTA–2,025	Lumber products.
Jam Enterprises (Co.)	El Paso, FL	11/19/97	NAFTA–2,026	Jeans.
Kemet Electronics (Co.)	Shelby, NC	11/19/97	NAFTA–2,027	Ceramic capacitors.
ITT Automotive (IAMAW)	Arshbold, OH	11/19/97	NAFTA–2,028	Gas.
Hogg's Factory (Wkrs)	Malden, MO	11/19/97	NAFTA–2,029	Fleece shirts and sets.
Crown Pacific (Co.)	Gilchrist, OR	11/20/97	NAFTA–2,030	Forest products, lumber.
Weyerhaeuser (WCIW)	Snoqualmie, WA	11/20/97	NAFTA–2,031	Fiber.
Alltrista Zinc Products (Co.)	Greeneville, TN	11/21/97	NAFTA–2,032	Zinc cans.
Identity Headwear U.S.A. (Wkrs)	Maysville, MO	11/25/97	NAFTA–2,033	Ball caps.
Dee's Manufacturing (Co.)	El Paso, TX	11/25/97	NAFTA–2,034	Women's denim jeans.
Maxton Sewing Plant (Co.)	Maxton, NC	11/25/97	NAFTA–2,035	T-shirts.
ConAgon Maple Leaf (AFCM)	Buffalo, NY	11/24/97	NAFTA–2,036	Flour and flour by-products.
TRW (ICWUC)	Augurn, NY	11/25/97	NAFTA–2,037	Switches for auto headlamps, airbags.
Racal Data (Wkrs)	Sunrise, FL	11/26/97	NAFTA–2,038	PC boards, chassis.
Everbrite (IBEW)	South Milwaukee, WI	11/19/97	NAFTA–2,039	Neon signs.
International Wire (Co.)	Bourbon, IN	11/01/97	NAFTA–2,040	Wire.
International Wire (Co.)	Bremen, IN	11/01/97	NAFTA–2,041	Wire.
Swansboro Garment (Wkrs)	Swansboro, NC	12/01/97	NAFTA–2,042	Men's dress shirts.
Franke (Wkrs)	North Wales, PA	12/01/97	NAFTA–2,043	Commercial kitchen equipment.
MASCO (Wkrs)	LaFollette, TN	12/01/97	NAFTA–2,044	Grills, registers, diffusers for heating.
Standard Keil—Tap Rite (UNITE)	Allenwood, NJ	11/25/97	NAFTA–2,045	Specialty hardware components.
Freeport McMoran (Wkrs)	New Orleans, LA	12/01/97	NAFTA–2,046	Mining sulphur.
Bazflex USA (Co.)	Gainesville, TX	12/02/97	NAFTA–2,047	Injection molding of shoe soles.
Oxford of Alma (Co.)	Alma, GA	12/02/97	NAFTA–2,048	Ladies dresses, pants and fleece jackets.
J and L Specialty Steel (USWA)	Detriot, MI	12/01/97	NAFTA–2,049	Steel.
Thunderbird Moulding Company (Co.)	Yreka, CA	12/01/97	NAFTA–2,050	Wood moulding.
Kock Refining (OCAW)	St. Paul, MN	12/02/97	NAFTA–2,051	Refinined crude oil products.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Greenfield Industries (Co.)	South Deerfield, MA	12/02/97	NAFTA–2,052	Hacksaw blades & wood boring tool bits.
General Cable (Co.)	Kenly, NC	12/04/97	NAFTA–2,053	Electrical cordsets.
Procter and Gamble (Co.)	Greenville, SC	12/05/97	NAFTA–2,054	Ingredients for over counter medicine.
Kessler Foundry and Machine (Co.)	Canutillo, TX	12/03/97	NAFTA–2,055	Metal furniture castings.
Johnstown Wire (USWA)	Buffalo, NY	12/04/97	NAFTA–2,056	Coil steel materials.
Sutersville Lumber (Co.)	Sutersville, PA	12/03/97	NAFTA–2,057	Building products, lumber, doors, windows.

[FR Doc. 97–33024 Filed 12/17/97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01881; NAFTA–01881D]

Fruit of the Loom; Martin Mills, Inc. D/B/A/ St. Martinville Mills including Former Employees of Jeanerette Mills St. Martinville, Louisiana; Jeanerette Mills; Division of Martin Mills, Inc., Jeanerette, Louisiana; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 29, 1997, applicable to workers of Fruit of the Loom, Martin Mills, Inc., located in St. Martinville, Louisiana. The certification was amended on September 14, 1997, to specify that Martin Mills, Inc., is doing business in St. Martinville, Louisiana as St. Martinville Mills, and to include those workers of the subject firm whose wages were reported under the separate Unemployment Insurance tax account for Jeanerette Mills. The notice of amended certification was published in the **Federal Register** on September 30, 1997 (62 FR 51160).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations will occur at the Jeanerette Mills, Division of Martin Mills in Jeanerette, Louisiana. The workers are engaged in employment related to the production of T-shirts, briefs, and A-shirts.

The intent of the Department's certification is to include all workers of Fruit of the Loom adversely affected by increased imports of underwear.

The amended notice applicable to NAFTA–01881 is hereby issued as follows:

All workers of Fruit of the Loom, Martin Mills, Inc., doing business as St. Martinville Mills, including former employees of Jeanerette Mills, St. Martinville, Louisiana (NAFTA–01881) and Jeanerette Mills, Division of Martin Mills, Inc., Jeanerette, Louisiana (NAFTA–01881D), who became totally or partially separated from employment on or after August 14, 1996, are eligible to apply for adjustment assistance under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 9th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33021 Filed 12–17–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01807; NAFTA–01807Y; NAFTA–01807Z; NAFTA–01807AA]

Levi Strauss and Company; Goodyear Cutting Facility and El Paso Field Headquarters, El Paso, Texas; Fayetteville, Arkansas; Harrison, Arkansas; Dallas CF Regional Office, Dallas, Texas; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1997 (62 FR 48889). The certification was subsequently amended to include the subject firm workers at the El Paso Field Headquarters in El Paso, Texas. The amendment was issued on September 14, 1997 and published in the **Federal Register** on September 30, 1997 (62 FR 51161).

At the request of the State agency and the company, the Department reviewed the certification for workers of the subject firm. New information submitted by the company shows that worker separations will occur at the Levi Strauss and Company production facilities located in Fayetteville and Harrison, Arkansas. The company also reports layoffs at the Dallas CF Regional Office in Dallas, Texas. The workers at these three locations are engaged in employment related to the production of men's, women's and youth's denim jeans and jackets. Based on this new information, the Department is amending the certification to cover the subject firm's workers in Fayetteville and Harrison, Arkansas, and Dallas, Texas.

The intent of the Department's certification is to include all workers of Levi Strauss and Company who were adversely affected by increased imports from Mexico of men's, women's and youth's denim jeans and jackets.

The amended notice applicable to NAFTA–01807 is hereby issued as follows:

All workers of Levi Strauss and Company, Goodyear Cutting Facility and El Paso Field Headquarters, El Paso, Texas (NAFTA–01807), Fayetteville, Arkansas (NAFTA–01807Y), Harrison, Arkansas (NAFTA–01807Z) and Dallas, Texas (NAFTA–01807AA) who were engaged in employment related to the production of men's, women's and youth's denim jeans and jackets who became totally or partially separated from employment on or after July 9, 1996 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 9th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33022 Filed 12–17–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–1750]

Steven Borek Farms, Inc., Princeton, Florida; Investigations Regarding Certifications of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance; Correction

This notice corrects the notice for petition number NAFTA–1750 which was published in the **Federal Register** on August 8, 1997 (62 FR 42823) in FR Document 97–21018.

This revises the subject firm name and location for NAFTA–1750 in the first and second columns in the appendix table on page 42823. The first column (subject firm), should read Steven Borek Farms, Inc., and the second column (location), should read Princeton, Florida.

Signed at Washington, D.C., this 11th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33017 Filed 12–17–97; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Leadership Initiatives Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Panel, Folk & Traditional Arts Infrastructure Section, to the National Council on the Arts will be held on January 7–8, 1998. The panel will meet from 9:00 a.m. to 7:00 p.m. on January 7, and from 9:00 a.m. to 12:30 p.m. on January 8 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 9:00 to 10:00 a.m. on January 8, will be open to the public for a policy discussion.

The remaining portions of this meeting, from 9:00 a.m. to 7:00 p.m. on January 7, and from 10:00 a.m. to 12:30 p.m. on January 8, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: December 15, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–33085 Filed 12–17–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnership Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Partnership Panel, Partnership Agreements Section, to the National Council on the Arts will be held on January 12–14, 1998. The panel will meet from 9 a.m. to 6:30 p.m. on January 12, from 9 a.m. to 5:30 p.m. on January 13, and from 9 a.m. to 4:30 p.m. on January 14 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: December 9, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–33084 Filed 12–17–97; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456 and STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37, NPF–66, NPF–72, and NPF–77 issued to Commonwealth Edison Company (the licensee) for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendment would allow licensee control of the reactor coolant system pressure and temperature limits for heatup, cooldown, low temperature operation and hydrostatic testing. ComEd also proposed to relocate the reactor vessel capsule withdrawal schedule in accordance with Generic Letter 91–01.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves 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. 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?

The proposed changes relocate RCS [reactor coolant system] P/T [pressure and temperature] limits, LTOP [low temperature overpressure protection] system setpoints, hydrostatic testing requirements, and the reactor vessel capsule withdrawal schedule, along with supporting information, from the Technical Specifications to a PTLR [pressure temperature limits report]. Compliance with these limits will continue to be required by the Technical Specifications. However, the limits themselves will be maintained in a Licensee-controlled document. Changes to the limits will be controlled by Section 6.9.1.11 of the Technical Specifications. Changes to the RCS P/T limits can only be made in accordance with the NRC-approved methodologies listed in the Technical Specifications. The limits and the Technical Specifications will continue to assure the function of the reactor vessel as a pressure boundary. Revision to the LTOP limits can only be made in accordance with the approved methodologies listed in the Technical Specifications, and any resulting setpoint changes are made through the provisions of 10 CFR 50.59. Changes to the specimen withdrawal requirements are governed by Appendix H to 10 CFR 50.

The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility. Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

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 involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements or introduce a new accident or malfunction mechanism. There is no significant change in the types or significant increase in the amounts of any effluent that may be released offsite, and there is no significant increase in individual or cumulative occupational radiation exposure. In addition, the Byron and Braidwood Technical Specifications will continue to require that the reactor is maintained within acceptable operational limits and ensure that the LTOP system meets operability requirements. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not result in any reduction in the margin of safety because they have no impact on safety analysis assumptions. The proposed changes have been shown to ensure that the P/T and LTOP limits in the PTLR continue to meet all necessary requirements for reactor vessel integrity. Any future changes to the RCS P/T, LTOP limits, or supporting information must be performed in accordance with NRC-approved methodologies. Technical Specifications continue to require compliance with the limits in the PTLR. Additionally, any revision to the LTOP limits which result in setpoint changes will be evaluated under the provisions of 10 CFR 50.59. The reactor vessel capsule withdrawal schedule will continue to meet the requirements of Appendix H to 10 CFR 50. Therefore, these changes do not involve a significant reduction in the margin of safety.

ComEd has concluded that the RCS P/T and LTOP limits are no longer required to be located in the Technical Specifications under 10 CFR 50.36 or Section 182a of the Atomic Energy Act, and are not required to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety. Additionally, they do not fall within any of the four criteria set forth in 10 CFR 50.36(c)(2)(ii) for defining Technical Specification Limiting Condition for Operations.

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.

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. 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, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 20, 1998, 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, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room: for Byron, located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. 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 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: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 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 Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

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 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 dated May 21, 1997, as supplemented on November 18, 1997, and December 3, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms: for Byron, located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 12th day of December, 1997.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33055 Filed 12–17–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–31373–CivP and ASLBP No. 98–735–01–CivP]

CONAM Inspection, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

CONAM Inspection, Inc.; Order Imposing Civil Monetary Penalty

This Board is being established pursuant to the request of Conam Inspection, Inc. for an enforcement hearing. The hearing request was made in response to an Order issued by the Director, Office of Enforcement, dated November 5, 1997, entitled "Order Imposing Civil Monetary Penalty" (62 FR 60923, November 13, 1997).

The Board is comprised of the following administrative judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 12th day of December 1997.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 97–33058 Filed 12–17–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–272]

Public Service Electric and Gas Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, 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–70 issued to Public Service Electric & Gas Company (the licensee) for operation of the Salem Nuclear Generating Station, Unit 1, located in Salem County, New Jersey.

The proposed amendment would provide a one-time change to the Technical Specifications to allow purging of the containment during Modes 3 (Hot Standby) and 4 (Hot Shutdown) upon return to power from the current outage (1R13). Because of the replacement of the steam generators, a large amount of new thermal insulation was installed. Although this insulation was pre-baked to minimize off-gassing, previous Salem and other industry experience indicates that there could be significant off-gassing from the insulation during the plant heat-up resulting in an uninhabitable containment atmosphere. The ability to purge the containment during Modes 3 and 4 will provide the most safe, efficient means of removing the off-gasses from the insulation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves 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. 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.

Performance of containment purging as proposed in this license change request does not modify any primary system, secondary system, or power supply system. The purging equipment will be operated as it was designed to be operated. In summary, no accident initiator will be affected by the proposed containment purging in Modes 3 and 4. For this reason, the activity does not involve an increase in the probability of an accident previously evaluated.

A conservative engineering evaluation was performed to calculate an upper bound for the dose consequences of a postulated LOCA during Modes 3 or 4 prior to Unit 1 Cycle 13 power operation. The computations performed evaluate a postulated release of the entire core inventory. The release is modeled as a "puff" release of core activity that is transported directly to the environment via the plant vent, taking no credit for containment isolation. The release is modeled as being instantaneous. This is conservative because the highest atmospheric dispersion factors are associated with the initial release period (0 to 2 hours). Twenty-five percent of the core radioactive iodine and one hundred percent of the core noble gas inventories were assumed to be immediately available for release from the containment in accordance with Regulatory Guide 1.4. Computations were developed for whole body gamma dose, beta skin dose and thyroid dose at the Unit 1 control room air intakes, and whole body gamma dose and thyroid dose at the exclusion area boundary (EAB).

The evaluation results show that the whole body dose and the thyroid dose at the EAB are negligible compared to the 10 CFR 100 limits and that the doses are less than the corresponding doses calculated for the design basis LOCA.

The results also indicate that the thyroid dose at the control room air intakes is negligible when compared to the GDC 19 and SRP 6.4 criteria and that the calculated whole body dose is well within its limit. The computed thyroid and whole body control room doses are less than the corresponding doses calculated for the design basis LOCA.

The computations indicate that the calculated control room beta skin dose is within the 75 rem limit for protective eyewear use. In consideration of the possibility of a LOCA, however low, protective eyewear will be provided to control room personnel during the purging process.

Even though no credit is taken for containment isolation in the dose assessment, it should be noted that the valves are expected to close when requested to do so. The containment supply and exhaust valves are tested within the surveillance program to check valve stroke times. Additionally, they are designed to close in response to Containment Ventilation Isolation and Phase A Isolation signals. This response is also tested periodically. Each purge penetration is protected by two automatic isolation valves which are safety related and leak tested. Therefore, although no credit has been taken for isolation of the purge supply and exhaust penetrations, the valve closure will probably occur in the event of a design basis accident in Modes 3 or 4.

Additionally, the actual time of purging will be minimized, significantly reducing the chance that the worst case of a LOCA while purging could occur.

Plant effluent monitors provide the same monitoring capability in Modes 3 and 4 as they do in Modes 5 and 6 and the guidance necessary to assess the radiological consequences of any purge in Modes 3 and 4 is contained, and will be followed, in existing plant procedures.

For the above reasons, it is concluded that purging of the containment in Modes 3 and 4 during return from 1R13 does not involve a significant increase in either the probability or the 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.

As is noted above, no accident initiators are affected by the proposed activity. The safety function of the purge valves is containment isolation. Performance of containment purging as proposed in this license change request does not modify any primary system, secondary system, or power supply system. Purging proposed in Modes 3 and 4 will be conducted and monitored in the same manner as it is routinely carried out in the shutdown modes. Therefore no new "accident initiators" are created by this activity. One difference is considered in the dose analysis. Although it is believed that containment isolation would occur, the conservative dose analysis, which takes no credit for containment isolation, calculates the doses for a LOCA during purging, to be within regulatory guidance. For these reasons, the activity will not create the possibility of a new or different type of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Margin of safety is associated with the confidence in the ability of the fission product barriers (the fuel and fuel cladding, the Reactor Coolant System pressure boundary, and the containment) to limit the level of radiation doses to the public. The proposed purging of the containment will occur at the end of an extended outage of over 2 1/2 years in length. The level of decay heat and activity in the reactor is very low compared to the levels associated with full power operations. For this reason, the likelihood of fuel damage following a LOCA occurring during the purging process is significantly reduced. Additionally the length of time that the purging will occur has been limited. This reduces the likelihood of the LOCA occurring during the purging process.

Conservative dose assessment performed to provide an upper bound shows that whole body and thyroid dose to the public is virtually non existent, and whole body and thyroid dose to the control room personnel is well within regulatory guidance and lower tha[n] design basis accident analysis.

The dose computations indicate that the calculated control room beta skin dose is

within the 75 rem limit for protective eyewear use. In consideration of the possibility of a LOCA, however low, protective eyewear will be provided to control room personnel during the purging process.

For these reasons, the activity 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.

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. 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 Rules Review and Directives Branch, Division of Freedom of Information and Publications 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, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 20, 1998 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, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. 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 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: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 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 Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

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 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 dated December 11, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 12th day of December 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33054 Filed 12–17–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear Corporation and Jersey Central Power & Light Company; Oyster Creek Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation, et al. (the licensee), for operation of the Oyster Creek Nuclear Generating Station (OCNGS) located in Ocean County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the OCNGS operating license and technical specifications (TSs) to reflect the registered trade name of "GPU Nuclear" under which the owner of OCNGS now does business and to reflect the change of the legal name of the operator of OCNGS from GPU Nuclear Corporation to GPU Nuclear, Inc. In addition, the proposed action includes two minor editorial corrections associated with the name changes.

Specifically, license conditions 1.A, 1.E, 1.F, and 2 have been revised to indicate Jersey Central Power & Light Company doing business as (d/b/a) GPU Energy and GPU Nuclear, Inc. as the licensed operator of the facility and TSs 6.2.1, 6.5.1, 6.5.2, 6.5.3, 6.18, and 6.19 have been modified to change GPU Nuclear Corp. to GPU Nuclear or GPU Nuclear, Inc. as applicable.

The proposed action is in accordance with the licensee's application for amendment dated October 10, 1997.

The Need for the Proposed Action

The proposed action is needed to conform the license to reflect the registered trade name under which the owner of OCNGS now does business and reflect the change in the legal name of the operator of OCNGS.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed amendment to the OCNGS operating license to reflect the trade name of the owner and to reflect the change in the legal name of the operator will have no impact on the continued safe operation of the facility. The corporate existence of the owner and operator of OCNGS will continue uninterrupted, and all legal characteristics other than the legal name of the operator will remain the same. The State of incorporation, registered agent, registered office, directors, officers, rights or liabilities of either the owner or the operator of OCNGS have not and will not change as a result of the amendment. Similarly, there will be no change in the function of either the owner or the operator of OCNGS or the way they do business. The owner's financial responsibility for OCNGS and the source of funds to support the facility will remain the same. There will be no alteration in any of the existing licensing conditions applicable to OCNGS, and no change to GPU Nuclear Corporation's ability to comply with any licensing conditions or any other obligation or responsibility under the license. Specifically, the owner of OCNGS will remain an electric utility as defined in 10 CFR 50.2. The funds accrued by the owner will continue to be available to fulfill all obligations related to OCNGS. The two minor editorial changes relate to a name change in the title of the President of GPU Nuclear Corporation that will similarly have no effect on the safe operation or licensing conditions of the facility.

Therefore, the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the OCNGS.

Agencies and Persons Consulted

In accordance with its stated policy, on December 12, 1997, the staff consulted with the New Jersey State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 10, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local

public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Dated at Rockville, Maryland, this 12th day of December 1997.

For the Nuclear Regulatory Commission.

Ronald B. Eaton,

Acting Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33056 Filed 12–17–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Long Island Lighting Company Nine Mile Point Nuclear Station, Unit 2; Environmental Assessment And Finding Of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding a proposed indirect transfer of control of ownership and possessory rights held by Long Island Lighting Company (LILCO) under the operating license for Nine Mile Point Nuclear Station, Unit No. 2 (NMP2). The indirect transfer would be to the Long Island Power Authority (LIPA), a corporate municipal instrumentality of New York State. LILCO is licensed by the Commission to own and possess an 18 percent interest in NMP2, located in the town of Scriba, Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the indirect transfer of control of the license to the extent affected by LILCO becoming a subsidiary of LIPA. This restructuring of LILCO as a subsidiary of LIPA would result from LIPA's proposed purchase of LILCO stock through a cash merger at a time when LILCO consists of its electric transmission and distribution system, its retail electric business, substantially all of its electric regulatory assets, and its 18 percent share of NMP2. LILCO would continue to exist as an "electric utility" as defined in 10 CFR 50.2 providing the same electric utility services it did immediately prior to the restructuring. No direct transfer of the operating license or interests in the station would result from the proposed restructuring. The transaction would not involve any change to either the management organization or technical personnel of Niagara Mohawk Power Corporation (NMPC), which is responsible for operating and maintaining NMP2 and is not involved in the LIPA acquisition of LILCO. The proposed action is in accordance with LILCO's application dated September 8, 1997, as modified and supplemented October 8, 1997, and November 7, 1997.

The Need for the Proposed Action

The proposed action is required to enable LIPA to acquire LILCO as described above.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that there will be no physical or operational changes to NMP2. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate and maintain the facility, as NMPC will continue to be responsible for the maintenance and operation of NMP2 and is not involved in the acquisition of LILCO by LIPA.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the restructuring would not affect nonradiological plant effluents and would have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements Related to the Operation of Nine Mile Point Nuclear Station, Unit No. 2, (NUREG–1085) dated May 1985.

Agencies and Persons Contacted

In accordance with its stated policy, on December 10, 1997, the staff consulted with the New York State official, Mr. Jack Spath, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see LILCO's application dated September 8, as modified and supplemented by letters dated October 8 and November 7, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 9th day of December 1997.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33057 Filed 12–17–97; 8:45 am]

BILLING CODE 7590–01–P

PANAMA CANAL COMMISSION

Revision of a Currently Approved Collection of Information

AGENCY: Panama Canal Commission.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163), this notice announces the Panama Canal Commission (PCC) is planning to submit to the Office of Management and Budget a Paperwork Reduction Act Submission (83-I) for a revision of a currently approved collection of information entitled

"Personnel Administration Forms," OMB Number 3207–0005.

DATES: Written comments on this proposed action regarding the collection of information must be submitted by February 17, 1998.

ADDRESSES: Address all comments concerning this notice to Edward H. Clarke, Desk Officer for Panama Canal Commission, Office of Information and Regulatory Affairs, Room 10202, New Executive Office Building, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Ruth Huff, Office of the Secretary, Panama Canal Commission, 202–634–6441.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. Collection of information is defined in 44 U.S.C. 3502(3) and 5 CFR 1 1320.3(c). Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires Federal agencies to provide a 60-day notice in the **Federal Register**, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, by soliciting comments to: (a) evaluate 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) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Title: Personnel Administration Forms.

Type of Request: Revision of a currently approved collection.

Background: The information requested is authorized by 35 Code of Federal Regulations (CFR), Parts 251 and 253, and sections 3652, 3654, and 3661–3664 of Title 22, United States Code. The information is needed to determine the qualifications, suitability and availability of applicants for Federal employment in the Panama Canal area so U.S. Federal agencies can be supplied with elegibles to fill vacant positions.

Abstract: On December 30, 1981, PCC requested OMB approval for a collection of information entitled "Personnel Administration Forms." OMB approved this collection for use through January 31, 1985 and assigned it OMB Number 3207–0005. On December 17, 1984, PCC requested another extension and received OMB approval and use through March 31, 1988. Prior to the expiration of the collection in subsequent years, PCC continued requesting approval for a revision of the collection and received approval through July 31, 1991, September 30, 1994, and February 28, 1998. The information requested is used by Recruitment and Examining Division (HRR) employees performing examining and suitability duties, by subject-matter experts on rating panels, and by agency officials making selections to fill vacancies.

Estimated Burden: The estimated burden of providing the information varies, depending upon the applicant's individual circumstances. The burden time for a full application is estimated to vary from 40 to 300 minutes with an average of 120 minutes per response, including supplemental qualifications forms when required, and 10 to 60 minutes with an average of 30 minutes to update applications already on file.

Estimated Number of Respondents: 7453.

Total Annual Reporting Hour Burden: 9082.

Respondents: Applicants for employment.

Frequency of Collection: When persons apply or update applications.

Jacinto Wong,

Chief Information Officer, Senior Official for Information Resources Management.

[FR Doc. 97–33003 Filed 12–17–97; 8:45 am]

BILLING CODE 3640–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration (NHTSA)

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of motor vehicle defect petition.

SUMMARY: This notice sets forth the reasons for the denial of a June 19, 1997 petition submitted to NHTSA under 49 U.S.C. 30162 by Donald Friedman, requesting that the agency commence a proceeding to determine the existence of defects related to motor vehicle safety in the air bag systems and the two-point automatic seat belt systems in all vehicles manufactured since 1987. After reviewing the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the allegations in the petition does not appear to be warranted. The agency accordingly has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Cooper, Chief, Vehicle Integrity Branch, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–5218.

SUPPLEMENTARY INFORMATION: On June 19, 1997, Mr. Donald Friedman submitted a petition requesting the agency to investigate "the safety performance of certain motor vehicles built in compliance with the automatic crash protection requirements of Federal Motor Vehicle Safety Standards (FMVSS) No. 208; 'Occupant crash protection.'" The petition concerns vehicles with "driver air bags built from 1987 to the present." It also "concerns some automobiles with two-point automatic belts."

The petition alleges two distinct defects in the subject vehicles. One alleged defect involves the safety of those individuals who are of a "short stature (around 5 feet tall)" who position the seat so that they can both reach the pedals and see "safely" through the windshield. By positioning themselves in such a manner, they may be very close to the air bag. The petitioner alleges that this positioning, when combined with air bags which deploy at a delta V [1] of 12 miles per hour (mph) and less and which deploy with aggressive force, can cause serious and fatal injuries.

The petition alleges a second defect in vehicles with automatic seat belts that restrain only the torso portion of the body. It alleges that if shorter people "ride without the lap belt and with their seat in a rearward position" they are "likely to submarine" in a crash, and that ["w]hen this happens, the two-point belt can catch the occupant's chin and cause serious neck injuries including paraplegia or quadriplegia."

NHTSA is denying the petition for the following reasons:

I. Alleged "Aggressive Air Bags"

The petition covers all vehicles with driver side air bags built since 1987. Essentially, this includes all vehicles sold with air bags in the United States. Previously, NHTSA studied this class of vehicles and found that the performance

[1] Delta V is the rapid change of a vehicle's speed due to a crash. A 12 mph delta V is the equivalent of a vehicle traveling at 12 mph crashing into an immovable solid object such as a heavy concrete wall.

of the air bag systems in crashes resulted in a significant reduction in fatalities and serious injuries. The agency's findings from this study of the "real-world" performance of air bag systems are contained in its third Report to Congress, "Effectiveness of Occupant Protection Systems and Their Use," December 1996. More recently, the agency has estimated that as of November 1, 1997, approximately 2620 lives have been saved by air bags.

ODI recently conducted a review of air bag fatalities and the "real-world" crash performance of air bags in evaluating a petition from the Center for Auto Safety (CAS) requesting the agency to conduct a defect investigation of certain specified vehicles. CAS alleged that these vehicles were over-represented in driver-side air bag fatalities, and identified low speed deployment (less than 12 mph delta V) and aggressive deployment as prime contributing factors. In its review of "real-world" crash data, the agency compared the performance of the vehicles identified in the CAS petition to the performance of other vehicles with driver-side air bags and found that some risk of a serious or fatal injury to an out-of-position occupant is present in any air bag-equipped vehicle. Data from the agency's National Accident Sampling System (NASS) indicated that the air bags in many vehicles deploy during impacts of less than 10 mph change of speed. Data provided by the Insurance Institute for Highway Safety (IIHS) showed that the vehicles that were the subject of the CAS petition had a rate of air bag deployments per 100 crashes that was similar to that of many other vehicles. The agency found that the subject vehicles did not show a tendency toward excessive air bag deployments. NHTSA concluded that further investigation of these vehicles was unlikely to result in a determination that the air bag systems in the vehicles identified in the petition contain safety-related defects as alleged by the petitioner, and that a further commitment of agency resources in this effort was not warranted. The denial decision is published at 62 FR 41477 (July 28, 1997).

Mr. Friedman has not provided in his petition any new evidence to suggest the existence of a vehicle design defect that creates an unreasonable risk to motor vehicle safety. His petition is similar to the CAS petition in that he also has identified low speed deployment and aggressive deployment of air bags as alleged defects. However, Mr. Friedman's petition is far broader in scope than CAS', in that it covers virtually all vehicles equipped with air bags. Because NHTSA has already concluded that it could not identify a defect trend in the smaller set of specific vehicle models identified in the CAS petition, it follows that it is even less likely that an agency investigation would identify a defect trend in the larger group of vehicles identified by Mr. Friedman.

The agency has taken or proposed a number of actions to reduce the risk of driver injury from air bags. NHTSA presently permits individuals with valid reasons (such as a medical reason) to request the agency's Chief Counsel to exercise prosecutorial discretion and allow a dealer or repair shop to deactivate their vehicles' air bag[s]. Also, the agency has issued a final rule (62 FR 62405 (November 21, 1997)) that will exempt dealers and repair businesses from the statutory prohibition against making federally-required safety equipment inoperative so that, beginning January 19, 1998, they may install retrofit manual on-off switches for air bags in vehicles owned by or used by persons in specified risk groups whose requests for switches have been approved by the agency.

Both NHTSA and the motor vehicle industry are presently providing vast amounts of information about the safe use of vehicles with air bags to the general public, through the print media, radio and television. Also, all vehicle manufacturers either have sent or are in the process of sending letters to owners of vehicles with air bags to supplement information that already is provided in warnings on the sun visor and in the owner's manual. The messages alert owners to the dangers of air bags and inform them of the proper procedures for occupying a seating position that is protected by an air bag.

II. Alleged "Submarining" in Vehicles With Two Point Automatic Seat Belt Systems

FMVSS No. 208 has required passive restraints in at least a percentage of passenger motor vehicles manufactured since September 1, 1986. Starting with MY 1987, manufacturers were required to phase in automatic occupant restraints to meet specified injury criteria. Although most manufacturers installed automatic seat belts in the early years of the passive restraint requirement, in more recent years air bags have become the more popular form of passive restraint. Beginning with MY 1990, all vehicles were required to meet the automatic restraint injury criteria and manufacturers began to make significant numbers of vehicles with driver air bags. Then in 1991, the Intermodal Surface Transportation Efficiency Act ("ISTEA") directed NHTSA to amend FMVSS 208 to require air bags as the form of automatic crash protection in light vehicles. As amended, Standard No. 208 requires the installation of air bags in all passenger cars manufactured on or after September 1, 1997, and all light trucks manufactured on or after September 1, 1998.

Mr. Friedman's petition is premised on the assumption that the covered vehicles were "built in compliance with the automatic crash protection requirements of [FMVSS No. 208]." Until FMVSS No. 208 was amended pursuant to ISTEA, the standard gave manufacturers the option of providing "two-point'automatic seat belt systems that included a combination of an automatic shoulder harness and a manual lap belt. Because manufacturers were legally authorized to meet the standard with this combination of equipment, NHTSA cannot conclude that two-point automatic belt systems that meet the performance requirements of the standard when operated as specified are "defective" if they are not operated as specified.

Furthermore, alleged "submarining" by short individuals who "ride without the lap belt and with their seat in a rearward position" normally will not occur if those individuals use the manual lap belts in their vehicles, in accordance with instructions. Individuals who find that they either cannot see properly or cannot reach the foot controls due to their height and/or the design of the vehicle seating system may avail themselves of certain vehicle modifications to correct the problem. Very short individuals may consider sitting on a booster pad to raise their seating position and/or contacting a dealer to have the vehicle fitted with a device to extend the foot pedals. Sitting on a booster pad does not reduce the protection that the vehicle's restraint system (the air bag and the safety belt) provides.

All manufacturers presently provide warnings to owners about the need to fasten manual safety belts despite the presence of an automatic restraint system. Warnings are located on the vehicle sun visor and in the owner's manual. Furthermore, NHTSA is conducting an extensive public education campaign to encourage the use of manual seat belts, and also is encouraging "primary" enforcement of state mandatory seat belt use laws. The agency anticipates that these measures will increase the use of manual lap belts in vehicles that are equipped with "two-point" automatic seat belts.

For the foregoing reasons, further expenditure of the agency's investigative resources on the allegations in the petition does not appear to be warranted. Therefore, the petition is denied.

Authority: 49 U.S.C. 30162 (d); delegations of authority at CFR 1.50 and 501.8.

Issued on: December 9, 1997.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 97–33032 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–65

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97-65, Income Tax Return Preparer Penalties—1997 Federal Income Tax Returns Due Diligence Requirements for Earned Income Credit (EIC).

DATES: Written comments should be received on or before February 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Income Tax Return Preparer Penalties—1997 Federal Income Tax Returns Due Diligence Requirements for Earned Income Credit (EIC).

OMB Number: 1545–1570.

Notice Number: Notice 97–65.

Abstract: Notice 97–65 sets forth due diligence requirements for tax preparers on returns involving the earned income tax credit (EIC). The due diligence requirements include soliciting the information necessary to determine a taxpayer's eligibility for the EIC and the amount of the EIC, and the retention of this information.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200,000.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 160,000.

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: December 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–32962 Filed 12–17–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–58–83]

Proposed Collection; Comment Request for Regulation Project

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–58–83 (T.D. 7959), Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations (§§ 1.955A–2 and 1.955A–3).

DATES: Written comments should be received on or before February 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.

OMB Number: 1545–0755.

Regulation Project Number: LR–58–83.

Abstract: This regulation concerns the election made by a related group of controlled foreign corporations to determine foreign base company shipping income and qualified investments in foreign base company shipping operations on a related group basis. The information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which is taxable to that shareholder.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondents: 2 hours, 3 minutes.

Estimated Total Annual Burden Hours: 205.

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: December 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–32963 Filed 12–17–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–46–89]

Proposed Collection; Comment Request for Regulation Project

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–46–89 (TD 8641), Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions (§§ 1.597-2, 1.597–4, 1.597–6, and 1.597–7).

DATES: Written comments should be received on or before February 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.

OMB Number: 1545–1300.

Regulation Project Number: FI–46–89.

Abstract: Recipients of Federal financial assistance ("FFA") must maintain an account of FFA that is deferred from inclusion in gross income and subsequently recaptured. This information is used to determine the recipient's tax liability. Also, tax not subject to collection must be reported and information must be provided if certain elections are made.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and the Federal Government.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 4 hours, 24 minutes.

Estimated Total Annual Burden Hours: 2,200.

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: December 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–32964 Filed 12–17–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–189–80]

Proposed Collection; Comment Request for Regulation Project

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, Pub.

L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–189–80 (TD 7927), Amortization of Reforestation Expenditures (§§ 1.194–2 and 1.194–4).

DATES: Written comments should be received on or before February 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Amortization of Reforestation Expenditures.

OMB Number: 1545–0735.

Regulation Project Number: LR–189–80.

Abstract: Internal Revenue Code section 194 allows taxpayers to elect to amortize certain reforestation expenditures over a 7-year period if the expenditures meet certain requirements. The regulations implement this election provision and allow the IRS to determine if the election is proper and allowable.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 6,001.

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: December 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–32965 Filed 12–17–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TREASURY

Internal Revenue Service

Notice of Renewal of the Charter of the Information Reporting Program Advisory Committee

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), this announcement serves as notice that the Department of the Treasury and the General Services Administration's Committee Management Secretariat have renewed the charter of the Information Reporting Program Advisory Committee (IRPAC) for a two-year period beginning on November 7, 1997. As the services of IRPAC are expected to be needed for an indefinite period of time, no termination date has been established which is less than two years from this date.

SUPPLEMENTARY INFORMATION: In 1991 the Internal Revenue Service (IRS) established IRPAC in response to a recommendation made by the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures and, when necessary, suggests ways to improve the operation of the Information Reporting Program (IRP). IRPAC reports to the National Director, Office of Specialty Taxes, who is the executive responsible for information reporting payer compliance. IRPAC is instrumental in providing advice to enhance the IR Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service. IRPAC is currently comprised of 18 representatives from various segments of the information reporting payer community and one member from the Social Security Administration. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend two or three meetings each year.

DATES: The request for renewal of the charter was signed by the Secretary of the Treasury on November 7, 1997. Official approval from the General Service Administration's Committee Management Secretariat was obtained on the same day. This charter renewal will expire in two years.

ADDRESSES: Questions or concerns should be directed to Ms. Kate LaBuda at IRS, Office of Payer Compliance, CP:EX:ST:PC, Room 2013, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Questions or concerns will also be taken over the telephone. Call Ms. Kate LaBuda at 202–622–3404 (not a toll-free number).

Dated: December 12, 1997.

Kate LaBuda,

(Acting) Director, Office of Payer Compliance, Office of Specialty Taxes.

[FR Doc. 97–32961 Filed 12–17–97; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Women's Leadership Training Program for Central and Eastern Europe; Request for Proposals

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop training programs that offer leadership training skills to women in Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia,

Lithuania, Poland, Romania, Serbia, Slovakia, and Slovenia.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Progams and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/P–98–19.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, February 27, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. We anticipate that grants will begin on or about June 1, 1998.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchange (E/PE) Room 224, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: 202–619–5319, fax: 202–619–4350, or Internet address: cminer@usia.gov, to request a Solicitation Package containing more detailed information. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download A Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive A Solicitation Package Via FAX on Demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Christina Miner on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and ten copies of the application should be sent to: U.S. Information Agency, Ref.: E/P–98–19, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

USIA is interested in proposals that encourage the growth of democratic institutions in Central and Eastern Europe. Exchanges and training programs supported by the Office of Citizen Exchange's institutional grants should operate at two levels: they should enhance institutional relationships; and they should offer practical information to individuals to assist them with their professional responsibilities. Strong proposals usually have the following characteristics: an existing partner relationship between an American organization and an in-country institution in Central and Eastern Europe; a proven track record of conducting program activity; cost-sharing from American or in-country sources, including donations or air fares, hotel and/or housing costs; experienced staff with language facility; and a clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant. USIA wants to see tangible forms of time and money contributed to the project by the prospective grantee institution, as well as funding from third party sources. We recommend that programs with a U.S. component include letters of commitment from host institutions, even if tentative. Letters of commitment from any in-country partners should also be provided. Applicants are encouraged to consult with USIS offices regarding program content and partner institutions before submitting proposals. Award-receiving applicants will be expected to maintain contact with the USIS post throughout the grant period.

USIA requests proposals for projects that offer leadership training skills to representatives of women's organizations who are active in their own communities in Albania, Bosnia, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Serbia, Slovakia, and Slovenia. The focus of the training program should be on how to identify priorities, organize and form coalitions, and influence decision makers about issues and problems affecting the well-being of people in local communities. Proposals are not limited to a one-country focus but may address how to build networks among women's organizations in several countries. Project activities may include: internships; study tours; short-term training; consultations; and extended, intensive workshops taking place in the United States or in Central and Eastern

Europe. Prospective grantee institutions should identify the Central and Eastern European local organizations and individuals with whom they are proposing to collaborate and describe in detail previous cooperative programming and contacts. Program activity may take place in Central and Eastern Europe or in the United States. This activity is intended to follow-up on issues addressed in the Vital Voices conference held in Vienna from July 9–11. For more information on the conference, please see the Vital Voices Homepage at http://www.usia.gov/vitalvoices.

Selection of Participants

Programs should describe clearly the type of persons who will participate in the program as well as the process by which participants will be selected. In the selection of foreign participants, USIA and USIS posts abroad retain the right to nominate participants and to approve or reject participants recommended by the grantee institution. Priority will be given to foreign participants who have not previously traveled to the United States.

Visa Regulations

Foreign participants on programs sponsored by the Office of Citizen Exchanges are granted J–1 Exchange Visitor visas by the American Embassy in the sending country.

Project Funding

Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other sources of financial and in-kind support. Proposals with substantial private sector support from foundations, corporations, and other institutions will be considered highly competitive.

Although no set funding limit exists, proposals for less that $75,000 will receive preference. Organizations with less that four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location or activity in order to facilitate USIA decisions on funding. While a comprehensive line item budget based on the model in the Solicitation Package must be submitted, separate component budgets are optional.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S. the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at http://www.policyworks.gov/.

3. Interpreters. If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreters, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Administrative Costs. Other costs necessary for the effective administration of the program, including salaries or grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of Program Idea:* Proposals should respond to the program requirements of the RFP and exhibit originality, substance, precision, and relevance to the Agency mission.

2. *Program planning and ability to achieve objectives:* Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Objectives should respond to the topic in this announcement and should relate to the current conditions in the target countries. They should be reasonable and attainable. A detailed work plan should explain step by step how objectives will be achieved. The substance of seminars, presentations, consulting, interships, and itineraries should be spelled out in detail. A timetable indicating when major program tasks will be undertaken should be provided. Responsibilities of in-country partners should be clearly described.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-

up sessions, program meetings, resource materials and follow-up activities).

4. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The narrative should demonstrate proven ability to handle logistics. Proposal should reflect the institution's expertise in the subject area and knowledge of the country. Proposals should demonstrate the institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Project Evaluation:* USIA is results-oriented. Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire and/or plan for use of another measurement technique (such as focus group) to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

6. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

7. *Cost-effectiveness/cost sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: December 11, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–32815 Filed 12–17–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension, parents' dependency and indemnity compensation (DIC), and spina bifida programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one-year period ending September 30, 1997. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 1998, which began on October 1, 1997.

DATES: These COLAs are effective December 1, 1997. The headstone or marker allowance rate is effective October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (213B), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(d), VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

Section 8041 of Pub. L. 101–508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of a VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O. G. C. Prec. 17–90), VA's General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA costs during that fiscal year for procurement, transportation, and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 1997 under the above computation method was $109. Therefore, effective October 1, 1997, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 1998 is $109.

Cost-of-Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Pub. L. 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.1 percent cost-of-living increase in Social Security benefits effective December 1, 1997. Therefore, applying the same percentage and rounding up in accordance with 38 CFR 3.29, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 1997:

TABLE 1.—IMPROVED PENSION

Maximum annual rates
(1) Veterans permanently and totally disabled (38 U.S.C. 1521):
Veteran with no dependents, $8,665
Veteran with one dependent, $11,349
For each additional dependent, $1,476
(2) Veterans in need of aid and attendance (38 U.S.C. 1521):
Veteran with no dependents, $13,859
Veteran with one dependent, $16,542
For each additional dependent, $1,476
(3) Veterans who are housebound (38 U.S.C. 1521):
Veteran with no dependents, $10,591
Veteran with one dependent, $13,275
For each additional dependent, $1,476
(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):
Neither veteran in need of aid and attendance or housebound, $11,349
Either veteran in need of aid and attendance, $16,542
Both veterans in need of aid and attendance, $21,734
Either veteran housebound, $13,275
Both veterans housebound, $15,202
One veteran housebound and one veteran in need of aid and attendance, $18,465
For each dependent child, $1,476
(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):
Surviving spouse alone, $5,808
Surviving spouse and one child in his or her custody, $7,607
For each additional child in his or her custody, $1,476
(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):
Surviving spouse alone, $9,288
Surviving spouse with one child in his or her custody, $11,082
For each additional child in his or her custody, $1,476
(7) Surviving spouses who are housebound (38 U.S.C. 1541):
Surviving spouse alone, $7,101
Surviving spouse and one child in his or her custody, $8,895
For each additional child in his or her custody, $1,476
(8) Surviving child alone (38 U.S.C. 1542), $1,476

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,963. (38 U.S.C. 1521(g)).

Parents' DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

Table 2

One parent. If there is only one parent, the monthly rate of DIC paid to such parent shall be $412, reduced on the basis of the parent's annual income, according to the following formula:

For each $1 of annual income

The $412 monthly rate		
Shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	$800	9,857

No DIC is payable under this table if annual income exceeds $9,857.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $297, reduced on the basis of each parent's annual income, according to the following formula:

Table 3

For each $1 of annual income

The $297 monthly rate		
Shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.06	$800	900
.07	900	1,100
.08	1,100	9,857

No DIC is payable under this table if annual income exceeds $9,857.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $278 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

Table 4

For each $1 of annual income

The $278 monthly rate		
Shall be reduced by	Which is more than	But not more than
$.00	0	$1,000
.03	$1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	13,250

No DIC is payable under this table if combined annual income exceeds $13,250.

The rates in this table are also applicable in the case of one surviving

parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $221 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse with no dependents, $9,857 (Pub. L. 95–588, section 306(a)).
(2) Veteran with no dependents in need of aid and attendance, $10,357 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(3) Veteran or surviving spouse with one or more dependents, $13,250 (Pub. L. 95–588, section 306(a)).
(4) Veteran with one or more dependents in need of aid and attendance, $13,750 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(5) Child (no entitled veteran or surviving spouse), $8,057 (Pub. L. 95–588, section 306(a)).
(6) Spouse income exclusion (38 CFR 3.262), $3,144 (Pub. L. 95–588, section 306(a)(2)(B)).

TABLE 6.—OLD-LAW PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse without dependents or an entitled child, $8,628 (Pub. L. 95–588, section 306(b)).
(2) Veteran or surviving spouse with one or more dependents, $12,440 (Pub. L. 95–588, section 306(b)).

Spina Bifida Benefits

Section 421 of Pub. L. 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children born with spina bifida who are natural children of veterans who served in the Republic of Vietnam during the Vietnam era. Pursuant to 38 U.S.C. 1805(b)(3), spina bifida rates are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.). Effective December 1, 1997, spina bifida monthly rates are as follows:

Level I: $205

Level II: $715

Level III: $1,226

Dated: December 10, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 97–32986 Filed 12–17–97; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee, Notice of Meetings

The Department of Veterans Affairs (VA), in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, January 14, 1998, at 2:00 p.m.

Wednesday, February 18, 1998, at 2:00 p.m.

Wednesday, March 25, 1998, at 2:00 p.m.

The meetings will be held in Room 246, Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee (05), 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: December 11, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–32987 Filed 12–17–97; 8:45 am]
BILLING CODE 8320–01–M

federal register

Thursday
December 18, 1997

Part II

Federal Reserve System

12 CFR Part 202
Equal Credit Opportunity; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0955]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing revisions to Regulation B (Equal Credit Opportunity). The revisions implement recent amendments to the Equal Credit Opportunity Act (ECOA). These amendments create a legal privilege for information developed by creditors as a result of "self-tests" that they voluntarily conduct to determine the level of their compliance with the ECOA. The Department of Housing and Urban Development will publish similar revisions to the regulations implementing the Fair Housing Act.

DATES: The rule is effective January 30, 1998.

FOR FURTHER INFORMATION CONTACT: James A. Michaels, Senior Attorney, or Natalie E. Taylor, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Diane Jenkins, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from any public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The act is implemented by the Board's Regulation B (12 CFR part 202).

On September 30, 1996, the President signed into law amendments to the ECOA as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) (1996 Act). Section 2302 of the 1996 Act creates a legal privilege for information developed by creditors through voluntary "self-tests" that are conducted to determine the level or effectiveness of their compliance with the ECOA, provided that appropriate corrective action is taken to address any possible violations that may be discovered. Privileged information may not be obtained by a government agency for use in an examination or investigation relating to compliance with the ECOA, or by a government agency or credit applicant in any proceeding in which a violation of the ECOA is alleged. The 1996 Act also provides that a challenge to a creditor's claim of privilege may be filed in any court or administrative law proceeding with appropriate jurisdiction.

The 1996 Act directs the Board to issue implementing regulations, including a definition of what constitutes a "self-test." The Act also establishes a privilege for creditor self-testing under the Fair Housing Act (42 U.S.C. 3601 *et seq.*), which is administered by the Department of Housing and Urban Development (HUD). The statute directs the Board and HUD to issue substantially similar regulations. In January, the Board published a proposed rule to Regulation B implementing the amendments to the ECOA (62 FR 56, January 2, 1997). After consultation with the federal agencies responsible for enforcing the ECOA and with HUD, the Board is publishing final rules to implement the 1996 Act's amendments to the ECOA. HUD will publish rules to implement the amendments to the Fair Housing Act.

After reviewing both regulations, the Board and HUD believe that there is no substantial difference in the final rules and that they should be interpreted to have the same effect, except where differences in the coverage of the ECOA and FHA dictate otherwise. For example, the ECOA covers nonmortgage credit transactions that are not covered by the FHA. Moreover, although there are organizational differences in the agencies rules, these differences are not intended to have any substantive effect, and merely reflect the Board's longstanding practice of publishing its interpretative rules in a separate Staff Commentary. HUD has no staff commentary and has generally included these interpretations in the text of its regulation. The consistency of the Board and HUD rules is evident based on a comparison of the complete documents published by the agencies, including the preambles to the regulatory amendments, and the revisions to the Board's Official Staff Commentary to Regulation B.

II. Regulatory Provisions

The amendments to Regulation B implement the 1996 Act by defining what constitutes a privileged self-test. A "self-test" is defined as any program, practice, or study that is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the ECOA or Regulation B, if it creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions. The privilege serves as an incentive, by assuring that evidence of discrimination voluntarily produced by a self-test will not be used against a creditor, provided the creditor takes appropriate corrective actions for any discrimination that is found.

This definition of "self-test" includes, but is not limited to, the practice of using fictitious applicants for credit (testers). A creditor also may develop and use other methods of generating information that is not available in loan and application files, for example, by surveying mortgage loan applicants to assess whether applications were processed appropriately. The definition does not include creditor reviews and evaluations of loan and application files, either with or without a statistical analysis.

The 1996 Act makes the results or report of a self-test privileged if the creditor takes appropriate corrective action to address possible violations identified by the self-test. In response to commenters' concerns about the proposal's effectiveness as an incentive for self-correction, the final rule provides additional guidance on the corrective action requirement.

The Board's final rule becomes effective January 30, 1998. The 1996 Act provides that self-tests will be privileged even if they were conducted before the regulation's effective date, with two exceptions. Self-tests previously conducted will not become privileged on the regulation's effective date if a court action or administrative proceeding has already commenced against the creditor alleging a violation of the ECOA or Regulation B or the Fair Housing Act. In addition, a self-test previously conducted will not become privileged on the regulation's effective date if any part of the report or results has already been voluntarily disclosed by the creditor.

III. Section-by-Section Analysis

Section 202.12—Record Retention

12(b)(6) Self-Tests

Paragraph 12(b)(6) contains provisions on record retention that were designated as Paragraph 15(e) of the proposed rule. There are no substantive changes to the provision as proposed. The redesignation allows all of the regulation's record retention requirements to be listed together in one

section. Paragraph 12(b)(6) states that a creditor has a duty to retain self-testing records for 25 months, which is the general standard for retaining other records required under the regulation.

Several commenters opposed any retention requirement for self-testing records. Some commenters suggested that retention of self-testing records should only be required if the creditor claims the self-testing privilege. Under the approach suggested by these commenters, a creditor that did not intend to claim privilege for the self-testing results could discard all related records even if the self-test identified violations; the creditor could decide whether or not to take corrective action, and the creditor could be required to provide oral testimony about the self-test results.

The provision requiring record retention has been adopted as proposed. The Board believes that retention of self-testing records is warranted whether or not the creditor ultimately decides to assert a privilege for the results. If the privilege is asserted, the self-test results may be needed to determine whether the creditor's claim of privilege is consistent with the corrective action requirement and other prerequisites. But in any event, allowing creditors to choose between claiming the privilege and discarding the self-testing records would be inconsistent with the intent of the legislation. The statute encourages testing, but its ultimate goal is to provide incentive for creditors to use the results to take appropriate corrective actions that increase compliance with the law. This goal is not furthered if creditors elect to destroy evidence of self-test results as one alternative to taking corrective action. The Board intends for the record retention requirement to encourage creditors to take the full measure of corrective action that is warranted in light of the self-test results.

Section 202.15—Incentives for Self-Testing and Self-Correction

15(a) General Rules

15(a)(1) Voluntary Self-Testing and Correction

Paragraph 15(a)(1) states the general rule that the report or results of a creditor's voluntary self-test are privileged if the conditions specified in this rule are satisfied. The language has been modified slightly for clarification. Data collection that is required by law or any government authority is not a voluntary self-test and does not qualify for the privilege.

15(a)(2) Corrective Action Required

Paragraph 15(a)(2) implements the requirement imposed by the 1996 Act that a creditor must take appropriate corrective action in order for the privilege to apply. A self-test is also privileged when it identifies no violations. The Board believes this is necessary to avoid the anomaly of requiring creditors to disclose self-test results when no violations are identified, which would make a creditor's claim of privilege tantamount to an admission that violations were found.

In some cases, the issue of whether certain information is privileged may arise before the self-test is complete or corrective actions are fully under way. This would not necessarily prevent a creditor from asserting the privilege. In situations where the self-test is not complete, for the privilege to apply the lender must satisfy the regulation's requirements within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the creditor establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Creditors must take corrective action on a timely basis after the results of the self-test are known. An adjudicator's final decision on whether the privilege applies should be withheld until the creditor has taken the appropriate corrective action.

A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results, which may require an in camera inspection of the privileged documents by a court or administrative law judge.

15(a)(3) Other Privileges

Several commenters requested that the Board clarify the effect of the self-testing rule on other privileges that may also apply, such as the attorney-client privilege or the privilege for attorney work product. Paragraph 15(a)(3) has been added to clarify that the self-testing privilege may be asserted in addition to any other privilege.

15(b) Self-Test Defined

15(b)(1) Definition

Paragraph 15(b)(1) states what constitutes a "self-test" for purposes of the ECOA. The 1996 Act does not define "self-test" and authorizes the Board to define by regulation the practices covered by the privilege. In the proposed rule, the privilege was limited to self-tests that create data or factual information about a creditor's compliance that is not available and cannot be derived from the creditor's loan or application files or other records related to credit transactions. The Board solicited views on whether a broader definition should be considered, for example, a definition that would also include creditors' analyses of their loan and application files. Comments were sought on whether a broader definition might adversely affect the ability of enforcement agencies and private parties to obtain needed information or whether it would provide needed incentives for creditor monitoring and self-correction.

Most of the comments received, from creditors and their representatives, favored a broad definition of "self-test." The Board has carefully considered all the comments along with the views of the agencies charged with enforcement of the act and regulation. For the reasons explained below, the scope of the definition as proposed has been retained in the final rule, although the language has been revised somewhat for clarity.

Under the final rule, the principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. The privilege does not protect a creditor's analysis performed as part of processing or underwriting a credit application. Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers), either with or without the use of matched pairs. A creditor may elect to test a defined segment of its business, for example, loan applications handled by a particular loan officer or processed by a specific branch, or applications made for a particular type of credit or loan program. A creditor also may use other methods of generating information that is not available in loan and application files, for example, by surveying mortgage loan applicants to assess whether applications were processed appropriately. To the extent permitted by law, creditors might also

develop methods that go beyond traditional pre-application testing, such as arranging for testers to submit fictitious loan applications for processing.

A creditor's evaluation or analysis of credit applications, loan files, Home Mortgage Disclosure Act data or similar types of records (such as broker or loan officer compensation records), does not produce new factual information about a creditor's compliance and is not a self-test for purposes of this section. Information derived from such records, even if it has been aggregated or reorganized to facilitate the creditor's analysis, also would not be privileged. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

As some commenters pointed out, the proposed rule focused only on testing for compliance with the prohibitions on discrimination contained in sections 202.4 and 202.5(a) of Regulation B. The statute refers, however, to self-testing for compliance with the ECOA generally. Accordingly, the language of the final rule has been modified to apply to self-testing for compliance with any requirement of the ECOA as implemented by Regulation B.

To qualify for the privilege, a self-test must be sufficient to constitute a determination of the extent or effectiveness of the creditor's compliance with the act and Regulation B. Accordingly, a self-test is only privileged if it was designed and used for that purpose. A self-test that is designed and used to determine compliance with other laws or regulations or for other purposes, is not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers' satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

Most creditors that commented believed that the proposed definition of "self-test" was too narrow because it would not provide incentives for creditors to review their existing loan files, either with or without a statistical analysis. These commenters asserted that the proposed definition would effectively be limited to testing for a narrow range of discriminatory practices—tests for illegal discouragement of loan applicants during the pre-application process. They believed there should be incentives to analyze a creditor's policies and evaluate its underwriting or other lending practices after an application is made, and that an audit and review of actual credit transactions are the most effective ways of monitoring compliance with the ECOA. These activities were generally characterized as "self-audits" or "self-examinations." In addition, some commenters suggested using an even broader definition, one that would privilege any critical self-analysis performed by a creditor.

A few commenters believed that a narrow definition of "self-test" only encourages the use of "testers," and will effectively limit the privilege to certain creditors and loan products. They cited wholesale lenders and secondary market purchasers as parties that do not have retail operations and cannot use testers. Also, testers generally are not used for credit cards, automobile loans, or other loan programs that do not typically involve personal contacts. Some commenters noted that "mystery shopper" tests are relatively expensive and are not used as frequently among smaller institutions, which are more likely to rely on paper audits.

Civil rights and community organizations favored a narrow definition of "self-test." Some claimed that creditors already have adequate incentives to monitor their loan and application files because they are subject to review by regulatory and enforcement agencies. They asserted that the risks and costs of litigation and creditors' potential liability are also sufficient incentives for creditors to audit their loan files. These commenters believed that the Board should maximize the amount of information available to private litigants by reading the privilege narrowly. In addition, one commenter believed that a broad definition would encourage creditors to shield as much information as possible and would force plaintiffs alleging discrimination to engage in lengthy and expensive litigation to challenge creditors' claims of privilege.

As directed by the statute, the Board consulted with the other federal bank regulatory agencies, and with the Federal Trade Commission and Department of Justice, all of which share some responsibility for enforcement of the ECOA. As a general matter, the agencies expressed support for implementing the privilege in a manner that encourages creditors to self-test and take voluntary corrective action, but does not hinder appropriate enforcement efforts that are undertaken through compliance examinations and, when necessary, the filing of legal actions. All of the agencies favored the narrow definition used in the proposed rule.

The bank regulatory agencies consulted by the Board believed that a broad privilege would make compliance examinations less efficient and more burdensome for financial institutions without necessarily increasing the level of self-testing. They noted that most large depository institutions already conduct some type of audit or self-evaluation, frequently involving the review or evaluation of actual loan files, even though the results of such evaluations currently are not privileged. As a matter of policy, the Office of the Comptroller of the Currency does not require national banks to disclose the results of self-evaluations, although banks that do so voluntarily may be eligible for more streamlined examinations. Generally, banks could be expected to continue their audit programs if the Board adopts a broader privilege, however, they probably would be less likely to share the results with their supervisory agencies because, if they did, they would lose any privilege to withhold the results from private litigants.

The bank regulatory agencies also expressed concern that a broader privilege is likely to result in more disputes over what information lenders may withhold from examiners, thereby making the examination process more adversarial. The enforcement agencies noted that a broader privilege is likely to require the commitment of greater resources to the adjudication of privilege claims.

The Department of Justice preferred the implementation of a narrow privilege so that the rule's benefits, risks, and overall effect could be studied before considering a broader rule with potentially greater impact on the government's and private litigants' access to creditor records.

The Board also consulted extensively with HUD in connection with that agency's mandate to implement the self-testing privilege under the Fair Housing Act. As noted in its notice of final rulemaking, HUD too favored the narrower rule.

The Board believes that adoption of either the broad or narrow definition of "self-test" would be within the Board's rulemaking authority under the statute, which does not define the term "self-test." There is some evidence in the legislative history that the congressional sponsors intended a narrow definition. The statute itself, however, defers to the agencies by expressly delegating to the Board and HUD the task of defining the term under the ECOA and the FHA.

The statutory language does not mandate a privilege that covers every method that a creditor might use to evaluate its performance. The only statutory guidance is language stating that the regulation should specify that a self-test must be sufficient to determine the level and effectiveness of the creditor's compliance with the law. That language has been incorporated into the final rule.

The Board believes that the Congress intended the agencies to weigh the competing interests of creditors, private litigants, and the regulatory and enforcement agencies in developing a definition that furthers compliance with the antidiscrimination policies of the ECOA and Fair Housing Act, as well as the purpose of the self-testing privilege, which is to increase creditor self-correction efforts. Balancing these interests to derive a definition calls for the agencies to make a prediction about future events that is necessarily imprecise—which definition and which enforcement methods are likely to produce the greatest increase in compliance with the two statutes.

The narrow definition of "self-test" provides added incentive for creditors to look beyond their ordinary business records and develop new factual evidence about the level and effectiveness of their compliance. In particular, it creates an incentive for creditors to use self-testing to monitor the pre-application process, a stage which typically does not produce the type of documentation that lends itself to traditional compliance reviews. But even under a narrow definition of "self-test," principles of sound lending dictate that a creditor have appropriate audit and control systems. These may take the form of compliance reviews, file analyses, the use of second-review committees, or other methods that examine loan and application files that are subject to examination by the regulatory and enforcement agencies and may be obtained by a private litigant alleging a violation. Creditors have incentives to conduct routine compliance reviews and file analyses as good business practices and to avoid or minimize potential liability for violations.

A broad definition of "self-test" might give some creditors greater incentive to evaluate their performance. To the extent they conduct such evaluations, a broad definition would also provide less information to government agencies or private litigants seeking to enforce the ECOA. It is difficult to know whether a broad definition would significantly increase creditor self-monitoring, or merely prevent or deter disclosure of audit results by creditors that routinely undertake such audits as a prudent business practice.

In the proposed rule, the Board also noted that extending the self-testing privilege to audits of existing business records could have an unintended negative effect on the levels of cooperation between creditors and the regulatory agencies. The agencies consulted by the Board agreed with that view. In addition to the Board, these agencies possess considerable expertise in supervising and regulating financial institutions and in enforcing the fair lending laws. In view of the concerns about the uncertain benefits and potential impact of a broader rule on government enforcement and the legal rights of private litigants, the Board is adopting the narrower definition as proposed. In reaching this decision, the Board has also given some weight to the argument that a broadly defined privilege would result in more disputed claims of privilege that must be adjudicated.

The Board expects creditors to continue conducting routine compliance reviews as a good business practice to eliminate discrimination and avoid or minimize their potential liability for violations, even without the self-testing privilege. After several years' experience, it may be appropriate to review the rule to determine if the incentives for self-testing and self-correction can be strengthened without impairing other enforcement mechanisms.

15(b)(2) Types of Information Privileged

Paragraph 15(b)(2) of the final rule was designated as paragraph 15(b)(3) of the proposed rule. The paragraph clarifies what information generated by a self-test is privileged. The examples of self-tests that had been listed in paragraph 15(b)(2) of the proposed rule are discussed in the Official Staff Commentary.

15(b)(3) Types of Information Not Privileged

Paragraph 15(b)(3) of the final rule had been designated as paragraph 15(b)(4) of the proposed rule. Paragraph 15(b)(3)(i) clarifies that information about the existence of a self-test, its scope, or the methodology used in conducting the test, is not privileged. Such information may be necessary to determine whether the prerequisites for a claim of privilege have been satisfied.

Paragraph 15(b)(3)(ii) clarifies that the underlying loan and application files or other business records related to actual credit transactions are not privileged. Information derived from such records also is not privileged, even if it has been aggregated, summarized, or reorganized to facilitate analysis. Examples of the types of records that are not privileged include property appraisal reports, loan policies or procedures, underwriting standards, employee or broker compensation records, and minutes of loan committee meetings or other documents reflecting the basis for a decision to approve or deny an application. If a creditor arranges for testers to submit loan applications for processing, the records are not related to actual credit transactions for purposes of this paragraph and may be privileged self-testing records.

15(c) Appropriate Corrective Action

Paragraph 15(c) has been revised in response to commenters' concerns. To give creditors more specific guidance, the final rule lists certain situations that will not require remedial relief to individual applicants in order for the privilege to apply.

The rule only addresses what corrective actions are required for a creditor to take advantage of the privilege in this section. A creditor may still be required to take other actions or provide additional relief if a formal finding of discrimination is made.

15(c)(1) General Requirement

The final rule has been revised to clarify that corrective action is required when the results of a self-test show that it is more likely than not that one or more violations occurred. The proposed rule used the language of the 1996 Act, stating that corrective action would be required when a creditor identified a "possible" violation. The final rule has been revised in light of commenters' concerns that this language was capable of differing interpretations. For example, some commenters feared that the rule might be construed to require corrective action if a violation was "possible" even if unlikely. The Board believes the statute was intended to require corrective action only if a violation is more likely than not, and that the reference to "possible" violations merely recognizes that corrective action is required even though no violation has been formally adjudicated or admitted. The language of the final rule has been modified accordingly.

In determining whether it is more likely than not that a violation occurred, a creditor must treat testers as if they are actual applicants for credit. A creditor may not refuse to take appropriate corrective action under this section because the self-test used fictitious loan

applicants. The fact that a tester's agreement with the creditor waives the tester's legal right to assert a violation does not eliminate the requirement for the creditor to take appropriate corrective action, although no remedial relief for the tester is required under paragraph 15(c)(3).

15(c)(2) Determining the Scope of Appropriate Corrective Action

Paragraph 15(c)(2) provides that a creditor must take corrective actions that are reasonably likely to remedy both the cause and effects of the violation; this requires identification of the practice or policy that is the likely cause and an assessment of the extent and scope of the violation. This determination must be made on a case-by-case basis. The rule is not intended to suggest that in each case there is a single, most appropriate response. To provide additional guidance, a list of sample corrective actions, including both prospective and remedial relief, is included in the Official Staff Commentary.

Many commenters believed that creditors will be less likely to self-test if the availability of the privilege cannot be determined until after their corrective action has been determined to be sufficient. A number of them suggested adopting a good-faith standard, so that creditors using reasonable business judgment about how to correct potential violations would be deemed to satisfy the corrective action requirement.

The Board recognizes that creditors' incentive to self-test may be affected by the fact that creditors' claims that the self-test report and results are privileged are subject to challenge. This is inherent in the statutory framework established by the 1996 Act, which allows parties who are denied access to self-test data an opportunity to contest the creditor's assertion of the privilege in a formal adjudication. The application of a good-faith or business judgment rule would significantly limit the right and ability of these parties to do so, by allowing creditors' own business judgment to serve as the ultimate guide on the corrective action requirement. The Board believes a good-faith or business judgment rule would be inconsistent with the legislative intent. Accordingly, as proposed, the rule continues to recognize that determining whether a creditor has taken appropriate corrective action must be made on a case-by-case basis and that the applicable standard is whether the corrective action is reasonably likely to remedy both the cause and effect of the violation.

Paragraph 15(c)(2) also provides that in determining the appropriate corrective action, creditors should identify the practice or policy that is the likely cause of the violation and assess the extent and scope of the violation. For example, a creditor might identify inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes. The extent and scope of a likely violation may be assessed by determining which areas of operations are likely to be affected by those policies and practices—for example, by determining the types of loans and stages of the application process involved and the branches or offices where the violations may have occurred.

15(c)(3) Types of Relief

Paragraph 15(c)(3) has been added in response to commenters' concerns. It is intended to give creditors more specific guidance, and lists certain situations that do not require remedial relief to individual applicants in order for the privilege to apply.

The proposed rule stated that corrective action includes both prospective and retroactive relief, as may be appropriate. Some commenters believed that this was too broad, especially in light of the narrow definition of "self-test." They expressed the view that the use of pre-application testers to identify policies and practices that illegally discriminate should not require creditors to review existing loan files to identify and compensate applicants who might have been adversely affected.

The final rule has been revised. For the privilege to apply, a creditor must take corrective action that is appropriate for the type of self-test and the scope of the likely violation. A creditor is required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated, but is not required to identify other persons who might have been adversely affected. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected. Because this rule only addresses the types of relief required in order to assert the self-testing privilege, creditors should make efforts to identify other potential victims, however, as a good business practice and to avoid or minimize potential liability.

Some commenters asserted that creditors' incentive to self-test would be weakened if the rule is interpreted to require remedial relief equal to or beyond what applicants could obtain in a legal action. The final rule clarifies that a creditor is not required to provide remedial relief to an applicant if the statute of limitations expired before the results of the self-test were obtained or if the applicant is otherwise ineligible for such relief. For example, the creditor need not offer credit to a denied applicant who no longer qualifies for the credit due to a change in financial circumstances, although some other type of relief might be appropriate.

15(c)(4) No Admission of Violation

This paragraph has been added in response to commenters' requests for clarification that a creditor's corrective actions not be deemed an admission that a violation occurred. The provision is intended to provide additional incentive for creditors to take preventive measures that may address potential problems even though a violation has not yet occurred.

15(d)(1) Scope of Privilege

Paragraph 15(d)(1) describes the scope of the privilege for covered self-tests. Privileged documents may not be obtained by a government agency for use in an examination or investigation relating to compliance with the ECOA, or by a government agency or applicant (including prospective applicants alleging they were discouraged from pursuing an application on a prohibited basis) in any civil proceeding in which a violation of the ECOA or Regulation B is alleged. This paragraph applies to federal, state, and local government agencies. Accordingly, in a case brought under the ECOA, the privilege established under this section would preempt inconsistent laws or court rules to the extent they might require disclosure of privileged self-testing data.

Some commenters believed that the privilege should also apply in cases filed under state law if the information would be privileged in a case filed under the ECOA. They argued that creditors would be unable to rely on the privilege as an incentive to self-test if parties can obtain the information by filing state law claims. The 1996 Act, however, establishes only a limited privilege, that protects self-testing data from disclosure or use in examinations and investigations conducted under the ECOA and Fair Housing Act, and in proceedings alleging a violation of those laws.

In proceedings where the self-testing privilege does not apply (for example, litigation that is filed only under a state's fair lending statute), if the court

orders a creditor to disclose self-test results, that disclosure would not be a voluntary waiver of the privilege for purposes of the ECOA. But the privilege could be undermined for purposes of the ECOA if the privileged self-testing data are made public. Creditors could seek a protective order to limit the availability and use of the self-testing data and prevent its dissemination beyond what is necessary in that particular case. In any event, as long as the self-testing privilege is not forfeited by the creditor, paragraph 15(d)(1) precludes a party who has obtained privileged information from using it in a case brought under the ECOA.

15(d)(2) Loss of Privilege

Paragraph 15(d)(2) describes the circumstances that would result in the loss of privileged status. This paragraph is adopted substantially as proposed with only minor modifications for clarification.

Paragraph 15(d)(2)(i) provides that the results or report of a self-test, including any data generated by the self-test, will no longer be privileged under this section once the creditor voluntarily discloses all or part of the contents to any government agency, loan applicant, or the general public. This paragraph has been revised to clarify that the privilege is lost if the creditor discloses privileged information, such as the results of the self-test, but that the privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

Comment was solicited on a possible exception to the general rule in paragraph 15(d)(2)(i), whereby creditors could voluntarily share privileged information with a regulatory or law enforcement agency without causing the information to lose its privileged status when it is subsequently sought by private litigants. Under such an exception, however, such disclosures would cause the documents or information to lose their privileged status with respect to all supervisory and enforcement agencies.

A significant number of commenters supported such an exception and believed it would be particularly useful in enabling creditors to seek guidance from the agencies in determining the appropriate corrective action that is a prerequisite for the privilege. It would also encourage financial institutions to voluntarily share self-testing data with examiners, to reduce the burden associated with compliance examinations performed by those agencies. A few commenters believed that mandatory sharing of self-test results with regulatory and enforcement agencies was appropriate.

Some commenters opposed any exception that would allow creditors to voluntarily share privileged information with government agencies while maintaining the privilege as to private litigants. They also questioned whether such an exception would be consistent with the law.

The Board believes that such an exception would be useful and could be adopted pursuant to the Board's statutory authority to create regulatory exceptions under the ECOA. The 1996 Act, however, directs the Board and HUD to enact substantially similar regulations under the ECOA and Fair Housing Act. For the reasons stated in its notice of final rulemaking under the Fair Housing Act, HUD does not believe that there is statutory authority for such an exception, and also does not believe it is advisable. Accordingly, the Board has adopted the rule as initially proposed.

As provided in the 1996 Act, the proposed rule stated that self-testing data loses its privileged status if it is disclosed by a person with "lawful access" to the self-test report or results. Some commenters suggested the privilege should be lost only if the person with access to the privileged information is also authorized to make such a disclosure. However, if a creditor has no formal method for authorizing individual employees to disclose privileged information, that approach would impose the added burden of determining the nature and scope of particular employees' duties and authority. Several commenters also requested that the rule expressly state that the privilege is not lost through an inadvertent or accidental disclosure.

The statutory language does not specifically address these issues. It may have been the legislative intent to allow such matters to be resolved under the substantial body of judicial law that has already developed regarding privileges generally. For example, some courts have held that a privilege is lost even if the disclosure was unintentional or inadvertent. Other courts have declined to adopt a strict rule and opt instead for an approach that takes account of the facts surrounding the particular disclosure before deciding whether or not the privilege should be deemed to be lost. In the absence of any clear legislative intent, the Board believes these issues are best resolved under the existing law concerning privileges and the rules of evidence as administered by the courts. Thus, the final rule has been adopted as proposed.

Several commenters sought additional clarification because they believed the rule regarding loss of the privilege when information is disclosed by a person with "lawful access" might be interpreted to include any person lawfully on the creditor's premises. Whether a particular individual has "lawful access" for purposes of disclosing privileged information is a factual issue. Consideration should be given to whether the individual was an employee or agent of the creditor who reasonably should be expected to have access to or knowledge of the privileged information. The Board believes such matters should be resolved by a court or administrative law judge under the existing law relating to privileges generally. Accordingly, the proposed rule has been adopted without change.

A few commenters requested clarification that the privilege is not lost if the creditor discloses self-testing results to independent contractors acting as auditors or consultants on compliance matters. The Official Staff Commentary is being revised to reflect this interpretation.

Some commenters expressed concern that if a creditor notified applicants or loan customers that they were eligible for remedial relief, that would be viewed as a disclosure of the self-test results, causing the privilege to be lost. A provision has been added to the Official Staff Commentary clarifying that a creditor's corrective actions alone will not be considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. A voluntary disclosure could occur, however, if the creditor disclosed the self-test results in connection with a new offer of credit.

Under paragraph 15(d)(2)(ii), if a creditor elects to rely on the self-testing results as a defense to alleged violations of the ECOA in court or administrative proceedings, the privilege will not apply if the documents are sought in connection with those proceedings. This paragraph has been revised to clarify that the privilege is lost if the creditor discloses privileged information, such as the results of the self-test, but that the privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

15(d)(3) Limited Use of Privileged Information

Paragraph 15(d)(3) is adopted as proposed, and implements the statutory provision that allows for a limited use of privileged documents for the purpose

of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. A creditor's compliance with this requirement does not evidence the creditor's intent to give up the privilege.

Supplement I to Part 202—Official Staff Interpretations

The Official Staff Commentary is being revised to reflect the amendments to Regulation B and incorporate the interpretations provided above.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the amendments to Regulation B. Overall, the amendments are not expected to have any significant impact on small entities. The amendments implement the legal privilege created by the 1996 Act for certain information that creditors may voluntarily develop about their compliance with the fair lending laws through self-testing. The regulation does not impose any significant regulatory requirements on creditors. Consequently, the amendments are not likely to have a significant impact on institutions' costs, including the costs to small institutions.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). 5 CFR 1320 Appendix A.1.

Regulation B applies to individuals and businesses that regularly extend credit or participate in the decision to extend credit. This includes all types of creditors. Under the Paperwork Reduction Act, however, the Board accounts for the paperwork burden associated with Regulation B only for state member banks. Any estimates of paperwork burden for other financial institutions would be provided by the federal agency or agencies supervising those lenders.

The collection of information relating to self-tests and corrective actions is mandatory under this final rule. These requirements are located in 12 CFR 202.12(b)(6). The recordkeepers are for-profit financial institutions, including small businesses that voluntarily conduct self-tests as defined in the rule. Records relating to self-tests must be retained for at least twenty-five months and may be stored electronically. The purpose of the recordkeeping is to facilitate a determination about whether the results or report of a creditor's self-test are privileged under the rule, in the event of a challenge. The recordkeeping requirement also encourages creditors to take appropriate corrective action if the self-testing results demonstrate that violations are likely. The recordkeeping burden consists of the additional effort necessary to retain self-testing records; it does not include the effort necessary to conduct and document the self-test.

There are 1,005 state member banks that are potential recordkeepers under this rule. In connection with the proposed rule, the Board estimated the recordkeeping burden based on each state member bank conducting one self-testing program per year. This was done in order to estimate the potential burden under the broad definition of "self-test" on which the Board was soliciting comment. Although the Board anticipates that all institutions will conduct audits of their performance under the fair lending laws, compliance programs that are covered by the final rule's narrow definition of self-test, which requires the production of new data, are most likely to be adopted by large institutions. The Board believes that the banks most likely to use compliance programs that also meet the rule's definition of "self-test" are those having assets of over $250 million, which is about 18 percent of the state member banks. The Board estimates that about half of these banks (approximately 90) will conduct such tests about once every 24 months, which is approximately once during each examination cycle. This is the equivalent of self-tests being conducted by approximately 45 state member banks during any one calendar year.

The Board previously estimated between one and eight hours (or an average of two hours) as the burden for retaining the relevant records of a self-test conducted by a state member bank. One comment was received from a bank holding company that believed the Board's estimate was too low. This commenter did not provide an explanation or provide any other estimate of the burden on state member banks or its organization. The Board is retaining its initial estimate.

The Board estimates that 25 percent of the state member banks that conduct self-tests will improve their compliance programs or take other actions in response to the self-test results, even if no likely violations are found. The improvements or corrective action taken will depend on self-test findings, and the nature and scope of any possible violation. The amount of time needed to document the creditors' actions will also vary. The Board estimates that at a typical state member bank the effort to retain records associated with corrective action would take an additional two to 20 hours, with an average of eight recordkeeping burden hours per year.

The total annual burden that this rule adds to the burden of Regulation B on a combined basis for all state member banks is estimated to be 178 hours. There is estimated to be no annual cost burden over the annual hour burden, and no capital or start up costs.

Because the records would be maintained at state member banks, no issue of confidentiality under the Freedom of Information Act normally will arise. If information does come into the Board's possession, it will be protected from disclosure by exemptions 4 and 6 of the Freedom of Information Act (FOIA). 5 U.S.C. 552(b)(4) and (6). In addition, if such information is in the workpapers of Board examiners or extracted in Board reports of examination, the information would also be protected by exemption 8 of the FOIA. 5 U.S.C. 552(b)(8).

An agency may not collect or sponsor the collection or disclosure of information, and an organization is not required to collect or disclose information unless a currently valid OMB control number is displayed. The OMB control number for Regulation B is 7100–0201.

The Board has a continuing interest in the public's opinions about the collection of information under the Board's rules. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set forth in the preamble, 12 CFR part 202 is amended as follows:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.12 is amended by adding a new paragraph (b)(6) to read as follows:

§ 202.12 Record retention.

* * * * *

(b) *Preservation of records.* * * *

(6) *Self-tests.* For 25 months after a self-test (as defined in § 202.15) has been completed, the creditor shall retain all written or recorded information about the self-test. A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In such cases, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

3. Section 202.15 is added to read as follows:

§ 202.15 Incentives for self-testing and self-correction.

(a) *General rules*—(1) *Voluntary self-testing and correction.* The report or results of the self-test that a creditor voluntarily conducts (or authorizes) are privileged as provided in this section. Data collection required by law or by any governmental authority is not a voluntary self-test.

(2) *Corrective action required.* The privilege in this section applies only if the creditor has taken or is taking appropriate corrective action.

(3) *Other privileges.* The privilege created by this section does not preclude the assertion of any other privilege that may also apply.

(b) *Self-test defined*—(1) *Definition.* A self-test is any program, practice, or study that:

(i) Is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the act or this regulation; and

(ii) Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions.

(2) *Types of information privileged.* The privilege under this section applies to the report or results of the self-test, data or factual information created by the self-test, and any analysis, opinions, and conclusions pertaining to the self-test report or results. The privilege covers workpapers or draft documents as well as final documents.

(3) *Types of information not privileged.* The privilege under this section does not apply to:

(i) Information about whether a creditor conducted a self-test, the methodology used or the scope of the self-test, the time period covered by the self-test, or the dates it was conducted; or

(ii) Loan and application files or other business records related to credit transactions, and information derived from such files and records, even if it has been aggregated, summarized, or reorganized to facilitate analysis.

(c) *Appropriate corrective action*—(1) *General requirement.* For the privilege in this section to apply, appropriate corrective action is required when the self-test shows that it is more likely than not that a violation occurred, even though no violation has been formally adjudicated.

(2) *Determining the scope of appropriate corrective action.* A creditor must take corrective action that is reasonably likely to remedy the cause and effect of a likely violation by:

(i) Identifying the policies or practices that are the likely cause of the violation; and

(ii) Assessing the extent and scope of any violation.

(3) *Types of relief.* Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this section:

(i) A creditor is not required to provide remedial relief to a tester used in a self-test;

(ii) A creditor is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated; and

(iii) A creditor is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the creditor obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(4) *No admission of violation.* Taking corrective action is not an admission that a violation occurred.

(d)(1) *Scope of privilege.* The report or results of a privileged self-test may not be obtained or used:

(i) By a government agency in any examination or investigation relating to compliance with the act or this regulation; or

(ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of § 202.5(a)) in any proceeding or civil action in which a violation of the act or this regulation is alleged.

(2) *Loss of privilege.* The report or results of a self-test are not privileged under paragraph (d)(1) of this section if the creditor or a person with lawful access to the report or results):

(i) Voluntarily discloses any part of the report or results, or any other information privileged under this section, to an applicant or government agency or to the public;

(ii) Discloses any part of the report or results, or any other information privileged under this section, as a defense to charges that the creditor has violated the act or regulation; or

(iii) Fails or is unable to produce written or recorded information about the self-test that is required to be retained under § 202.12(b)(6) when the information is needed to determine whether the privilege applies. This paragraph does not limit any other penalty or remedy that may be available for a violation of § 202.12.

(3) *Limited use of privileged information.* Notwithstanding paragraph (d)(1) of this section, the self-test report or results and any other information privileged under this section may be obtained and used by an applicant or government agency solely to determine a penalty or remedy after a violation of the act or this regulation has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission was made. Information disclosed under this paragraph (d)(3) remains privileged under paragraph (d)(1) of this section.

4. In Supplement I to Part 202, under *Section 202.12—Record Retention*, a new paragraph 12(b)(6) is added to read as follows:

Supplement I To Part 202—Official Staff Interpretations

* * * * *

Section 202.12—Record Retention

* * * * *

12(b) Preservation of Records

* * * * *

12(b)(6) Self-tests

1. The rule requires all written or recorded information about a self-test to be retained for 25 months after a self-test has been completed. For this purpose, a self-test is completed after the creditor has obtained the results and made a determination about what corrective action, if any, is appropriate. Creditors are required to retain information about the scope of the self-test, the methodology used and time period covered by the self-test, the report or results of the self-test including any analysis or conclusions, and any corrective action taken in response to the self-test.

* * * * *

5. Supplement I to Part 202 is amended by adding *Section 202.15—Incentives for Self-testing and Self-correction*, to read as follows:

* * * * *

Section 202.15—Incentives for Self-testing and Self-correction

15(a) General Rules

15(a)(1) Voluntary Self-Testing and Correction

1. Activities required by any governmental authority are not voluntary self-tests. A governmental authority includes both administrative and judicial authorities for federal, state, and local governments.

15(a)(2) Corrective Action Required

1. To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or this regulation. A self-test is also privileged when it identifies no violations.

2. In some cases, the issue of whether certain information is privileged may arise before the self-test is complete or corrective actions are fully under way. This would not necessarily prevent a creditor from asserting the privilege. In situations where the self-test is not complete, for the privilege to apply the lender must satisfy the regulation's requirements within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the creditor establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Creditors must take appropriate corrective action on a timely basis after the results of the self-test are known.

3. A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results, which may require an in camera inspection of the privileged documents.

15(a)(3) Other privileges

1. A creditor may assert the privilege established under this section in addition to asserting any other privilege that may apply, such as the attorney-client privilege or the work product privilege. Self-testing data may still be privileged under this section, whether or not the creditor's assertion of another privilege is upheld.

15(b) Self-test Defined

15(b)(1) Definition

Paragraph 15(b)(1)(i)

1. To qualify for the privilege, a self-test must be sufficient to constitute a determination of the extent or effectiveness of the creditor's compliance with the act and Regulation B. Accordingly, a self-test is only privileged if it was designed and used for that purpose. A self-test that is designed or used to determine compliance with other laws or regulations or for other purposes is not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers' satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

Paragraph 15(b)(1)(ii)

1. The principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers), either with or without the use of matched pairs. A creditor may elect to test a defined segment of its business, for example, loan applications processed by a specific branch or loan officer, or applications made for a particular type of credit or loan program. A creditor also may use other methods of generating information that is not available in loan and application files, such as surveying mortgage loan applicants. To the extent permitted by law, creditors might also develop new methods that go beyond traditional pre-application testing, such as hiring testers to submit fictitious loan applications for processing.

2. The privilege does not protect a creditor's analysis performed as part of processing or underwriting a credit application. A creditor's evaluation or analysis of its loan files, Home Mortgage Disclosure Act data, or similar types of records (such as broker or loan officer compensation records) does not produce new information about a creditor's compliance and is not a self-test for purposes of this section. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

15(b)(3) Types of Information not Privileged

Paragraph 15(b)(3)(i)

1. The information listed in this paragraph is not privileged and may be used to determine whether the prerequisites for the privilege have been satisfied. Accordingly, a creditor might be asked to identify the self-testing method, for example, whether pre-application testers were used or data were compiled by surveying loan applicants. Information about the scope of the self test (such as the types of credit transactions examined, or the geographic area covered by the test) also is not privileged.

Paragraph 15(b)(3)(ii)

1. Property appraisal reports, minutes of loan committee meetings or other documents reflecting the basis for a decision to approve or deny an application, loan policies or procedures, underwriting standards, and broker compensation records are examples of the types of records that are not privileged. If a creditor arranges for testers to submit loan applications for processing, the records are not related to actual credit transactions for purposes of this paragraph and may be privileged self-testing records.

15(c) Appropriate Corrective Action

1. The rule only addresses what corrective actions are required for a creditor to take advantage of the privilege in this section. A creditor may still be required to take other actions or provide additional relief if a formal finding of discrimination is made.

15(c)(1) General Requirement

1. Appropriate corrective action is required even though no violation has been formally adjudicated or admitted by the creditor. In determining whether it is more likely than not that a violation occurred, a creditor must treat testers as if they are actual applicants for credit. A creditor may not refuse to take appropriate corrective action under this section because the self-test used fictitious loan applicants. The fact that a tester's agreement with the creditor waives the tester's legal right to assert a violation does not eliminate the requirement for the creditor to take corrective action, although no remedial relief for the tester is required under paragraph 15(c)(3).

15(c)(2) Determining the Scope of Appropriate Corrective Action

1. Whether a creditor has taken or is taking corrective action that is appropriate will be determined on a case-by-case basis. Generally, the scope of the corrective action that is needed to preserve the privilege is governed by the scope of the self-test. For example, a creditor that self-tests mortgage loans and discovers evidence of discrimination may focus its corrective actions on mortgage loans, and is not required to expand its testing to other types of loans.

2. In identifying the policies or practices that are the likely cause of the violation, a creditor might identify inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes. The extent and scope of a likely violation may be assessed by determining which areas of operations are likely to be affected by those policies and practices, for example, by determining the types of loans and stages of the application process involved and the branches or offices where the violations may have occurred.

3. Depending on the method and scope of the self-test and the results of the test, appropriate corrective action may include one or more of the following:

i. If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the application was improperly denied and compensating such persons for out-of-pocket costs and other compensatory damages;

ii. Correcting institutional polices or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;

iii. Identifying and then training and/or disciplining the employees involved;

iv. Developing outreach programs, marketing strategies, or loan products to serve more effectively segments of the lender's markets that may have been affected by the likely discrimination; and

v. Improving audit and oversight systems to avoid a recurrence of the likely violations.

15(c)(3) Types of Relief

Paragraph 15(c)(3)(ii)

1. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected.

2. If a self-test identifies a specific applicant that was subject to discrimination on a prohibited basis, in order to qualify for the privilege in this section the creditor must provide appropriate remedial relief to that applicant; the creditor would not be required under this paragraph to identify other applicants who might also have been adversely affected.

Paragraph 15(c)(3)(iii)

1. A creditor is not required to provide remedial relief to an applicant that would not be available by law. An applicant might also be ineligible from obtaining certain types of relief due to changed circumstances. For example, a creditor is not required to offer credit to a denied applicant if the applicant no longer qualifies for the credit due to a change in financial circumstances, although some other type of relief might be appropriate.

15(d)(1) Scope of Privilege

1. The privilege applies with respect to any examination, investigation or proceeding by federal, state, or local government agencies relating to compliance with the Act or this regulation. Accordingly, in a case brought under the ECOA, the privilege established under this section preempts any inconsistent laws or court rules to the extent they might require disclosure of privileged self-testing data. The privilege does not apply in other cases, for example, litigation filed solely under a state's fair lending statute. In such cases, if a court orders a creditor to disclose self-test results, the disclosure is not a voluntary disclosure or waiver of the privilege for purposes of paragraph 15(d)(2); creditors may protect the information by seeking a protective order to limit availability and use of the self-testing data and prevent dissemination beyond what is necessary in that case. Paragraph 15(d)(1) precludes a party who has obtained privileged information from using it in a case brought under the ECOA, provided the creditor has not lost the privilege through voluntarily disclosure under paragraph 15(d)(2).

15(d)(2) Loss of Privilege

Paragraph 15(d)(2)(i)

1. Corrective action taken by a creditor, by itself, is not considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. Voluntary disclosure could occur under this paragraph, however, if the creditor disclosed the self-test results in connection with a new offer of credit.

2. Disclosure of self-testing results to an independent contractor acting as an auditor or consultant for the creditor on compliance matters does not result in loss of the privilege.

Paragraph 15(d)(2)(ii)

1. The privilege is lost if the creditor discloses privileged information, such as the results of the self-test. The privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

Paragraph 15(d)(2)(iii)

1. A creditor's claim of privilege may be challenged in a court or administrative law proceeding with appropriate jurisdiction. In resolving the issue, the presiding officer may require the creditor to produce privileged information about the self-test.

Paragraph 15(d)(3) Limited use of Privileged Information

1. A creditor may be required to produce privileged documents for the purpose of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. A creditor's compliance with this requirement does not evidence the creditor's intent to forfeit the privilege.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 10, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–32663 Filed 12–17–97; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Parts 100 and 103
HUD'S Regulation on Self-Testing Regarding Residential Real Estate-Related Lending Transaction and Compliance With the Fair Housing Act; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 100 and 103

[Docket No. FR–4160–F–02]

RIN 2529–AA82

HUD's Regulation on Self-Testing Regarding Residential Real Estate-Related Lending Transactions and Compliance With the Fair Housing Act

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This rule implements section 814A of the Fair Housing Act, which encourages voluntary compliance by lenders with the Fair Housing Act (FHAct) through lender-initiated self-tests of lenders' residential real estate-related lending transactions and, where appropriate, corrective action designed to remedy any possible violations of the FHAct revealed by such tests. This rule also makes technical amendments to the fair housing complaint processing regulations.

EFFECTIVE DATE: January 30, 1998.

FOR FURTHER INFORMATION CONTACT: Peter Kaplan, Director, Office of Policy and Regulatory Initiatives, Fair Housing and Equal Opportunity, (202) 708–2904. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. A telecommunications device for hearing- and speech-impaired persons (TTY) is available at (202) 708–9300 (these are not toll-free telephone numbers).

SUPPLEMENTARY INFORMATION:

I. General. Incentives for Self-testing and Self-correction

On January 31, 1997 at 62 FR 4882, the Department published a proposed rule to implement section 814A of the FHAct, promulgated at section 2302 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 (Pub. L. 104–208, approved September 30, 1996). Section 2302, found in title II of Pub. L. 104–208, entitled the "Economic Growth and Regulatory Paperwork Reduction Act" ("Act"), amends the FHAct to promote compliance by establishing a privilege for lender-initiated self-tests of residential real estate-related lending transactions.

The Economic Growth and Regulatory Paperwork Reduction Act: Sec. 2302

Section 2302 adds a new section 814A to the FHAct which creates a legal and administrative enforcement privilege for "self-tests" conducted by entities engaged in residential real estate-related lending to determine compliance under the FHAct. This provision also adds a new section 704A to the Equal Credit Opportunity Act ("ECOA") which creates the same privilege with respect to credit transactions by a creditor. A report or result of a self-test is privileged from disclosure if a lender conducts, or authorizes an independent third party to conduct, a self-test of a real estate-related lending transaction to determine the level or effectiveness of compliance with the FHAct, and has taken, or is taking, appropriate corrective action to address possible violations discovered as a result of the self-test.

The Act requires the Department, with respect to the FHAct, and the Federal Reserve Board (the Board), with respect to the ECOA, to implement section 2302 and define "self-testing" in substantially similar regulations within six months of enactment. This final rule was drafted after consideration of the comments the Department received on the January 31, 1997 proposed rule, and in consultation with the Board, the Department of Justice (DOJ), and appropriate Federal regulatory and enforcement agencies, including the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), and the Federal Trade Commission (FTC). The Act's requirement that the Board's and the Department's regulations be substantially similar, the comments received on the proposed rule, and the consultation which followed, delayed publication of the final rule beyond the six months the Act prescribed.

After reviewing both regulations, the Department and the Board have determined that there is no substantial difference in the final rules and that they should be interpreted to have the same effect except where differences in the FHAct and ECOA dictate otherwise. For example, ECOA covers non-mortgage credit transactions which are not residential real estate-related transactions under the FHAct. This dictated slight differences in the definition of "self-test" in the agencies' rules.

Moreover, although there are organizational differences in the agencies' rules, these differences are not intended to have any substantive effect, and merely reflect the Board's longstanding practice of publishing its interpretative rules in a separate staff commentary. The Department has no staff commentary, therefore some of this material appears in the Department's rule and other material appears in its preamble. The consistency of the Department and the Board rules is evident based on a comparison of the complete documents published by the agencies, including the preambles to the regulatory amendments and the revisions to the Board's Official Staff Commentary to Regulation B.

Public Comments

In the proposed rule, the Department invited public comments for consideration in drafting a final rule. The Department received a total of 52 public comments, 18 of which were from lenders, 16 from public interest organizations, 15 from lending industry associations, and one each from a law firm, a government agency, and an individual. The comments are addressed in the Section-by-Section Analysis of this final rule preamble. The Department revised the proposed rule based on its consideration of the comments received. The Department also made editorial, non-substantive revisions to use plain English wherever possible and to meet Congress's mandate of substantial similarity between final rules issued by it and the Board. The preamble discusses the revisions made to the proposed rule to effect a substantive change.

Existing Self-testing Policies

The Department notes that prior to the amendment of the FHAct to create this privilege, several agencies stated their enforcement policy in regard to self-testing by a lender.[1] To the extent this final rule does not contravene an agency's or department's enforcement policies, those policies remain in effect until the agency or department determines otherwise. Accordingly, for example, OCC Bulletin 95–51 (September 15, 1995) remains in effect. The Department's prior policy, on the other hand, is superseded by this regulation.

Review of Rule

As the proposed rule noted, in developing the regulation to implement the self-testing privilege, the Department seeks to provide a real incentive for innovative, effective, and non-routine fair lending monitoring and self-correction while ensuring the rights of discrimination victims. Lending discrimination, however, is an evolving area of the law, and modifications may be appropriate. Therefore, the

[1] OCC Bulletin 95–51 (September 15, 1995); Deval Patrick, Assistant Attorney General for Civil Rights, Letter to the Mortgage Bankers Association, et al. (February 21, 1995).

Department and the Board may review this rule, including the definition of self-test, after several years' experience. Should it determine to conduct such a review, the Department will seek public comment on whether the rule should be amended. A review would focus on whether the self-testing incentives created by Congress and implemented in this rule should be strengthened, and whether the definition of self-test should be broadened. Since there is a corresponding relationship between the breadth of the definition of self-test and the scope of corrective actions, the review would also examine the extent to which corrective actions as defined in the rule provide appropriate relief for victims of discrimination.

II. Changes From the Proposed Rule

This final rule includes several changes from the proposed rule:

—The statement of the general rule applying the self-testing privilege contained in § 100.140 has been modified to reflect the need to address only likely violations and to incorporate the requirement to take appropriate corrective action. As a result, § 100.141 of the proposed rule is deleted and the sections which followed were renumbered. As more fully explained in § 100.143, Appropriate Corrective Action, the revised rule provides a privilege when a lender takes corrective action which is reasonably likely to remedy the cause and effect of a violation identified by a self-test in instances where it is more likely than not that a violation has occurred.

—The section on Definitions, now § 100.141, explicitly includes applicant and customer surveys within the definition of self-test and makes clear that self-tests are not limited to the pre-application stage of loan processing.

—Section 100.142 now specifies that material such as appraisal reports, loan committee meeting minutes, underwriting standards or compensation records is not privileged, nor is any information or data derived from them privileged.

—As discussed above, Appropriate Corrective Action, § 100.143, now refers to "likely violations" rather than "possible violations." Rather than requiring appropriate corrective action to address possible violations, this section now specifies that corrective action is only required when it is more likely than not that a violation occurred, even though no violation was adjudicated formally.

—The proposed rule § 100.141 requirement (now deleted) that lenders "take whatever actions are reasonable in light of the scope of the possible violations to fully remedy both their cause and effect" is now addressed in § 100.143(b), which requires a lender to take action "reasonably likely to remedy the cause and effect of a likely violation."

—A new § 100.143(c) states that to establish a privilege a lender is not required to provide remedial relief to a tester in a self-test; is only required to provide remedial relief to an applicant if the self-test identified that applicant as one who was more likely than not the subject of a violation; and is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the lender obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

—The illustrative list of appropriate corrective actions contained in § 100.143 no longer includes notifying persons whose applications were inappropriately processed of their legal rights.

—Section 100.143(f) clarifies that taking appropriate corrective action is not an admission a violation occurred.

—Section 100.145(b), Loss of Privilege, specifies that lenders will not lose their privilege by notifying persons about remedial relief.

In discussing the public comments received on the proposed rule, the next section provides a more detailed description of these and other changes made in the final rule.

III. Section-by-Section Analysis of the Rule

Section 100.140 General Rule

Voluntary Self-Testing and Self-Correction

Section 100.140(a) states the general rule that the report or results of a self-test a lender voluntarily conducts or authorizes are privileged if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. The privilege applies whether the lender conducts the self-test or employs the services of a third-party. Data collection required by law or governmental authority is not a voluntary self-test.

Subsection (a) also implements the Act's requirement that a lender must take appropriate corrective action to address likely violations identified by the self-test before the privilege can be invoked. This subsection incorporates the requirement that corrective action must be taken for the privilege to apply, as stated in § 100.141 in the proposed rule. The requirement in the proposed rule § 100.141 that lenders "fully remedy possible violations" has been modified and is now addressed in § 100.143, Appropriate Corrective Action, which also discusses "likely violation."

Other Privileges

Subsection (b), a new subsection, clarifies in the final rule itself the language contained in the preamble to the proposed rule at § 100.140, which stated that the privilege of self-testing is in addition to any other privileges which may exist, such as attorney-client privilege or the privilege for attorney work product. This change was requested by some commenters. A lender may assert the privilege created by this subpart as well as any other applicable privilege.

Section 100.141 Definitions

The Act does not define "self-test" and authorizes the Department to define by regulation the practices covered by the privilege. The Department received substantial comment on the definition of self-test.

The Department defines a self-test as any program, practice or study a lender voluntarily conducts or authorizes which is designed and used specifically to determine the extent or effectiveness of compliance with the FHAct. The self-test must create data or factual information that is not available and cannot be derived from loan files, application files, or other residential real estate-related lending transaction records. The final rule substitutes the phrase "residential real estate-related lending transaction records" in place of "records related to credit transactions" to reflect more accurately the coverage of the FHAct.

Self-testing includes, but is not limited to, using fictitious credit applicants (testers), including matched-pair testers. It includes surveys of applicants and mortgage customers, and is not restricted to the pre-application stage of the credit process.

As the proposed rule's preamble noted, the principal attribute of self-testing is that it constitutes a voluntary undertaking by the lender to produce new—otherwise unavailable—factual information. The definition contained in the rule provides added incentives for lenders to look beyond their business records and develop new factual evidence about the level of their compliance. The rule does not define self-test so broadly as to include all types of lender self-evaluation or self-assessment. While versions of the legislation initially introduced in

Congress extended the privilege to a lender's test or review, the statute as adopted refers only to a self-test.

The Department notes that a lender's analysis performed as part of processing or underwriting a credit application is not privileged under the final rule. A lender's evaluation or analysis of its loan files, Home Mortgage Disclosure Act data or similar types of records (such as broker or loan officer compensation records) is derived from loan files, application files and other real-estate-related lending transaction records and is, therefore, not a self-test and is not privileged under this rule. However, new data or factual information created as a result of self-testing would be privileged.

A broader definition of self-testing is within the Department's rulemaking authority under the statute. A broad definition of self-testing, however, was generally opposed by Federal regulatory and enforcement agencies, civil rights and consumer organizations, and fair lending enforcement agencies.

As the proposed rule's preamble noted, principles of sound lending dictate that a lender have adequate policies and procedures in place to ensure compliance with applicable laws and regulations, and that lenders adopt appropriate audit and control systems. These may take the form of compliance reviews, file analyses, the use of second review committees, or other methods that examine lender records kept in the ordinary course of business. Notwithstanding any evaluation performed by the lender, the underlying loan records are subject to examination by the supervisory and law enforcement agencies and must usually be disclosed to a private litigant alleging a violation.

In consultation with Federal regulatory and enforcement agencies in developing the proposed and final rules, the Department found that, according to a 1994 survey of large depository institutions by one regulator, approximately 78% of the institutions surveyed performed reviews that included comparative file reviews or statistical modeling as part of their fair lending management and oversight. This is evidence that an additional incentive for such reviews may not be required. Providing a privilege for such reviews could make information now provided to supervisory agencies unavailable, and could make examinations less efficient.

A comment letter on the proposed rule from a Federal regulatory agency noted:

> We agree that a broader definition of self-test could have an unintended negative effect on the levels of cooperation between creditors and the regulatory agencies. Institutions use internal fair lending audits and reviews to monitor their compliance with the Fair Housing Act and regulatory agencies consider them valuable examination tools to identify areas most in need of supervisory attention . . . [M]oreover, a broader definition could create a more confrontational examination setting due to arguments over the scope of the privilege. There would be no clear line between documents that institutions maintain in the ordinary course of business and documents that are part of an internal audit.

Civil rights and community organization comments generally opposed a broad definition of self-testing. A comment letter from a national civil rights organization said the self-testing privilege should not extend beyond the proposed rule's definition to encompass other self-evaluations and self-assessments, including fair lending business records lenders now maintain routinely. The organization said incentives for self-testing should not undermine the strong Federal interest in full relief for all victims of discrimination, and should not place an undue burden on regulators, enforcement agencies or litigants. The letter further noted:

> In general, the new privilege is likely to lead to more lengthy and expensive litigation. In the context of litigation or enforcement investigation, many lenders will have an incentive to overreach by broadly defining "self-test" in order to shield more information under the new privilege. Furthermore, some lenders may try to narrowly define "any possible violation" to mean "only clear violations," and many lenders may prefer a low standard for "appropriate corrective action." Plaintiffs alleging discrimination, on the other hand, will be forced to challenge every assertion of privilege.

A national community advocacy organization cited the history of legal privileges while commenting in opposition to a broad definition of self-testing. That organization said:

> Historically in this country, we have granted legal privilege in very limited circumstances. It applies to communications between individuals and their clergy, to communications between individuals and their attorneys, and in few, if any, other circumstances. In these cases, the need for open, honest and unrestricted communication is viewed as outweighing the need of the legal system for access to information. This historical practice of limiting the scope of privilege should certainly be applied in this case. It may be beneficial to encourage lenders to undertake self-testing. However, given the rudimentary nature of the nation's understanding of the problem of lending discrimination and the evolving nature of the field of fair lending enforcement, it is critical not to unduly limit the availability of information necessary to enforce the law.

Comments from lenders were generally in opposition to a narrow definition of self-testing. A coalition of national mortgage lenders and servicers said in a comment letter:

> It is clear from the statute that Congress intended a broad definition of self-test. Congress essentially forged a quid pro quo for obtaining the self-test privilege under which a lender is allowed not to disclose self-test reports if it undertakes appropriate corrective action with respect to the findings. Given this tradeoff, there is every reason to *expand* the types of self-assessments which are to be subject to this rule, not limit them. Otherwise, Congress' efforts to encourage self-tests will largely have been in vain.

At this time, the Department believes lenders already have adequate incentive to conduct routine compliance reviews and file analyses as good business practices to avoid or minimize potential liability for violations. Therefore, the Department does not believe it is now appropriate to extend the privilege to audits of actual business records. A broader privilege, which would extend to comparative reviews of file contents (whether or not conducted with use of statistical methods such as sampling and regression analysis) would greatly limit the availability of evidence of violations. To do so also would make the analysis of records lenders now maintain as part of routine fair lending activities unavailable to supervisory and enforcement agencies conducting fair lending examinations. Moreover, it could have the unintended result of effectively precluding the use of discovery and other fact-finding mechanisms by private litigants seeking relief under the FHAct.

Testing designed and used for compliance with other laws, or for other purposes, is not privileged under this rule. For instance, a self-test designed to observe employees' efficiency and thoroughness in meeting customer needs is not covered by the privilege even if it incidentally uncovers evidence of discrimination. The final rule clarifies that to qualify for the privilege, a self-test must be designed and used specifically to determine the extent or effectiveness of a lender's compliance with the FHAct, giving effect to the statutory language of the Act at paragraph 814(a)(1). If a test is designed for multiple purposes, only the portion designed to determine compliance with the FHAct would be eligible for the privilege.

Some commenters were critical of the emphasis on matched-pair testing in the proposed rule, stating such tests are expensive and may, due to a small

sample size, yield statistically invalid conclusions. In addition, some commenters maintained such tests are often inadequately performed or analyzed, leading to unwarranted conclusions. Matched-pair testing, they asserted, is impractical for many small community banks because of the expense and because testers would be obvious in many rural areas where "strangers" would be readily apparent to bank personnel.

As defined in the final rule, the principal attribute of self-testing is that it constitutes a voluntary undertaking by the lender to produce new factual information that otherwise would not be available or derived from loan or application files or other residential real estate-related lending transaction records. While this includes matched-pair testing, it is not limited to such testing. A lender is not required to use matched-pair testing or to test only in the pre-application process. For instance, a lender could survey mortgage brokers with whom it has a relationship to determine whether minority applicants were treated similarly to non-minority applicants, or use testers (in matched-pairs or otherwise) in the mortgage process.

Section 100.142 Types of Information

Subsection (a) provides that the types of information the privilege covers include: the report or results of the self-test; data or factual information created by the self-test; workpapers, draft documents and final documents; analyses, opinions, and conclusions if they directly result from the self-test report or results.

The final rule clarifies the self-testing privilege applies to any data generated by the self-test, as well as any analysis of that data, workpapers and draft documents. Thus, testers, attorneys, auditors, experts and others who participate in the testing, or who review the results to help the lender determine what corrective action, if any, is needed, may not be compelled to produce testimony or documents describing these matters. This assurance to lenders responds to concerns expressed in the comments.

Subsection (b) lists exclusions from the privilege. The privilege does not cover information about whether a lender has conducted a self-test, the methodology or scope of the self-test, the time period covered, or the dates it was conducted. This list of exclusions is exemplary and not exhaustive.

Commenters differed on whether lenders must disclose the fact that tests were conducted, and the scope and methodologies of the tests. A few commenters wanted the existence of the test and its methodology to be privileged. One commenter suggested that requiring lenders to disclose the existence of a self-testing program, its scope, and its methodology defeats the purpose of the privilege. That commenter stated that only the factual information underlying the analysis should be excluded from the privilege coverage. Another commenter maintained that since nothing in the statute requires disclosure of the parameters of the analysis, the regulation should not require it. Yet another commenter stated the rule should limit privilege-related disclosures to a reasonable identification of purportedly privileged documents, together with a general description of the basis of that claim.

The Department considered these views. This section of the rule is consistent with the statute, which specifically provides that only reports or results of self-tests are privileged. The statute does not prohibit an aggrieved person, complainant, department or agency from requesting information about whether and, if so, how a lender has conducted a self-test. Disclosure of the existence of a privileged self-test, the self-test's scope, methodology or the time period when it was conducted are essential to a decision as to whether to seek the final results or report or to challenge the lender's claim of privilege. This disclosure is essential to ensure the testing information at issue can properly be identified in any proceeding challenging a lender's claim of privilege.

This subsection also clarifies that loan and application files, or other real-estate related lending transaction records, or information derived from such sources, are not privileged, even if the data is aggregated, summarized or reorganized to facilitate analysis. Records related to applications submitted by testers are not "real estate-related lending transaction records" for purposes of this subsection and may be privileged self-testing records.

Section 100.143 Appropriate Corrective Action

Section 100.143(a) Generally

Commenters expressed diverse opinions about the standard by which corrective measures should be judged. Several wanted a "good faith" standard for corrective actions which would be met if the lender in good faith takes the corrective actions it determines appropriate. Neither the statute nor the legislative history suggests Congress intended a "good faith" standard.

Other commenters suggested a "business judgment rule" as a measure of appropriate corrective action. Under that standard, the prevailing practices in the lending industry would dictate what corrective actions are appropriate. As with the "good faith" standard, the Department believes a "business judgment rule" would be inconsistent with the legislative intent.

The rule does provide a standard by which corrective actions are to be measured. The action must be reasonably likely to remedy the cause and effect of a likely violation. Although an action may be taken in good faith, it may not be reasonably likely to remedy the cause and effect.

The Department further notes that a lender's determination as to whether corrective action is needed, and, if so, what type, is not conclusive in determining whether the privilege requirements are satisfied.

If a lender asserts a claim of privilege, the adjudicator would have to assess the need for, and the type of, appropriate corrective action based on a review of the self-testing results. Such an assessment might be accomplished by an in camera inspection of the privileged documents, or by sealed pleadings.

Section 100.143(a) Has Taken or Is Taking

This subsection also states that the report or results of a self-test are privileged if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. In some cases, the issue of whether certain information is privileged may arise before self-tests are complete or before the corrective actions are fully under way. This would not necessarily prevent a lender from asserting the privilege.

In situations where the self-test is not complete, the lender must complete the requirements of this subpart within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the lender establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Furthermore, lenders must take corrective action on a timely basis after the results of the self-tests are known. An adjudicator's final decision on whether the privilege applies should be withheld until the creditor has taken the appropriate corrective action.

Section 100.143(a) Likely Violations

The Act states that corrective action is required for possible violations. Some

commenters noted lenders have no FHAct liability for "possible violations," only proven ones. The term "possible violations" means that there need not have been an adjudication by a court or an administrative law judge before lenders should begin corrective actions. Otherwise, corrective actions would only begin following an adjudication, which would effectively render the privilege moot.

The Act requires appropriate self-correction in the case of possible violations for the privilege to apply. To implement the Act and address the interpretation of possible violations, the final rule now refers to "likely violations," which means instances where it is more likely than not that a violation has occurred even though no violation was adjudicated formally.

Although corrective actions are required when a likely violation is found, a self-test is also privileged when it does not identify any likely violation and no corrective action is necessary. The self-test incentive would be undermined if the privilege applied only when violations were discovered, because the mere assertion of the privilege would amount to an admission that it is more likely than not that a violation occurred.

Section 100.143(b) and (d) Cause and Effect

Some commenters asserted that corrective action must include both prospective and retroactive relief to fully remedy both the cause and effect of the violations. For example, in the instance of charging higher interest rates to minorities, they urged that relief would require not only lowering the rate, but reimbursing the overpayment with interest, and paying damages for pain and suffering.

The final rule requires a lender to take corrective action reasonably likely to remedy the cause and effect of a likely violation. The Department revised the phrase "fully remedy" that appeared in the proposed rule since, as many commenters argued, that phrase implied that damages paid, or remedies provided, would have to equal those a court would award if there had been an adjudication. It would be difficult or impossible for a lender to determine in advance whether corrective action met that standard, and the Act included no such requirement. However, there may be situations where the violation and the facts known to the lender are such that limiting the corrective action solely to out-of-pocket damages would be inappropriate. The final rule standard of "reasonably likely to remedy the cause and effect" intends that payments of out-of-pocket and other compensatory damages be determined on a case-by-case basis without any adjudication.

Section 100.143(b) and (d) Policies or Practices; Extent and Scope

A lender must: (1) Identify the policies or practices that are the likely cause of the violation, such as inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes; and (2) assess the extent and scope of any likely violation, by determining which areas of its operation are likely to be affected by those policies and practices, such as stages of the loan application process, types of loans, or the branches or offices where likely discrimination has occurred.

Generally, if the scope of the testing is broad, the need to examine information beyond that generated by the self-test is correspondingly broad. For example, a lender that self-tests its marketing practices and discovers evidence of discrimination may focus its corrective actions on its marketing practices, and is not required to expand its testing to other aspects of its operation. Also, for example, if the testing focuses on a particular loan officer at a particular branch, and a likely violation is found, then the lender need not commence a nationwide loan file review. Nevertheless, a comprehensive examination of that loan officer's activities would be required, covering all mortgage loan products handled by that officer.

In some instances, a pre-application matched-pair test may reveal that potential borrowers in minority areas are not offered or made aware of the full range of available loan products offered or advertised to borrowers in non-minority areas. In this case, the lender, in determining prospective relief, should examine its marketing, sales, and outreach activities both as a whole and in its individual branches, and should implement prospective actions to address the results of the test, where necessary.

Section 100.143(b) and (d) Interagency Guidance

Subsection (d) provides lenders with additional direction on what is appropriate corrective action to remedy the cause and effect of a likely violation, as required by subsection (b).

Several commenters recommended the rule should offer greater guidance on what is and is not appropriate corrective action, and on how to apply the actions listed in the proposed rule. Some suggested the actions listed were too vague, thereby diluting the self-test incentive. These commenters generally recommended that specific standards be established and limitations be placed upon the amount of corrective action required in connection with past discrimination.

Others maintained a case-by-case analysis invites unrestrained second-guessing of difficult judgments on likely violations and remedies. Several commenters viewed the case-by-case approach as an ex post facto assessment of a lender's corrective actions. Other commenters, generally those supporting case-by-case determinations, argued that if the rule mandated any particular corrective action, it would impede fair lending litigation and/or settlement proceedings.

The Department carefully weighed the comments received and recognizes the need for certainty as to whether corrective actions are appropriate. However, it is not possible to develop a standard that would describe the specific appropriate action in every hypothetical situation. Rather, the final rule contains a standard that describes the criteria for determining the corrective action appropriate to the fact pattern involved, and retains the general categories developed by the Interagency Task Force on Fair Lending.[2] The final rule does note that not every corrective measure listed need be taken for each likely violation.

Section 100.143(c) Prospective and Remedial Relief

There were many comments with differing views on the issue of whether corrective action should be prospective only, or whether retrospective actions also should be necessary. Those favoring prospective action only argued that Congress intended to eliminate disincentives to self-testing, and that a requirement for retrospective relief deterred self-testing. Some commenters suggested that while corrective action should generally be limited to prospective relief, if the self-test has confirmed actual violations of law by the lender in connection with the lender's extension of credit to specific individuals, retrospective relief may be appropriate. Another commenter opposed any unilateral determination and payment of out-of-pocket and compensatory damages since such damages are only determinable and obligatory following a finding of a violation of the FHAct at the conclusion of a contested case.

With respect to whether remedial relief is required, the final rule does not require a lender who seeks to establish

[2] 59 FR 18266, 18270–18271 (April 15, 1994).

a self-testing privilege to provide remedial relief to individuals if the self-test does not discover evidence of likely discrimination against an actual applicant identified by the self-test. Accordingly, a pre-application matched-pair test which reveals that potential borrowers in minority areas were not offered or made aware of the full range of available loan products which borrowers in non-minority areas were offered would require prospective, but not remedial, relief because the self-test did not discover evidence of likely discrimination against an actual applicant identified by the self-test.

Were lenders required to undertake reviews of loan or application files to identify actual applicants who were victims in such instances, the result of such a review would not be privileged as a self-test under this subpart, since it involves information contained in or derived from a loan or application file. Such an outcome, therefore, could require a lender who undertook a self-test with the expectation of a privilege to be required to provide incriminating evidence.

It is also worth noting that the fact that a tester has an agreement with a lender that waives the tester's legal right to assert a violation does not eliminate the requirement for the lender to take corrective action although no remedial relief for the tester is required.

Lenders should note that while application of the privilege does not require a lender to take extra measures to identify and compensate individual victims of discrimination, such persons still may file a complaint with the Department or in court and may obtain the remedies available in such cases. A lender should consider an effort to identify such individuals as a good business practice to avoid or minimize potential liability.

The final rule does not require a lender to provide remedial relief to an actual applicant if the FHAct's two year statute of limitations[3] expired before the lender obtained the results of the self-test, or if the applicant is otherwise ineligible for such relief.

Changed circumstances might mitigate against giving an applicant certain types of relief. For example, a lender is not required to offer credit to an unlawfully denied applicant if the applicant no longer qualifies for credit due to a change in financial circumstances, although some other type of relief may be appropriate.

[3] 42 U.S.C. 3613(a).

Section 100.143(e)

Determination of appropriate corrective action is fact-based. Not every corrective measure listed in subsection (d) need be taken for each likely violation.

Section 100.143(f)

In response to commenters who fear incriminating themselves by taking corrective actions, the Department added a new subsection (f) which provides that taking corrective action by a lender is not an admission a violation occurred.

Section 100.144 Scope of Privilege

This section, which explains the nature of the qualified privilege afforded by the Act, states that the report or results of a self-test may not be obtained or used by an aggrieved person, complainant, department or agency in any: (1) Proceeding or civil action in which a violation of the FHAct is alleged, or (2) examination or investigation relating to compliance with the FHAct.

Several commenters wanted the privilege extended to encompass alleged violations of State and local fair housing laws. In addition, one commenter wanted the Department to clarify that if, in litigation involving the Real Estate Settlement Procedures Act (RESPA), a court orders a lender to perform a self-test, and to furnish the results of that test to the opposing party, those results may not later be used in a proceeding or investigation pursuant to the FHAct.

The Department did not adopt either suggestion. The Act states specifically that the self-testing privilege applies only in proceedings, civil actions, examinations, and investigations under the FHAct. Congress indicated no intent to have the privilege apply to actions under any other law, including State and local fair housing laws. The Department lacks the legal authority to extend the privilege's application beyond the FHAct. However, the Department will encourage States or localities, who have sought and received a determination that their law is substantially equivalent to the FHAct in the rights and remedies accorded, to provide a privilege equal to that provided by Congress and implemented in this rule. Such States and localities will be asked to provide a privilege through the application of their fair housing law, its regulations or binding rules, or they must agree to refer all complaints involving lending discrimination where the privilege has been invoked to the Department for processing.

The Department intends to propose rulemaking which would require States and localities seeking a substantial equivalency determination in the future to accord a self-testing privilege substantially equivalent to the Act and this subpart. Under such a rule, if the proceeding, civil action, examination or investigation is pursuant to the FHAct, or pursuant to a State or local law which has been deemed substantially equivalent to the FHAct, the privilege would apply. States and localities which do not have laws which are substantially equivalent to the FHAct may choose to adopt the privilege for use in proceedings under their laws.

As to the furnishing of information in a RESPA proceeding, the self-testing privilege applies only if the test is performed "in order to determine the level or effectiveness of compliance" with the FHAct. Since a court-ordered self-test under RESPA would be performed to ascertain compliance with RESPA, rather than the FHAct, the self-test would not come within the parameters of the privilege. Consequently, unless the court in the RESPA matter ordered that use of the RESPA-related self-testing information was limited to that proceeding, the information would not be privileged in a FHAct proceeding.

If, however, the RESPA court ordered the lender to produce information privileged under the Act, that information could not, by virtue of that order, be used in a subsequent FHAct case. The privilege would still apply because material privileged under this subpart may not be "used" in FHAct litigation, regardless of how it was "obtained," unless it was obtained by the lender's voluntary disclosure. Thus, the privilege covers material obtained involuntarily in collateral litigation, such as suits filed under RESPA, the Truth-in-Lending Act, or under State laws.

Another commenter suggested the final rule's use of the term "agency," with regard to those who may not obtain or use privileged information, must be construed to encompass State, municipal and other agencies. The Department agrees that "agency" would include a State or local agency that sought to obtain or use the privileged information in a proceeding or civil action alleging a violation of, or an examination or investigation relating to, the FHAct, or pursuant to a State or local law which provides for the privilege and has been deemed substantially equivalent to the FHAct, as discussed above. If, however, the State or local agency sought the information under the auspices of a law, other than

those discussed in the preceding sentence, including a State or local fair housing law, the privilege would not apply.

Section 100.145 Loss of Privilege

This section explains the circumstances that would cause documents to lose their privileged status. Generally, the self-test report or results are not privileged if the lender or person with lawful access to the report or results, or any other information otherwise privileged under this subpart, discloses or uses the report, results or such information as a defense to charges a lender violated the FHAct, or fails or is unable to produce self-test records or information needed to determine whether the privilege applies. This section has been revised to clarify that the privilege is lost if the lender discloses privileged information, such as the results of the self-test, but that the privilege is not lost if the creditor merely reveals or refers to the existence of the self-test. As discussed, future rulemaking will address record retention requirements.

The Department received a number of comments on this section of the proposed rule. Several commenters wanted the rule to specify that unauthorized disclosure would not forfeit the privilege. The Department did not adopt this suggestion. To do so would require a plaintiff to disprove a lender's assertions as to what its internal policies, practices, and chain-of-command are, which is an unreasonable burden. Moreover, the statute provides that the report or results of a self-test are not privileged if disclosed by a person with lawful access to the report or results. Accordingly, disclosures made by such persons are treated as disclosures made by the lender, without regard to whether the person was authorized to make the particular disclosure. Existing law adequately addresses the issues of scope of employment and agency.

Under the rule, a lender's production of records in response to a judicial order, or a disclosure in a case where the privilege does not apply, e.g., in a non-FHAct case, does not necessarily mean that the lender intended to give up the privilege voluntarily. Accordingly, if such disclosures are not voluntary, e.g., under a court order, they will not affect the privileged status of the documents.

One commenter stated that without a record retention requirement, lenders could conduct self-tests, find violations, and destroy all records without taking corrective action. According to this commenter, the rule should require any records, results, analyses, work product, or other material related to or created from self-tests to be maintained by the lender and/or its agents for at least 48 months if litigation or an enforcement action is pending against the lender. The Department's proposed rule included no provision on record retention. Since the issue was not addressed in the proposed rule, the Department has not included it in the final regulation. Instead, the Department in the near future will propose for comment a rule on record retention as it relates to self-testing information and the FHAct, with appropriate recognition of the ECOA requirements in this area. In the meantime, to assert the self-test privilege, lenders who are subject to ECOA must comply with the record retention requirements of the Board's rule for ECOA purposes.

Some commenters wanted the regulation changed to specify that release of part of a report only forfeits the privilege as to that part of the report released. However, the statute does not permit this result, since it states that release of "all, or any part of, the report or results" waives the privilege.

In the proposed rule, the Department solicited comments on whether the regulation should provide that lenders could voluntarily share privileged information with a Federal or State bank supervisory or law enforcement agency without the information losing its privileged status in litigation by private plaintiffs. The disclosures on which comments were solicited, however, would have caused the documents to lose their privileged status with respect to all supervisory and law enforcement agencies, e.g., HUD and DOJ, as well as the Board, the OCC, the FDIC, the OTS, the NCUA, and the FTC.

A substantial number of commenters supported the idea. According to these commenters, this would encourage lenders to seek guidance from regulators in developing appropriate corrective actions. The commenters stated further that the Department should draw no negative inferences from a lender's decision not to provide information voluntarily. Another group of commenters wanted mandatory sharing of self-test results with regulatory and enforcement agencies to ensure that the scope of the remedy is appropriate and that the remedy is entirely and effectively implemented. One commenter strongly opposed allowing lenders to voluntarily share privileged information with a supervisory agency while maintaining the privilege as to private litigants. Yet, another commenter argued that such a mechanism directly conflicts with the statute, which specifically provides that voluntary disclosure in such instances constitutes a waiver of the privilege. A number of other commenters similarly maintained there is nothing in the statute which suggests the Department could adopt a partial waiver of privilege. Furthermore, they maintained, the law of privileges generally does not recognize a right to waive a privilege (as with the attorney-client privilege) only as to some parties but not others. According to these commenters, several bank counsel expressed reluctance to rely on such a split privilege if based on the Department's rulemaking authority, absent specific legislative language, or a court ruling upholding such an interpretation of the privilege.

Other commenters supported limited disclosure to determine whether appropriate corrective action had been taken, but opposed any interpretation of the privilege that allowed blanket protection for all voluntary disclosures of "self-tests" to banking or enforcement agencies so as to immunize banks or enforcement agencies from disclosure in private litigation. Another commenter asserted the Act was enacted to provide creditors with the necessary protection to encourage them to self-test, not to promote cooperation between creditors and their regulators.

The Department concluded that a mechanism that would permit lenders to provide privileged information to the independent financial regulatory agencies, and simultaneously to enforcement agencies, e.g., HUD, DOJ, while still maintaining a privilege as to private litigants, is not allowed by the statute. Such a mechanism might help lenders secure certainty that the privilege was properly asserted. However, some commenters were concerned that allowing disclosure to the regulatory agencies with simultaneous disclosure to enforcement agencies might result in enforcement action if the self-test were not within the statutory privilege, and that this would be a deterrent to self-testing. The process would also raise resource issues concerning the capacity of the regulatory and enforcement agencies to issue advisory opinions. In any case, after careful study, the Department determined that in addition to the policy consequences, this step is not allowed by the statutory language.

Section 100.146 Limited Use of Privileged Information

This section provides for a limited use of privileged documents that will not be treated as a voluntary disclosure affecting the privileged status of the

documents under § 100.144. The report or results of a privileged self-test may be obtained and used solely for the purpose of determining a penalty or remedy after a violation of the Act has been formally adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission is made. Information disclosed under this section remains otherwise privileged under this subpart.

Section 100.147 Adjudication

The Act provides that the privilege may be challenged in any court or administrative law proceeding with appropriate jurisdiction. The Department expects such challenges to be resolved according to the laws and procedures used for other types of privilege claims, such as attorney-client or attorney work product.

One commenter recommended the privilege remain in effect during the period in which an adjudicator is determining whether the privilege applies. The Department agrees. As with other privileges, a lender's claim that information is privileged protects that information from disclosure during the time the adjudicator is determining whether the lender is entitled to the privilege. However, the adjudicator may order the lender to disclose the information so that the adjudicator can determine whether the privilege was invoked properly. The adjudicator may require in camera proceedings, the filing of documents and pleadings under seal, and the production of documents to other parties under a protective order limiting the purpose for which they may be used. If the adjudicator orders disclosure for the limited purpose of determining whether the privilege was invoked properly, the information is protected from use in any proceeding, civil action, examination or investigation until the adjudicator determines the privilege does not apply.

One commenter urged that since assertion of, and challenges to, the privilege will result in more lengthy and expensive litigation, the Department should include a provision for attorney's fees and costs for private plaintiffs who successfully challenge the assertion of the privilege. If a judge finds, during the discovery phase of a proceeding, that a lender improperly invoked the privilege, the judge may order appropriate sanctions, including those provided by Rule 37 of the Federal Rules of Civil Procedure or by 24 CFR 180.540. In appropriate circumstances, this may include attorneys' fees and costs. Moreover, the FHAct and its implementing regulations specifically provide for the award of attorney's fees to the prevailing party in any court or administrative proceeding.[4] A party is entitled to reasonable attorney's fees and costs to the extent provided under the Equal Access to Justice Act.[5] Any award of fees would be made in accordance with those provisions.

Section 100.148 Effective Date

Lenders and others may invoke the self-testing privilege regarding self-tests undertaken prior to the effective date of the final rule, but not if either a formal complaint has been filed involving matters covered by the self-test, or if the privilege has been lost pursuant to § 100.145. A complaint filed in a court with jurisdiction over the FHAct is a "formal complaint." Moreover, as the proposed rule preamble noted, a formal complaint alleging a FHAct violation includes one filed with the Department or a substantially equivalent agency (pursuant to subsection 810(f) of the FHAct, 42 U.S.C. 3610(f)). Any other interpretation would conflict with Congress' intent in the Fair Housing Amendments Act of 1988 to establish an administrative process that is an equally effective alternative to the filing of a complaint in a Federal court.

Technical Correction to 24 CFR Part 103

A final rule published October 4, 1996 (61 FR 52216) consolidated HUD's hearing procedures for nondiscrimination and equal opportunity matters in a new 24 CFR part 180. In that rulemaking, conforming changes were made throughout 24 CFR to replace references to parts eliminated as a result of the consolidation with references to new part 180. Although part 103 was included in the list of parts in which all references to part 104 were to be replaced by 180, paragraph (b) of § 103.215 contained two references to 104, and only the first reference was changed to 180. The reference in this paragraph to § 104.590 is corrected to read § 180.545. Similarly, references to part 104 are corrected to read part 180 in §§ 103.1(c), 13.230(a)(1), 103.405(b)(2) and (3).

IV. Findings and Certifications

Regulatory Planning and Review

This rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the rule resulting from this review area available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(1) of the Department's regulations, the policies and procedures contained in this rule do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities, because the rule only proposes to implement a statutory provision that allows an evidentiary privilege for the report and results of self-tests of FHAct compliance undertaken by lenders.

Executive Order 13145, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk for children.

List of Subjects

24 CFR Part 100

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties,

[4] *See* 42 U.S.C. 3612(p), 3613(c)(2), and 3614(d)(2); 24 CFR 180.705.

[5] 5 U.S.C. 504.

Reporting and recordkeeping requirements.

Accordingly, parts 100 and 103 of title 24 of the Code of Federal Regulations are amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3620.

2. In subpart C, new sections 100.140, 100.141, 100.142, 100.143, 100.144, 100.145, 100.146, 100.147, and 100.148 are added to read as follows:

§ 100.140 General rules.

(a) *Voluntary self-testing and correction.* The report or results of a self-test a lender voluntarily conducts or authorizes are privileged as provided in this subpart if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. Data collection required by law or any governmental authority (federal, state, or local) is not voluntary.

(b) *Other privileges.* This subpart does not abrogate any evidentiary privilege otherwise provided by law.

§ 100.141 Definitions.

As used in this subpart:

Lender means a person who engages in a residential real estate-related lending transaction.

Residential real estate-related lending transaction means the making of a loan:

(1) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(2) Secured by residential real estate.

Self-test means any program, practice or study a lender voluntarily conducts or authorizes which is designed and used specifically to determine the extent or effectiveness of compliance with the Fair Housing Act. The self-test must create data or factual information that is not available and cannot be derived from loan files, application files, or other residential real estate-related lending transaction records. Self-testing includes, but is not limited to, using fictitious credit applicants (testers) or conducting surveys of applicants or customers, nor is it limited to the pre-application stage of loan processing.

§ 100.142 Types of information.

(a) The privilege under this subpart covers:

(1) The report or results of the self-test;

(2) Data or factual information created by the self-test;

(3) Workpapers, draft documents and final documents;

(4) Analyses, opinions, and conclusions if they directly result from the self-test report or results.

(b) The privilege does not cover:

(1) Information about whether a lender conducted a self-test, the methodology used or scope of the self-test, the time period covered by the self-test or the dates it was conducted;

(2) Loan files and application files, or other residential real estate-related lending transaction records (e.g., property appraisal reports, loan committee meeting minutes or other documents reflecting the basis for a decision to approve or deny a loan application, loan policies or procedures, underwriting standards, compensation records) and information or data derived from such files and records, even if such data has been aggregated, summarized or reorganized to facilitate analysis.

§ 100.143 Appropriate corrective action.

(a) The report or results of a self-test are privileged as provided in this subpart if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. Appropriate corrective action is required when a self-test shows it is more likely than not that a violation occurred even though no violation was adjudicated formally.

(b) A lender must take action reasonably likely to remedy the cause and effect of the likely violation and must:

(1) Identify the policies or practices that are the likely cause of the violation, such as inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes; and

(2) Assess the extent and scope of any likely violation, by determining which areas of operation are likely to be affected by those policies and practices, such as stages of the loan application process, types of loans, or the particular branch where the likely violation has occurred. Generally, the scope of the self-test governs the scope of the appropriate corrective action.

(c) Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this subpart:

(1) A lender is not required to provide remedial relief to a tester in a self-test;

(2) A lender is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated;

(3) A lender is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the lender obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(d) Depending on the facts involved, appropriate corrective action may include, but is not limited to, one or more of the following:

(1) If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the applications were improperly denied; compensating such persons for any damages, both out-of-pocket and compensatory;

(2) Correcting any institutional policies or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;

(3) Identifying, and then training and/or disciplining the employees involved;

(4) Developing outreach programs, marketing strategies, or loan products to serve more effectively the segments of the lender's market that may have been affected by the likely violation; and

(5) Improving audit and oversight systems to avoid a recurrence of the likely violations.

(e) Determination of appropriate corrective action is fact-based. Not every corrective measure listed in paragraph (d) of this section need be taken for each likely violation.

(f) Taking appropriate corrective action is not an admission by a lender that a violation occurred.

§ 100.144 Scope of privilege.

The report or results of a self-test may not be obtained or used by an aggrieved person, complainant, department or agency in any:

(a) Proceeding or civil action in which a violation of the Fair Housing Act is alleged; or

(b) Examination or investigation relating to compliance with the Fair Housing Act.

§ 100.145 Loss of privilege.

(a) The self-test report or results are not privileged under this subpart if the lender or person with lawful access to the report or results:

(1) Voluntarily discloses any part of the report or results or any other information privileged under this subpart to any aggrieved person, complainant, department, agency, or to the public; or

(2) Discloses the report or results or any other information privileged under this subpart as a defense to charges a lender violated the Fair Housing Act; or

(3) Fails or is unable to produce self-test records or information needed to determine whether the privilege applies.

(b) Disclosures or other actions undertaken to carry out appropriate

corrective action do not cause the lender to lose the privilege.

§ 100.146 Limited use of privileged information.

Notwithstanding § 100.145, the self-test report or results may be obtained and used by an aggrieved person, applicant, department or agency solely to determine a penalty or remedy after the violation of the Fair Housing Act has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission is made. Information disclosed under this section remains otherwise privileged under this subpart.

§ 100.147 Adjudication.

An aggrieved person, complainant, department or agency that challenges a privilege asserted under § 100.144 may seek a determination of the existence and application of that privilege in:

(a) A court of competent jurisdiction; or

(b) An administrative law proceeding with appropriate jurisdiction.

§ 100.148 Effective date.

The privilege under this subpart applies to self-tests conducted both before and after January 30, 1998, except that a self-test conducted before January 30, 1998 is not privileged:

(a) If there was a court action or administrative proceeding before January 30, 1998, including the filing of a complaint alleging a violation of the Fair Housing Act with the Department or a substantially equivalent state or local agency; or

(b) If any part of the report or results were disclosed before January 30, 1998 to any aggrieved person, complainant, department or agency, or to the general public.

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

3. The authority citation for part 103 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

4. In the list below, for each section indicated in the left column, remove the reference indicated in the middle column from wherever it appears in the section, and add the reference indicated in the right column:

Section	Remove	Add
103.1(c)	Part 104	Part 180 of this chapter.
103.215(b)	104.590	180.545.
103.230(a)(1)	Part 104	Part 180 of this chapter.
103.405(b)(2)	104.410(b)	24 CFR 180.410(b).
103.405(b)(3)	104.410(a)	180.410(a).

Dated: December 8, 1997.

Susan M. Forward,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 97–32657 Filed 12–17–97; 8:45 am]

BILLING CODE 4210–28–P

federal register

Thursday
December 18, 1997

Part IV

Department of Education

Notice Inviting Applications for New Awards for Fiscal Year 1998; Notice

DEPARTMENT OF EDUCATION

Notice Inviting Applications for New Awards for Fiscal Year 1998

AGENCY: Department of Education.

SUMMARY: On June 4, 1997, the President signed into law Pub. L. 105–17, the Individuals with Disabilities Education Act Amendments, amending the Individual with Disabilities Education Act (IDEA).

This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1998 competitions under two programs authorized by IDEA, as amended. The priorities under these programs are based on previously published priorities for which public comment was sought and received. Only changes required by IDEA were made to priorities previously published. For example, IDEA no longer refers to "youth with disabilities". "Youth with disabilities" is no longer distinguished from "children with disabilities" under IDEA; therefore, all references to "youth with disabilities" have been deleted from the priorities. Also, the types of entities eligible to apply for grants under these programs have been changed where necessary to reflect changes in IDEA.

This notice supports the National Education Goals by improving understanding of how to enable children with disabilities to reach higher levels of academic achievement.

Note: The Department of Education is not bound by any estimates in this notice.

Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities [CFDA No. 84.324]

Purpose of Program: To produce, and advance the use of, knowledge to: (1) Improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities; and (2) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 76, 77, 80, 81, 82, 85, and 86; and (b) The selection criteria included in regulations in 34 CFR 324.31 for priority 2, and 34 CFR 324.32 for priority 1.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priorities: Under section 672 of IDEA and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only those applications that meet these absolute priorities:

Absolute Priority 1—Outreach Projects for Children With Disabilities (84.324R)

This priority supports projects that assist educational and other agencies in implementing proven models, components of models, and other exemplary practices to improve services for infants, toddlers, children with disabilities, and individuals with disabilities transitioned into postsecondary settings. The models, components of models, or exemplary practices selected for outreach may include models developed for pre-service and in-service personnel preparation, and do not need to have been developed through projects funded under IDEA, or by the applicant. To increase the impact of outreach activities, projects are encouraged to select implementation sites in multiple regions or States.

An outreach project must—

(a) Disseminate information about and assist in replicating proven models, components of models, or exemplary practices;

(b) Coordinate dissemination and replication activities as appropriate with dissemination projects, technical assistance providers, consumer and advocacy organizations, State and local educational agencies, and the lead agencies for Part C of IDEA;

(c) Ensure interagency coordination if multiple agencies are involved in the provision of services;

(d) Ensure that the models, components of models, or exemplary practices are consistent with Parts B and C of IDEA, are state-of-the-art, match the needs of the proposed sites, and have evaluation data supporting their effectiveness;

(e) Include public awareness, product development and dissemination, training, and technical assistance activities and written plans for working with sites;

(f) Describe criteria for selecting implementation sites where outreach activities will be conducted; and the expected costs, needed personnel, staff training, equipment, and sequence of implementation activities;

(g) Evaluate the outreach activities to determine their effectiveness. The evaluation must include the types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of children and families served at each outreach site, child and family progress and satisfaction, and changes in the model or practices made by sites;

(h) Make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act. (See section 606 of IDEA); and

(i) Prepare products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities. (See section 661(f)(2)(B) of IDEA).

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects. (See section 661(f)(1)(A) of IDEA).

Projects must budget for two trips annually to Washington, DC, for: (1) A two-day project directors' meeting; and (2) a meeting to collaborate with the Federal project officer and other projects funded under this priority, to share information and discuss project implementation issues.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $150,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register.**

Page Limits

The applicant must limit Part III of its application to the equivalent of no more than 60 double-spaced 8½ x 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Absolute Priority 2—Research Institute to Accelerate Learning for Children With Disabilities With Curricular and Instructional Interventions in Kindergarten Through Grade Three (84.324V)

Background

The consequences of failing to learn are serious. Lack of learning in one domain reduces an individual's capacity

to benefit from other educational experiences. Failure in education establishes a self-perpetuating cycle and negatively affects the individual's disposition toward lifelong learning, employment, and contribution to society. Most children with disabilities face challenges to learning. These challenges are amplified as calls are made for higher standards to be achieved by all students, including children with disabilities, and as more children with disabilities are educated in general education classrooms.

Evidence from the National Longitudinal Transition Study indicates that many children with disabilities are not learning subject matter content. An urgency exists to develop powerful curricular and instructional interventions that maximize rates of development, promote generalized learning, and reduce discrepancies between their performance and that of their peers.

Intervention research has demonstrated that children with disabilities possess the potential to learn, participate, and contribute in school, home, community, and workplace. Research on instructional interventions for children with disabilities has been the hallmark of special education research. For example, research on direct instruction, behavioral management interventions, learning strategies, peer mediated learning, and reciprocal teaching has led to improvements in professional practice.

Yet, single solution interventions are insufficient for teaching children with disabilities complex subject matter content. In many instances, these interventions are content free. Moreover, little empirical evidence is available on the context of the classroom for supporting the implementation of these solutions.

Priority

The Secretary establishes an absolute priority for the purpose of establishing a research institute to study curricular and instructional classroom based interventions in kindergarten through grade three that accelerate subject matter learning for children with disabilities and promote sustained use of these interventions by practitioners.

The Institute must examine—

(a) The effectiveness of the various interventions for children with disabilities; and

(b) The classroom context that supports the implementation of the interventions that produce and sustain positive learning outcomes for children with disabilities, including such factors as classroom groups; classroom and cross-classroom management strategies; curriculum design principles; classroom settings; instructional materials; amount of time on task; integration into the curriculum; and teacher actions, skills, and attitudes.

The research may include, for example, studying classroom based exemplars and models, designing and implementing interventions, and collecting student and teacher data from exemplars, using a rich array of research methods to reach the intended goals of this priority and as articulated by the proposed research hypotheses.

The Institute must—

(a) Design and conduct a strategic program of research that focuses on helping students with disabilities learn subject matter content in critical areas such as reading and math, and builds upon the existing research knowledge for teaching children with disabilities;

(b) Design and conduct a strategic program of research across multiple sites to represent organizational and demographic diversity;

(c) Collect, analyze, and communicate student outcome data and supporting context data, and multiple outcome data for teachers, parents, and administrators, as appropriate;

(d) Collaborate with other research institutes supported under the Individuals with Disabilities Education Act and experts and researchers in related subject matter and methodological fields, as appropriate for the program of research, to design and conduct the strategic program of research;

(e) Collaborate with communication specialists and professional and advocacy organizations to ensure that findings are prepared in formats that are useable for specific audiences such as teachers, administrators, and other service providers;

(f) Develop linkages with Education Department technical assistance providers to communicate research findings and distribute products;

(g) Provide training and research opportunities for a limited number of graduate students, including students who are from traditionally underrepresented groups;

(h) Meet with the Office of Special Education Programs (OSEP) project officer in the first four months of the project to review the program of research and communication approaches;

(i) Make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act. (See section 606 of IDEA); and

(j) Prepare the research and evaluation findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities. (See section 661(f)(2)(B) of IDEA).

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects. (See section 661(f)(1)(A) of IDEA).

The project must budget for two trips annually to Washington, D.C. for: (1) a two-day Research Project Directors' meeting; and (2) another meeting to meet and collaborate with the OSEP project officer.

Under this priority, The Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the Institute for the fourth and fifth years of the project period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit to the Institute are to be performed during the last half of the Institute's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the Institute's budget for year two. These costs are estimated to be approximately $4,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Institute; and

(c) The degree to which the Institute's research design and methodology demonstrates the potential for advancing significant new knowledge.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $700,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The applicant must limit Part III of its application to the equivalent of no more than 60 double-spaced 8½ x 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Program Authority: Section 672 of IDEA.

Special Education—Technology and Media Services for Individuals With Disabilities [CFDA No. 84.327]

Purpose of Program: The purpose of this program is to promote the development, demonstration, and utilization of technology and to support educational media activities designed to be of educational value to children with disabilities. This program also provides support for some captioning, video description, and cultural activities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86; and (b) The selection criteria included in regulations for these programs in 34 CFR 332.32.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under section 687 and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary funds under these competitions only those applications that meet these absolute priorities:

Absolute Priority 1 —Closed-Captioned Daytime Television Programs (84.327S)

This priority would continue and expand closed-captioning of a variety of daytime television programs broadcast nationally for persons who are deaf or hard of hearing during this segment of the day that has proven to be the most difficult in terms of private sector support.

To be considered for funding under this priority, a project must—

(a) Include the criteria used to determine which programs are proposed for captioning. These criteria must take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational and cultural experiences of individuals with hearing impairments;

(b) Determine the total number of hours and the projected cost per hour for each program to be captioned;

(c) For each proposed program to be captioned, identify the source of private or other public support and the projected dollar amount of that support;

(d) Identify the methods of captioning to be used for each hour and the projected cost per hour for each method used;

(e) Provide and maintain back-up systems that would ensure successful, timely captioning service;

(f) Demonstrate the willingness of major national television networks and cable companies to permit captioning of their programs; and

(g) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects. (See section 661(f)(1)(A) of IDEA).

All projects funded under this priority must make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act. (See section 606 of IDEA).

A project's budget must include funds to attend a two-day Project Directors' meeting to be held in Washington, D.C. each year of the project.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $350,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The applicant must limit Part III of its application to the equivalent of no more than 40 double-spaced 8½ x 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Absolute Priority 2—Cultural Experiences for Deaf or Hard of Hearing Individuals (84.327T)

Background

In the past, projects under this priority have supported a variety of activities, including: theatrical experiences in which cast members included deaf, hard-of hearing, and hearing performers; theater and set design, directing, dance, and storytelling; cultural experiences focusing on Native American art and culture; hands-on theater experience involving persons from minority groups; and a touring "instant theater'.

Priority: This priority supports a variety of cultural activities designed to enrich the lives of deaf or hard-of hearing individuals, including children and adults. These activities must use an approach that integrates children and adults who are deaf or hard of hearing with those who can hear while conducting cultural experiences that will increase public awareness and understanding of deafness and other hearing impairments, and of the artistic and intellectual achievements of deaf and hard of hearing individuals.

A grantee may not use funds under this priority for passive activities such as viewing a play or video, or passively watching a storyteller or artist at work.

To be considered for funding under this priority, a project must—

(a) Use an integrated approach that mixes children and adults who are deaf or hard of hearing, with those who are hearing in carrying out project activities; and

(b) Develop and implement strategies that will increase public awareness and understanding of deafness and other hearing impairments and of the artistic and intellectual achievements of deaf and hard of hearing individuals, including children and adults. Outreach activities such as promoting the project to schools, community organizations, news media, and relevant national organizations are encouraged.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project. (See section 661(f)(1)(A) of IDEA).

All projects funded under this priority must make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act. (See section 606 of IDEA).

A project's budget must include funds to attend a two-day Project Directors'

meeting to be held in Washington, D.C. each year of the project.

Invitational Priority

Within this absolute priority, the Secretary is particularly interested in applications that meet the following invitational priority. However, pursuant to 34 CFR 75.105(c)(i), an application that meets this invitational priority does not receive competitive or absolute preference over applications that do not meet this priority:

Projects that include people from a variety of cultural, racial, or ethnic backgrounds.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $110,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The applicant must limit Part III of its application to the equivalent of no more than 40 double-spaced 8½ x 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Absolute Priority 3—Video Description Projects (84.327C)

This priority supports the description of national television programming in order to make television more accessible to persons with visual impairments. The intent of this priority is to provide access to diverse programming in order to enhance shared educational, social, and cultural experiences of persons who are visually impaired. The range of programs proposed for description may include, but is not limited to, children's programs, prime time programming, movies, and specials.

To be considered for funding under this priority, a project must—

(a) In selecting programs to be video described, include criteria that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experience of individuals with visual impairments;

(b) Determine the total number of hours and the projected cost per hour for each program to be described;

(c) For each program to be described, identify the source of private or other public support, if any, and the projected dollar amount of that support;

(d) Identify the methods to be used in the provision of described video;

(e) Demonstrate the willingness of major national television networks and cable companies to permit video description of their programs; and

(f) Implement procedures for monitoring the extent to which an accurate description is provided and use this information to make refinements in the video description operations.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects. (See section 661(f)(1)(A) of IDEA).

All projects funded under this priority must make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act. (See section 606 of IDEA).

A project's budget must include funds to attend a two-day Project Directors' meeting to be held in Washington, D.C. each year of the project.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $350,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The applicant must limit Part III of its application to the equivalent of no more than 40 double-spaced 8½ x 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Program Authority: Section 687 of IDEA.

Page Limit: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of the number of pages listed under each priority, using the following standards: (1) A "page" is 8½" x 11" (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III, If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

For Applications and General Information Contact

Requests for applications and general information should be addressed to the Grants and Contracts Services Team, 600 Independence Avenue, S.W., room 3317, Switzer Building, Washington, D.C. 20202–2641. The preferred method for requesting information is to FAX your request to: (202) 205–8717. Telephone: (202) 260–9182.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for those program.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 1998

CFDA number and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year)*	Page limit**	Estimated number of awards
84.324R Outreach Projects for Infants, Toddlers, and Children with Disabilities	12/29/97	2/23/98	4/27/98	$150,000	40	21
84.324V Research Institute to Accelerate Learning for Children with Disabilities with Curricular and Instructional Interventions in Kindergarten through Grade Three	12/29/97	2/23/98	4/27/98	700,000	60	1
84.327S Closed-Captioned Daytime Television Programs	12/29/97	2/23/98	4/27/98	350,000	40	4
84.327T Cultural Experiences for Deaf or Hard of Hearing Individuals	12/29/97	2/23/98	4/27/98	110,000	40	5
84.327C Video Description Projects	12/29/97	2/23/98	4/27/98	350,000	40	2

*The Department rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months.

**Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the "Page Limit" section of this notice for the specific requirements. The Secretary rejects and does not consider an application that does not adhere to this requirement.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register.**

Dated: December 12, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–33007 Filed 12–17–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
December 18, 1997

Part V

Department of the Interior

Bureau of Reclamation

43 CFR Part 418

Adjustments to 1988 Operating Criteria and Procedures (OCAP) for the Newlands Irrigation Project in Nevada; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 418

RIN 1006–AA37

Adjustments to 1988 Operating Criteria and Procedures (OCAP) for the Newlands Irrigation Project in Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rulemaking.

SUMMARY: This rule adjusts the 1988 Operating Criteria and Procedures (OCAP) for the Newlands Irrigation Project (Project). Adjustments are made to the Project efficiency requirements, maximum allowable diversion calculations, and Lahontan Reservoir storage targets in the 1988 OCAP to reflect current irrigated acreage, court decrees which have lowered the water duty applicable to certain Project lands, and other factors affecting water demand. To better manage diversions from the Truckee River to the Project, the rule provides flexibility to adjust the water supply in response to Project demand, flexibility in using snowpack and runoff forecasts, and extends the time frame for storing water in Truckee River reservoirs in lieu of diversions to the Project from the Truckee River.

DATES: Effective December 16, 1997.

FOR FURTHER INFORMATION CONTACT: Dave Overvold, Acting Area Manager, Lahontan Area Office, Bureau of Reclamation, P.O. Box 640, Carson City, NV 89702, telephone (702) 882–3436; or Jeffrey Zippin, Team Leader, Truckee-Carson Coordination Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (702) 887–0640. Copies of Adjusted OCAP regulations may be obtained from either office.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 1988, the Secretary of the Interior (Secretary) implemented new Operating Criteria and Procedures (OCAP) governing management of water diverted to and used within the Newlands Project. These 1988 OCAP were approved by the U.S. District Court for the District of Nevada, subject to a hearing on objections raised by various parties. In 1990, Congress directed in the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Title II of Pub. L. 101–618, Section 209 (j) (104 Stat. 3294) that the 1988 OCAP remain in effect at least until December 31, 1997, unless changed by the Secretary in his sole discretion. Prior to the proposed rule, the 1988 OCAP had not been published in the **Federal Register.**

These 1988 OCAP were designed to increase the reliance of the Project on water from the Carson River, minimize the use of water from the Truckee River as a supplemental supply, increase efficiency of water use in the Project, and establish a regulatory scheme to manage deliveries to Project water users including incentives for efficiency and penalties for inefficiency.

An environmental impact statement (EIS) was prepared for the 1988 OCAP. That EIS served as the basis for reviewing the environmental effects of these adjustments. The Department of the Interior (DOI) has prepared an environmental assessment on the adjustments which tiers off of the analysis in that EIS. Copies of the environmental assessment may be obtained from the Truckee-Carson Coordination Office.

The Department is making a number of revisions to the 1988 OCAP to adjust for changes in use of water rights, to increase flexibility, and to clarify the language of the OCAP based on experience gained in administering the 1988 OCAP through nine irrigation seasons. These revisions are within the basic framework of the 1988 OCAP and its environmental documentation and are being published for codification.

The need for additional changes to the 1988 OCAP beyond those in this rule may be appropriate as well, but consideration of such changes is expected to require further examination including the preparation of an EIS.

Description of the 1988 OCAP

The 1988 OCAP provisions were preceded by a preamble which is equally applicable to the Adjusted OCAP. The 1988 OCAP preamble is reproduced with minor grammatical editing. The following *1988 OCAP Preamble* is taken from the 1988 OCAP:

1988 OCAP Preamble

The development of Operating Criteria and Procedures for the Newlands Project in western Nevada was initiated in the late 1960's and has proven to be a divisive, contentious issue for the people in Nevada who rely on the waters of the Carson and Truckee Rivers. Competition for the water in the Project's desert environment is intense and growing. The conflicts among uses are clearly apparent in the effects forecast on various areas where the DOI has program responsibilities. The issue is complicated further by the requirements of the Endangered Species Act and the listing of the Cui-ui, a fish inhabiting the lower Truckee River and Pyramid Lake.

In order to proceed effectively and fairly, the DOI had to have guiding principles for the OCAP. These are to:

—Provide water deliveries sufficient to meet the water right entitlements of Project water users;
—Meet the requirements of the Endangered Species Act as they specifically relate to the Truckee River/Pyramid Lake Cui-ui;
—Fulfill Federal trust responsibilities to the Pyramid Lake Paiute Indian Tribe and the Fallon Paiute-Shoshone Tribes;
—Conserve wetland and wildlife values in both the Truckee and Carson River basins;
—Give cognizance to the State laws affecting water rights and uses;
—Provide for stable economies and improve quality of life in the region to the extent it is influenced by the DOI-managed resources and facilities;
—Allow local control and initiative to the maximum extent possible; and
—Provide stability and predictability through straightforward operation based on actual versus forecast conditions.

The DOI believes that the proposed OCAP best satisfy these principles within the limits of the Department's legal authority. Each of the competing uses for the water is critical in its own right. They are all essentially separable for decision making purposes even though they clearly impact upon each other since the available supply is far less than the demand.

The OCAP deal with the operation and use of Federal facilities related to the Newlands Project. Therefore, their primary responsibility is supplying the water rights to the Project water users. To the extent this can be done effectively and efficiently, then the remaining water supply is available for other competing uses. The secondary impacts of the OCAP must, however, act to support or encourage results which benefit the other competing uses.

The basic structure of the OCAP relies on both rules and incentives which we believe will ensure reasonable, efficient water management through reliance on local control and initiatives. The direct consequences of the OCAP will be delivery of full water entitlements within the Newlands Project, protection of endangered species, fulfillment of trust responsibilities, and encouragement for the protection of other environmental and quality of life values.

Adjusted OCAP Proposed Changes

The Notice of Proposed Rulemaking for the Adjusted OCAP, published in the **Federal Register**, 61 FR 64832, December 9, 1996, proposed a number of changes to the 1988 OCAP based, in part, on a comparison of the assumptions in the 1988 OCAP about the size of the Project and patterns of water use with Project size in 1995 and new patterns of water use. Specifically, the changes are:

- *Acreage:* The anticipated increase in acreage has not materialized; actual irrigated acreage in 1995 was 59,075 acres. This amount reflects efforts of the Bureau of Reclamation (BOR) to limit irrigation to water-righted lands and that, on average, irrigators have not

increased the acreage of lands in production. In the Notice of Proposed Rulemaking for Adjusted OCAP, the 1995 preliminary estimate of irrigated acreage for that year was shown in the text as 59,023. However, modeling was based on 59,075 irrigated acres. In this final rule, both the text, tables, and modeling consistently use 59,075 irrigated acres for 1995. When this rule becomes effective, the provisions of section 418.22 will be used to adjust Lahontan Reservoir storage targets to reflect the current water demand.

• *Average Water Duty:* The average water duty for the project has been reduced as a result of the so-called "bench/bottom" litigation (1995 Order of Judge McKibben, in *U.S.* v. *Alpine,* United States District Court for the District of Nevada No. D–185). This bench/bottom court ruling approved a change in the designation of some Project lands from bench lands to bottom lands. Bench lands have a maximum water duty of 4.5 acre-feet/acre; bottom lands have a maximum water duty of 3.5 acre-feet/acre. (The Project includes pasture lands with a duty of 1.5 acre-feet/acre.) The bench/bottom decision reclassified approximately 9,000 acres of irrigated lands in the project, reducing Project water entitlements by approximately 9,000 acre-feet. The change in demand is expected to be approximately 5,000 acre-feet of water when measured at the farm headgates. This is based on historic use of about 90 percent of the headgate entitlement at 4.5 acre-feet/acre versus projected use of 100 percent of the 3.5 acre-feet/acre entitlement.

• *Average Use of Entitlement:* Actual water use as a percentage of entitlement is usually less than 100 percent, historically about 90 percent. The reduced percentage of entitlement use results from on-farm practices and efficiencies, fallowing of lands, and varying weather conditions. The current projected percent use of entitlement is 93.4 percent. This is based on irrigation use of 91.8 percent and 95 percent for Carson and Truckee Divisions, respectively, and 100 percent water use for pasture lands and wetlands. Several factors will affect use of entitlement in the future:

—Irrigators whose lands were reclassified from bench lands with a water duty of 4.5 acre-feet per acre to bottom lands with a 3.5 acre-feet per acre duty may use more than 90 percent of their entitlement.

—The Fallon Paiute-Shoshone Tribes reservation is within the Project and the Tribes have a cap on the water they receive. The Tribes are expected to use their full water entitlement under the cap every irrigation season.

—The Naval Air Station Fallon, as part of an agreement with the U.S. Fish and Wildlife Service (FWS), will use less of its irrigation water and is also developing less water intensive cropping strategies, decreasing percent use of entitlement.

—The FWS and the State of Nevada are acquiring water rights within the Newlands Project for restoration of wetlands at Stillwater National Wildlife Refuge. The FWS has been transferring the consumptive use portion, 2.99 acre-feet per acre, of the water rights they acquire. This changes their effective entitlement to 2.99 acre-feet per acre of which they are expected to take 100 percent, thus increasing percent use of entitlement.

These and other changes in water use will cause the percent use of entitlement to vary from year to year. The percent use will be determined based on actual experience and will be used in calculating the expected irrigation diversion for each irrigation season.

• *Efficiency:* Within the same size project, more irrigated acreage results in greater efficiency; with less irrigated acreage lower efficiencies are expected. Project irrigated acreage never reached the level anticipated in the 1988 OCAP but the associated target efficiencies have remained in effect. As water rights are acquired for Stillwater Wildlife Refuge (Pub. L. 101–618, section 206), the effect on Project efficiencies may vary at first, but as more water is acquired and moves to the Refuge, efficiencies should improve stemming from the concentration of deliveries through the system.

This rule addresses only those adjustments to the 1988 OCAP in the following areas:

1. Target Efficiency Adjustments (§§ 418.12 (c)(3), 418.13 (a), and Newlands Project Water Budget table): The 1988 OCAP envisioned and allowed for increasing irrigated acreage, assuming the Project would grow to over 64,850 irrigated acres by 1992 compared to a base of approximately 60,900 acres being irrigated in 1987. The annual calculations of the Maximum Allowable Diversion (MAD) to the Project and efficiency requirements currently in use are based on a Project consisting of 64,850 or more irrigated acres and a commensurate target efficiency of 68.4 percent. However, the acreage increase has not materialized and the 1995 irrigated acreage was approximately 59,075 acres. The Project conveyance efficiency that can be achieved, which is the relationship between the total annual diversion to the Project and total delivery to farm headgates, is directly related to irrigated acreage; efficiency generally decreases as the irrigated acreage in the Project decreases. The 1988 OCAP does not accurately reflect the current acreage, and as a consequence, the higher efficiency requirement remains in effect. This may decrease the water available to the Project as calculated in the MAD and increases the likelihood of penalties for inefficiency.

In response to less irrigated acreage and varying water demand, the DOI will calculate the annual Project water budget for each irrigation season in accordance with the elements in the Newlands Project Water Budget table of the Adjusted OCAP. Each year the MAD will be based on the projected irrigated acreage for that year and applicable water duties. The other elements in Newlands Project Water Budget, including appropriate Project efficiency at 100 percent use, would be calculated to determine the MAD and Project efficiencies for each year. Only the first 10 lines of the water budget would be calculated before the irrigation season to determine the MAD, then the remaining lines would be calculated after the irrigation season to determine target efficiency. Through this approach, the Project water budget can accommodate anticipated changes in Project characteristics.

Using the 1995 Actual Acres column from the Newlands Project Water Budget, Maximum Headgate Entitlement (line 2) is the product of Irrigated Acres (line 1) and the average water duty (calculated annually). Variable distribution system losses of Canals/Laterals Evaporation (line 3), Canals/Laterals Seepage (line 5), and Operational Losses (line 7) are extrapolated to determine the Total Losses (line 8) for a given Project size. The combined Maximum Headgate Entitlement (line 2) and the Total Losses (line 8) determines the MAD (line 9), and the relationship of Maximum Headgate Entitlement (line 2) to Total Losses (line 8) estimates Project Efficiencies at 100 percent water use (line 10). Actual use of entitlement, based on historic patterns, is less than 100 percent (not all irrigators take all of their entitlement each year), so the Maximum Headgate Entitlement is adjusted by the projected percent use of entitlement (calculated annually) to yield Expected Headgate Entitlement Unused (line 11) and the Diversion Reduction for Unused Water (line 12). The Diversion Reduction for Unused Water (line 12) is subtracted from the MAD (line 9) to determine Expected

Irrigation Diversions (line 13). Finally, the adjusted Project demand (calculated from line 2 minus line 11) is divided by the Expected Irrigation Diversions (line 13) to determine the Expected Efficiency (iine 14).

The effect of this is to have the Adjusted OCAP more accurately reflect the Project water demand. Reducing the annual Project efficiency target will recognize the limitation of the present water distribution system facilities and assist the Project in achieving efficiency requirements. No changes are proposed for the 1988 OCAP relative to how the MAD is calculated and administered, determination of eligible land, reporting, or calculation of credits or debits.

2. Adjustments to Lahontan Reservoir Storage Targets (§§ 418.20, 418.21, and 418.22, and tables of Monthly Values for Lahontan Storage Computations, End of Month Storage Targets for July Through December, and Adjustments to Lahontan Reservoir Storage Targets): The 1988 OCAP prescribes when water may be diverted from the Truckee River to supplement Carson River inflow to Lahontan Reservoir to serve the Carson Division of the Project. (The Truckee Division of the Project is supplied entirely by water from the Truckee River.) The Truckee River diversion to the Carson Division is governed by end-of-month storage target levels in Lahontan Reservoir. Water is diverted from the Truckee to the Reservoir only if it is forecast that the storage target will not be met by Carson River inflow by the end of the month. In years of low flow on the Carson River, a greater percentage of the Carson Division Project water supply is diverted from the Truckee River. In wet years, the Carson Division supply may come entirely from the Carson River. Thus, storage targets are used to help maintain a steady water supply despite the natural climatic variability and differences in annual runoff between the two river basins.

The formula used to determine how much water may be diverted to Lahontan Reservoir from the Truckee River in January through June relies, in part, on the runoff forecast for the Carson River. The imprecision inherent in such forecasting can lead to variable consequences. Sometimes more Truckee River water is diverted than is needed to serve Project water users. This is particularly problematic when the Carson River fills Lahontan Reservoir to the point that water spills over Lahontan Dam or so that a precautionary spill (release) of water must be made to avoid later flooding. In either situation, spilled water that cannot be transported to water-righted lands or Lahontan Valley wetlands flows into Carson Sink in the desert. This situation occurred most recently in 1995, 1996, and 1997 with the consequence that Truckee River water that could have flowed into Pyramid Lake contributed to water that was spilled.

Because of their imprecision, forecasts for Carson River runoff do not always reflect actual conditions and the water may not materialize. If not enough water was brought over from the Truckee River earlier in the water year, or Truckee River flow is insufficient to make up for the shortfall from the Carson River, then the water supply may be inadequate to meet the annual irrigation demand. This situation occurred in 1994 when the Carson River was forecast to have a 100 percent water year but only produced a 50 percent water supply.

Two of the objectives of OCAP are to minimize spills and moderate shortages. It is important to note that for the 95 years of records, the climatic/hydrologic variability of both rivers is so great that even if there were no limits on the diversion of Truckee River water, in some years shortages would result. Conversely, even if no Truckee River water were diverted, in some years Lahontan Reservoir would spill just from Carson River inflow.

The 1988 OCAP has a June end-of-month storage target of 215,000 acre-feet in Lahontan Reservoir. The 215,000 acre-feet would serve at least 4,000 to 5,000 more acres of water-righted and irrigated land than has been irrigated in actual practice. The reclassification of some bench lands to bottom lands further reduces water demand in the Carson Division. The difference in headgate demand between what the 1988 OCAP projected and current Carson Division demand is approximately 21,000 acre-feet. The current storage targets permit unnecessary diversions from the Truckee River to the Project. The proposed Adjusted OCAP storage targets were based on the lower Carson Division demand and reducing water loss to seepage, evaporation, and spill. Accordingly, the proposed end-of-June storage target was adjusted to 174,000 acre-feet, and the July through December targets were lowered as shown in Table A. However, in this final rule, the end-of-June storage target is 190,000 acre-feet, as shown in the table Monthly Values for Lahontan Storage Calculations (section 418.20 of the rule), while the January–May targets are retained, subject to the adjustment procedures described below. July and August end-of-month storage targets are also increased to help maintain recreation levels in Lahontan Reservoir. This is discussed in the Response to Comments, II.7., in this preamble.

A comparison of the 1988 OCAP, the proposed Adjusted OCAP, and the final Adjusted OCAP storage targets for Lahontan Reservoir are shown in Table A of this preamble. In addition, this final Adjusted OCAP, in response to comments, adopts a flexible storage target regime that can respond to future changes in Project water demand. This is discussed in the Response to Comments, II.1, in this preamble and set out in section 418.22 of the rule. The new storage targets will be used to calculate diversions from the Truckee River in accordance with section 418.20 *et seq.* of the proposed rule.

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TABLE A

TRUCKEE-CARSON MODEL RESULTS FOR ADJUSTED OCAP FOR 1901-1995				
KEY MODELING ASSUMPTIONS[1]	1988 OCAP[2]	Current Condition[3]	Proposed Adjusted OCAP[4]	Final Adjusted OCAP[5]
Newlands Project Diversion Demand	320.0	294.0	294.0	294.0
Newlands Project Acreage	64,800	59,075	59,075	59,075
Newlands Project Use of Entitlement	90.0%	93.4%	93.4%	93.4%
Newlands Project Conveyance Efficiency	66.7%	65.7%	65.7%	65.7%
1 TRUCKEE CANAL				
2 Diversion from Truckee Canal	131.8	113.6	91.2	91.4
3 Truckee Canal Loss	21.1	18.7	16.8	16.8
4 TRUCKEE DIVISION				
5 Diversion Demand	28.00	23.00	23.00	23.00
6 Diversion from Truckee Canal	27.54	22.71	22.71	22.71
7 Diversion Supply (% of demand)	98.36%	98.74%	98.74%	98.74%
8 Percent Use of Entitlement	90.0%	95.0%	95.0%	95.0%
9 LAHONTAN RESERVOIR				
10 Inflow from Truckee Canal	82.9	72.1	51.7	51.9
11 Carson River near Ft. Churchill	289.8	289.8	289.8	289.8
12 Reservoir Loss	39.3	40.8	35.0	35.1
13 Total Release and Spill	332.8	320.7	305.8	305.9
14 Reservoir Spill	48.7	54.2	41.9	42.0
15 CARSON DIVISION				
16 Demand at Lahontan Reservoir	292.0	271.0	271.0	271.0
17 Lahontan Release Shortage	7.98	4.50	7.10	7.05
18 Average Water Supply (% of demand)	97.27%	98.34%	97.38%	97.40%
19 Number of Shortage Years	9	8	9	9
20 Normal Conveyance Efficiency	67.0%	65.0%	65.0%	65.0%
21 Average Percent Use of Entitlement	90.0%	93.2%	93.2%	93.2%
22 PYRAMID LAKE				
23 Truckee River Inflow to Lake	441.3	458.7	480.6	480.5
24 Beginning Elevation (feet)	3,804.0	3,804.0	3,804.0	3,804.0
25 Ending Elevation (feet)	3,824.3	3,831.5	3,841.0	3,840.9
26 Beginning Cui-ui (adult females)	50,000	50,000	50,000	50,000
27 Ending Cui-ui (adult females)	217,100	526,900	1,052,200	1,051,900
28 Number of Cui-ui Spawning Years	73	73	75	75
29 CORE ASSUMPTIONS				
30 Carson Division Acreage Served	60,400	55,075	55,075	55,075
31 Truckee Division Acreage Served	4,400	4,000	4,000	4,000
32 Lahontan End of Month Targets:				
33 January through May	215	215	174	174
34 June	215	215	174	190
35 July	160	160	139	160
36 August	140	140	95	100
37 September	120	120	64	64
38 October	80	80	52	52
39 November	160	160	74	74
40 December	210	210	101	101
41 Lahontan Maximum Storage	295.5	295.5	295.5	295.5
42 Lahontan Minimum Storage	4.0	4.0	4.0	4.0

1. All modeling from the Adjusted OCAP Notice of Proposed Rulemaking (NPR) has been updated for 1995 hydrology and for new operations at Lahontan Reservoir to limit storage to 295,500 acre-feet. At the time of the NPR, the Reservoir was being managed to store additional water on flash boards installed in Lahontan Dam, bringing the storage level to 316,900 acre-feet.
2. All the 1988 OCAP assumptions for 1992, including serving 64,850 irrigated acres, are modeled using the 1901-1995 hydrology. This represents what Project conditions would be today if the 1988 OCAP acreage assumptions had been borne out.
3. Current Condition or No Action models the 1988 OCAP at the 1995 Project acreage level.
4. Proposed Adjusted OCAP has been updated only as noted in footnote 1.
5. Final Adjusted OCAP includes changes to Lahontan Reservoir storage targets.

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The storage targets were developed using the Truckee River settlement negotiations water balance model. The model was used to examine how different storage targets affected spills, inflow to Pyramid Lake, and other parameters. Key assumptions used in modeling were reduced Project water demand from the 1988 OCAP, lower efficiency targets, current Truckee River operations, and Project shortages consistent with the 1988 OCAP. The model uses the 95-year (1901–1995) historic hydrologic record for the Truckee and Carson Rivers.

For the proposed Adjusted OCAP, a series of modeled storage targets was evaluated based on the degree to which a set of targets reduced spills, increased inflow to Pyramid Lake, increased the estimated number of spawning years for cui-ui, increased the estimated number of cui-ui, reduced Lahontan Reservoir and Truckee Canal seepage and evaporation losses, and held frequency and magnitude of Project shortages consistent with the 1988 OCAP. These goals are consistent with the Secretary of the Interior's responsibilities as the District Court ruled in *Pyramid Lake Paiute Tribe of Indians* v. *Rogers C.B. Morton (Tribe* v. *Morton)*, 354 F. Supp. 252 (D.D.C. 1973).

Though not a specific feature of the Adjusted 1988 OCAP, the modeling used in making decisions on this proposed rule took cognizance of the 4,000 acre-foot minimum pool that the Truckee-Carson Irrigation District (TCID), the Project operator, voluntarily has maintained in Lahontan Reservoir to protect fish resources there. Though this action to maintain a minimum pool is purely voluntary on the part of TCID and Newlands Project water right holders, it provides environmental benefits, was assumed to be continued into the future, and was credited in the modeling used to establish new Lahontan storage targets; that is to say, the targets would have been somewhat lower to achieve the same release shortage percentage and Truckee River inflow volume to Lahontan Reservoir assuming no anticipation of the 4,000 acre-foot minimum pool.

Table A presents the model results examined in developing the Adjusted OCAP, and the values are averages for the 95-year period of record. Modeled results for the 1988 OCAP with current hydrology are compared to the Current Conditions, the proposed Adjusted OCAP, and the final Adjusted OCAP. In a number of categories, the modeled results show improvements under the final Adjusted OCAP storage targets as compared with the 1988 OCAP. For example, there is less Truckee Canal loss (line 3), less Lahontan Reservoir loss (line 12), and less Lahontan Reservoir spill (line 14). Compared to the Current Conditions, the final Adjusted OCAP is an improvement in all areas except for Project water supply (line 18) and the additional shortage year (line 19). The modeled reduction of water loss and spill from the Project increases inflow to Pyramid Lake under the final Adjusted OCAP (line 23). Compared to the Current Conditions, approximately 19,800 acre-feet of water is modeled to be saved from the Truckee River under the Final Adjusted OCAP from reduced Truckee Canal loss, reduced Lahontan Reservoir loss, and reduced spills. Of this 19,800 acre-feet of Truckee River water saved, approximately 2,550 acre-feet of the water saved reduces Project water supply compared to Current Conditions.

3. Truckee River Storage in Lieu of Diversions (§ 418.20 (f)): Project diversions from the Truckee River may be fine-tuned by retaining water in upper Truckee River reservoirs that would otherwise have been diverted to Lahontan Reservoir to meet storage targets. Depending upon how much Carson River runoff reaches Lahontan Reservoir and whether storage targets are met by the Carson River inflow, the water retained in storage may be released later in that year and diverted to Lahontan Reservoir for delivery to the Carson Division, or retained for Pyramid Lake if the water is not needed for Carson Division irrigation.

Under the 1988 OCAP, water was allowed to be stored upstream on the Truckee River in lieu of diversion only from April to June. In 1995, this limitation contributed to approximately 80,000 acre-feet of water being diverted from the Truckee River to Lahontan Reservoir before March 31, then spilling because of high Carson River runoff. None of the Truckee River water was needed because the Carson River more than filled Lahontan Reservoir and precautionary releases were made to avoid spilling over the dam. While the 80,000 acre-foot-diversion from the Truckee was controversial, it resulted from managing the diversion in strict adherence with the 1988 OCAP targets. In the 1996 and 1997 water years, respectively, 6,000 and 22,000 acre-feet were diverted from the Truckee River in late fall and winter, and again spilled. It is possible that a similar occurrence may result in the 1998 water year from continued application of the 1988 OCAP storage targets. The proposed Adjusted OCAP provided more flexibility to reduce such unnecessary diversions.

Consistent with managing Project diversions from the Truckee River, the proposed Adjusted OCAP expanded the opportunity to credit store water for the Project in reservoirs on the upper Truckee River by allowing storage as early as January of each year. In this final Adjusted OCAP, Truckee River storage would be allowed as early as November of the previous year. The water would be credited based on water actually retained in Truckee River reservoirs or, if water was not being released for Project diversion, credited as Newlands Project water in Stampede Reservoir adverse to other water (fish water) stored in Stampede Reservoir. In the latter situation, concurrence by the FWS will be required. For example, a reduction of diversions in January through March of 1995, would have required FWS approval to create Newlands Project credit water out of Stampede Reservoir water because water was not being released for Project diversion. Newlands Project credit water could be released for diversion to Lahontan Reservoir, if needed, as early as July 1 through the end of the irrigation season, but not thereafter. The water would only be used for the Carson Division. Water in storage could be exchanged to other reservoirs but it will not carry over to the next year for use in the Project. If it is not used in the year in which it is stored, it will not be available thereafter to the project. To protect the water users, the water held in storage on the Truckee River would not be reduced by evaporation and would be gaged at the US Geological Survey gage on the Truckee Canal near Wadsworth, Nevada, to ensure that diversion to the Project matches the diversion foregone earlier in the season. Water could spill, but if spilled, it would be subject to diversion to Lahontan when needed to meet storage targets. Water stored but not needed for the Project would be managed to benefit cui-ui and Lahontan cutthroat trout in Pyramid Lake.

This change provides flexibility to reduce excessive diversions from the Truckee River. The BOR is expected to use this proposed provision only in years when Carson River runoff is forecast to be above average and is intended to fine tune diversions and avoid over-diversions from the Truckee River. Such storage in Stampede Reservoir or other Truckee River Reservoirs is not intended to make up for shortages in drier years.

There is little advantage to foregoing diversions in below average runoff years if the likelihood is that all the credit stored water would need to be diverted to the Project in any event. The changes in Section 418.20 (f) of the rule include provisions for BOR to consult with

TCID, the Federal Water Master, FWS, Bureau of Indian Affairs (BIA), and the Pyramid Lake Paiute Tribe before any credit storing is initiated.

4. Expanded Forecasting (section 418.20 (a)): In calculating the January to June monthly diversions from the Truckee River, the 1988 OCAP uses the monthly forecast for April through July runoff published by the Natural Resources Conservation Service (NRCS) (formerly the Soil Conservation Service). Rather than continuing to rely on that forecast alone, the proposed Adjusted OCAP provided flexibility to examine other forecasts and allow the use of a deliberative process to determine how to manage Truckee River diversions. This provision remains unchanged in this final Adjusted OCAP. The intent of this change is to allow the BOR to take advantage of other forecasts and the experience and knowledge of the Federal Water Master, the TCID water master, and other parties. The desired effect of this change is to improve precision in forecasting and managing the Truckee River diversion to the Project to avoid spills and shortages.

5. Additional Revisions: In addition to the changes identified in 1. through 4. above, a number of minor revisions have been made to the 1988 OCAP. Most changes are editorial and do not affect the meaning of the text. Some changes provide opportunities for consultation with interested and affected parties before BOR makes a decision.

A few changes add language to clarify or interpret the meaning of the 1988 OCAP in light of experience administering the OCAP, passage of time, or new statutory provisions. Changes to the text of the 1988 OCAP occur at:

Section 418.2: Other Project purposes are added in accordance with Pub. L. 101–618, 104 Stat. 3289, § 209 (a) (1).

Section 418.13 (a) (3): Explains the use of efficiencies in calculating the MAD.

Section 418.18 (b): Calculates terminal flow in the Truckee Canal by averaging flows during the time when water is not being diverted to Lahontan Reservoir.

Section 418.24: Water captured in Project facilities from a spill or precautionary drawdown is used to make deliveries to eligible lands but does not count as a Project diversion or as Lahontan Reservoir storage.

Section 418.29: Deletes the reference to the February 14, 1984, Contract for Operation and Maintenance between the United States and the District.

Section 418.37 (d): Adds new text clarifying that a natural drought greater than or equal to the debit will eliminate the debit.

Section 418.38 (b): Allows TCID to divert up to the MAD if needed to meet headgate entitlements.

Rulemaking Process

The DOI announced in 1995 that it intended to revise the 1988 OCAP through adjustments to that OCAP. In the summer of 1995 the TCCO held four public workshops in Fernley, Nevada to invite affected and interested parties to offer their thoughts on changes to the 1988 OCAP affecting storage targets, conveyance efficiency, storage in lieu of diversions, and the use of runoff forecast data.

The Notice of Proposed Rulemaking on the Adjusted OCAP was published December 9, 1996, with the 60-day comment period scheduled to close on February 7, 1997. As a result of being preoccupied with the worst floods in decades on both the Carson and Truckee Rivers in January 1997, the DOI received many requests for an extension of the comment period. By notice in the **Federal Register** on February 18, 1997, the comment period was extended an additional 60 days until April 8, 1997. The Notice extending the comment period also included frequently asked questions and answers regarding the Adjusted OCAP, and made known the availability of general and detailed modeling results related to the rulemaking.

During the initial comment period, the TCCO conducted an information briefing for the State of Nevada, TCID, Fallon Tribe, and Pyramid Lake Tribe. Two public workshops to explain and answer questions about the proposed rule were held in Fallon and Fernley, Nevada. The TCCO received 47 written comments on the proposed rule. Comments addressed the proposed rule and are responded to in this preamble. Many comments addressed the draft environmental assessment (EA), which had been made available for review, and have been responded to with changes in the EA. Two commenters submitted pleadings in litigation on the 1988 OCAP which were not addressed in this final rule because they were already addressed in the United States' responsive pleadings in that case.

Changes Made in This Final Rule

In response to comments and additional information, the DOI has made several changes in this final Adjusted OCAP rule. The proposed change in Lahontan Reservoir storage targets received more comments than any other issue in the proposed rule. This final Adjusted OCAP addresses two storage target issues raised in comments: future increases or decreases in Project water demand, and effects of lower storage targets on recreation. In this final rule, a system of demand responsive storage targets is implemented to provide a stable water supply to the Project over a range of water demands that may result from changes in irrigated acres, use of entitlements, or other circumstances. In addition, summer storage targets have been increased to help maintain recreation levels at Lahontan Reservoir, without substantial effect on Pyramid Lake inflow or threatened and endangered fish recovery. This also provides a slight benefit to Project water supply. These changes are described in sections II.1. and II.7. of the *Response to Comments* in this preamble and sections 418.20, 418.21, and 418.22 of the rule.

The Adjusted OCAP proposal to extend the period for storage of Truckee River water in lieu of diversions back to January each year has been changed in the final rule by extending it back to include November and December. November and December targets increase significantly to take advantage of winter flows in the Truckee River when the water will clearly be needed in the Project. Adding storage in lieu of diversions in November and December will help avoid a repeat of the situation that developed in late 1996 and early 1997 when all reservoir storage levels were up yet diversions from the Truckee River to the Project continued through the end of December, only to begin spilling as a precautionary release from Lahontan Reservoir on January 1, 1997. The final rule also allows Newlands credit water spilled from Truckee River reservoirs to be diverted to Lahontan Reservoir subject to applicable storage targets. These changes are described in sections II.5 of the *Response to Comments* in this preamble and section 418.20(f) of the rule.

The proposed Adjusted OCAP lowered the Project conveyance efficiency target based on increases in the percent use of entitlements and decreases in the Project size. The intent was for the conveyance efficiency target to be dynamic and continue to vary with the use of entitlements and the Project size. However, Figure 1, the graph in Appendix A at the end of the proposed rule, showed target efficiencies varying only in proportion to percent use of entitlement. This has been replaced in the rule at section 418.13(a)(4) and by the table Expected Project Distribution System Efficiency that shows required efficiency for a range of irrigated acreage and a range of percent use of entitlement. The table also provides the

slope and y-intercept so that a new graph may be prepared. Appendix A in this final rule has a table Calculation of Efficiency Equation which shows how the Expected Project Distribution System Efficiency is calculated using a range of percent use of entitlement from 100 percent to 75 percent.

The proposed Adjusted OCAP made several corrective adjustments to the 1988 OCAP to have the Adjusted OCAP reflect actual Project operations. One of these affected how water released into Rock Dam Ditch was counted. Rock Dam Ditch may receive water directly from releases at Lahontan Reservoir, or may get water directly from the Truckee Canal via a siphon pipe under the stilling basin below Lahontan Dam. In the proposed Adjusted OCAP rule, diversions directly from the Truckee Canal would have counted against the Truckee Division. As was noted in comments, this is incorrect, as the water that reaches Rock Dam Ditch would, in all cases, come from water in Lahontan Reservoir or destined to arrive in Lahontan Reservoir. This change is noted at section III.1 of the preamble and in the rule at section 418.23.

Modeling used to compare various OCAP scenarios and storage target regimes has been updated since the proposed rule was published. The new modeling retains the Project acreage and water use assumptions from the proposed rule but is modeled over the 95-year period 1901–1995, it also includes the additional hydrology for 1995, and does not include storage in Lahontan Reservoir on the flash boards above 295,500 acre-feet.

Based on technical comments from the BOR, which will administer this rule, the language in section 418.13(a) has been revised to clarify the timing and procedures for recalculating the Project water budget, the MAD, and the required conveyance efficiency. At the start of the irrigation season, a provisional water budget and MAD will be recalculated. After the irrigation season when actual irrigated acres and percent use of headgate entitlement is known, a final target conveyance efficiency will be determined from the table Expected Project Distribution System Efficiency.

This final rule has been revised to conform to numbering and plain language requirements for publication of the Adjusted OCAP rule in the Code of Federal Regulations. Some extraneous introductory text has been removed or incorporated into the preamble. Throughout the text of the rule, "must" or other appropriate wording replaces "shall" and references to "these OCAP" has been replaced by "this part." Additional text has been changed only to clarify the meaning. The new format includes a section on definitions and has moved a few sections forward as General Provisions of Adjusted OCAP. Also, the rule has been divided into more sections, each dealing more discretely with each subject. With these exceptions, the text of this rule appears in the same order as in the Notice of Proposed Rulemaking and can be easily compared.

Need for Immediate Effect

This adjusted OCAP rule is effective December 16, 1997, to allow its provisions to address imminent diversions of water from the Truckee River to Lahontan Reservoir. Under the Administrative Procedure Act, sec. 553(d)(3), a rule may have immediate effect when the agency finds that there is good cause for waiving the normal 30-day period between publication of the rule and its effective date. This waiver of the normal 30-day waiting period for this rule to become effective is critical for the Secretary to meet all obligations in the Truckee River basin. A 30-day delay in implementation will compromise the effectiveness of the Adjusted OCAP by allowing unnecessary diversions of more than 14,000 acre-feet of water from the Truckee River.

Delayed implementation of the rule would be contrary to the public interest. The Adjusted OCAP more accurately limits Truckee River diversions to only that amount of water that the water users in the Project require. In the past three years, the 1988 OCAP storage targets have allowed Truckee River diversions of about 80,000 acre-feet, 6,000 acre-feet, and 22,000 acre-feet of water that was not needed to satisfy diversionary rights and which ultimately was spilled during required precautionary drawdowns of Lahontan Reservoir increasing the danger of flooding in the Carson River valley.

Immediate implementation will not harm those affected by the rule because there will be sufficient water available to serve water rights during the 1998 irrigation season. Lahontan Reservoir storage levels in November resulted in diversions of nearly 10,400 acre-feet of Truckee River water under the existing 1988 OCAP storage targets. Projections for December 16–31, 1997, indicate that an additional 14,000 acre-feet of water might need to be diverted from the Truckee River to meet 1988 OCAP storage targets. Under the Adjusted OCAP storage targets in this rule, no water would have been diverted in November or would need to be diverted in December. Moreover, the November and December diversions are not needed to serve Project water rights. The 160,000 acre-feet already in Lahontan Reservoir, less evaporation and seepage, along with the water that would be available if needed from the Truckee River based on current water storage in Truckee River reservoirs, indicates that there will be sufficient water to meet Project requirements for the 1998 irrigation season. Therefore, immediate implementation is necessary to prevent the waste of at least 14,000 acre-feet of water that will be diverted from the Truckee River in December if the Adjusted OCAP is not in effect. If the rule were not in effect until January 16, 1998, additional water would be diverted that will not be needed.

In addition, immediate implementation will benefit Pyramid Lake by maintaining needed Truckee River flows with no attendant harm to Project water users, because the Adjusted OCAP does not affect decreed water rights. Conversely, diversions at Derby Dam in December pursuant to the existing 1988 OCAP storage targets would significantly decrease Truckee River flows to the detriment of Lahontan Cutthroat Trout, which is a threatened species under the Endangered Species Act.

A 30-day delay in implementation would result in an irretrievable commitment of at least 14,000 acre-feet of water from the Truckee River to Lahontan Reservoir. Immediate implementation of the Adjusted OCAP will allow better management of the Project, and will avoid potential threats to public health and safety due to the increased risk under the 1988 OCAP of flooding those downstream of Lahontan Reservoir.

The main reason for a 30-day waiting period prior to implementation is to provide affected parties with an opportunity to adjust their actions. The need for this is obviated by the fact that the Adjusted OCAP are an outgrowth of the 1988 OCAP. They are designed to fine tune the 1988 OCAP, not to replace them with an entirely new regulatory scheme. The revisions fall within the basic framework of the 1988 OCAP, a regulatory system that the affected parties have been operating under for nine years. Further, the Adjusted OCAP have been in circulation for many months, and all affected entities have had ample opportunity to participate in workshops on the proposed rule and to comment.

The affected parties have participated in the development of the Adjusted OCAP and are aware of the content of the rule as well as the approximate time it would be implemented. In spring

1997, the DOI extended the period for comment on the proposed rule for 60 days to accomodate interested parties who had been preoccupied by flooding during the original comment period. This 60-day delay should not be allowed to compromise the rationale underlying the Adjusted OCAP's development. The potential for harm to the public outweighs any possible prejudice to the affected parties. Therefore, the Department finds that there is good cause for the Adjusted OCAP to be effective on December 16, 1997.

Response to Comments on Proposed Rule

The proposed rulemaking provided a 60-day public comment period which was later extended another 60 days to end on April 8, 1997. The Truckee-Carson Coordination Office (TCCO) received 46 letters from commenters during the comment period. One additional commenter submitted late comments that TCCO received on April 9, 1997, and accepted for review, for a total of 47 comments. Fifteen comments were from an irrigation district, twelve from interested parties, seven from local governments, six from organizations or public interest groups, three from Nevada State agencies, two from Tribes, one from a public utility, and one from a Federal agency.

We reviewed and analyzed all comments, and in some instances revised the final rule based on these comments. The following is a discussion of the comments received and our response. First, we addressed general comments and concerns. Second, we responded to specific comments referred to by regulation section.

I. General Concerns

1. Why Propose These Changes? Some commenters asked what the purpose and need was for making adjustments to the 1988 OCAP. One commenter asked when the continued encroachment on water rights by successive OCAP's will end. Other commenters said that the proposed Adjusted OCAP rule does not meet the goals stated in the 1988 OCAP regarding service of water entitlements, conservation of wetlands and wildlife, Trust obligations to the Fallon Paiute-Shoshone Tribes (FPST), stable economies, and stability of operations. Other commenters argued that the diversion and subsequent spill of more than 100,000 acre-feet of Truckee River water in the past three seasons points to the need to adjust the 1988 OCAP to avoid a recurrence of such diversions and spills. Finally, one commenter suggested that instead of having an OCAP, that a discussion process be used to determine the need for fall or winter diversions from the Truckee River.

Response: As explained in the preamble to the proposed Adjusted OCAP rule published in December 1996, the primary purpose of this rule is to adjust the OCAP to reflect the fact that demand for water to meet Newlands Project water rights is less than projected at the time the 1988 OCAP were adopted and the OCAP can be adjusted to better reflect new water demand assumptions which will increase Newlands Project reliance on the Carson River as the primary source of water for the Carson Division. Other adjustments are made to provide flexibility in operations to help conserve water based on experience gained in the past nine years. The changes in this rule are designed to reduce diversions from the Truckee River in such a way that approximately 87 percent of the reduction comes from reduced Truckee Canal loss, reduced reservoir loss, and reduced spills. For the reasons explained above under the heading, "Adjusted OCAP Proposed Changes," demand for water to serve water rights has been less than anticipated in the 1988 decision which means that more water is being diverted from the Truckee River under the 1988 OCAP than is necessary to serve Newlands Project water rights. This is inconsistent with the Secretary's trust responsibility as spelled out in the Gesell decision in *Tribe* v. *Morton* to ensure that only the water needed to serve Project water rights is diverted from the Truckee River and away from Pyramid Lake. As such, this is not an encroachment on Newlands Project water rights, but a limited refinement of diversion criteria to assure that Project water rights are met but with maximum reliance on the Carson River.

This final OCAP rule is consistent with the 1988 OCAP goals. Water entitlements in the Newlands Project are served subject to such regulations or requirements as the Secretary may impose. This final rule is the Secretary's OCAP regulation for the Project, provides for the full service of water rights so long as the water is available, meets the OCAP goal of satisfying entitlements, and therefore, fulfills the *Alpine* and *Orr Ditch* decrees. The Adjusted OCAP is not expected to interfere with efforts to restore Lahontan Valley wetlands and wildlife resources because the proposed Adjusted OCAP was considered in the decision making process for the FWS Water Rights Acquisition Program (WRAP) EIS and it is being considered as the FWS develops its comprehensive management plan for Stillwater National Wildlife Refuge. The DOI is negotiating an agreement with the FPST on a number of issues including maintaining the Tribe's irrigation water supply. This agreement with the FPST is expected to help ensure that the DOI will meet its trust responsibilities to the Tribe under the Adjusted OCAP.

The Adjusted OCAP decreases slightly— from 98.41 percent to 97.48 percent—the average water supply in the Carson Division of the Project and would have an effect on farm production, profits, and income in drought years (see response to I–12). However, the modeled average water supply under Adjusted OCAP is similar to the modeled supply in the 1988 OCAP EIS assumptions under current conditions (1988 OCAP in Table A), therefore the economic stability of the Project is not expected to change compared to 1988 OCAP projected conditions. Finally, the Adjusted OCAP rule does not impose new operational requirements and is, therefore, consistent with the goal of stability in operations.

This Adjusted OCAP addresses the comment regarding the need to manage early season diversions of Truckee River water to Lahontan Reservoir to avoid subsequent spills. We believe the proposed storage target regime in the rule will minimize, but cannot eliminate, the possibility of Truckee River diversions being spilled later. We believe, further, that we cannot legally abandon OCAP in favor of a discussion process as the basis for controlling Truckee River diversions.

2. Why Change the OCAP Now? A number of commenters questioned why the DOI is changing the OCAP at this time. They cite the December 31, 1997, expiration of the prohibition on litigation on the 1988 OCAP in Section 209 of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Pub. L. 101–618), the absence of any court order for a new OCAP, and question why the DOI was moving "swiftly" on Adjusted OCAP in light of numerous concerns. Some commenters questioned the timing and need for the Adjusted OCAP in light of the DOI's announced plans to develop a revised, long-term OCAP. Other commenters asked to have the Adjusted OCAP rule in effect by October 1, 1997, to avoid potentially unnecessary diversions from the Truckee River.

Response: Section 209 of Pub. L. 101–618 allows the Secretary to decide, in his sole discretion, that changes to the OCAP are necessary to comply with his obligations. No court order is needed to

make these changes. The experience of initially seven and now nine years implementing the 1988 OCAP indicates that a number of changes could be made to save additional diversions of Truckee River water within the framework of the 1988 OCAP. The timing of this rulemaking relative to December 31, 1997, is coincidental since the rulemaking started in 1995. The DOI announced its intent to develop an interim or Adjusted OCAP in March 1995, held public planning workshops on Adjusted OCAP in August 1995, published a proposed rule in December 1996, held public workshops on the proposed rule in December 1996 and January 1997, and extended the comment period by 60 days in February 1997. We believe this history reflects the ample opportunities for public input and the deliberative pace of rulemaking to allow due consideration of issues.

The DOI's intention to develop a revised OCAP was also announced in March 1995. Unlike the Adjusted OCAP which makes some changes in the 1988 OCAP as an interim correction, the revised OCAP contemplates more fundamental changes to OCAP, will take a number of years to develop, and will be the subject of an EIS that also considers other related water management issues. The fact that the DOI conducted EIS scoping meetings for this EIS during the comment period on the Adjusted OCAP is more a reflection on the lengthy EIS process than on the DOI's intent to rush into the next OCAP before this rulemaking is concluded.

As to when the rule will go into effect, it had been the DOI's hope to have the Adjusted OCAP in effect prior to when Truckee River diversions might have begun under the current OCAP storage targets.

3. What is the legal authority for changing OCAP and for making OCAP a regulation? A number of commenters questioned the DOI's authority and the legal basis to make changes to the 1988 OCAP and to do so via rulemaking. One commenter made the point that this rulemaking will "grandfather" the 1988 OCAP which never was published in the **Federal Register**, never underwent notice and comment rulemaking, and which has not undergone judicial review. Another commenter asked if the Secretary had the approval of the Pyramid Lake Paiute Tribe (PLPT) to change OCAP.

Response: The Secretary of the Interior is authorized to promulgate regulations for the operation of irrigation projects under the Reclamation Act of 1902, as amended. Promulgation of the Adjusted OCAP rules replaces the existing 1967 OCAP regulations and a number of court approved OCAPs. Promulgation of Adjusted OCAP affords the public a formal opportunity to participate and have their concerns considered in the rulemaking process.

The Adjusted OCAP is based on the 1988 OCAP framework with changes in efficiency requirements, storage targets, upstream storage, and forecasting. It is correct that the 1988 OCAP was not published in the **Federal Register**, was not included in the Code of Federal Regulations, and has not gone completely through judicial review. However, Congress, through Pub. L. 101–618, directed the 1988 OCAP to remain in effect until changed by the Secretary, at his sole discretion, and to be barred from judicial review until December 31, 1997. The public law also declared valid all actions taken by the Secretary under any OCAP prior to that law, including implementation of the 1988 OCAP, and not subject to judicial review.

Newlands Project OCAP may be implemented through approval by the *Tribe* versus *Morton* court, or with the approval of the PLPT. The DOI believes it has received the approval of the PLPT through the Tribe's comments on the proposed Adjusted OCAP rule.

4. Adjusted OCAP Violates Water Rights under the Alpine and Orr Ditch Decrees: A number of commenters contend that the Adjusted OCAP reduces the water supply to the Newlands Project, and that any reduction in water supply affects water rights in violation of Nevada water law. These commenters also view this as a violation of water rights adjudicated under the *Orr Ditch* and *Alpine* decrees. Several commenters cite the court's decision in *Tribe* v. *Morton* which said that OCAPs should not alter the *Orr Ditch* or *Alpine* decrees.

Response: Under Nevada water law, water rights holders are entitled to a certain water duty per acre which represents the maximum amount of irrigation water that can be beneficially used on water righted lands. This water duty is neither a minimum amount of the entitlement that must be received, nor is it a guarantee that that amount of water will always be available. As the Carson and Truckee Rivers' runoff varies from year to year, so too does the water supply, resulting in full years serving up to the water duty, and in drought years where the available water supply serves less than the water duty.

As shown in Table A, line 19, under final Adjusted OCAP there is an additional shortage year compared to the current condition. The additional shortage year results from reduced carry over storage of Truckee River water in Lahontan Reservoir. Under Judge Gesell's decision in *Tribe* v. *Morton,* the Truckee River water left in Lahontan Reservoir at the end of the irrigation season is water that was not needed to serve water rights, and the Project is not entitled to this water.

Nothing in the Adjusted OCAP changes anyone's water right or affects the *Orr Ditch* or *Alpine* decrees. What OCAP does is determine under what conditions Truckee River water may be diverted to Lahontan Reservoir to supplement the water supply from the Carson River for purposes of serving such rights that year. That combined supply in Lahontan Reservoir is the water supply available to meet the water demand in the Carson Division in a given year. Our modeling analysis of the Adjusted OCAP, which considers the hydrologic record for the Carson and Truckee Rivers from 1901 to 1995, indicates that in more than 9 out of 10 years Lahontan Reservoir has enough water to fully satisfy the Carson Division demand, with an average water supply of more than 97 percent of demand. This combined use of Carson and Truckee River ensures a more secure and consistent water supply for the Carson Division than most other *Alpine* decree water rights holders experience on the Carson River.

5. The Adjusted OCAP Affects Property Rights: Commenters have expressed concern that Adjusted OCAP may cause shortages that are a taking of property rights. A State Agency believes that any action by the Federal government that results in water rights holders not receiving their legal entitlement of water is a taking of personal property. Also, because the State Agency is a holder of water rights in the Newlands Project, it says that Adjusted OCAP may devalue its water right holdings when they receive less water than is available in the system. Other commenters say this is stealing water or a taking without just compensation.

Response: Newlands Project irrigators do indeed have a property right in their water rights, as do other water rights holders in Nevada. However, as pointed out in the response to issue number 4, the Adjusted OCAP has no effect on water rights or on the *Alpine* and *Orr Ditch* decrees. In addition, these water rights are not an entitlement to a certain amount of water every year, but rather an entitlement to receive up to a certain amount of water, when that water is available. In drought years, water may not be available to serve all entitlements. Thus, the water that reaches and is retained in Lahontan

Reservoir constitutes the available water for Newlands Project irrigators in the Carson Division. Further, these water rights are subject to applicable laws, rules, and judicial decrees. The supply of water in Lahontan Reservoir, out of which Carson Division water rights are served, is subject at least to the segmentation and priority provisions of the *Alpine* decree for the Carson River, and to the Floriston flow rate and priority provisions of the *Orr Ditch* decree for the Truckee River. Under Pub. L. 101–618 and *Tribe* v. *Morton,* OCAP may not affect the decrees; it merely provides that the deliveries be limited to those actually needed to serve water rights. As such, this is not a taking of a constitutionally protected property right by the Adjusted OCAP.

6. The Adjusted OCAP Denies Carry Over Storage Rights: Carry over storage refers to the ability to store in a reservoir water that is not needed in one year for use in the next year, if needed. Five commenters believe the Adjusted OCAP, as well as the 1988 OCAP currently in place, take away carry over rights in Lahontan Reservoir by limiting the diversion of Truckee River water. They contend the diminution of carry over storage under Adjusted OCAP erodes the principle of storing in times of plenty for times of drought. Further, one commenter contends that carry over storage is a right that was given to irrigators when they traded their pre-Project vested water rights to the Federal government for water rights in Lahontan Reservoir. In contrast, one commenter felt that the proposed end-of-month storage target for October of 52,000 acre-feet was too high because it could allow carry over of Truckee River water diverted right at the end of the irrigation season.

The Adjusted OCAP provides for storage of Truckee River water in Stampede Reservoir in lieu of diversions to Lahontan. One commenter asked why the Adjusted OCAP would not allow carry over storage of Newlands Project water in Stampede Reservoir.

Response: All water remaining in Lahontan Reservoir at the end of the irrigation season does carry over to the next year and this is not changed by the Adjusted OCAP. The Project water users benefit from carry over storage of all the Carson River water that remains in Lahontan Reservoir and provides protection against future droughts. However, to the extent that any portion of the water remaining in Lahontan Reservoir is water that had been diverted from the Truckee River, such water is, by definition, water that was not needed to serve Project water rights. It is the presence of this Truckee River water in Lahontan Reservoir at the end of the irrigation season that Adjusted OCAP seeks to minimize because it conflicts with the court's basic requirement of OCAP: that the Newlands Project receive only the Truckee River water needed to serve water rights so that the Secretary's trust responsibility to the PLPT may be fulfilled. Likewise, for Newlands Project water stored in Truckee River reservoirs, any water left over at the end of the season is water that was not needed to serve Project water rights and, therefore, should go to Pyramid Lake.

The goal of OCAP is to divert just that amount of Truckee River water needed to serve water rights in the Project and to let the rest continue to Pyramid Lake. The ideal OCAP would be based on demand and only allow diversions of Truckee River water to Lahontan Reservoir when it was actually needed for the Carson Division, and then, in quantities sufficient to always meet the water demand. This would ensure serving all water rights all the time with no over-diversions of water and no Truckee River water spilled from Lahontan Reservoir. Unfortunately, our analysis indicates that such a "demand only" OCAP would not serve water rights because of the variability in the amount of water available for diversion from the Truckee River from month to month, and because of the capacity limits of the Truckee Canal.

Instead of a demand-only OCAP, the Adjusted OCAP rule continues to allow diversions of Truckee River water to Lahontan Reservoir, even at times when the water is not immediately needed to serve water rights at the time of diversion, as a safeguard for a water supply later in the year against the unpredictability of the runoff from the Carson River. This is why the Adjusted OCAP includes a storage target greater than zero for October. The modeling analysis of the Adjusted OCAP indicates that it provides a water supply for the Newlands Project consistent with the water supply evaluated in the 1988 OCAP, even though the supply is less than under current (i.e., 1997) conditions.

7. There was Inadequate Information Provided to Evaluate the Proposed Rule: Eight commenters raised questions and concerns about the amount of information made available by the DOI in support of the Notice of Proposed Rulemaking. These concerns centered on modeling evaluations of the proposed Adjusted OCAP and alternative OCAP scenarios that had been considered. Some commenters believe that due process is being "trampled" or that modeling results were skewed because all of the information in the government's possession was not made public. Others questioned how the proposed rule could be evaluated without foundational data and assumptions. Yet another commenter chided DOI for manipulating data to achieve a predetermined result. Specific questions were posed regarding the need for a modeling scenario that allowed Lahontan Reservoir to fill without storage target limits and another modeling scenario for current conditions.

Response: In developing the Adjusted OCAP rulemaking, the DOI evaluated five OCAP alternatives based on different storage target regimes. These were modeled and compared with modeled scenarios for current conditions and for the 1988 OCAP with 1988 time frame assumptions and 1994 time frame assumptions. In all, nine modeling runs were examined. The printout from each modeling run is approximately 400 pages long. To facilitate comparisons of the modeling runs a single summary table labeled Table 9 was prepared listing 9 input assumptions and 53 key output parameters for each run. The DOI did not model a "full reservoir" scenario because it would not be consistent with the decision in *Tribe* v. *Morton* and would serve no practical purpose.

In response to requests for information on modeling runs considered by the DOI, Table 9 was made available to all parties. In response to requests for more detailed information, we also provided copies of the full 400-page proposed rule modeling run and a 36-page document of 94 years of modeled monthly output for 29 parameters. Table 9 was made available at three public workshops on the proposed rule and the availability of the remaining materials was announced in a **Federal Register** notice dated February 18, 1997, extending the comment period on the proposed rule by 60 days. The DOI believes that the modeling information provided was specific to the proposed rule and sufficient, when used in conjunction with the Notice of Proposed Rulemaking, to allow the public to evaluate and comment on the proposed rule.

8. OCAP Modeling: Many questions and comments were received regarding the Truckee River operations model used in developing the Adjusted OCAP. Commenters noted concerns both with the model itself and with DOI's use of the modeled data. One commenter noted that DOI is relying on a long string of assumptions in using the

model, and that the model cannot be used to determine the water supply for decreed rights. Another believes the operations model to be a product of collusion between the United States, the Pyramid Lake Paiute Tribe of Indians, and Sierra Pacific Power Company.

Several commenters wanted to know if and how the operations model had been calibrated or verified. There were also questions about the reliability of the model's estimates of parameters like seepage and evaporation, sensitivity to various parameters, and about the uncertainty these parameters create in the modeled output. One commenter asked if the model was available for review.

Another series of comments questioned why "real data" were not used and the model generates certain input data for missing stream gauges or extrapolates reservoir operations for time periods when the reservoirs were not in existence. Commenters also questioned why the model examines a 94 year time period instead of the last 30 years, especially when early stream gauges were not accurate.

Commenters also addressed the modeling results. Several noted that the modeled results do not match what actually occurred in some years and asked if DOI would monitor the actual Project hydrology, and if DOI would change the OCAP if it did not match what actually happens. Modeling was also thought by some to underestimate or to cover the actual effects of shortages that result from not achieving high efficiency requirements. One commenter suggested that the model does not show the economic effect of lower Lahontan Reservoir storage on hydropower generation, and does not account for the effect of upstream storage in lieu of diversions to the Project. Some recommended identifying shortages, or using the first year of a drought instead of listing average shortages because averages do not show the one in ten year event.

Response: The Truckee River operations model, a monthly river and reservoir operations accounting model, was developed by the BOR and has been added to and upgraded by contractors and BOR staff. The model is in the public domain and has been used as an analytical tool in a number of negotiations in western Nevada and has been accepted by parties to these negotiations as the best modeling program available for evaluating various Truckee River and Newlands Project operating scenarios. Over the years, various versions of the model have been made available to many organizations to use independently, including Sierra Pacific Power Company, the Pyramid Lake Paiute Tribe, TCID, and the States of Nevada and California.

Critics of the model point out that it does not use "real" data and its results do not replicate the historic record. The reason is that the model uses historic hydrology of the Truckee and Carson Rivers starting with 1901, but has to extrapolate to fill data gaps from the early 1900's. Also, the Truckee River operations and hydrology are modified in the model to assume that all the reservoirs and operations in place today have been in place since 1901, which is not this case. This allows the model to keep a single accounting book of reservoir records rather than having a new set of accounting books added to the program when each new reservoir was built. Thus, modeled output reflects operating the rivers with today's reservoirs and physical features in place using 94 or 95 years of hydrology. Though suggestions have been made to use a shorter time period such as 30 years of hydrology, we believe the longer time period is a more robust data base.

The model has undergone reviews by a number of modeling peers and users of the model and has been evaluated for sensitivity to certain parameters. Its input parameters for terms like seepage and evaporation are based on field tests and observations. Because the model has been widely accepted for use as a comparative tool for examining different water management scenarios, it has not been calibrated for or verified against any particular year or period of record.

The model uses historic hydrology, so it cannot be used predictively, and by standardizing physical features, it cannot be used to create an accurate hindcast. However, standardizing the river and reservoir operations allows users to look prospectively at what might happen in the future if the range of hydrology of the past is representative of what might happen in the future.

By holding the physical features and hydrology constant, the DOI uses the model to examine, compare, and contrast different operations scenarios. The modeling is only used for comparative purposes and not to suggest a specific future condition will exist. Operations under the Adjusted OCAP will be monitored, but not for the purpose of comparing the day to day operations in the Project with modeled results. As one commenter noted, upstream storage in lieu of diversions to Lahontan is not accounted for in the model. Upstream storage is intended to refine the Truckee River diversion so that there is no inadvertent over diversion. Because the model does account for forecasting errors and so allows occasional over diversion, it may overestimate the water supply in years when upstream storage might be used. Also, the model does not consider the effects of lower reservoir levels on hydropower production; this is considered in the environmental assessment for the Adjusted OCAP rulemaking.

The DOI has examined and considered the severity of drought years besides looking only at average water supplies. Table B shows the modeled water supply for drought years in four modeled scenarios: 1988 OCAP assumptions with current hydrology; the Current Conditions, Proposed Adjusted OCAP, and Final Adjusted OCAP. The Project water supply under Final Adjusted OCAP is comparable to, though slightly better than, what was modeled for the 1988 OCAP with the demand assumptions for 1992, however it is less than the Current Condition water supply. In the nine driest years, Final Adjusted OCAP is better than what the Project is modeled to experience under the 1988 OCAP, but worse than Current Conditions by 27,000 acre-feet on average for those nine years. The additional shortage is the result of reduced carry over of Truckee River in Lahontan Reservoir at the start of each year under Adjusted OCAP.

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TABLE B

Carson Division Release Shortages for 1901 - 1995[1] (1000 acre-feet)				
	1988 OCAP	Current Condition	Proposed Adjusted OCAP	Final Adjusted OCAP
Demand	292.00	271.00	271.00	271.00
Year and Shortage:				
1931	79.04	44.69	81.47	80.42
1934	91.21	40.99	70.08	70.28
1961	58.23	3.68	38.05	38.05
1977	79.56	38.19	74.99	74.99
1988	72.35	33.32	66.03	66.03
1990	29.80	0.00	34.73	30.67
1991	137.77	110.84	113.66	113.66
1992	172.79	150.08	149.48	149.59
1994	37.09	5.30	46.37	46.37
95-Year Average Release Shortage	7.98	4.50	7.10	7.05
95-Year Average Water Supply (Percent)	97.27%	98.34%	97.38%	97.40%
Number of Shortage Years	9	8	9	9
Average Release Shortage in 9 Driest Years	84.2	47.5	75.0	74.5
9 Driest Years Water Supply (Percent)	71.2%	83.5%	72.3%	72.5%

1. All the footnotes from Table A apply to this Table.

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9. OCAP Development and Alternatives Selection: When it was first announced in March 1995 that the DOI would be making adjustments to the 1988 OCAP, then Assistant Secretary for Water and Science Betsy Rieke made a commitment to the TCID and Newlands Water Protective Association (NWPA) that they would be consulted about changes the DOI was considering before any decisions were made. Several commenters have argued that the government did not fulfill this commitment, while others have asked for a new proposed rule to be developed in cooperation with all parties. One commenter objected to the rulemaking process because they were not invited to a briefing on the proposed rule after the **Federal Register** notice was published. Another commenter asked if the State of Nevada had been informed about the proposed rule. One commenter viewed the proposed rulemaking as a "take it or leave it" ultimatum without consideration of reasonable alternatives, and suggested that a new proposal should be developed in cooperation with other parties. Two commenters believe the attorney for the PLPT had "inside knowledge" of the proposed rule and that TCID and NWPA were excluded from participation while the PLPT and DOI developed the rule. Another cited DOI's alleged fiduciary responsibility to water right owners that the DOI must fulfill. Yet another commenter supported the proposed rule but thought that DOI should have selected an alternative that provided more benefits to Pyramid Lake. A State agency recommended delaying the rule for more complete environmental and economic evaluations and to await completion of negotiations between TCID and PLPT. Commenters also suggested that the DOI take notice of the draft *Truckee-Carson River Basin Study for the Western Water Policy Review Advisory Commission.*

Response: The rulemaking was conducted in accordance with Administrative Procedure Act requirements, which included notice published in the **Federal Register** and an opportunity for comment by all interested parties, as detailed in the Rulemaking Process section of the preamble. In addition, certain parties were advised early in 1995 that before a decision was made, they would have an opportunity to review changes DOI was considering making to the 1988 OCAP. The DOI honored this by meeting with TCID, NWPA, PLPT, FPST, the State of Nevada, and other parties to brief them on the content of the proposed rule after it was published in the **Federal Register**. For interested parties that did not attend this briefing, the same presentation was made later at two public workshops on the proposed rule.

The view that the Adjusted OCAP is a "take it or leave it" proposal without considering alternatives presumes that the proposed rule was a negotiating position. It was not. The DOI has been unsuccessful in several multiparty efforts to negotiate an OCAP settlement for the Newlands Project. The most recent effort, outside of current "out of court" discussions to settle pending litigation, was a facilitated negotiation that ended in March 1995, after which the DOI announced its intention to proceed with changes to the 1988 OCAP. In developing the Adjusted OCAP rule, the DOI has examined a wide range of alternatives, including those that were presented during the facilitated negotiations. The DOI held four well-attended public workshops in August and September 1995 to discuss possible changes to the 1988 OCAP and afford the public early input to developing the Adjusted OCAP. With the exception of these public workshops, no outside parties participated in DOI's development of the Notice of Proposed Rulemaking. As well, to our knowledge, no outside party has participated or been privy to development of this Notice of Final Rulemaking.

The DOI has reviewed and takes notice of the draft Western Water Policy Review Advisory Commission report.

The DOI selection of Alternative D for the proposed Adjusted OCAP and as the basis for the final Adjusted OCAP is primarily based on the mix of water savings and water supply impacts this alternative provides. The obligation owed to the water rights holders in the Newlands Project is a contractual obligation, not a fiduciary obligation. In evaluating OCAP alternatives, the DOI must seek to satisfy its contractual obligation to serve water rights, and to meet its Trust responsibility to the PLPT. Also, the DOI has completed both environmental and economic analyses in promulgating this rule.

10. Relationship of OCAP to the Truckee River Operating Agreement: Three commenters raise concerns regarding ongoing Truckee River Operating Agreement (TROA) negotiations which address, in part, storage in Truckee River reservoirs. Their concerns fall into three areas. First, that absent the TROA, the DOI has no authority to implement the upstream storage provisions necessary for storage in lieu of diversions, and therefore the Adjusted OCAP cannot precede TROA. Second, that until the TROA is completed there is no way for the DOI to evaluate opportunities for storage in lieu of diversions or assess what impact TROA may have on Truckee River flows available to the Project. Third, that the relationship of OCAP storage to other storage under TROA is not clear, and OCAP storage cannot adversely affect existing storage agreements.

Response: The Adjusted OCAP rule does not establish credit storage in lieu of diversions; that was established in the 1988 OCAP already in effect. This Adjusted OCAP rule extends the time period during which water may be credit stored, from April–June, to November–June, and it clarifies the procedures for storage in lieu of diversions. Therefore, the TROA negotiations need to address OCAP storage regardless of whether the 1988 OCAP is replaced by Adjusted OCAP or not. Also, the United States already has the authority to capture this water in Stampede Reservoir or to credit store the water out of fish water in Stampede by exchange and does not need TROA to be in place.

Modeling for the Adjusted OCAP does not assume that the TROA is in effect and therefore does not assess whether the TROA would have any impact on the Newlands Project. However, Pub. L. 101–618 mandates that the TROA must not adversely affect water rights. Preliminary modeling results for the draft TROA EIS indicate that flows in the Truckee River are affected by increased water use over time in the Truckee Meadows, and by effluent reuse programs associated with the Water Quality Settlement Agreement.

The effect of OCAP storage is unclear, but the DOI has agreed preliminarily that it will not credit store water in lieu of diversions if such credit storage would adversely impact the storage, retention, or use of other categories of credit water under TROA. The text of the Adjusted OCAP in section 418.3(e)(8) has been modified to ensure that OCAP storage does not interfere with other storage in Truckee River reservoirs. It should be noted that TROA is the subject of continuing negotiations among many parties and that its timing and configuration are not yet known.

11. Compliance with National Environmental Policy Act (NEPA): The DOI received many comments on the draft EA that accompanied publication of the proposed Adjusted OCAP rule. Those comments, including recommendations for mitigation of environmental effects, are addressed in the final EA.

Eight commenters questioned the DOI's preliminary determination that

the Adjusted OCAP is not a significant Federal action requiring preparation of an EIS, citing general impacts to wildlife, wetlands, ground water, and socio-economic effects. One commenter suggested that because the Adjusted OCAP violated laws related to water rights, this must be considered a significant impact under NEPA. Several commenters cited the need for a programmatic EIS to be prepared on the Adjusted OCAP and all other actions under Pub. L. 101–618.

Response: All comments received regarding environmental effects have been considered and addressed in the EA. While the EA does discuss possible effects on wildlife, wetlands, ground water, and socio-economic impacts, none of these were considered to be significant for NEPA purposes. Further, nothing in this Adjusted OCAP rule causes a violation of law. Where appropriate, mitigation measures and their environmental benefits are discussed in the EA.

A number of parties have advocated that the DOI must prepare a single, programmatic EIS on all actions under Pub. L. 101–618, including for the Adjusted OCAP. The DOI disagrees with this position. This issue was the subject of litigation brought by Churchill County and the Town of Fallon, was dismissed by the U.S. District Court for Nevada, and is currently the subject of an appeal to the United States Court of Appeals for the Ninth Circuit.

12. Compliance with Executive Orders: One commenter questioned whether this rulemaking complies with various Executive Orders that must be considered in promulgating regulations. This person believes the more than 120,000 acre-foot reduction in storage targets in Lahontan Reservoir poses an unreasonable cost on society and triggers the need for the rule to be reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order (E.O.) 12866. Under E.O. 12612 on Federalism, the commenter questions whether the DOI has properly evaluated the need for Federal action and the impacts of the Adjusted OCAP on the State of Nevada's sovereignty and costs or burdens on the State. The commenter asks that DOI not adopt the Adjusted OCAP rule until it completes the requirements of E.O. 12606 on the Family, particularly with respect to impacts on family earnings. The commenter also believes the Adjusted OCAP rulemaking does not comply with E.O. 12988 on Civil Justice Reform because of the likelihood that the DOI will be sued on the rule.

Response: The cited change in Lahontan Reservoir storage targets is inaccurate and is not a basis for review of the Adjusted OCAP rulemaking by OMB. The proposed Adjusted OCAP reduced the key January to June storage target from the 1988 OCAP level of 215,000 acre-feet to 174,000 acre-feet, a reduction of 41,000 acre-feet. The reference to "more than 120,000 acre-feet" assumes a reduction from the reservoir capacity of 295,000 acre-feet to 174,000 acre-feet. The changes in storage targets only affect the trigger points for diversion of Truckee River water to Lahontan Reservoir. The storage targets do not impose any limit on the amount of Carson River water or the total amount of water that can be held in Lahontan Reservoir. Further, in response to comments, the DOI has revised the end-of-June storage target to 190,000 acre-feet, though retains the January–May targets at 174,000 acre-feet, subject to the adjustment procedure in section 418.22 of the rule.

The economic threshold for OMB review under E.O. 12866 is if the proposed rule is anticipated to have an economic impact of $100 million or more on a single entity or an economic sector. The economic impact of the Adjusted OCAP rule is based on average changes to the water supply and its effects on foregone production of alfalfa. These effects would only be experienced in drought years, the intensity of which would determine any actual changes in production. The average effect is calculated to be in the range of $561,000 to $283,000 per year, gross, to the agricultural sector. This estimate reflects the price of alfalfa without subtracting production costs. A 1994 study by the University of Nevada Cooperative Extension (Fact Sheet 94–22, Alfalfa Production Costs for Fallon, Nevada Area, by Wheeler and Meyer) concluded that the per acre profit for alfalfa was approximately $220 per acre which places the economic impact of the Adjusted OCAP at approximately $160,380 based on the rule having a water supply impact that might otherwise have served 729 acres. Nor does the Adjusted OCAP rule meet any of the other criteria for significance under E.O. 12866 regarding a serious conflicting action with another Federal agency, creating a budgetary impact, or raising novel legal or policy issues.

The Adjusted OCAP makes changes to four existing provisions of the 1988 OCAP. It neither creates any new requirement affecting the sovereignty of the State of Nevada, nor changes the role of the State or its rights and responsibilities with respect to regulating the Newlands Irrigation Project. The State was notified of the DOI's intent to proceed with the Adjusted OCAP rulemaking in 1995, participated in workshops on developing the proposed rule, and was consulted with before publication of the proposed rule. The DOI believes the requirements of E.O. 12612 on Federalism have been satisfied.

The DOI has examined the impact on family income as a result of the Adjusted OCAP in accordance with E.O. 12606. The economic impact of the Adjusted OCAP, which is experienced only within the Carson Division of the Project and only during the first year of a drought, translates into an estimated average economic impact on production of between $10 and $5 per acre per year, and an impact on profits of approximately $2.90 per acre per year. This cost is neither considered to have a significant impact on family budgets, nor expected to have any effect on any other family criteria under E.O. 12606. In addition, each farmer's strategy for managing a reduced water supply in a drought will affect their costs of production, which are typically $450 to $476 per acre, and gross receipts, which may mitigate or exacerbate the effects of the rule. If a farmer's net return is $220 per acre as noted, it is possible that leasing water in a drought year would generate more profit than alfalfa production in a full water year. However, none of these economic assessments includes the costs of replanting crops which might be necessary following severe droughts or leasing water. While the precise impact to each family budget is unknown, the DOI is cognizant of and has considered these overall effects in this rulemaking.

The applicable standards of E.O. 12988 on Civil Justice Reform do not set a threshold on the possibility of litigation as a consequence of the rulemaking. While we seek to avoid litigation, we recognize that all rulemaking holds the possibility of litigation by an allegedly aggrieved party. The DOI does not consider the litigious and turbulent history of Newlands Project OCAPs to be dissuasive in pursuing its responsibilities.

II Adjusted OCAP Issues

1. Project Acreage Base: The adjustments to the 1988 OCAP are based, in part, on anticipated increases in irrigated Project acreage that did not take place under that OCAP and some changes that did take place. The 1988 OCAP anticipated and was based upon the acreage in the Project increasing to 64,850 acres with an attendant headgate entitlement of 237,485 acre-feet and a total diversion demand of 346,985 acre-feet. Instead, the project acreage is

currently approximately 59,000–60,000 acres with a headgate entitlement of approximately 206,500–210,000 acre-feet and a total diversion demand of approximately 301,900–307,000 acre-feet. The current diversion demand figures for the Project are the result of a smaller acreage base than had been anticipated in the 1988 OCAP, reduced entitlements based on the so-called "bench/bottom" litigation (1995 Order of Judge McKibben, in *U.S.* v. *Alpine,* United States District Court for the District of Nevada No. D–185), ongoing water transfer litigation, a cap on water use by the Fallon Paiute-Shoshone Tribes, and a transfer rate of 2.99 acre-feet per acre for acquired wetland water rights as has been transferred to date instead of 3.5 or 4.5 acre-feet per acre. In response to the reduced water demand, the Adjusted OCAP changes the Lahontan Reservoir storage targets to provide a commensurate reduction in water supply from the Truckee River.

The DOI has received comments from eight parties objecting to the proposed storage targets using a 1995 acreage base of 59,075 water-righted, irrigated acres, when there are nearly 73,000 acres in the Project assessed annual charges for operations and maintenance (O&M). Commenters also disagree with BOR's determinations as to which lands are eligible for water deliveries. They contend that acreages and entitlements could change as a result of rulings favorable to irrigators in the transfer litigation and individual readjudications of the bench/bottom decision.

Response: The DOI agrees that the Project water demand may change over time. When the Notice of Proposed Rulemaking was published, the DOI assumed that changes affecting water demand might not occur for some years. It appears, now, that resolution for some proposed water rights transfers may occur sooner. Also, the 1995 actual irrigated acreage figure used in developing the Adjusted OCAP may have been depressed following several years of drought. The irrigated acreage reported for 1996 and estimated for 1997 has increased somewhat. On the other hand, additional acreage has been acquired for wetlands use at 2.99 acre-feet per acre which would tend to reduce water demand on the Project.

In response to these comments, the DOI is adopting, in effect, a sliding scale of storage targets predicated on holding the water supply available to the Project commensurate over a range of water demands. The table Adjustments to Lahontan Reservoir Storage Targets in the rule shows targets corresponding to water demands from 249,800 acre-feet to 290,200 acre-feet, and section 418.22 includes formulae for demands below and above those levels. For all levels of demand, the average annual water supply is about 97.4 percent. As an example of using the storage targets to match demand, Table C shows key modeling results for two demand levels below the Adjusted OCAP level and two above the Adjusted OCAP. In the four variations, the water supply to the individual irrigators remains at approximately the same level consistent with the proposed Adjusted OCAP water supply level.

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TABLE C

Truckee-Carson Model Results for 1901-1905 for a Carson Division Demand Range from 250,000 to 290,000 Acre-Feet					
KEY MODELING ASSUMPTIONS	Lower Demand 2	Lower Demand 1	Final Adjusted OCAP	Higher Demand 1	Higher Demand 2
Newlands Project Diversion Demand	273.0	283.0	294.0	303.0	313.0
Lahontan Reservoir End-of-June Target	150	170	190	210	229
Lahontan Average Target in July-Dec.	55.5	71.8	91.8	111.8	130.8
Lahontan Loss for LSOCM (Feb.-Jun.)	18.2	18.2	18.2	18.2	18.2
TRUCKEE CANAL					
Diversion from Truckee River	70.6	79.5	91.4	103.1	115.5
Truckee Canal Loss	14.2	15.3	16.8	18.2	19.5
LAHONTAN RESERVOIR					
Inflow from Truckee Canal	33.7	41.5	51.9	62.2	73.3
Carson River near Ft. Churchill	289.8	289.8	289.8	289.8	289.8
Reservoir Loss	34.3	34.4	35.1	36.3	37.6
Total Release and Spill	288.4	296.1	305.9	315.0	324.8
Reservoir Spill	44.9	42.9	42.0	42.3	42.4
Average End of Month Storage					
May	208.9	211.6	217.2	225.4	234.1
June	208.9	210.9	215.7	222.6	229.7
July	179.4	179.9	183.3	189.0	194.8
August	141.3	140.5	142.5	147.0	151.6
September	114.7	113.3	114.6	118.4	122.1
October	103.6	102.4	103.8	107.8	112.2
CARSON DIVISION					
Demand at Lahontan Reservoir	250.0	260.0	271.0	280.0	290.0
Lahontan Release Shortage	6.52	6.79	7.05	7.24	7.52
Water Supply (%of Demand)	97.39%	97.39%	97.40%	97.41%	97.41%
No. of Shortage Years	9	9	9	9	9
PYRAMID LAKE					
Truckee River Inflow to Lake	500.9	492.2	480.5	469.8	457.6
Ending Elevation (feet)	3,849.3	3,845.9	3,840.9	3,835.9	3,830.5
Beginning Cui-ui (1,000's of adult females)	50.0	50.0	50.0	50.0	50.0
Ending Cui-ui (1,000's of adult females)	1,735.3	1,259.7	1,051.9	572.6	311.6
Number of Cui-ui Spawning Years	77	75	75	71	69

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The BOR will determine at the end of each irrigation season what change, if any, is to be made to the monthly Lahontan Reservoir storage target for the next year, starting with the November end-of month storage target. Changes in the storage targets shall be implemented in whole increments of 1,000 acre-feet as indicated on the Table. For water demands above or below the values shown on the table Adjustments to Lahontan Reservoir Storage Targets, the two formulae associated with the table will be used to calculate the target adjustments, but will only be implemented in whole units of 1,000 acre-feet.

Carson Division water demand from the previous full water year (100 percent supply) will be the basis for changes in storage targets. Following any water year there will be a one-year lag in water demand data because verification of the irrigated acreage cannot be determined until about March for the prior irrigation season ending in October. For example, the Carson Division water demand for the 1997 irrigation season, a full water year, will not be known until March 1998. Under this rule, any further adjustments to storage targets could not go into effect before November 1998.

These flexible storage targets in Adjusted OCAP will address the concern that the DOI has selected an unreasonably low acreage or is relying on an inflexible demand base for setting Lahontan Reservoir storage targets. This provision assures the irrigators a consistent water supply as Project acreage changes.

2. Changes in Storage Targets: The Adjusted OCAP change Lahontan Reservoir storage targets to bring the water supply in Lahontan Reservoir in line with the Carson Division water demand in a manner that is consistent with the 1988 OCAP. The DOI received specific comments from nine parties, some saying that this change in storage targets will cause shortages and artificial droughts. Some comments say the reduced December and winter storage targets will cause diversions to begin later in the spring and summer when less water is available in the Truckee River. This will cause shortages that will prevent water entitlements from being satisfied or will satisfy entitlements in normal water years but leave less water in storage at the end of the irrigation season creating new droughts or worsening droughts in future years. In turn, this will reduce crop yields, and in drought years, more farmland will be fallowed, requiring larger capital investment to replant after a drought. One commenter asked if DOI only looked at elements that might reduce Truckee River diversions rather than increase them. It appears to some that the DOI is deliberately creating shortages in the Project water supply by only adjusting OCAP provisions that increase shortages, and asking the water rights owners to bear these shortages and the related economic effects. After all, one asks, isn't the goal to reduce risks of shortages? Another commenter said basing reduced diversions on trust obligations is disingenuous because the real reason is to allow growth in the Reno and Sparks area.

Another area of stated concern in comments is that the change in Lahontan Reservoir storage targets is unjustified because the percentage reduction in storage targets exceeds the percentage reduction in Project acreage. One commenter asks whether DOI is assuming a 1:1 relationship of storage targets to water demand and whether that same relationship applies to the current project acreage.

Other commenters suggest that the Adjusted OCAP storage targets are too high and the October storage target should be reduced to 4,000 acre-feet, the November and December targets reduced, and, in years of high precipitation, the October to December targets reduced. One suggests that the 4,000 acre-foot minimum pool in Lahontan should be eliminated or maintained out of water rights acquired for that purpose, otherwise it is, in effect, maintained out of the Truckee River by a higher storage target.

Response: The Adjusted OCAP do not lower storage targets for the purpose of creating water shortages in the Project. The purpose of lower targets is to reduce unnecessary diversions of water from the Truckee River. The storage targets are calibrated to meet the Secretary's trust responsibility to minimize Truckee River diversions while satisfying the Secretary's contractual obligation to provide an appropriate water supply to serve Project water rights. Also, the benefits of reduced Truckee River diversions accrue to water users downstream of Derby Dam and to Pyramid Lake. Reno and Sparks derive no benefits from Adjusted OCAP.

The 1988 OCAP established a set of Lahontan Reservoir storage targets that were expected to satisfy the existing and increasing future water demands of the Newlands Project. It was assumed that the Project would grow to 64,850 acres and be served in the Carson Division by the 215,000-acre-foot-storage-target set defined in the 1988 OCAP. Modeling indicates that the 1988 OCAP with conditions projected for 1992 would provide approximately a 97.27 percent water supply. However, the Project did not attain the size envisioned. The fortuitous consequence for the Carson Division water users has been to have the current acreage level and corresponding water demand served out of a water supply capable of serving a larger Project. Thus, the Project today enjoys an average water supply modeled at 98.34 percent, but also increased spills and other losses at the expense of the Truckee River and Pyramid Lake. The proposed Adjusted OCAP would have provided an average water supply of 97.38 percent, a reduction from current conditions by about 2,550 acre-feet on average. This Adjusted OCAP final rule, by increasing the end-of-June storage target to 190,000 acre-feet, provides a modeled average water supply of 97.40 percent, which is approximately the same supply the 1988 OCAP would have provided with expected growth.

The lower Lahontan Reservoir storage targets do reduce, as noted in comments, the available Project water supply, but still serve water right entitlements for full water years in nine out of ten years, based on the historic hydrologic record. Lower storage targets also result in less water remaining in the Reservoir at the end of each season which means that in the approximately one year in ten when there is a drought, there is less water carried over to cushion the Project from the drought, as shown in Table B. Generally, if a drought lasts for more than one year, the storage targets have no effect on the Project water supply because the target limits are never met and TCID can continue diversions of water from the Truckee River that may be available, subject to higher priority *Orr Ditch* water rights. Any additional shortage resulting from Adjusted OCAP has an economic effect, which is discussed in I.12. of this preamble.

Regarding percentage reductions in acreage and targets, there is not a one to one relationship between Project acreage and storage targets under the Adjusted OCAP or the 1988 OCAP. Storage target levels determine when TCID can divert water from the Truckee River to Lahontan Reservoir. Under the Adjusted OCAP, during January through May when Lahontan Reservoir storage is forecast to be below 174,000 acre-feet at the end of June, TCID may divert Truckee River water to Lahontan. If the water level in Lahontan Reservoir is forecast to be above the storage level of 174,000 acre-feet at the end of June, then TCID may not divert Truckee River water to Lahontan. The 174,000-acre-foot target is not a new limit on how much water Lahontan Reservoir may

hold. Lahontan Reservoir can still fill to capacity with Carson River water, as it has done, for instance, in the past three years.

The percentage change in Project acreage from a projected 64,850 acres to 59,075 acres is an 8.9 percent reduction. Acreage is directly related to water demand and OCAP's goal is to provide the appropriate water supply to meet the demand for water righted acreage in irrigation. In the Adjusted OCAP rule, storage targets are adjusted so that in most years, the Project water supply in Lahontan matches or exceeds (based primarily on Carson River inflow) the water demand at current acreage levels. The corresponding percentage reduction in average water supply from the 1988 OCAP with 1992 assumptions to the Final Adjusted OCAP (from Table A) is modeled to be about a 7 percent reduction (284,020 acre-feet and 263,950 acre-feet, respectively). Separate from the percentage reductions in acreage and water demand, the OCAP determines how to get enough water in Lahontan Reservoir to satisfy the water demand. Lahontan Reservoir receives an average annual inflow of approximately 355,000 acre-feet of which, on average, about 80 percent is Carson River inflow and 20 percent Truckee River diversions to Lahontan. Therefore, a given percentage reduction in the storage target for Truckee River diversions has a much smaller percentage effect on the total water supply in Lahontan Reservoir. For example, a 50 percent reduction in storage targets would still provide, on average, about a 90 percent supply to the Project; a 100 percent reduction in storage targets (no Truckee River water) would still leave an 80 percent water supply, on average.

On the issue of maintaining a 4,000 acre-foot minimum storage in Lahontan Reservoir, that is not a provision of OCAP, but rather appears to be an informal agreement between TCID and the Nevada Department of Conservation and Natural Resources to provide some water for fish in the Reservoir. Although Lahontan Reservoir was designed for irrigation water storage, Pub. L. 101–618 expands the authorized purposes of the Newlands Project to include recreation and fish and wildlife (Section 209 (a)), though no water rights have been transferred to the Reservoir for that purpose. The DOI supports maintenance of the recreational fishery at Lahontan Reservoir, and by modeling the Reservoir with a 4,000 acre-foot minimum level, the DOI acknowledges that this amount of water is, in effect, unavailable for use in the Project. Also, the minimum reservoir pool is beneficial to dam safety and operations because both the dam and the valves and packing in the outlet works perform best if kept wet instead of being subject to frequent wetting and drying.

3. Project Conveyance Efficiency: The Adjusted OCAP does not change the assumptions underlying the conveyance efficiency provision in the 1988 OCAP, but it does reduce the conveyance efficiency requirement based on less Project acreage than was envisioned in the 1988 OCAP. The basis for the new, lower conveyance efficiency requirement is that conveyance efficiency generally decreases as the irrigated acreage in the Project decreases because conveyance losses (seepage and evaporation) are about the same even though deliveries to headgates decrease.

Thirteen commenters questioned why DOI was continuing to rely on the efficiency assumptions in the 1988 OCAP. The comments focus on a table of 22 Potential Water Conservation Measures for the Newlands Project first published as Table 4 in the 1988 OCAP and republished in a modified form in the Adjusted OCAP proposed rule. Commenters object to using this table because the conservation measures, many of which were implemented by TCID, have not always achieved the water savings predicted in the 1988 OCAP. Some stated that continuing to cite these conservation measures perpetuates in the Adjusted OCAP the errors from the 1988 OCAP. Some feel that DOI has not recognized the efforts of TCID in trying to achieve the conveyance efficiency requirements by relying on these conservation measures. One commenter stated that DOI had used these conservation measures to justify unreasonable conveyance efficiency requirements in the 1988 OCAP, while another commenter stated that the requirements were made artificially high to run up Project debits. Another commenter stated that the conservation measures had interfered with getting irrigation deliveries at the optimum times for plants. Several commenters wanted to know what other irrigation projects the Newlands Project had been compared to in determining what level of conveyance efficiency was possible.

Five commenters raised questions about how the Adjusted OCAP conveyance efficiency was developed, whether DOI had considered the 1994 Report to Congress on the Newlands Project Efficiency Study, how the lower storage targets relate to efficiency, and if we can be very accurate in measuring conveyance efficiency.

Two commenters stated that the conveyance efficiency requirement should not be lowered because the 1994 BOR Efficiency Study shows that efficiencies could be increased to 75 percent, and that lower efficiencies were inconsistent with BOR policy on water conservation.

Response: In planning the adjustments to be made to the 1988 OCAP, the DOI identified four changes within the scope of the 1988 OCAP: adjustments to Lahontan Reservoir storage targets based on current irrigated acres, conveyance efficiency requirements based on current irrigated acres, extending the time period for storage in lieu of diversions to avoid winter over diversions, and giving BOR flexibility in determining what snowpack/runoff forecasts to use. The DOI was asked to consider more fundamental changes to the 1988 OCAP approach to conveyance efficiency; however, the suggested changes were far beyond the scope of the Adjusted OCAP analysis. The DOI has committed to a review of conveyance efficiency requirements and conservation measures as part of long-term revisions to OCAP, but not as part of Adjusted OCAP.

The expected water savings from the 22 conservation measures identified in Table 4 in the 1988 OCAP were based on information available at the time. Many of those measures were suggested as a relatively inexpensive means to achieve the conveyance efficiency requirements in the 1988 OCAP. Some of the measures in Table 4 were expensive and some of the predicted savings have not been achieved in practice. Many of the 22 measures were implemented by TCID, although not always consistently, but the predicted water savings were not realized in all cases. In its 1994 Efficiency Study, the BOR recognized the differences between the water savings predicted in the 1988 OCAP and what had been achieved. It also identified other measures, some at quite low cost, that could increase project efficiency. The Adjusted OCAP incorporates the new information from the 1994 Efficiency Study and updates the table on Potential Water Conservation Measures. However, the 1988 OCAP neither required those specific measures from Table 4 to be implemented nor precluded the Project from implementing any other measures to improve water conservation and meet the efficiency requirement. The conservation measures are not a means of justifying conveyance efficiency requirements but were suggested as a way to achieve those requirements. Nor are the conveyance efficiency requirements a way to increase debits in the Project.

As suggested in a comment, it is difficult to know with precision how a particular conservation measure improves conveyance efficiency. One of the problems—and one of the twenty-two conservation measure suggestions—is the inaccuracy of measuring deliveries to headgates. As a result of the new Project O&M contract, TCID is undertaking installation of water measurement devices to improve measurement of headgate deliveries. The efficiency study estimates that this will actually increase efficiency by about 7.5 percent because the current measurement is inaccurate and seems to produce systematic over-diversions to Project irrigators.

In formulating the conveyance efficiency requirements for the 1988 OCAP, BOR compared the Newlands Project to two other irrigation projects concerning the conveyance efficiencies that might be achieved. The BOR looked at the Payette Division of the Boise Project and the South Side Pumping Division of the Minidoka Project, both in Idaho. The observed conveyance efficiency in the Payette Division is 66.3 percent and in the South Side Pumping Division 64.4 percent. As might be expected, the Newlands Project shares some characteristics with these projects and is different from them in other ways. The 1988 OCAP considered these to be "comparable" projects, but no assessment has been made of the validity of any comparisons.

The Adjusted OCAP reduction in the conveyance efficiency requirement is calculated based solely on the current Project acreage compared with the 1988 OCAP acreage assumptions and is unrelated to the calculation of the Adjusted OCAP storage targets. The conveyance efficiency requirement will be extrapolated each year using the 1988 OCAP acreage assumptions and the current acreage.

The DOI believes the reduced efficiency requirement to be consistent with other changes in the Adjusted OCAP based on Project acreage. This change recognizes the difficulty in meeting the efficiency requirements when headgate deliveries are lower. It is not a windfall for the irrigators because the reduced efficiency requirement still cannot be met without physical or operational improvements in the Project, although there is a benefit because it will reduce the debit the Project may incur in certain years.

4. Effects of Other Actions on Efficiency: One commenter noted that various water rights acquisition programs could result in the acquisition and transfer out of the Newlands Project of a significant portion of the water rights in the Truckee Division. The conveyance efficiency in the Truckee Division is approximately 74 percent, and this higher conveyance efficiency improves the overall Project conveyance efficiency. The commenter is concerned that Truckee Division water rights acquisitions will shift more of the burden of meeting efficiency targets to the less efficient Carson Division.

Four other commenters say that the wetlands water rights acquisition program managed by the FWS to acquire water rights for Stillwater National Wildlife Refuge will make it difficult to achieve the required efficiencies. The wildlife refuge is at the end of the Project delivery system and commenters contend delivering increasing amounts of water to the end of the system will reduce conveyance efficiency. Another concern is that the pattern of water rights acquisitions may eliminate deliveries to some properties along a delivery lateral and result in less efficient water deliveries to other remaining properties on the lateral. One commenter disagreed with the assumption that the water rights acquisition program will, over time, help to improve conveyance efficiency in the Carson Division, and cited the 1994 BOR Efficiency Study to support this claim .

Response: While the concern for conveyance efficiency is legitimate, the specific argument is questionable considering that wasteful deliveries occur, including one at no more than about five percent efficiency.

The DOI continues to believe that the pattern of purchases, predominantly in the Stillwater and St. Clair Districts, the areas closest to the wetlands, will improve Project efficiencies by concentrating deliveries through the system. This is consistent with the 1994 BOR Efficiency Study which states that delivery of more water to wetlands should not affect seepage because the canals used to deliver water to the wetlands are generally full throughout the irrigation season, and that the wetted area of the canal and not flow determines seepage.

The DOI recognizes that absent targeted water rights acquisitions, the FWS may buy water rights in other areas of the Project. It is the DOI position that if, at some appropriate point in the future, water rights acquisitions in the Truckee Division or the Carson Division are shown, on the whole, to have a demonstrable adverse effect on Project conveyance efficiency, the calculation of Project conveyance efficiency may be adjusted. This would be done solely at the discretion of the BOR and only if a feasible technical approach can be developed to remove the inefficient component of the delivery system from the calculation of conveyance efficiency.

This should not affect the Secretary's carrying out his trust obligations to the PLPT because each wetlands acquisition reduces the demand for Truckee River water in the Project by transferring to the wetlands only 2.99 acre-feet of every 3.5 or 4.5 acre-feet acquired. Also, the conveyance efficiency improvements from concentrating deliveries to the wetlands further reduces the demand for Truckee River water in the Carson Division.

5. Credit Storage in Lieu of Diversions: The proposed Adjusted OCAP rule extended the time period during which water might be stored in Stampede Reservoir on the Truckee River in lieu of diverting that water to Lahontan Reservoir. The 1988 OCAP allowed storage in lieu of diversion from April through June. The proposed rule extended storage in lieu of diversion to begin as early as January each year.

Six commenters raised a number of questions, foremost seeking a better description of when credit storage provisions would be utilized, how much water could be stored, when it would be released from storage, and how it relates to storage targets. Another question was why DOI was using credit storage to address unique events like high runoff years, but not drought years. One commenter suggested that there would be little benefit for the Truckee River or Pyramid Lake if credit storage is only used in years that are full water years or better. Some comments expressed concern for water levels in Lahontan Reservoir when water was being stored in Truckee River reservoirs, and saw the potential for less carry over storage in Lahontan and more diversions from the Truckee River. One commenter questioned why unused Newlands Project water could not be carried over to the next year in Truckee River reservoirs. Another commenter asked why the credit water could only be used in the Carson Division when the greater need for the water might be in the Truckee Division.

Two commenters recommended that the credit storage in lieu of diversions start in October to avoid excess diversions, particularly in November and December. One commenter suggested that storage in lieu of diversions should be done whenever possible, regardless of runoff forecasts, and that credit water only be taken to Lahontan Reservoir after June and then only to meet storage targets.

One commenter was concerned about the effects of storage in Truckee River

reservoirs and recommended that water be stored in all Truckee River reservoirs, not just Stampede reservoir, and that unused portions of the credit storage should revert to the reservoir in which the water would have been captured. The commenter wanted the storage priority for OCAP credit water to be junior to all existing categories of stored water and junior to all future storage under the TROA, and that it not be stored adverse to Floriston rates without a hydropower waiver from Sierra Pacific Power Company. Also, they indicated that the OCAP credit storage should be subject to reductions by evaporation and spills.

Response: Extending the time period during which the credit storage provision is applicable is intended to fine-tune the amount of water the Project receives from the Truckee River. It is a way to avoid excess winter diversions of Truckee River water that ultimately spills from Lahontan Reservoir, as occurred in 1995, 1996, and 1997. The following discussion is intended to clarify when and how the credit storage provision (§ 418.20 (f)) will be used. In response to comments received, and in consideration of the experience in December 1996 when approximately 22,000 acre-feet of water was diverted from the Truckee River to Lahontan Reservoir and then was spilled in January 1997 due to high Carson River runoff, the Adjusted OCAP rule extends credit storage in lieu of diversion to include November and December. October was not included because it is during the irrigation season and because it is the month with the lowest storage target—52,000 acre-feet—so there is little risk that Truckee River diversions to meet that target would result in a spill. As revised, this Adjusted OCAP rule provides the BOR flexibility to determine, in consultation with other parties, whether to initiate credit storage any time from November through June of the next year.

Under this credit storage provision, water that otherwise would have been released for diversion to Lahontan Reservoir that is actually retained in Truckee River reservoirs would be credited as Newlands Project credit water. Also, water that could be diverted to Lahontan Reservoir but is allowed to pass Derby Dam may be credited as Newlands Project credit water in Stampede Reservoir from the fish water stored in Stampede Reservoir. In the latter situation, concurrence by the FWS, and as appropriate, the PLPT, will be required because they control the use of fish water, and the storage would have to be accomplished by exchange with water dedicated to help restore endangered and threatened fish at Pyramid Lake. For example, a reduction of diversions in January through March of 1995, would have required FWS approval because water was not being released for Project diversions.

Newlands Project credit water could be exchanged to other special categories of water in Truckee River reservoirs such as project water held for fish recovery, and can be retained in storage until the end of the irrigation season. The number of categories available for such exchanges is expected to increase if the TROA currently in negotiation is completed and entered into effect.

Newlands Project credit water that spills may be captured and diverted to the Project at Derby Dam if the diversion is within the applicable OCAP storage targets. However, Newlands Project credit water remaining in storage at the end of the Project irrigation season will be managed to benefit threatened or endangered fish in Pyramid Lake.

Newlands Project credit water may be released for diversion to Lahontan Reservoir, if needed, as early as July 1 through the end of the irrigation season, but not thereafter. Credit water can be diverted to Lahontan Reservoir only to meet applicable storage targets during the irrigation season. Newlands Project credit water will not carry over to the next year for use in the Project, therefore, if it is not used in the year in which it is stored, it will not be available thereafter to the Project. To protect the water users, the Newlands Project credit water held in storage on the Truckee River will not be reduced as a result of seepage or evaporation. If Newlands Project credit water spills from Truckee River reservoirs it can be diverted at Derby Dam for Lahontan Reservoir subject to applicable storage targets.

If the entire amount in credit storage is needed to meet Lahontan Reservoir storage targets, then the amount of water released from Truckee River reservoirs will be the amount actually captured in storage. If the Newlands Project credit storage is based on water that was allowed to pass Derby Dam, then sufficient water will be released from credit storage to ensure that the diversion to the Project, as measured at the U.S. Geological Survey gauge on the Truckee Canal near Wadsworth, Nevada, matches the diversion foregone earlier in the season.

The BOR is expected to apply this provision starting in November or December only in years when the water levels in Lahontan Reservoir and Truckee River Federal reservoirs are high enough to indicate that a normal or near normal water year would be expected to satisfy Project water demand. For example, there would be no point in credit storing potential Truckee River diversions in November or December if Lahontan Reservoir were nearly empty due to a drought in the preceding irrigation season. Thereafter, Newlands Project credit water will be stored in lieu of diversion if the Carson River runoff is forecast to provide a full supply of water to Lahontan Reservoir.

The reason Newlands Project credit storage is not allowed to carry over to subsequent years is because, by definition, the water left in storage at the end of the irrigation is water that was not needed to serve Project water rights. In accordance with *Tribe* v. *Morton*, the credit water remaining is water that must flow to Pyramid Lake.

The effect of this provision on water levels in Lahontan Reservoir will vary from year to year, depending on the amount and timing of the Carson River spring runoff. The information on storage levels in Table D does not include any effects from storage in lieu of diversion. If, as expected, credit storage is exercised only during above average water years, it may have little effect on recreation levels in Lahontan Reservoir. Credit storage will tend to reduce water levels in Lahontan, particularly in the spring and early summer recreation seasons, but if the credit water is needed and taken to Lahontan later in the summer it will increase water levels. The fine tuning facilitated by credit storing will tend to reduce carry over of Truckee River water in Lahontan and this will decrease spills.

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TABLE D

Percent of Time Lahontan Reservoir Storage is Less Than Given Value on Indicated Date (1901-1995)[1]					
Date	Lahontan Reservoir Storage[2]	1988 OCAP	Current Condition	Proposed Adjusted OCAP	Final Adjusted OCAP
April 30	160,000[3]	7%	4%	20%	20%
	120,000[4]	3%	3%	3%	3%
	90,000[5]	2%	2%	2%	2%
May 31	200,000[3]	13%	13%	43%	43%
	120,000	6%	3%	7%	7%
	90,000	3%	2%	3%	3%
June 30	200,000[3]	20%	20%	45%	45%
	120,000	9%	7%	10%	10%
	90,000	8%	3%	8%	8%
July 31	160,000[3]	24%	21%	48%	44%
	120,000	14%	10%	18%	18%
	90,000	10%	8%	12%	12%
August 31	120,000[3]	31%	21%	51%	51%
	100,000[6]	20%	15%	39%	26%
	90,000	20%	13%	25%	23%
September 30	120,000[3]	49%	41%	58%	58%
	90,000[5]	23%	20%	53%	52%
	25,000[6]	10%	10%	11%	11%

1. All the footnotes from Table A apply to this Table.
2. Values in acre-feet
3. State of Nevada monthly preferred reservoir storage levels for recreation.
4. 120,000 acre-feet is the minimum reservoir storage levels allowing safe use of existing boat ramps.
5. New storage level for safe use of boat ramps after extension of ramps as a mitigation measure.
6. State of Nevada recommended minimum storage level.

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The Newlands Project credit water is not intended to be used to balance the water supply between the Truckee and Carson Divisions of the Project. The credit storage is created out of water that would have gone to Lahontan Reservoir. If the credit water is needed to meet storage targets in Lahontan Reservoir but it is instead diverted for use in the Truckee Division, that leaves the Reservoir below targets and places an additional call on Truckee River water. On the other hand, if diversions out of winter and spring Truckee River water would have met Lahontan storage targets and summer and fall flows are insufficient to meet current demand there would be no bar to using a portion of the stored water to equalize deliveries between the two Divisions. It is expected that this situation could occur rarely, if at all, since the intention is to divert sufficient water, when available, to serve water rights and to store water in Stampede Reservoir only when Carson River flows are expected to meet the Lahontan Reservoir storage target criteria.

The priority of storage for Newlands Project credit water in relation to other stored water and to Sierra Pacific Power Company's hydropower right is expected to be resolved in TROA negotiations which are not yet completed. (See also the response I.10. on the relationship of Adjusted OCAP to TROA.)

6. Cui-ui Fish: Measures to recover the endangered cui-ui, a fish species unique to Pyramid Lake, are detailed in the 1992 Cui-ui Recovery Plan prepared by the FWS. These measures include increasing the inflow of the Truckee River to the Lake to first stabilize what has been a falling lake level, then increasing the water level in the Lake so that the fish can eventually swim unaided up the Truckee River to the fish passage facility at Marble Bluff Dam where they are passed upstream to spawn. If the Lake level rises above Marble Bluff Dam, the cui-ui will be able to spawn upstream without human assistance to get over the dam.

Three good water years and four years of cui-ui spawning runs have dramatically increased the population of cui-ui in Pyramid Lake, although much of the increased population is juvenile fish which have yet to contribute to spawning. Along with successful spawning and increasing population have come questions about how much water the cui-ui need for recovery. Nine commenters raised a number of issues regarding cui-ui, the heart of which is questioning the need for Adjusted OCAP in light of recent increases in the cui-ui population. The underlying assumption is that the Adjusted OCAP's purpose is to obtain more water from the Newlands Project for cui-ui recovery. This notion was probably reinforced by the Endangered Species Act (ESA) consultation on the 1988 OCAP which effectively limited the maximum allowable diversion in the Project to 320,000 acre-feet per year to avoid jeopardizing the continued existence of cui-ui. One commenter asked what the current biological opinion shows for cui-ui at current population levels.

One commenter asked why the 1988 OCAP was being changed when the Recovery Plan was still under review by the National Academy of Science. Two commenters questioned if a water demand for Pyramid Lake or cui-ui had been defined or if DOI had performed a demand study for the Newlands Project and concluded it needed 110,000 acre-feet for cui-ui. Several commenters believed that modeling done for Adjusted OCAP is flawed because it doesn't reflect current cui-ui data on population or lake level relationships, and there is no information on how the cui-ui index was formulated. These commenters also thought too much water might be going to Pyramid Lake and could affect boating, the delta wetlands, pelicans, and grazing. One commenter questioned why getting 110,000 acre-feet of water to Pyramid Lake for recovery of the cui-ui was the sole responsibility for the Newlands Project.

Response: The original litigation in *Tribe* v. *Morton* is the basis for the current OCAP for the Newlands Project, and that case is based on the Secretary's trust responsibilities to the Pyramid Tribe, not the Secretary's responsibilities under ESA to recover cui-ui. This is not to say that cui-ui recovery is ignored in developing OCAP. As with any action that may affect a species listed under the ESA, the Secretary had to consider the effects of the 1988 OCAP on cui-ui and consult with the FWS which resulted in the 1988 biological opinion. We have again consulted with the FWS on this Adjusted OCAP and the FWS has confirmed that the Adjusted OCAP will not adversely affect listed species, including the endangered cui-ui. The recent population increase does not alter the Secretary's trust responsibility to ensure that only the water needed to serve Project water rights is diverted from the Truckee River.

The Cui-ui Recovery Plan calls for annual inflow to Pyramid Lake to increase by 110,000 acre-feet, although some of this water may be in the form of equivalent benefits like improvements in lower Truckee River habitat or enhanced fish passage over Marble Bluff Dam. This amount of water or its equivalent is not based on a study of how much water can or should be taken from the Newlands Project for cui-ui, but on a determination of the water flows and Lake levels needed to ensure the persistence of the species.

A revised provisional version of the cui-ui model has undergone peer review and will be submitted to the cui-ui recovery team for their consideration of the model and its results. The revised model includes new information on cui-ui spawning and survival developed since the current model version was developed. The revised model is expected to better mirror the recent increases in cui-ui population. Even with the current cui-ui model, the cui-ui results presented in Table A show a marked increase in cui-ui numbers over the proposed rule modeling because of the inclusion of the three good spawning years in the hydrology. Except for the peer review of the model noted above, we are not aware of any review of the Cui-ui Recovery Plan by the National Academy of Science.

The reduced diversions of Truckee River water under Adjusted OCAP do increase inflow to Pyramid Lake and, if the next 95 years match the hydrology of the last 95 years (as the model operates), Pyramid Lake could rise as much as 37 feet. This would inundate some existing recreational facilities and possibly some roads, all of which would have to be relocated. However, this only brings the elevation of Pyramid Lake to approximately 3,840 feet, which is still lower than Marble Bluff Dam and well below the Lake level when the Newlands Project began.

7. Impacts on Recreation: Lahontan Reservoir is one of Nevada's most important recreational lakes. It is operated as a State park recreation area through an agreement with the BOR. A number of comments were received citing the effects of lower storage targets in Lahontan Reservoir on use of the lake for boating, fishing, swimming, and camping. Nine commenters expressed concerns for recreation.

Several commenters cited Nevada's investment of $6.5 million in facilities at Lahontan Reservoir, and view the Adjusted OCAP as a breach of trust of the recreation agreement between the State and the BOR, and further, as a conflict with the Reclamation Recreation Management Act of 1992 section 2802 findings.

Most impacts are related to the lower water levels in Lahontan during summer holidays. One commenter says the times the July target of 150,000 acre-feet won't

be met increases from 38 years to 54 years out of 94 years. Another commenter cites a 41 percent reduction in storage. There is also a concern that these impacts occur at a time of rapid growth in Nevada. One commenter says the impact of losing 50,000 acre-feet to Pyramid Lake is minimal compared with the virtual destruction of recreation at Lahontan by these changes. One commenter suggested that the State of Nevada should purchase and dedicate water rights for recreation at Lahontan.

Response: Lahontan Reservoir was constructed for the purpose of storing water to serve the Newlands Project. The Reservoir itself does not enjoy an adjudicated or quantified water right. The United States Court of Appeals for the Ninth Circuit has opined that "The Lahontan Reservoir, as a Project built under the federal Reclamation Act, was intended for the primary benefit of the farmers who would use its waters for irrigation, and any beneficial use of the reservoir by way of recreation could only be incidental to that purpose." Further, the United States has an affirmative duty pursuant to its trust obligations to the PLPT not to divert any more water from the Truckee River than is needed to meet Project water rights.

Not surprisingly, the water level in Lahontan fluctuates during the irrigation season and from year to year, and is not always favorable to recreational uses. Modeling results for the proposed Adjusted OCAP indicate lower levels in Lahontan Reservoir during the recreation season than are experienced under the 1988 OCAP. In response to comments, but taking the Secretary's trust responsibility into account, the storage targets in Adjusted OCAP have been modified from the proposed rule as shown in Table A, lines 33 through 40. This change in the final rule provides a slight increase in recreation levels in Lahontan during the summer season.

Water levels in Lahontan Reservoir under the Adjusted OCAP will not cause any damage to the existing recreation facilities developed and constructed by the State of Nevada. The concern is that lower water levels will "virtually destroy" the Reservoir as an important recreation resource. The main obstacle to Lahontan recreation from lower water levels is the boating access to the Reservoir via paved boat ramps. The boat ramps are currently useable down to a storage level of 120,000 acre-feet. As a mitigation measure to ensure continued boating access to Lahontan Reservoir, the DOI proposes to extend the boat ramps so that there is safe access down to a storage level of 90,000 acre-feet. With the extended boat ramps, modeling results for Final Adjusted OCAP shown on Table D indicate that there should be boating access through the Labor Day holiday about 75 percent of the time.

Regarding the suggestion that the State of Nevada should purchase and dedicate water rights for Lahontan Reservoir, this is beyond the scope of this rule and beyond DOI jurisdiction. However, the State has had discussions with the DOI on doing exactly this in conjunction with acquiring water rights upstream of Lahontan Reservoir for recreational and wetlands use.

8. Impacts on Wetlands: Eight commenters were concerned that Adjusted OCAP would adversely affect the efforts of the FWS and the State of Nevada to restore 25,000 acres of wetlands in Lahontan Valley because of reduced flows to the wetlands. Flows to wetlands might be reduced in three ways. First, agricultural water rights acquired by the FWS or the State and transferred to wetlands are subject to all OCAP requirements and effects on the water supply. Any increase in water shortages for farmers is an increase in shortages for wetlands. Second, the lower Lahontan Reservoir storage targets will reduce the frequency and quantity of spills and precautionary draw-downs from the Reservoir, a portion of which flows to wetlands. Third, any reduction in the water applied to farm lands reduces the return flows to agricultural drains, some of which carry water to the wetlands.

Several commenters felt that Adjusted OCAP conflicts with or invalidates the assumptions in the Water Rights Acquisition EIS recently published by the FWS, because they will need to acquire more agricultural water rights. They did not believe it was the role of the State or Federal water rights acquisition programs to mitigate for effects from Adjusted OCAP. One also questioned if needing to mitigate for effects on wetlands was contrary to the 1988 OCAP preamble.

Finally, one commenter asked how the OCAP would account for any wetland water rights acquired above Lahontan Reservoir.

Response: Adjusted OCAP will not cause a net loss in wetlands, however, it will have a minor effect on how quickly the FWS can obtain all the water it needs for wetlands, and will require the FWS to obtain additional water rights. Modeling results show that the long-term effect of Adjusted OCAP will reduce slightly the yield from acquired water rights for wetlands, reduce drainflows, and reduce water reaching the wetlands from spills. The effect of Adjusted OCAP may be a reduction in headgate deliveries and drainflows by about 1,100 acre-feet. The average reduction in spilled water may be 4,000 acre-feet. Neither of these effects are necessarily additive because the average spill reduction does not occur in the same year as droughts which would cause delivery and drainflow reductions. However, the Project and the wetlands are expected to receive a full supply of water in 9 out of 10 years. In full water years or in years with spills, there would be no effect on headgate deliveries and drain flows.

The precise amount of additional water that may need to be acquired cannot be determined at this time because the modeled effects described above do not occur simultaneously, and there has not been enough time to precisely assess the long-term average acreage produced by a given water supply. The wetlands acreage will naturally vary because of wet years and dry years. The TCID policy of basing a water right owner's share of water in a drought year on both active and inactive water rights will slightly augment the amount of water the FWS might otherwise receive for wetlands. This is because a portion of the water rights acquired by the FWS are inactive, and because they are not transferring the full water duty. Also, the amount of water reaching wetlands during a spill or precautionary release is variable. Most of the water released does not reach the wetlands because of limitations in the system to deliver water to the wetlands. The FWS is considering improvements in the Project delivery capacity to the wetlands which will help get more water to wetlands during spills. Under a separate action, new criteria for the management of excess water from precautionary releases and spills from Lahontan Reservoir are being developed by the BOR. These criteria will help ensure that deliveries of excess water to wetlands are given a high priority.

The effects of Adjusted OCAP were considered in the FWS Water Rights Acquisition Final EIS (pages 4–145 to 4–147) and in its Record of Decision on the water acquisition alternative. The FWS acknowledged that it might have to acquire additional water rights to make up for any reductions. It is expected to take the FWS some 10 to 20 years and perhaps longer to acquire water needed to create, on average, 25,000 acres of wetlands. Over that time, in managing water to have an average amount of wetlands, it will be very difficult to determine how much additional water had to be acquired because of Adjusted OCAP. In its Record of Decision, the FWS said it would periodically reassess

its water needs and its ability to obtain water from all the sources under consideration.

The State of Nevada would experience similar effects on wetlands water, proportional to the amount of water rights they own, however, the FWS must acquire the necessary water rights to achieve the full 25,000 acres of wetlands.

The Adjusted OCAP does not address how to account for wetlands water rights acquired above Lahontan Reservoir. This may be managed on a case-by-case basis by the DOI.

9. Impacts on Groundwater: The Newlands Project is the principal source of water for recharge to the shallow aquifers in the Lahontan Valley and Fernley areas. Both Fallon and Fernley have municipal water supplies that rely on groundwater. Elsewhere in the Lahontan Valley, individual wells and community wells provide a domestic water supply.

Fourteen commenters have expressed concerns about the effects of the Adjusted OCAP on groundwater. The source of concern is that Adjusted OCAP will reduce the amount of water that moves through the Truckee Canal and that is available for use in the Lahontan Valley. A number of commenters said there would be significant reductions in the recharge to the shallow aquifer resulting in reduced water for domestic wells, for municipal and industrial use, and adverse effects on water quality.

Several commenters were concerned about recharge to the basalt aquifer from which the City of Fallon draws its municipal water supply, and the secondary effects this might have on future water supplies and economic development in the area. One commenter said the effects of reduced drain flows posed qualitative risks for humans and the environment and might have legal implications for the Carson River above Lahontan Reservoir and in California.

Several commenters also were concerned about reduced Truckee Canal flow affecting recharge to the aquifers in the Fernley area, and thus affecting municipal water quantity and quality, and having socio-economic and environmental impacts.

Response: The recharge of groundwater from irrigation in the Newlands Project is incidental and there is no water right to require recharge. Using data from the U.S. Geological Survey [1] (USGS), the FWS, in their water rights acquisition EIS,[2] estimates the current average recharge in the Lahontan Valley from irrigated agriculture to be about 123,300 acre-feet a year. At completion of their water rights acquisitions, the FWS estimates that recharge to groundwater will be about 93,000 acre-feet per year.

The modeled change in the quantity of water from the Truckee River reaching Lahontan Reservoir from the Current Condition to the Final Adjusted OCAP in Table A is 20,200 acre-feet (line 10). This difference in inflow is offset because the lower targets result in 5,700 acre-feet of less reservoir loss (line 12) from evaporation and seepage. The exact amount of loss that might go to seepage is unclear, however, seepage is thought to contribute only minor amounts of water to groundwater recharge in Lahontan Valley (Mauer, *et. al.*). Of the remaining reduction, part is accounted for by a difference of about 12,200 acre-feet per year in reduced spills (line 14), much of which is surface flow that goes directly to wetlands and the Carson Sink and does not recharge groundwater. The remaining portion of the reduction is 2,550 acre-feet from water applied to irrigated lands (line 17). The combination of spills and reduction to irrigation is 14,750 acre-feet per year, resulting in a net annual recharge of about 108,550 acre-feet at current rates, and about 78,250 acre-feet after wetland water acquisitions. This recharge rate far exceeds the current water consumption of about 13,000 acre-feet in the Lahontan Valley from municipal and domestic well sources.

Adjusted OCAP will increase shortages during drought years as shown in Table B. However, well monitoring in the Lahontan Valley by the USGS during and following the last drought period shows that water levels in the shallow aquifer drop during droughts but returned to pre-drought levels during full water years.[3] The Adjusted OCAP is modeled to provide full water years in 9 out of 10 years. Generally, any effect the Adjusted OCAP might have on groundwater levels in the shallow aquifer during droughts would be eliminated by subsequent full water years.

The basalt aquifer is already being mined by the municipal water withdrawals for the City of Fallon, Naval Air Station, and Fallon Tribe. The degree to which the basalt aquifer is recharged by the shallow and intermediate aquifers is uncertain, but is the subject of a study by the USGS being funded by the Navy and DOI. The study will help define how the basalt aquifer is recharged and its potential for recharge from surface water supplies. If the shallow aquifer is an important recharge pathway for the basalt aquifer, then in 9 out of 10 years the Adjusted OCAP would have no effect on recharge to the basalt aquifer. Even in drought years and with any additional water shortage related to the Adjusted OCAP, the effect on groundwater levels in the shallow aquifer is unknown and the degree to which this affects the basalt aquifer likewise unknown, but is not expected to be large.

Lahontan Valley, formed under ancient Lake Lahontan and then from the sediments borne by the meandering Carson River, has numerous discontinuous, unconsolidated deposits of sands, silts, and clays that caused great variability in local use and quality of groundwater. The local variability and the small reduction in groundwater recharge compared with natural events like droughts makes it impossible to identify any effects on groundwater quality or drain water quality.

Reducing the total flow of water through the Truckee Canal to Lahontan Reservoir will likely reduce seepage into groundwater in the Fernley, Hazen, and Swingle Bench areas. The modeled change in canal loss from the current condition to Adjusted OCAP is about 1,900 acre-feet per year out of a current canal and irrigation recharge of more than 41,000 acre-feet per year of recharge from Project irrigation. The percent reduction in recharge that may affect a particular community along the Truckee Canal is not known.

10. Effects on the Fallon Paiute-Shoshone Tribes: The Fallon Paiute-Shoshone Tribe Reservation is located within the Project and has Project water rights. One commenter asked why the protection of the Tribe's trust interests had been dropped from the guiding principles in Adjusted OCAP. Another commenter was concerned with effects of Adjusted OCAP on the domestic water supply of the Tribe. Two commenters objected to the Tribe receiving a full supply of water down to a 56 percent water year and wanted to know why this didn't apply to other water users in the Project.

Response: The reference to fulfilling Federal trust responsibilities to the Fallon Tribe was inadvertently deleted from the list of guiding principles that appeared in the proposed rule. The

[1] Mauer, D.K., A.K. Johnson, and A.H. Welch. 1994. "Hydrology and potential effects of changes in water use, Carson Desert agricultural area, Churchill County, Nevada." U.S. Geological Survey Open File Report 93–463.

[2] U.S. Fish and Wildlife Service. 1996. "Final environmental impact statement: Water rights acquisition for Lahontan Valley wetlands, Churchill County, Nevada." Portland, Oregon.

[3] Personal communication: USGS, Water Resources Division, Carson City, NV. 1997.

Fallon Tribe is added to this principle in the preamble to this Adjusted OCAP rule.

The domestic water supply on the Fallon Indian Reservation comes from wells in the basalt aquifer. The discussion on the basalt aquifer in 9. above applies here as well.

Regarding the allocation of water to the Tribe in a water short year, the Tribe is treated by TCID exactly as everyone else is in the Project. In water short years, TCID bases water allocations on each water users total water right including active and inactive water rights. The Fallon Tribe has 19,041.05 acre-feet of water rights appurtenant to their Reservation. However, Pub. L. 101–618 limited the Tribe to using only 10,587.5 acre-feet or approximately 56 percent of that water right per year as part of a settlement with the Tribe. Though the remaining 8,453.55 acre-feet of water rights are not active because the Tribe cannot call for this water, the DOI pays operations and maintenance fees to TCID on the full 19,041.05 acre-foot water right. Therefore, in a 56 percent water year (or better), the Tribe gets 56 percent of 19,041.05 acre-feet of water which equals their use cap of 10,587.5 acre-feet.

III. Technical Issues

1. Rock Dam Ditch: The proposed Adjusted OCAP rule would have changed how certain diversions to Rock Dam Ditch are counted. Rock Dam Ditch may receive water directly from releases at Lahontan Reservoir, or may get water directly from the Truckee Canal via a siphon pipe under the stilling basin below Lahontan Dam. In the proposed rule, diversions directly from the Truckee Canal would have counted against the Truckee Division. Two commenters noted that this is incorrect and all diversion to Rock Dam Ditch should be counted in the Carson Division.

Response: The commenters are correct, as the water that reaches Rock Dam Ditch would, in all cases, come from water in Lahontan Reservoir or destined to arrive in Lahontan Reservoir. The language at section 418.23 has been revised.

2. Credit and Debit Procedures: Three commenters object to how the credit and debit incentive provisions preserved from the 1988 OCAP provide for a full debit but a credit of only two-thirds of the actual savings. They suggest the credit should be a full credit.

Response: These credit and debit provisions are in the 1988 OCAP as a way to encourage the Project to meet or exceed the efficiency targets. The debit is based fully on the excess water that was used in the season. Using that excess water leaves Lahontan Reservoir with less winter carryover storage, and allows for larger amounts of Truckee River water to be diverted to make up for the "hole" that was left in the Reservoir.

The credit provision allows the Project to take advantage of the unused water any time it exceeds the efficiency targets. By definition, this unused water is water that was not needed to serve Project water rights. The Gesell decision in *Tribe* v. *Morton* specifies that only the water needed to serve Project water rights can be diverted to the Project from the Truckee River. Therefore, the Project earns a credit for the portion of the Carson River water saved through greater efficiency, presumed to be about two-thirds because about two-thirds of the Project water comes from the Carson River. The remaining third stays in Lahontan Reservoir to help reduce future diversions of Truckee River water as a way of returning the Truckee River water that was not needed when the credit was earned.

3. Forecasting: One commenter wanted clarification of how the deliberative forecasting process will work and wanted to know if this would avoid what happened in the 1993–1994 season when a full water year was initially forecast and it turned out to be one of the driest years on record.

Response: The 1988 OCAP required the BOR to rely solely on the NRCS runoff forecasts for the Carson River. However, there are runoff forecasts prepared by other Federal and State agencies that can be used along with the NRCS forecast. The consultation process also allows the BOR to take advantage of the years of experience available from local authorities. This change was proposed in the Adjusted OCAP in response to the situation that occurred in 1993–1994.

4. Water Rights Maps: Two commenters object to using the TCID's water maps to determine eligible land irrigated with transferred water rights, saying that the maps were never intended to be in OCAP. They suggest that eligible lands should follow what is defined in contracts, decrees, and State law.

Response: The BOR relies on the TCID to maintain and keep up-to-date these water rights maps as the basis for determining which lands are eligible to be irrigated. The land definitions in contracts and decrees do not indicate whether a particular parcel has been irrigated and is deemed to have a valid water right. Issues of eligible land and valid transfers are before the Nevada State Engineer at this time.

5. Floods: One commenter said that before completing the rulemaking a study needs to be done of whether OCAP contribute to flooding.

Response: The flooding on the Carson and Truckee Rivers in 1997 was an excellent example of how OCAP do not affect flooding. Thanks to Lahontan Dam and Reservoir, the communities below the dam were the only areas that were not flooded in January 1997. The irrigation system below the Dam, including the Carson River, can handle releases of about 2,000 cubic feet per second (cfs) without causing flooding. During the flood, the inflow to Lahontan Reservoir was higher than 10,000 cfs at times. That flow would have caused widespread flooding in the Lahontan Valley if not for the storage available in the Reservoir. Without any OCAP, much less space would have been available to capture and regulate the flood waters because, prior to OCAP, the Project diverted water from the Truckee River year-round. The Adjusted OCAP will further help reduce flooding risks.

6. 1967 OCAP Language: One commenter suggested leaving in place the Statement of Considerations and some objectives from the 1967 OCAP that is currently in the Code of Federal Regulations at 43 CFR Part 418 and is to be replaced by this rule. The commenter says the information is important to understanding the need for OCAP.

Response: Much of the information contained in the 1967 OCAP Statement of Considerations has been incorporated in the preamble to this rulemaking and prior OCAPs. The 1967 OCAP is being replaced in its entirety.

Administrative Matters

- This rule has been made effective on publication to stop ongoing diversions of water from the Truckee River to Lahontan Reservoir. Under the current 1988 OCAP storage target provisions, approximately 500 acre-feet per day are being diverted. The diversion will continue to divert until the Adjusted OCAP and a new set of Lahontan Reservoir storage targets go into effect. This water is not needed to serve water rights in the Newlands Project at this time and in accordance with the requirements of *Tribe* v. *Morton* is water that must flow to Pyramid Lake.
- This rule is not a significant rule under Executive Order (E.O.) 12866 and does not require review by the OMB.
- As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

• This rule does not include any collections of information requiring approval under the Paperwork Reduction Act.

• The DOI has determined that the proposed rule is not a major Federal action having significant effects on the human and natural environment. An environmental assessment (EA) has been prepared on the effects of the proposed rule.

• The proposed rule has no substantial effects on Federalism under the requirements of E.O. 12612.

• The proposed rule does not have a significant impact on family formulation, maintenance, and general well-being under the requirements of E.O. 12606.

• The proposed rule does not represent a government action that would interfere with constitutionally protected property rights and does not require a Takings Implications Assessment under E.O. 12630.

• The proposed rule meets the applicable standards of civil justice reform in accordance with E.O. 12988.

• The proposed rule will not result in aggregate annual expenditures in excess of $100 million by state, local, and tribal governments, or the private sector and is, therefore, not subject to the requirements of Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

The author of this rule is Jeffrey Zippin of the Department of the Interior, Truckee-Carson Coordination Office.

The rule replaces the 1967 OCAP regulations at 43 CFR 418. That regulation was superseded by subsequent U.S. District Court-approved OCAP, including the 1988 OCAP, which are the basis for this rule.

List of Subjects in 43 CFR Part 418

Irrigation, Water supply, Newlands Irrigation Project; Operating criteria and procedures.

Dated: December 11, 1997.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

For the reasons set forth in the preamble, 43 CFR part 418 is revised to read as follows:

PART 418—OPERATING CRITERIA AND PROCEDURES FOR THE NEWLANDS RECLAMATION PROJECT, NEVADA

General Provisions

Authority: 43 U.S.C. 391, et seq.; 43 U.S.C. 373; 43 U.S.C. 614, et seq.; 104 Stat. 3289, Pub. L. 101–618.

General Provisions

§ 418.1 Definitions.

Bureau means the Bureau of Reclamation.

Decrees means the *Alpine* decree (*United States* v. *Alpine Land and Reservoir Co.*, 503 F. Supp. 877 (D. Nev. 1980)) and the *Orr Ditch* decree (*United States* v. *Orr Water Ditch Co.*, Equity No. A–3 (D. Nev.))

District means the Truckee-Carson Irrigation District or any other approved Newlands Project operator.

Eligible land means Project land which at the time of delivery has a valid water right and either:

(1) Is classified as irrigable under Bureau land classification standards (Reclamation Instruction Series 510); or

(2) Has a paid out Project water right.

Full reservoir means 295,500 acre-feet in Lahontan Reservoir using Truckee River diversions. The Reservoir can fill above 295,500 acre-feet to 316,500 acre-feet with Carson River inflow and the use of flash boards. Intentional storage on the flash boards will occur only after the peak runoff.

Project means the Newlands Irrigation Project in western Nevada.

§ 418.2 How Project water may be used.

Project water may be delivered only to serve valid water rights used for:

(a) Maintenance of wetlands and fish and wildlife including endangered and threatened species;

(b) Recreation;

(c) Irrigation of eligible land; and

(d) Domestic and other uses of Project water as defined by the decrees.

§ 418.3 Effect of these regulations on water rights.

This part governs water uses within existing rights. This part does not in any way change, amend, modify, abandon, diminish, or extend existing rights. Water rights transfers will be determined by the Nevada State Engineer under the provisions of the *Alpine* decree.

§ 418.4 Prohibited deliveries.

The District must not deliver Project water or permit its use except as provided in this part. No Project water will be released in excess of the maximum allowable diversion or delivered to ineligible lands. Delivery of water to land in excess of established water duties is prohibited.

§ 418.5 Responsibility for violations.

Violations of the terms and provisions of this part must be reported immediately to the Bureau. The District or individual water users will be responsible for any shortages to water users occasioned by waste or excess delivery or delivery of water to ineligible land as provided in this part.

§ 418.6 Fallon Paiute-Shoshone Indian Reservation.

Nothing in this part affects:

(a) The authority of the Fallon Paiute-Shoshone Tribe to use water on the

Tribe's reservation which was delivered to the Reservation in accordance with this part; or

(b) The Secretary's trust responsibility with respect to the Fallon Paiute-Shoshone Tribe.

Conditions of Water Delivery

§ 418.7 Who may receive irrigation deliveries.

Project irrigation water deliveries may be made only to eligible land to be irrigated. The District must maintain records for each individual water right holder indicating the number of eligible acres irrigated and the amount of water ordered and delivered.

§ 418.8 Types of eligible land.

(a) *Eligible land actually irrigated.* During each year, the District, in cooperation with the Bureau, must identify and report to the Bureau the location and number of acres of eligible land irrigated in the Project. Possible irrigation of ineligible land will also be identified. The Bureau will review data to ensure compliance with this part. The District, in cooperation with the Bureau, will be responsible for field checking potential violations and immediately stopping delivery of Project water to any ineligible land. The Bureau may also audit as appropriate.

(b) *Eligible land with transferred water rights.* The District water rights maps dated August 1981 through January 1983 will be used as the basis for determining which lands have a valid water right. The original maps will be maintained by the District. The District must provide copies of the maps to the Bureau. The District will alter the maps and the copies to account for water right transfers as the transfers are approved by the Nevada State Engineer.

(c) *Other eligible land.* The Bureau will also identify eligible land that was not irrigated during the prior irrigation season.

§ 418.9 Reporting changes in eligible land.

(a) *Eligible land anticipated to be irrigated.* (1) Anticipated changes in irrigated eligible land from the prior year will be reported to the Bureau's Lahontan Area Office by the District by March 1 of each year. The District will adjust the acreage of the eligible land anticipated to be irrigated to correct for inaccuracies, water right transfers that have been finally approved by the Nevada State Engineer, and any other action that affects the number of eligible acres, acres anticipated to be irrigated, or water deliveries.

(2) As the adjustments are made, the District will provide updated information to the Bureau for review and approval. The District must adjust anticipated water allocations to individual water users accordingly. The allocations will at all times be based on a maximum annual entitlement of 3.5 acre-feet (AF) per acre of bottom land, 4.5 AF per acre of bench land, and 1.5 AF per acre of pasture land that is anticipated to be irrigated and not on the number of water-righted acres.

(3) The District will provide the individual water users with the approved data regarding the anticipated acreage to be irrigated and water allocations for each water user that year.

(i) Any adjustments based on changes in lands anticipated to be irrigated during the irrigation season must be reported by the individual water user to the District.

(ii) The District will, in turn, notify the Bureau of any changes in irrigated acreage which must be accounted for.

(iii) Each landowner's anticipated acreage must be less than or equal to the landowner's eligible acreage.

(4) Should a landowner believe that the number of acres of eligible land he or she is entitled to irrigate is different from the number of acres as approved by the Bureau, the landowner must notify the District and present appropriate documentation regarding the subject acreage. The District must record the information and present the claim to the Bureau for further consideration.

(i) If the Bureau determines there is sufficient support for the landowner's claim, then adjustments will be made to accommodate the changes requested by the landowner.

(ii) If the Bureau disallows the landowner's claim, the Bureau must notify the District in writing. The District will, in turn, inform the landowner of the disposition of the claim and the reasons therefore, and will further instruct the landowner that he or she may seek judicial review of the Bureau's determination under the decrees. If the dispute affects the current year, then the Bureau and the District will seek to expedite any court proceeding.

(b) *Changes in domestic and other uses.* By March 1 of each year, the District must report to the Bureau all anticipated domestic and other water uses. This notification must include a detailed explanation of the criteria used in allowing the use and sufficient documentation on the type and amount of use by each water user to demonstrate to the satisfaction of the Bureau that each water user is in compliance with the criteria. With adequate documentation, the District may notify the Bureau of any changes in domestic water requirements at any time during the year.

§ 418.10 Determining the amount of water duty to be delivered.

(a) Eligible land may receive no more than the amount of water in acre-feet per year established as maximum farm headgate delivery allowances by the decrees. All water use is limited to that amount reasonably necessary for economical and beneficial use under the decrees.

(b) The annual water duty as assigned by the decrees is a maximum of 4.5 AF per acre for bench lands and a maximum of 3.5 AF per acre for bottom lands. The water duty for fields with a mixture of bench and bottom lands must be the water duty of the majority acreage. Bench and bottom land designations as finally approved by the United States District Court for the District of Nevada will be used in determining the maximum water duty for any parcel of eligible land. The annual water duty for pasture land established by contract is 1.5 AF per acre.

§ 418.11 Valid headgate deliveries.

The valid water deliveries at the headgate are set by the product of eligible land actually irrigated multiplied by the appropriate water duty in accordance with §§ 418.8 and 418.10. The District will regularly monitor all water deliveries and report in accordance with § 418.9. No amount of water will be delivered in excess of the individual water user's headgate entitlement. In the event excess deliveries should occur, such amount will be automatically reflected in the efficiency deficit adjustment to the Lahontan storage. Water delivered in excess of entitlements must not be considered valid for purposes of computing project efficiency.

§ 418.12 Project efficiency.

(a) The principal feature of this part is to obtain a reasonable level of efficiency in supplying water to the headgate by the District. The efficiency targets established by this part are the cornerstone of the enforcement and the incentive provisions and when implemented will aid other competing uses.

(b) The efficiency is readily calculable at the year's end, readily applicable to water appropriate to that year, able to be compared to other irrigation systems even though there may be many dissimilarities, appropriate for long term averaging, adjustable to any headgate delivery level including droughts or allocations, automatically adjusts to

changes during the year and accurately accounts for misappropriated water. Efficiency also can be achieved through any number of measures from operations to changes in the facilities and can be measured as an end product without regard to the approach. Thus it is flexible enough to allow local decision making and yet is fact based to minimize disputes.

(c) Assuming the headgate deliveries are valid and enforceable, conveyance efficiency is the only remaining variable in determining the quantity of water needed to be supplied to the District. Conveyance efficiency is a measure of how much water is released into the irrigation system relative to actual headgate deliveries. Differences in efficiency, therefore, are directly convertible to acre-feet. The differences in efficiency, expressed as a quantity in acre-feet, may be added to or subtracted from the actual Lahontan Reservoir storage level before it is compared to the monthly storage objective. Thus, the diversions from the Truckee River, operation of other facilities (e.g., Stampede Reservoir) and decisions related to Lahontan Reservoir are made after the efficiency storage adjustments have been made. Operating decisions are made as if the adjusted storage reflected actual conditions.

(1) *Efficiency incentive credits.* In any year that the District's actual efficiency exceeds the target efficiency for the actual headgate delivery, two-thirds of the resultant savings, in water, will be credited to the District as storage in Lahontan. This storage amount will remain in Lahontan Reservoir as water available to the District to use at its discretion consistent with Nevada and Federal law. Such uses may include wetlands (directly or incidentally), power production, recreation, a hedge against future shortages or whatever else the District determines. The storage is credited at the end of the irrigation season from which it was earned. This storage "floats" on top of the reservoir so that if it is unused it will be spilled first if the reservoir spills. The District may use all capacity of Lahontan Reservoir not needed for project purposes to store credits.

(2) *Efficiency disincentive debits.* In any year that the District's actual efficiency falls short of the target appropriate to the actual headgate deliveries, then the resultant excess water that was used is considered borrowed from the future. Thus it becomes a storage debit adjustment to the actual Lahontan Reservoir storage level for determining all operational decisions. The debit may accumulate but may not exceed a maximum as defined in § 418.13(b). The debit must be offset by an existing incentive credit or, if none is available, by a subsequent incentive at a full credit (not a 2/3 credit), or finally by a restriction of actual headgate deliveries by the District. This would only be done prospectively (a subsequent year) so the District and the water users can prepare accordingly. Since the debit does not immediately affect other competing uses or the District (except in a real drought), it allows for future planning and averaging over time.

(3) *Efficiency targets.* To determine the efficiency target, the system delivery losses were divided into categories such as seepage, evaporation and operational losses. The "reasonable" level of savings for each category was then determined by starting with current operating experience and applying the added knowledge from several measures. Means of achieving the efficiency targets, including the specific conservation measures and amounts, are identified in the table Possible Water Conservation Measures for the Newlands Project. Applicable target efficiencies will be determined each year as described in § 418.13 (a)(4).

(4) *Available conservation measures.* The water conservation measures referred to in paragraph (c)(3) of this section and others currently available to the District are listed in the following table. The table has been revised based upon the Bureau of Reclamation's Final Report to Congress of the Newlands Project Efficiency Study, 1994.

POSSIBLE WATER CONSERVATION MEASURES FOR THE NEWLANDS PROJECT

Conservation measures [1]	Expected savings in acre-feet (AF) per year [2]	Notes
1. Water ordering	1,000	Require 48-hour advance notice.
2. Adjust Lahontan Dam releases frequently	++ [3]	Match releases to demand with daily adjustments.
3. Increase accuracy of delivery records and measurement devices	12,000	Account for deliveries to nearest cfs and to nearest minute.
4. Change operation of regulating reservoirs	?? [4]	Eliminate use of all or parts of regulating reservoirs; drain at end of season.
5. Shorten irrigation season	4,000	Reduce by 2 weeks.
6. Control delivery system	++	Eliminate spills, better scheduling, grouping deliveries.
7. System improvements	??	O&M activity: repair leaky gates, reshape canals, improve measuring devices.
8. Dike off 2/3 S-Line Reservoir	2,720	500 ft. dike; (5' evaporation, 0.75' seepage).
9. Dike off south half of Harmon Reservoir	2,130	5,000 ft. dike; large savings considering canal losses (5' evap., 1.8' seepage).
10. Dike off west half of Sheckler Reservoir	2,400	6,000 ft. dike.
11. Eliminate use of Sheckler Reservoir	4,000	Use for Lahontan spill capture only; restore 200 ft. of E-Canal; A-Canal is OK.
12. Line 20 miles of Truckee Canal [5]	20,000	Reduces O&M.
13. Line large canals	26,100–31,000	Line large net losers first.
14. Line regulatory reservoirs	2.3 AF/acre	
15. Reuse drain water for irrigation	7,100	Assuming blended water quality would be adequate
16. Ditch rider training each year	??	
17. Canal automation	??	Reduced canal fluctuations.
18. Community rotation system	??	Grouping deliveries by area.
19. Reclamation Reform Act water conservation plan:	??	District implementation of water conservation plan.
a. Weed and phreatophyte control		

POSSIBLE WATER CONSERVATION MEASURES FOR THE NEWLANDS PROJECT—Continued

Conservation measures [1]	Expected savings in acre-feet (AF) per year [2]	Notes
b. Fix gate leaks c. Water measurement d. Automation e. Communication		
20. Pumps and wells for small diverters	400	
21. Water pricing by amount used	++	Incurs administrative costs to implement.
22. Incentive programs	??	For District personnel and/or water users.
23. Drain canals	1,065	At the end of each irrigation season.
24. Acquire parcels with inefficient delivery[6]	22,280	Acquire and retire water rights from irrigated acreage with particularly inefficient delivery. Lesser savings from transferring water rights to lands with more efficient delivery.

[1] The first seven measures were considered in developing the water budget in Table 1 for the 1988 OCAP. Additional measures could be implemented by the District to help achieve efficiency requirements.
[2] Water savings have been updated in accordance with Bureau of Reclamation's Report to Congress on Newlands Project Efficiency, April 1994.
[3] ++ indicates a positive number for savings but not quantifiable at this time.
[4] ?? indicates uncertainty as to savings.
[5] This measure was included in the 1988 OCAP and effects overall Project efficiency; it is recognized that savings from this measure are not accounted for in the OCAP.
[6] Identified in the 1994 BOR Efficiency Study: 31 Corporation, below Sagouspe Dam, and N Canal.

(5) The measures in paragraph (c)(4) of this section are discretionary choices for the District. The range of measures available to the District provides a level of assurance that the target efficiency is reasonably achievable. The resultant efficiency targets were also compared to the range of efficiencies actually experienced by other irrigation systems that were considered comparable in order to provide a further check on "reasonable." Most of the delivery losses are relatively constant regardless of the amount of deliveries. The efficiency will necessarily vary with the amount of headgate deliveries.

(6) The target efficiency for any annual valid headgate delivery can be derived from the table in Appendix A to this part.

§ 418.13 Maximum allowable limits.

(a) Maximum allowable diversions. (1) A provisional water budget in the Newlands Project Water Budget table must be recalculated for each irrigation season to reflect anticipated water-righted acres to be irrigated. At the start of the irrigation season, the maximum allowable diversion (MAD) for each year must be determined by revising the first 10 lines of the Newlands Project Water Budget table based on acres of eligible land anticipated to actually be irrigated in that year (§ 418.9(a)) and the water duties for those lands (§ 418.10). At the end of the irrigation season, the required target efficiency must be recalculated for the irrigation season based on the actual irrigated acres and percent use of headgate entitlements.

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NEWLANDS PROJECT WATER BUDGET

Line		1988 OCAP[1], Base	1988 OCAP, 1992 Assumptions	1988 0CAP, 1992 w/o Additional Acres	1995 Example
1	Irrigated Acreage (acres)	60,900	64,850	61,630	59,075
2	Maximum Headgate Entitlement [2]	226,450	237,485	226,555	206,230
	Distribution System Losses				
	Evaporation:				
3	Canals/Laterals	6,000	6,200	6,000	5,838
4	Regulatory Reservoirs	15,000	7,500	7,500	7,500
	Seepage:				
5	Canals/Laterals	50,000	51,000	48,500	46,481
6	Regulatory Reservoirs	7,000	4,000	4,000	4,000
7	Operational Losses	87,980	40,800	39,400	38,270
8	TOTAL LOSSES [3]	165,980	109,500	105,400	102,089
9	Max. Allowable Diversion[4] (MAD)	392,430	346,985	331,955	308,319
10	Projected Efficiency (%) [5] Assuming 100% Water Use	58.4	68.4	68.2	66.9
11	Expected Headgate Entitlement Unused[6]	20,930	23,700	22,700	13,611
12	Diversion Reduction for Unused Water[7]	25,430	26,500	25,400	15,279
13	Expected Irrigation Diversions[8]	367,000	320,485	306,555	293,040
14	Expected Efficiency (%) [9]	56.0	66.7	66.5	65.7 [10]

1. All values are in acre-feet except where noted. The first 3 columns of numbers come from the 1988 OCAP, Table 1.
2. Derived by multiplying the acreage by the appropriate water duty.
3. In deriving the 1988 OCAP water budget, it was recognized that the District had reduced losses by 7,400 acre-feet prior to 1988.
4. Maximum Headgate Entitlement (line 2) plus Total Losses (line 8).
5. Maximum Headgate Entitlement (line 2) divided by Maximum Allowable Diversion (line 9) multiplied by 100.
6. Water delivery records show that, historically, lands have been irrigated with less than their full entitlement. In the 1988 OCAP base, the unused portion of the entitlement was assumed to be approximately 9 percent; in the 1988 OCAP 10 percent; in the 1995 example 6.6 percent.
7. Unused Water (line 11) plus a proportional share of Operational Loss (line 7).
8. Maximum Allowable Diversion (line 9) minus Diversion Reduction (line 12).
9. Maximum Headgate Entitlement (line 2) minus Unused Water (line 11) divided by Expected Irrigation Diversion (line 13) multiplied by 100.
10. Expected efficiency at 93.4 percent use of headgate entitlement; other entries based on 90 percent.

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(2) The MAD will be calculated annually to ensure an adequate water supply for all water right holders whose water use complies with their decreed entitlement and this part. The MAD is the maximum amount of water permitted to be diverted for irrigation use on the Project in that year. It is calculated to ensure full entitlements can be provided, but is expected to significantly exceed Project requirements. The MAD will be established by the Bureau at least 2 weeks before the start of each irrigation season. All releases of water from Lahontan Reservoir and diversions from the Truckee Canal (including any diversions from the Truckee Canal to Rock Dam Ditch) must be charged to the MAD except as provided in §§ 418.23 and 418.35 of this part.

(3) On the basis of the methodology adopted in this part (i.e., actual irrigated acres multiplied by appropriate water duties divided by established project efficiency) an example of the MAD calculated for the projected irrigated acreage as shown in the Newlands Project Water Budget table would be 308,319 acre-feet for the 1995 Example. The sample MAD corresponds to a system efficiency for full deliveries at 66.9 percent for 1995 actual acres. Target efficiencies must be based on the percentage of maximum headgate entitlement delivered and not on the percent of water supply available.

(4) The table Expected Project Distribution System Efficiency shows the target efficiencies which will be used over the range of irrigated acreage and percent use of entitlement expected in the future. At the beginning of the irrigation season, the target efficiencies from the Expected Project Distribution System Efficiency table used to calculate the MAD will be based on the expected irrigated acreage and expected percent use of entitlement. At the end of the irrigation season, the actual acreage irrigated and actual percent use of entitlement will be used to determine the required efficiency from the Expected Project Distribution System Efficiency. The target efficiencies are read directly from the table if the acreage and use of entitlement values are shown, otherwise the target efficiency must be extrapolated from the table or calculated using the Efficiency Equation. Appendix A of this part shows the calculations used to derive the Efficiency Equation and the efficiency targets.

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Expected Project Distribution System Efficiency (Not Valid Below 75 Percent Headgate Delivery)														
Project Acreage	Efficiency Equation A and B values: Effic. = AxD + B		Actual Project Headgate Delivery Expressed as a Percent of Full Entitlement (efficiency equation variable D)											
	A	B	75%	80%	85%	90%	91%	92%	93%	94%	95%	96%	98%	100%
64,850	0.1840	49.02	62.8	63.7	64.7	65.6	65.8	65.9	66.1	66.3	66.5	66.7	67.1	67.4
64,500	0.1842	48.97	62.8	63.7	64.6	65.5	65.7	65.9	66.1	66.3	66.5	66.7	67.0	67.4
64,000	0.1845	48.90	62.7	63.7	64.6	65.5	65.7	65.9	66.1	66.2	66.4	66.6	67.0	67.3
63,500	0.1847	48.83	62.7	63.6	64.5	65.5	65.6	65.8	66.0	66.2	66.4	66.6	66.9	67.3
63,000	0.1850	48.76	62.6	63.6	64.5	65.4	65.6	65.8	66.0	66.2	66.3	66.5	66.9	67.3
62,500	0.1853	48.69	62.6	63.5	64.4	65.4	65.5	65.7	65.9	66.1	66.3	66.5	66.8	67.2
62,000	0.1856	48.62	62.5	63.5	64.4	65.3	65.5	65.7	65.9	66.1	66.2	66.4	66.8	67.2
61,500	0.1858	48.54	62.5	63.4	64.3	65.3	65.5	65.6	65.8	66.0	66.2	66.4	66.8	67.1
61,000	0.1861	48.47	62.4	63.4	64.3	65.2	65.4	65.6	65.8	66.0	66.1	66.3	66.7	67.1
60,500	0.1864	48.39	62.4	63.3	64.2	65.2	65.4	65.5	65.7	65.9	66.1	66.3	66.7	67.0
60,000	0.1867	48.31	62.3	63.3	64.2	65.1	65.3	65.5	65.7	65.9	66.1	66.2	66.6	67.0
59,500	0.1870	48.24	62.3	63.2	64.1	65.1	65.3	65.4	65.6	65.8	66.0	66.2	66.6	66.9
59,000	0.1873	48.16	62.2	63.1	64.1	65.0	65.2	65.4	65.6	65.8	66.0	66.1	66.5	66.9
58,500	0.1876	48.08	62.1	63.1	64.0	65.0	65.1	65.3	65.5	65.7	65.9	66.1	66.5	66.8
58,000	0.1879	47.99	62.1	63.0	64.0	64.9	65.1	65.3	65.5	65.7	65.8	66.0	66.4	66.8
57,500	0.1882	47.91	62.0	63.0	63.9	64.9	65.0	65.2	65.4	65.6	65.8	66.0	66.4	66.7
57,000	0.1886	47.83	62.0	62.9	63.9	64.8	65.0	65.2	65.4	65.6	65.7	65.9	66.3	66.7
56,500	0.1889	47.74	61.9	62.9	63.8	64.7	64.9	65.1	65.3	65.5	65.7	65.9	66.3	66.6
56,000	0.1892	47.66	61.8	62.8	63.7	64.7	64.9	65.1	65.3	65.4	65.6	65.8	66.2	66.6
55,500	0.1895	47.57	61.8	62.7	63.7	64.6	64.8	65.0	65.2	65.4	65.6	65.8	66.1	66.5
55,000	0.1899	47.48	61.7	62.7	63.6	64.6	64.8	64.9	65.1	65.3	65.5	65.7	66.1	66.5
54,500	0.1902	47.39	61.7	62.6	63.6	64.5	64.7	64.9	65.1	65.3	65.5	65.6	66.0	66.4
54,000	0.1906	47.30	61.6	62.5	63.5	64.4	64.6	64.8	65.0	65.2	65.4	65.6	66.0	66.4
53,500	0.1909	47.20	61.5	62.5	63.4	64.4	64.6	64.8	65.0	65.1	65.3	65.5	65.9	66.3
53,000	0.1913	47.11	61.5	62.4	63.4	64.3	64.5	64.7	64.9	65.1	65.3	65.5	65.9	66.2
52,500	0.1916	47.01	61.4	62.3	63.3	64.3	64.4	64.6	64.8	65.0	65.2	65.4	65.8	66.2
52,000	0.1920	46.91	61.3	62.3	63.2	64.2	64.4	64.6	64.8	65.0	65.2	65.3	65.7	66.1

(5) Adjustments in the MAD must be made by the Bureau each year based on changes in irrigated eligible land from the

(5) Adjustments in the MAD must be made by the Bureau each year based on changes in irrigated eligible land from the prior year and subsequent decisions concerning transfers of Project water rights, using the methodology established in this section.

(6) If the MAD for a given year will not meet the water delivery requirements for the eligible land to be irrigated due to weather conditions, canal breaks, or some other unusual or unforeseen condition, the District must ask the Bureau for additional water.

(i) The District's request must include a written statement containing a detailed explanation of the reasons for the request.

(ii) The Bureau must promptly review the request and after consultation with the Federal Water Master and other interested parties, will determine if the request or any portion of it should be approved. The Bureau will make reasonable adjustments for unforeseen causes or events but will not make adjustments to accommodate waste or Project inefficiency or other uses of water not in accordance with this part or with State and Federal law.

(iii) The Bureau will then notify the District of its determination. If the District does not agree with the Bureau's decision, it may seek judicial review. The Bureau and the District will seek to expedite the court proceeding in order to minimize any potential adverse effects.

(b) *Maximum allowable efficiency debits (MED).* The debits in Lahontan Reservoir storage from the District's actual conveyance efficiency not achieving the target efficiency can accumulate over time. If these amounts of borrowed storage get too large they may not be offset later by increased efficiencies and may severely affect the District's water users by imposing an added "drought" on top of a real one. Therefore, the maximum efficiency debit cushion is set at 26,000 acre-feet. However, unlike the MAD, it only applies to the subsequent year's operation. The MED is approximately 9 percent of the headgate entitlements.

Monitoring Diversions

§ 418.14 Recordkeeping requirements.

(a) By the end of each month, the District must submit to the Bureau's Lahontan Area Office reports for the previous month which document monthly inflow and outflow in acre-feet from the Truckee and Carson divisions of the Project for that month. Reports must include any data the Bureau may reasonably require to monitor compliance with this part.

(b) Accounting for farm headgate deliveries must be based on the amount of water actually delivered to the water user. Project operations must provide for the amount of water ordered and the distribution system losses.

(c) The District must keep records of all domestic and other water uses showing the purpose and amount of water usage for each entity. The District must make the records available for review by the Bureau upon request. The Bureau may audit all records kept by the District.

§ 418.15 Operations monitoring.

(a) The Bureau will work with the District to monitor Project operations and will perform field inspections of water distribution during the irrigation season.

(1) Staff members of the Bureau's Lahontan Area Office and the District will meet as often as necessary during the irrigation season after each water distribution report has been prepared to examine the amounts of water used to that point in the season.

(2) On the basis of the information obtained from field observations, water use records, and consultations with District staff, the Bureau will determine at monthly intervals whether the rate of diversion is consistent with this part for that year.

(3) The District will be informed in writing of suggested adjustments that may be made in management of diversions and releases as necessary to achieve target efficiencies and stay within the MAD.

(b) Project operations will be monitored in part by measuring flows at key locations. Specifically, Project diversions (used in the calculations under § 418.18 below) will be determined by:

(1) Adding flows measured at:

(i) Truckee Canal near Wadsworth—U.S. Geological Survey (USGS) gauge number 10351300;

(ii) Carson River below Lahontan Dam—USGS gauge number 10312150;

(iii) Rock Dam Ditch near the end of the concrete lining; and

(2) Subtracting:

(i) Flows measured at the Truckee Canal near Hazen—USGS gauge number 10351400;

(ii) The Carson River at Tarzyn Road near Fallon (below Sagouspe Dam) for satisfying water rights outside of the Project boundaries as described in § 418.25, USGS gauge number 10312275;

(iii) Estimated losses in the Truckee Canal; and

(iv) Spills, precautionary drawdown, and incentive water released at Lahontan Dam under §§ 418.24 and 418.36.

Operations and Management

§ 418.16 Using water for power generation.

All use of Project water for power generation must be incidental to releases charged against Project diversions, precautionary drawdown, incentive water (§ 418.35), or spills.

§ 418.17 Truckee and Carson River water use.

Project water must be managed to make maximum use of Carson River water and to minimize diversions of Truckee River water through the Truckee Canal. This will make available as much Truckee River water as possible for use in the lower Truckee River and Pyramid Lake.

§ 418.18 Diversions at Derby Dam.

(a) Diversions of Truckee River water at Derby Dam must be managed to maintain minimum terminal flow to Lahontan Reservoir or the Carson River except where this part specifically permits diversions.

(b) Diversions to the Truckee Canal must be managed to achieve an average terminal flow of 20 cfs or less during times when diversions to Lahontan Reservoir are not allowed (the flows must be averaged over the total time diversions are not allowed in that calendar year; i.e., if flows are not allowed in July and August and then are allowed in September then not allowed in October and November, the average flow will be averaged over the four months of July, August, October, and November).

(c) The Bureau will work cooperatively with the District on monitoring the flows at the USGS gage on the Truckee Canal near Hazen to determine if and when flows are in excess of those needed in accord with this part and bringing the flows back into compliance when excessive.

(d) Increases in canal diversions which would reduce Truckee River flows below Derby Dam by more than 20 percent in a 24-hour period will not be allowed when Truckee River flow, as measured by the gauge below Derby Dam, is less than or equal to 100 cfs.

(e) Diversions to the Truckee Canal will be coordinated with releases from Stampede Reservoir and other reservoirs, in cooperation with the Federal Water Master, to minimize fluctuations in the Truckee River below Derby Dam in order to meet annual flow regimes established by the United States Fish and Wildlife Service for listed species in the lower Truckee River.

§ 418.19 Diversions from the Truckee River to the Truckee Division.

Sufficient water, if available, will be diverted from the Truckee River through the Truckee Canal to meet the direct irrigation, domestic and other entitlements of the Truckee Division.

§ 418.20 Diversions from the Truckee River to Lahontan Reservoir, January through June.

(a) Truckee River diversions through the Truckee Canal will be made to meet Lahontan Reservoir end-of-month storage objectives for the months of January through June. The current month storage objective will be based, in part, on the monthly Natural Resources Conservation Service (NRCS) April through July runoff forecast for the Carson River near Fort Churchill. The forecast will be used to determine the target storage for Lahontan Reservoir and anticipated diversion requirements for the Carson Division. The Bureau, in consultation with the District, Federal Water Master, Fish and Wildlife Service, the Pyramid Lake Paiute Tribe, and other affected parties, will determine the exceedance levels and predicted Carson River inflows based on the reliability of the NRCS forecast and other available information such as river forecasts from other sources. The end-of-month storage objectives may be adjusted any time during the month as new forecasts or other information become available.

(b) The January through June storage objective will be calculated using the following formula:

LSOCM=TSM/J – (C1* AJ)+L+(C2* CDT)

Where:

(1) LSOCM=current end-of-month storage objectives for Lahontan Reservoir.

(2) TSM/J=current end-of-month May/June Lahontan Reservoir target storage.

(3) C1* AJ=forecasted Carson River inflow for the period from the end of the current month through May or June, with AJ being the Bureau's April through July runoff forecast for the Carson River at Fort Churchill and C1 being an adjustment coefficient.

(4) L=an average Lahontan Reservoir seepage and evaporation loss from the end of the current month through May or June.

(5) C2 * CDT=projected Carson Division demand from the end of the current month through May or June, with CDT being the total Carson Division diversion requirement (based on eligible acres anticipated to be irrigated times the appropriate duty times a 95 percent usage rate), and C2 being the estimate of the portion of the total diversion requirement to be delivered during this period.

(6) Values for TSM/J will vary with the Carson Division water demand as shown in § 418.22 and the Adjustments to Lahontan Reservoir Storage Targets table. Values C1, L and C2 are defined in the following table along with an example of TSM/J for Carson River water demand of 271,000 acre-feet.

MONTHLY VALUES FOR LAHONTAN STORAGE COMPUTATIONS

	January	February	March	April	May	June
TSM/J	174.0	174.0	174.0	174.0	174.0	190.0
C1/MAY	0.863	0.734	0.591	0.394		
C1/JUNE	1.190	1.061	0.918	0.721	0.327	
L/MAY	13.9	12.5	9.9	7.1		
L/JUNE	18.2	16.8	14.2	11.4	4.3	
C2/MAY	0.30	0.30	0.28	0.18		
C2/JUNE	0.47	0.47	0.45	0.35	0.17	

(c) The Lahontan Reservoir storage objective for each month is contained in the following table.

LAHONTAN RESERVOIR STORAGE OBJECTIVES

Period	Monthly storage objective
January through April	Lowest of the May calculation, the June calculation, or full reservoir.
May	Lower of the June calculation or full reservoir.
June	June storage target.

(d) Once the monthly Lahontan Reservoir storage objective has been determined, the monthly diversion to the Project from the Truckee River will be based upon water availability and Project demand as expressed in the following relationship:

TRD=TDD+ TCL+CDD+LRL+ LSOCM – ALRS – CRI

Where:

(1) TRD=current month Truckee River diversion in acre-feet to the Project.

(2) TDD=current month Truckee Division demand.

(3) TCL = current month Truckee Canal conveyance loss.

(4) CDD = current month Carson Division demand.

(5) LRL = current month Lahontan Reservoir seepage and evaporation losses.

(6) LSOCM = current month end-of-month storage objective for Lahontan Reservoir.

(7) ALRS = current month beginning-of-month storage in Lahontan Reservoir. (Includes accumulated Stampede credit described below and further adjusted for the net efficiency penalty or efficiency credit described in §§ 418.12, 418.36, and 418.37).

(8) CRI = current month anticipated Carson River inflow to Lahontan Reservoir (as determined by Reclamation in consultation with other interested parties).

(e) The following procedure is intended to ensure that monthly storage objectives are not exceeded. It may be implemented only if the following conditions are met:

(1) Diversions from the Truckee River are required to achieve the current

month Lahontan Reservoir storage objective (LSOCM);

(2) Truckee River runoff above Derby Dam is available for diversion to Lahontan Reservoir;

(3) Sufficient Stampede Reservoir storage capacity is available.

(f) The Bureau, in consultation with the Federal Water Master, the District, Fish and Wildlife Service, the Bureau of Indian Affairs, and the Pyramid Lake Paiute Tribe will determine whether the calculated current month Truckee River diversion to Lahontan Reservoir (TRD-TDD-TCL) may be reduced during that month and the amount of reduction credit stored in Stampede Reservoir.

(1) Reductions in diversions may begin in November and continue until the end of June.

(2) Reductions in diversions to Lahontan Reservoir with credit storage in Stampede Reservoir may be implemented to the extent that:

(i) The reduction is in lieu of a scheduled release from Stampede Reservoir for the purpose of supplementing flows to Pyramid Lake; and/or

(ii) Water is captured in Stampede Reservoir that is scheduled to be passed through and diverted to the Truckee Canal.

(3) The Fish and Wildlife Service must approve any proposal to reduce diversions to Lahontan Reservoir for Newlands Project credit purposes without a comparable reduction in release from Stampede Reservoir or any conversion of Stampede Reservoir project water to Newlands Project credit water.

(4) The diversion to Lahontan Reservoir may be adjusted any time during the month as revised runoff forecasts become available. The accumulated credit will be added to current Lahontan Reservoir storage (ALRS) in calculating TRD. If the sum of accumulated credit and Lahontan Reservoir storage exceeds 295,000 acre-feet, credit will be reduced by the amount in excess of 295,000 acre-feet. Credit will also be reduced by the amount of precautionary drawdown or spills in that month. If the end-of-month storage in Lahontan Reservoir plus the accumulated credit in Stampede Reservoir at the end of June exceeds the end-of-month storage objective for Lahontan, the credit will be reduced by the amount exceeding the end-of-month storage objective.

(5) Following consultation with the District, the Federal Water Master, and other interested parties as appropriate, the Bureau will release credit water as needed for Project purposes from July 1 through the end of the irrigation season in which the credit accrues with timing priority given to meeting current year Project irrigation demands.

(6) Conveyance of credit water in the Truckee Canal must be in addition to regularly scheduled diversions for the Project and will be measured at the USGS gauge number 10351300 near Wadsworth.

(7) Newlands credit water in Stampede Reservoir storage will be subject to spill and will not carry over to subsequent years. Newlands credit water in Stampede can be exchanged to other reservoirs and retain its priority. The credit must be reduced to the extent that Lahontan Reservoir storage plus accumulated credit at the end of the previous month exceeds the storage objectives for that month. If Newlands credit water is spilled, it may be diverted to Lahontan Reservoir subject to applicable storage targets.

(i) The Bureau, in consultation with the District, the Federal Water Master, and other interested parties, may release Newlands Project credit water before July 1.

(ii) If any Newlands credit water remains in Stampede Reservoir storage after the end of the current irrigation season in which it accumulated, it will convert to water for cui-ui recovery and will no longer be available for Newlands credit water.

(iii) Newlands credit water stored in Stampede Reservoir will be available for use only on the Carson Division of the Newlands Project.

(g) Subject to the provisions of § 418.20 (b), LSOCM may be adjusted as frequently as necessary when new information indicates the need and diversions from the Truckee River to the Truckee Canal must be adjusted daily or otherwise as frequently as necessary to meet the monthly storage objective.

§ 418.21 Diversion of Truckee River water to Lahontan Reservoir, July through December.

Truckee River diversions through the Truckee Canal to Lahontan Reservoir from July through December must be made only in accordance with the Adjustments to Lahontan Reservoir Storage Targets table and § 418.22. Diversions shall be started to achieve the end-of-month storage targets listed in the table in § 418.22 and will be discontinued when storage is forecast to meet or exceed the end-of-month storage targets at the end of the month. Diversions may be adjusted any time during the month as conditions warrant (i.e., new forecasts, information from other forecasts becoming available, or any other new information that may impact stream forecasts).

§ 418.22 Future adjustments to Lahontan Reservoir storage targets.

(a) The Lahontan Reservoir storage targets must be adjusted to accommodate changes in water demand in the Carson Division. Using the information reported by the District by March 1 of each year on eligible land expected to be irrigated and end-of-year data on eligible land actually irrigated (§ 418.9(b)), the Bureau will determine if the Lahontan Reservoir storage targets need to be changed. If no change is needed, the storage targets currently in effect will remain in effect.

(1) Only the actual water demand reported for full water years (100 percent water supply) will be considered. Targets will not be changed based on water demand reported for less than full water years.

(2) All changes in storage targets must start on October 1 of any year. If information provided by March 1 and other available information indicates that the Lahontan Reservoir storage targets must be changed, the new set of storage targets must be applied starting October 1 of the same year and remain in effect until changed according to this section.

(b) All changes to storage targets will be made according to the table in this section. The table of storage targets has been developed to provide a consistent Project water supply over a range of demands.

(1) A storage target adjustment must be made in increments of thousands of acre-feet for the change as indicated in the column listing Carson Division Demand and the complete set of monthly targets must be applied.

(2) If the change in reported water demand is above or below the values in the table of storage targets, the adjustment to the storage targets can be calculated. The calculated adjustment is the number that would appear in the column Target Adjustment in the table. The calculated Target Adjustment is then added or subtracted to the base storage target for each month. Target Adjustments must be made in whole increments of 1,000 acre-feet and calculated values will be rounded to the nearest 1,000 acre-feet.

(i) For demands greater than those set forth on the table, the formula for the Target Adjustment is: Target Adjustment = 0.00208 (Demand in acre-feet—271,000 acre-feet). For example, if water demand increased to 292,635 acre-feet per year, the Target Adjustment calculation would be = 0.00208×(292,535 − 271,000). The result would be a Target Adjustment of 45 or 45,000 acre-feet. This would be added to the base monthly storage target values

so, the January–May target would be 219,000 acre-feet, June would be 235,000 acre-feet, and so on.

(ii) For demands less than those set forth on the table, the formula for the Target Adjustment is: Target Adjustment = 0.00174 (Demand in acre-feet—271,000 acre-feet). For example, if water demand decreased to 248,011 acre-feet per year, the Target Adjustment calculation would be = 0.00174×(248,011 − 271,000). The result would be a Target Adjustment of −40 or −40,000 acre-feet. This would be subtracted from the base monthly storage target values so, the January–May target would be 134,000 acre-feet, June would be 150,000 acre-feet, and so on.

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ADJUSTMENTS TO LAHONTAN RESERVOIR STORAGE TARGETS

Increase in Storage Targets for Carson Division Diversion Demand Greater than 271,000 acre-feet									
Target Adjust-ment	Carson Division Demand	Jan-May	June	July	Aug	Sep	Oct	Nov	Dec
0	271.0	174	190	160	100	64	52	74	101
1	271.5	175	191	161	101	65	53	75	102
2	272.0	176	192	162	102	66	54	76	103
3	272.4	177	193	163	103	67	55	77	104
4	272.9	178	194	164	104	68	56	78	105
5	273.4	179	195	165	105	69	57	79	106
6	273.9	180	196	166	106	70	58	80	107
7	274.4	181	197	167	107	71	59	81	108
8	274.8	182	198	168	108	72	60	82	109
9	275.3	183	199	169	109	73	61	83	110
10	275.8	184	200	170	110	74	62	84	111
11	276.3	185	201	171	111	75	63	85	112
12	276.8	186	202	172	112	76	64	86	113
13	277.3	187	203	173	113	77	65	87	114
14	277.7	188	204	174	114	78	66	88	115
15	278.2	189	205	175	115	79	67	89	116
16	278.7	190	206	176	116	80	68	90	117
17	279.2	191	207	177	117	81	69	91	118
18	279.7	192	208	178	118	82	70	92	119
19	280.1	193	209	179	119	83	71	93	120
20	280.6	194	210	180	120	84	72	94	121
21	281.1	195	211	181	121	85	73	95	122
22	281.6	196	212	182	122	86	74	96	123
23	282.1	197	213	183	123	87	75	97	124
24	282.5	198	214	184	124	88	76	98	125
25	283.0	199	215	185	125	89	77	99	126
26	283.5	200	216	186	126	90	78	100	127
27	284.0	201	217	187	127	91	79	101	128
28	284.5	202	218	188	128	92	80	102	129
29	284.9	203	219	189	129	93	81	103	130
30	285.4	204	220	190	130	94	82	104	131
31	285.9	205	221	191	131	95	83	105	132
32	286.4	206	222	192	132	96	84	106	133
33	286.9	207	223	193	133	97	85	107	134
34	287.3	208	224	194	134	98	86	108	135
35	287.8	209	225	195	135	99	87	109	136
36	288.3	210	226	196	136	100	88	110	137
37	288.8	211	227	197	137	101	89	111	138
38	289.3	212	228	198	138	102	90	112	139
39	289.8	213	229	199	139	103	91	113	140
40	290.2	214	230	200	140	104	92	114	141

Decrease in Storage Targets for Carson Division Diversion Demand Less than 271,000 acre-feet									
Target Adjust-ment	Carson Division Demand	Jan-May	June	July	Aug	Sep	Oct	Nov	Dec
0	271.0	174	190	160	100	64	52	74	101
-1	270.4	173	189	159	99	63	51	73	100
-2	269.9	172	188	158	98	62	50	72	99
-3	269.3	171	187	157	97	61	49	71	98
-4	268.7	170	186	156	96	60	48	70	97
-5	268.1	169	185	155	95	59	47	69	96
-6	267.6	168	184	154	94	58	46	68	95
-7	267.0	167	183	153	93	57	45	67	94
-8	266.4	166	182	152	92	56	44	66	93
-9	265.8	165	181	151	91	55	43	65	92
-10	265.3	164	180	150	90	54	42	64	91
-11	264.7	163	179	149	89	53	41	63	90
-12	264.1	162	178	148	88	52	40	62	89
-13	263.5	161	177	147	87	51	39	61	88
-14	263.0	160	176	146	86	50	38	60	87
-15	262.4	159	175	145	85	49	37	59	86
-16	261.8	158	174	144	84	48	36	58	85
-17	261.2	157	173	143	83	47	35	57	84
-18	260.7	156	172	142	82	46	34	56	83
-19	260.1	155	171	141	81	45	33	55	82
-20	259.5	154	170	140	80	44	32	54	81
-21	258.9	153	169	139	79	43	31	53	80
-22	258.4	152	168	138	78	42	30	52	79
-23	257.8	151	167	137	77	41	29	51	78
-24	257.2	150	166	136	76	40	28	50	77
-25	256.6	149	165	135	75	39	27	49	76
-26	256.1	148	164	134	74	38	26	48	75
-27	255.5	147	163	133	73	37	25	47	74
-28	254.9	146	162	132	72	36	24	46	73
-29	254.3	145	161	131	71	35	23	45	72
-30	253.8	144	160	130	70	34	22	44	71
-31	253.2	143	159	129	69	33	21	43	70
-32	252.6	142	158	128	68	32	20	42	69
-33	252.0	141	157	127	67	31	19	41	68
-34	251.5	140	156	126	66	30	18	40	67
-35	250.9	139	155	125	65	29	17	39	66
-36	250.3	138	154	124	64	28	16	38	65
-37	249.7	137	153	123	63	27	15	37	64

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§ 418.23 Diversion of Rock Dam Ditch water.

Project water may be diverted directly to Rock Dam Ditch from the Truckee Canal only when diversions cannot be made from the outlet works of Lahontan Reservoir. Such diversions will require the prior written approval of the Bureau and be used in calculating Project diversions.

§ 418.24 Precautionary drawdown and spills from Lahontan Reservoir.

(a) Even though flood control is not a specifically authorized purpose of the Project, at the request of the District and in consultation with other interested parties and the approval of the Bureau, precautionary drawdown of Lahontan Reservoir may be made to limit potential flood damage along the Carson River. The Bureau will develop criteria for precautionary drawdown in consultation with the District and other interested parties.

(1) The drawdown must be scheduled sufficiently in advance and at such a rate of flow in order to divert as much water as possible into the Project irrigation system for delivery to eligible land or storage in reregulating reservoirs for later use on eligible land.

(2) During periods of precautionary drawdown, or when water is spilled from Lahontan Reservoir, Project diversions will be determined by comparison with other years' data and normalized by comparison of differences in climatological data. The Bureau will estimate the normalization in consultation with the District and other interested parties.

(3) Spills from Lahontan Reservoir and precautionary drawdown of the reservoir to create space for storing flood waters from the Carson River Basin that are in excess of the normalized diversions will not be used in calculating Project diversions.

(4) Water captured in Project facilities as a result of a precautionary drawdown or spill will not be counted as storage in Lahontan Reservoir for the purpose of calculating Truckee River Diversions. Such water will not be counted as diversions to the Project unless such water is beneficially applied as described in (a)(5) of this section.

(5) Water from precautionary drawdowns or spills that is captured in Project facilities must be used to the maximum extent possible, and counted as deliveries to eligible lands in the year of the drawdown. If all the drawdown water captured in Project facilities cannot be used in the year of capture for delivery to eligible lands, then that water must be delivered to eligible lands in subsequent years to the maximum extent possible and counted against the water users' annual allocation.

(b) If a precautionary drawdown in one month results in a failure to meet the Lahontan Reservoir storage objective for that month, the storage objective in subsequent months will be reduced by one-half of the difference between that month's storage objective and actual end-of-month storage. The Bureau is not liable for any damage or water shortage resulting from a precautionary drawdown.

§ 418.25 Water use for other than Newlands Project purposes.

The District will release sufficient water to meet the vested water rights below Sagouspe Dam as specified in the *Alpine* decree. These water rights are usually met by return flows. Releases for these water rights will in no case exceed the portion of 1,300 acre-feet per year not supplied by return flows. This water must be accounted for at the USGS gauge number 10312275 (the Carson River at Tarzyn Road near Fallon). Releases for this purpose will not be considered in determining Project diversions since the lands to which the water is being delivered are not part of the Project. (See § 418.15(b)(2)(ii).) Any flow past this gage in excess of the amount specified in this part will be absorbed by the District as an efficiency loss.

§ 418.26 Charges for water use.

The District must maintain a financing and accounting system which produces revenue sufficient to repay its operation and maintenance costs and to discharge any debt to the United States. The District should give consideration to adopting a system which provides reasonable financial incentives for the economical and efficient use of water.

§ 418.27 Distribution system operation.

(a) The District must permit only its authorized employees or agents to open and close individual turnouts and operate the distribution system facilities. After obtaining Bureau approval, the District may appoint agents to operate individual headgates on a specific lateral if it can be shown that the water introduced to the lateral by a District employee is completely scheduled and can be fully accounted for with a reasonable allowance for seepage and evaporation losses.

(b) If agents need to adjust the scheduled delivery of water to the lateral to accommodate variable field conditions, weather, etc., they must immediately notify the District so proper adjustments can be made in the distribution system. Each agent must keep an accurate record of start and stop times for each delivery and the flow during delivery. This record will be given to the District for proper accounting of water delivered.

(c) The program of using agents to operate individual headgates will be reviewed on a regular basis by the District and the Bureau. If it is found that problems such as higher than normal losses, water not accounted for, etc., have developed on an individual lateral, the program will be suspended and the system operated by District employees until the problems are resolved.

Enforcement

§ 418.28 Conditions of delivery.

There are four basic elements for enforcement with all necessary quantities and review determined in accordance with the relevant sections of this part.

(a) *Valid headgate deliveries.* If water is delivered to ineligible land or in excess of the appropriate water duty then:

(1) The District will stop the illegal delivery immediately;

(2) The District will notify the Bureau of the particulars including the known or estimated location and amounts;

(3) The amount will not be included as a valid headgate delivery for purposes of computing the Project efficiency and resultant incentive credit or debit to Lahontan storage; and

(4) If the amount applies to a prior year, then the amount will be treated directly as a debit to Lahontan storage in the same manner as an efficiency debit.

(b) *District efficiency.* To the extent that the actual District efficiency determined for an irrigation season is greater or less than the established target efficiency, as determined for the corresponding actual valid headgate deliveries, then the difference in efficiency, expressed as a quantity in acre-feet, may be added to or subtracted from the actual Lahontan Reservoir storage level before it is compared to the monthly storage objective as follows:

(1) Greater efficiency—Credited to the District as storage in Lahontan or subtracted from any accumulated debit, or two-thirds as storage in Lahontan for their discretionary use in accordance with state law.

(2) Less efficient—Debited or added to Lahontan storage as an adjustment to the actual storage level.

(c) *Maximum Allowable Diversion (MAD).* The MAD must be computed each year to determine the amount of water required to enable the delivery of

full entitlements at established Project efficiencies. Project diversions must not exceed the MAD. Within the operating year, the Bureau will notify the District in writing of any expected imminent violations of the MAD. The District will take prompt action to avoid such violations. The Bureau will exercise reasonable latitude from month to month to accommodate the District's efforts to avoid exceeding the MAD.

(d) *Maximum Efficiency Debit (MED).* If the MED exceeds 26,000 AF at the end of any given year, the District must prepare and submit to the Bureau for review and approval, a plan detailing the actions the District will take to either earn adequate incentive credits or to restrict deliveries to reduce the MED to less than 26,000 AF by the end of the next year. The plan must be submitted to the Bureau in writing before the date of March 1 immediately subsequent to the exceeding of the MED. If the District fails to submit an approvable plan, Project allocations will be reduced by an amount equal to the MED in excess of 26,000 plus 13,000 (one-half the allowable MED). Nominally this will mean a forced reduction of approximately five percent of entitlements. The Bureau will notify the District in writing of the specific allocation and method of derivation in sufficient time for the District to implement the allocation. Liabilities arising from shortages occasioned by operation of this provision must be the responsibility of the District or individual water users.

§ 418.29 Project management.

In addition to the provisions of § 418.28, if the District is found to be operating Project facilities or any part thereof in substantial violation of this part, then, upon the determination by the Bureau, the Bureau may take over from the District the care, operation, maintenance, and management of the diversion and outlet works (Derby Dam and Lahontan Dam/Reservoir) or any or all of the transferred works by giving written notice to the District of the determination and its effective date. Following written notification from the Bureau, the care, operation, and maintenance of the works may be retransferred to the District.

§ 418.30 Provisions required in future contracts.

The Bureau must provide in new, amended, or replacement contracts for the operation and maintenance of Project works, for the reservation by the Secretary of rights and options to enforce this part.

Water Management and Conservation

§ 418.31 Conservation measures.

(a) Specific conservation actions will be needed for the District and its members to achieve a reasonable efficiency of operation as required by this part. The District is best able to determine the particular conservation measures that meet the needs of its water users. This ensures that the measures reflect the priorities and collective judgment of the water users; and will be practical, understandable and supported. The District also has the discretion to make changes in the measures they adopt as conditions or results dictate.

(b) The District will keep the Bureau informed of the measures they expect to utilize during each year. This will enable the Bureau to stay apprised of any helpful information that may, in turn, help the Bureau assist other irrigation districts. The Bureau will work cooperatively in support of the District's selection of measures and methods of implementation.

§ 418.32 Cooperative programs.

(a) The Bureau and the District will work cooperatively to develop a water management and conservation program to promote efficient management of water in the Project. The program will emphasize developing methods, including computerization and automation, to improve the District's operations and procedures for greater water delivery conservation.

(b) The Bureau will provide technical assistance to the District and cooperatively assist the District in their obligations and efforts to:

(1) Document and evaluate existing water delivery and measurement practices:

(2) Implement improvements to these practices; and

(3) Evaluate and, where practical, implement physical changes to Project facilities.

Implementation

§ 418.33 Purpose of the implementation strategy.

The intent of the implementation strategy for this part is to ensure that the District delivers water within entitlements at a reasonable level of efficiency as a long term average.

(a) The incentives and disincentives provided in this part are designed to encourage local officials with responsibilities for Project operations to select and implement through their discretionary actions, operating strategies which achieve the principles of this part.

(b) The specified efficiencies in the Expected Project Distribution System Efficiency table (§ 418.13 (a)(4)) were developed considering implementation of reasonable conservation measures, historic project operations, economics, and environmental effects.

(c) The efficiency target will be used as a performance standard to establish at the end of each year on the basis of actual operations, whether the District is entitled to a performance bonus in the form of incentive water or a reduction in storage for the amount borrowed ahead.

§ 418.34 Valid headgate deliveries.

Project water may be delivered to headgates only as provided in §§ 418.8 and 418.10. Water delivered to lands that are not entitled to be irrigated or not in accord with decreed water duties is difficult to quantify at best because it is not typically measured. Since it is not likely to be a part of the total actual headgate deliveries, yet is a part of the total deliveries to the Project, it will manifest itself directly as a lower efficiency. Thus, it will either reduce the District's incentive credit or increase the storage debit by the amount improperly diverted. All other users outside the Project are thereby held harmless but the District incurs the consequence. This approach should eliminate any potential disputes between the District and the Bureau regarding the quantity of water misappropriated.

§ 418.35 Efficiencies.

The established target efficiencies under this part are shown in the Expected Project Distribution System Efficiency table (§ 418.13 (a)(4)). The efficiency of the Project will vary with the amount of entitlement water actually delivered at the headgates. Since most of the distribution system losses such as evaporation and seepage do not change significantly with the amount of water delivered (i.e., these losses are principally a function of water surface area and the wetted perimeter of the canals), the Project efficiency requirement is higher as the percent of entitlement water actually delivered at the headgates increases. The actual efficiency is calculated each year after the close of the irrigation season based on actual measured amounts. The application of any adjustments to Lahontan Reservoir storage or Truckee River diversions resulting from the efficiency is always prospective.

§ 418.36 Incentives for additional long term conservation.

(a) As an incentive for the District to increase the efficiency of the delivery system beyond the expected efficiency of 65.7 percent (66.9 percent with full delivery) as shown in the Newlands Project Water Budget table, 1995 Example, the District will be allowed to store and use the Carson River portion of the saved water at its discretion, in accordance with Nevada State Law and this part.

(1) If the District is able to exceed its expected efficiency, the District may store in Lahontan Reservoir two-thirds (2/3) of the additional water saved. (The remaining one-third (1/3) of the water saved will remain in the Truckee River through reduced diversions to Lahontan Reservoir). This water will be considered incentive water saved from the Carson River and will not be counted as storage in determining diversions from the Truckee River or computing the target storage levels for Lahontan Reservoir under this part.

(2) For purposes of this part, incentive water is no longer considered Project water. The District may use the water for any purpose (e.g., wetlands, storage for recreation, power generation, shortage reduction) that is consistent with Nevada State Law and Federal Law. The water will be managed under the District's discretion and may be stored in Lahontan Reservoir until needed subject to the limitations in (a)(3) of this section.

(3) The amount of incentive water stored in Lahontan Reservoir will be reduced under the following conditions:

(i) There is a deficit created and remaining in Lahontan Reservoir from operations penalties in a prior year;

(ii) The District releases the water from the reservoir for its designated use;

(iii) During a spill of the reservoir, the amount of incentive water must be reduced by the amount of spill; and

(iv) At the discretion of the District, incentive water may be used to offset the precautionary drawdown adjustment to the Lahontan storage objective.

(v) At the end of each year, the amount of incentive water will be reduced by the incremental amount of evaporation which occurs as a result of the increased surface area of the reservoir due to the additional storage. The evaporation rate used will be either the net evaporation measured or the net historical average after precipitation is taken into account. The method of calculation will be agreed to by the District and the Bureau in advance of any storage credit.

(b) An example of this concept is:

Example: *Incentive Operation*—

(1) At the end of the 1996 irrigation season, the Bureau and the District audit the District's water records for 1996. The District's water delivery records show that 194,703 acre-feet of water were delivered to farm headgates. On the basis of their irrigated acreage that year (59,075) the farm headgate entitlement would have been 216,337 acre-feet. On the basis of 90 percent deliveries for 59,075 acres (194,203 divided by 216,337 = 0.90) the established Project efficiency requirement was 65.1 percent.

(2) On the basis of the established Project efficiency (66.1 percent), the Project diversion required to make the headgate deliveries would be expected to be 291,909 acre-feet (194,703 divided by 0.651 = 291,909). An examination of Project records reveals that the District only diverted 286,328 acre-feet which demonstrated actual Project efficiency was 68 percent and exceeded requirements of this part.

(3) The 5,581 acre-feet of savings (291,909–286,328 = 5,581) constitutes the savings achieved through efficiency improvements and the District would then be credited two-thirds (3,721 acre-feet = 5,581 x 2/3) of this water (deemed to be Carson River water savings) as incentive water.

(4) This incentive water may be stored in Lahontan Reservoir or otherwise used by the District in its discretion consistent with State and Federal Law (e.g., power generation, recreation storage, wildlife, drought protection, etc.).

§ 418.37 Disincentives for lower efficiency.

(a) If the District fails to meet the efficiencies established by this part, then, in effect, the District has borrowed from a subsequent year. The amount borrowed will be accounted for in the form of a deficit in Lahontan Reservoir storage. This deficit amount will be added to the actual Lahontan Reservoir storage quantity for the purpose of determining the Truckee River diversions to meet storage objectives as well as all other operating decisions.

(b) The amount of the deficit will be cumulative from year to year but will not be allowed to exceed 26,000 acre-feet (the expected variance between the MAD and actual water use). This limit is expected to avoid increasing the severity of drought and yet still allow for variations in efficiency over time due to weather and other factors. This approach should allow the District to plan its operation to correct for any deficiencies.

(c) The deficit can be reduced by crediting incentive water earned by the District or reducing the percentage of headgate entitlement delivered either through a natural drought or by the District and its water users administratively limiting deliveries while maintaining an efficiency greater than or equal to the target efficiency.

(d) If there is a natural drought and the shortage to the headgates is equal to or greater than the deficit, then the deficit is reduced to zero. If the shortage to headgates is less than the deficit then the deficit is reduced by an amount equal to the headgate shortage. During a natural drought, if the percentage of maximum headgate entitlement delivered is 75 percent or more then the District will be subject to the target efficiencies and resultant deficits or credits.

(e) If the District has a deficit in Lahontan Reservoir and earns incentive water, the incentive water must be used to eliminate the deficit before it can be used for any other purpose. The deficit must be credited on a 1 to 1 basis (i.e., actual efficiency savings rather than ⅓–⅔ for incentive water).

(f) An example of the penalty concept is:

Example: *Penalty*—

In 1996 the District delivers 90 percent of the maximum headgate entitlement or 194,703 acre-feet 216,337 x .90) but actually diverts 308,000 acre-feet. The efficiency of the Project is 63.2 percent (194,703 divided by 308,000). Since the established efficiency of 65.1 percent would have required a diversion of only 299,083 acre-feet (194,703 divided by .651) the District has operated the system with 8,917 acre-feet of excess losses. Therefore, 8,917 acre-feet was borrowed and must be added to the actual storage quantities of Lahontan Reservoir for calculating target storage levels and Truckee River diversions.

§ 418.38 Maximum allowable diversion.

(a) The MAD established in this part is based on the premise that the Project should be operated to ensure that it is capable of delivering to the headgate of each water right holder the full water entitlement for irrigable eligible acres and includes distribution system losses. The MAD will be established (and is likely to vary) each year. The annual MAD will be calculated each year based on the actual acreage to be irrigated that year.

(b) Historically, actual deliveries at farm headgates have been approximately 90 percent of entitlements. This practice is expected to continue but the percentage is expected to change. This variance between headgate deliveries and headgate entitlements will be calculated annually under this part and is allowed to be diverted if needed and thereby provides an assurance that full headgate deliveries can be made. The expected diversion and associated efficiency target for the examples shown in the Newlands Project Water Budget table would be: 285,243 AF and 65.1 percent in 1996 and beyond. These are well below the MAD limits; however, the District may divert up to the MAD if it is needed to meet valid headgate entitlements.

Appendix A to Part 418-Calculation of Efficiency Equation

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Calculation of Efficiency Equation Slope and Y-Intercept for Adjusted OCAP													
	1988 OCAP		With Adjusted OCAP										
	Projected for 1992	Without added ac.											
Irrigated Acreage	64,850	61,630	64,850	64,500	64,000	63,500	63,000	62,500	62,000	61,500	61,000	60,500	60,000
Max. Headgate Entitlement	237,485	226,555	226,586	225,363	223,616	221,869	220,122	218,375	216,628	214,881	213,134	211,387	209,640
Distribution System Losses													
Evaporation													
Canals/Laterals	6,200	6,000	6,200	6,178	6,147	6,116	6,085	6,054	6,023	5,992	5,961	5,930	5,899
Reg. Reservoirs	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500
Seepage													
Canals/Laterals	51,000	48,500	51,000	50,728	50,340	49,952	49,564	49,175	48,787	48,399	48,011	47,623	47,234
Reg. Reservoirs	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000
Operational Losses	40,800	39,400	40,800	40,648	40,430	40,213	39,996	39,778	39,561	39,343	39,126	38,909	38,691
Total System Losses	109,500	105,400	109,500	109,054	108,418	107,781	107,144	106,508	105,871	105,234	104,598	103,961	103,325
100% Use of Entitlement:													
Allowable Diversion	346,985	331,955	336,086	334,417	332,034	329,650	327,266	324,883	322,499	320,115	317,732	315,348	312,965
Conveyance Efficiency	68.44%	68.25%	67.42%	67.39%	67.35%	67.30%	67.26%	67.22%	67.17%	67.13%	67.08%	67.03%	66.99%
75% Use of Entitlement:													
Headgate Ent. Unused	59,371	56,639	56,646	56,341	55,904	55,467	55,031	54,594	54,157	53,720	53,284	52,847	52,410
Headgate Delivery	178,114	169,916	169,939	169,022	167,712	166,402	165,092	163,781	162,471	161,161	159,851	158,540	157,230
Diversion Reduction	68,717	65,554	65,563	65,209	64,704	64,198	63,693	63,187	62,682	62,176	61,671	61,165	60,660
Allowable Diversion	278,268	266,401	270,523	269,208	267,330	265,452	263,574	261,696	259,817	257,939	256,061	254,183	252,305
Conveyance Efficiency	64.01%	63.78%	62.82%	62.78%	62.74%	62.69%	62.64%	62.58%	62.53%	62.48%	62.43%	62.37%	62.32%
Slope	0.1774	0.1787	0.1840	0.1842	0.1845	0.1847	0.1850	0.1853	0.1856	0.1858	0.1861	0.1864	0.1867
Y-Intercept	50.70	50.38	49.02	48.97	48.90	48.83	48.76	48.69	48.62	48.54	48.47	48.39	48.31
Note: (1) The average water duty with Adjusted OCAP assumed to be 3.494 acre-feet/acre based on 1995 conditions.													
(2) The conveyance efficiency of the unused entitlement (75% use) assumed to be 86.4% based on Figure 1 and Table 1 of 1988 OCAP.													

Calculation of Efficiency Equation Slope and Y-Intercept for Adjusted OCAP

Adjusted OCAP (continued)

Calculation of Efficiency Equation Slope and Y-Intercept for Adjusted OCAP																
Adjusted OCAP (continued)																
Irrigated Acreage	59,500	59,000	58,500	58,000	57,500	57,000	56,500	56,000	55,500	55,000	54,500	54,000	53,500	53,000	52,500	52,000
Max. Headgate Ent.	207893	206146	204399	202652	200905	199158	197411	195664	193917	192170	190423	188676	186929	185182	183435	181688
Distribution Losses																
Evaporation																
Canal/Laterals	5868	5837	5806	5775	5743	5712	5681	5650	5619	5588	5557	5526	5495	5464	5433	5402
Reg. Reservoirs	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500
Seepage																
Canal/Laterals	46846	46458	46070	45682	45293	44905	44517	44129	43741	43352	42964	42576	42188	41800	41411	41023
Reg. Reservoirs	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000
Operational Losses	38474	38257	38039	37822	37604	37387	37170	36952	36735	36517	36300	36083	35865	35648	35430	35213
Total System Losses	102688	102051	101415	100778	100141	99505	98868	98231	97595	96958	96321	95685	95048	94411	93775	93138
100% Use of Ent.																
Allowable Diversion	310581	308197	305814	303430	301046	298663	296279	293895	291512	289128	286744	284361	281977	279593	277210	274826
Convey. Efficiency	66.94%	66.89%	66.84%	66.79%	66.74%	66.68%	66.63%	66.58%	66.52%	66.47%	66.41%	66.35%	66.29%	66.23%	66.17%	66.11%
75% Use of Ent.																
Entitlement Unused	51973	51537	51100	50663	50226	49790	49353	48916	48479	48043	47606	47169	46732	46296	45859	45422
Headgate Delivery	155920	154610	153299	151989	150679	149369	148058	146748	145438	144128	142817	141507	140197	138887	137576	136266
Diversion Reduction	60154	59649	59143	58638	58132	57627	57121	56616	56110	55605	55099	54594	54088	53583	53077	52572
Allowable Diversion	250427	248549	246670	244792	242914	241036	239158	237280	235401	233523	231645	229767	227889	226011	224133	222254
Convey. Efficiency	62.26%	62.20%	62.15%	62.09%	62.03%	61.97%	61.91%	61.85%	61.78%	61.72%	61.65%	61.59%	61.52%	61.45%	61.38%	61.31 %
Slope	0.1870	0.1873	0.1876	0.1879	0.1882	0.1886	0.1889	0.1892	0.1895	0.1899	0.1902	0.1906	0.1909	0.1913	0.1916	0.1920
Y-Intercept	48.24	48.16	48.08	47.99	47.91	47.83	47.74	47.66	47.57	47.48	47.39	47.30	47.20	47.11	47.01	46.91
Note: (1) The average water duty with Adjusted OCAP assumed to be 3.494 acre-feet/acre based on 1995 conditions.																
(2) The conveyance efficiency of the unused entitlement (75% use) assumed to be 86.4% based on Figure 1 and Table 1 of 1988 OCAP.																

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federal register

Thursday
December 18, 1997

Part VI

Department of Housing and Urban Development

24 CFR Part 180
Civil Penalties for Fair Housing Act Violations; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 180

[Docket No. FR–4302–P–01]

RIN 2529–AA83

Civil Penalties for Fair Housing Act Violations

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule interprets the Fair Housing Act to allow Administrative Law Judges (ALJs) to assess a separate civil penalty for each of multiple acts involving housing discrimination. Under the Fair Housing Act, housing discrimination violations carry maximum civil penalties for first-, second-, and third-time offenders. This proposed rule would interpret the Fair Housing Act to clarify that, in a given case, an ALJ may assess more than one maximum civil penalty against a respondent in a given case, where the respondent has committed separate and distinct acts of discrimination.

The proposed rule is also part of President Clinton's "Make 'Em Pay" initiative, which is designed to fight housing-related acts of hate violence and intimidation with increased enforcement and monetary penalties. Such housing-related hate acts continue to pose a significant problem; last year, according to FBI statistics, of 8,759 hate crimes, 2,416, or 27%, were housing-related. The rule would describe how ALJs are to consider housing-related hate acts under the six factors ALJs apply in determining the amount of a civil penalty to assess against a respondent found to have committed a discriminatory housing practice.

DATES: Comments on the proposed rule are due on or before: January 20, 1998.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Stephen I. Shaw, Trial Attorney, Office of Litigation and Fair Housing Enforcement, Room 10258, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1042. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (With the exception of the "800" number, these are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Civil Penalties for Separate and Distinct Fair Housing Act Violations

The Fair Housing Act (42 U.S.C. 3601–3619), allows an Administrative Law Judge (ALJ) in a Fair Housing Act case to assess a civil penalty if the ALJ "finds that a respondent has engaged in or is about to engage in a discriminatory housing practice" (42 U.S.C. 3612(g)(3) (emphasis added)). A "discriminatory housing practice" is defined as "*an* act that is unlawful under section 804, 805, 806 or 818 of the [Fair Housing] Act" (42 U.S.C. 3602(f) (emphasis added)). The Fair Housing Act specifically does not say that an ALJ may assess only a single civil penalty for *all* separate and distinct violations that respondent is found to have committed in a case. Likewise, the Fair Housing Act does not specify that the ALJ may assess a civil penalty for each separate discriminatory housing act. Thus, the statutory language is ambiguous with respect to the issue of whether an ALJ may assess multiple civil penalties for multiple discriminatory housing practices. The legislative history also does not address this point. In such a case of statutory ambiguity, the agency's interpretation will be upheld if it is "based on a permissible construction of the statute." *Chevron, U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).

It is certainly a permissible and reasonable interpretation of the Fair Housing Act that, where a respondent commits a single discriminatory housing practice, that is, a single act of discrimination, an ALJ has the discretion to assess a civil penalty against that respondent, up to the maximum, for that particular illegal act. It is similarly reasonable and permissible to interpret the Fair Housing Act to indicate that, where a respondent has committed multiple, separate illegal acts, an ALJ has discretion to assess a separate civil penalty against a respondent for *each separate* discriminatory housing practice that respondent committed in a case.

In accordance with the foregoing construction of the Fair Housing Act, HUD interprets the language of the statute to indicate that an ALJ may assess multiple penalties against a respondent in cases where the respondent is found to have committed multiple discriminatory acts. Accordingly, under the proposed rule, ALJs will have the discretion to assess multiple civil penalties in cases where a respondent has committed more than one discriminatory act, limited only by the number of violations that respondent is found to have committed.

This rule proposes to amend HUD's regulations at 24 CFR part 180 (Hearing Procedures for Civil Rights Matters) to clarify that, in a given case, an ALJ may, and in appropriate circumstances should, assess more than one civil penalty against a given respondent where the respondent has committed separate and distinct acts of discrimination

II. Housing Related Hate Acts

ALJs often assess maximum civil penalties against respondents in cases of particularly heinous or pervasive hate acts. Traditionally, ALJs have applied six factors in determining the amount of a civil penalty to assess: (1) Whether the respondent has previously been adjudged to have committed unlawful housing discrimination; (2) the respondent's financial resources; (3) the nature and circumstances of the respondent's violation; (4) the degree of the respondent's culpability; (5) the goal of deterrence; and (6) other matters as justice may require (*HUD* v. *Housing Authority of Las Vegas*, 2A Fair Housing Fair Lending ¶ 25,116 (Nov. 6, 1995); H.R. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988)).

This proposed rule would also amend 24 CFR part 180 to define "housing related hate act" and articulate that it is appropriate that ALJs consider, under the last four of the traditional requirements, the commission of a housing-related hate act to provide a basis for assessing a maximum civil penalty. Nothing in this regulation, however, is intended to lead ALJs to infer that they should necessarily assess a less than maximum penalty in any particular case that does not involve a hate act.

III. Creation of New § 180.671

In addition to the amendments described above, this rule proposes to make a clarifying change to 24 CFR part 180. Specifically, the provisions governing the assessment of civil penalties currently found at § 180.670(b)(3)(iii)(A), (B), and (C)

would be moved to a new § 180.671. With the exception of the amendments described above, no substantive revisions would be made to these provisions. HUD, however, is proposing to make changes to certain of these provisions for purposes of clarity. The creation of a new § 180.671 is designed to make the part 180 regulations easier to understand.

IV. Justification for Reduced Comment Period

It is HUD's policy generally to afford the public not less than 60 days for submission of comments on its notices of proposed rulemaking (24 CFR 10.1). In this case, HUD has determined that it would be contrary to the public interest to provide a public comment period greater than 30 calendar days. The current interpretation of the civil penalty structure has not been sufficient to deter discriminatory housing practices, particularly housing-related acts of hate violence. The proposed amendments interpret the Fair Housing Act to insure that ALJs have the necessary flexibility to assess the appropriate number of civil penalties to deter these egregious acts of housing discrimination. The provision of a 60-day comment period would delay implementation of the proposed amendments, and tend to limit the ability of the government to maximize the use of civil penalties in cases involving housing-related hate violence.

HUD believes that the 30-day comment period strikes a balance between the need for public input in the regulatory process, and the need to address housing discrimination and, particularly, housing-related acts of hate violence. HUD recognizes the value and necessity of public comments in the development of final regulations and welcomes comments on this proposed rule. All public comments will be addressed in the final rule.

V. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of the HUD regulations, the policies and procedures contained in this proposed rule set out nondiscrimination standards and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would have no federalism implications, and that the policies are not subject to review under the Order.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This proposed rule would not pose an environmental health risk or safety risk to children.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this proposed rule would not impose a Federal mandate that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12866, Regulatory Planning and Review.

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance Number.

The Catalog of Federal Domestic Assistance Number for this program is 14.400.

List of Subjects in 24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 180 is proposed to be amended as follows:

PART 180—HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

1. The authority citation for 24 CFR part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d–1, 3535(d), 3601–3619, 5301–5320, and 6103.

2. Section 180.670 is amended by revising paragraph (b)(3)(iii) to read as follows:

§ 180.670 Initial decision of ALJ.

* * * * *

(b) * * *

(3) * * *

(iii) Assessing a civil penalty against any respondent to vindicate the public interest in accordance with § 180.671.

* * * * *

3. Section 180.671 is added to read as follows:

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) *Amounts.* The ALJ may assess a civil penalty against any respondent under § 180.670(b)(3) for each separate and distinct discriminatory housing practice (as defined in paragraph (b) of this section) that the respondent committed, each civil penalty in an amount not to exceed:

(1) $11,000, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency, to have committed any prior discriminatory housing practice.

(2) $27,500, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the five-year period preceding the date of filing of the charge.

(3) $55,000, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the seven-year period preceding the date of the filing of the charge.

(b) *Definition of separate and distinct discriminatory housing practice.* A

separate and distinct discriminatory housing practice is a single, continuous, uninterrupted transaction or occurrence that violates section 804, 805, 806, or 818 of the Fair Housing Act, even if committed by the same person. Each single, continuous, uninterrupted transaction or occurrence that violates more than one provision of the Act, violates one provision more than once, or violates the fair housing rights of more than one person constitutes a separate and distinct discriminatory housing practice.

(c) *Factors for consideration by ALJ.* (1) In determining the amount of the civil penalty to be assessed against any respondent for each separate and distinct discriminatory housing practice the respondent committed, the ALJ shall consider the following six (6) factors:

(i) Whether that respondent has previously been adjudged to have committed unlawful housing discrimination;

(ii) That respondent's financial resources;

(iii) The nature and circumstances of the violation;

(iv) The degree of that respondent's culpability;

(v) The goal of deterrence; and

(vi) Other matters as justice may require.

(2)(i) Where the ALJ finds any respondent to have committed a housing-related hate act, the ALJ shall take this fact into account in favor of imposing a maximum civil penalty under the factors listed in paragraphs (c)(1)(iii), (iv), (v), and (vi) of this section.

(ii) For purposes of this section, the term "*housing-related hate act*" means any act that constitutes a discriminatory housing practice under section 818 of the Fair Housing Act and which constitutes or is accompanied or characterized by the threat, or any action toward carrying out, or the carrying out of actual violence, intimidation, coercion, assault, bodily harm, and/or harm to property.

(iii) Nothing in this paragraph shall be construed to require an ALJ to assess any amount less than a maximum civil penalty in a non-hate act case, where the ALJ finds that the factors listed in paragraphs (c)(1)(i) through (vi) of this section warrant the assessment of a maximum civil penalty.

(d) *Persons previously adjudged to have committed a discriminatory housing practice.* If the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who has previously been adjudged, in any administrative proceeding or civil action, to have committed acts constituting a discriminatory housing practice, the time periods set forth in paragraphs (a)(2) and (3) of this section do not apply.

(e) *Multiple discriminatory housing practices committed by the same respondent; multiple respondents.* (1) In a proceeding where a respondent has engaged in or is about to engage in more than one separate and distinct discriminatory housing practice, a separate civil penalty may be assessed against the respondent for each separate and distinct discriminatory housing practice.

(2) In a proceeding involving two or more respondents, one or more civil penalties, as provided under this section, may be assessed against each respondent that has been determined to have been engaged in or is about to engage in one or more discriminatory housing practices.

Dated: November 24, 1997.

Andrew Cuomo,

Secretary.

[FR Doc. 97–33051 Filed 12–17–97; 8:45 am]

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Thursday
December 18, 1997

Part VII

The President

Executive Order 13070—The Intelligence Oversight Board, Amendment to Executive Order 12863

Federal Register
Vol. 62, No. 243
Thursday, December 18, 1997

Presidential Documents

Title 3—

The President

Executive Order 13070 of December 15, 1997

The Intelligence Oversight Board, Amendment to Executive Order 12863

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to emphasize the role of the Intelligence Oversight Board in providing executive branch oversight, it is hereby ordered that Executive Order 12863 is amended as follows:

Section 1. The text in section 2.1 is deleted and the following text is inserted in lieu thereof: "The Intelligence Oversight Board (IOB) is hereby established as a standing committee of the PFIAB. The IOB shall consist of no more than four members designated by the President from among the membership of the PFIAB. The Chairman of the PFIAB may also serve as the Chairman or a member of the IOB if so designated by the President. The IOB shall utilize such full-time staff and consultants as authorized by the Chairman of the IOB with the concurrence of the Chairman of the PFIAB."

Sec. 2. The first sentence in section 2.3 is deleted and the following sentence is inserted in lieu thereof: "The IOB shall report to the President."

William J. Clinton

THE WHITE HOUSE,
December 15, 1997.

[FR Doc. 97–33299
Filed 12–17–97; 10:29 am]
Billing code 3195–01–P

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 18, 1997

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Scallop; published 12-9-97

DEFENSE DEPARTMENT
Vocational rehabilitation and education:
Reservists' education—
Montgomery GI Bill-Selected Reserve; rates payable increase; published 12-18-97

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Clean Air Act:
Acid rain program—
Continuous emission monitoring; excess emissions, etc., rules streamlining; correction; published 12-18-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Hazard Analysis Critical Control Point (HACCP) principles:
Fish and fishery products, safe processing and importing; procedures; published 12-18-95

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Single Audit Act Amendments of 1996; implementation:
Audits of States, local governments, and non-profit organizations expending Federal awards; published 11-18-97

LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards, etc.:
Methylene chloride; occupational exposure
Partial stay; published 12-18-97

TRANSPORTATION DEPARTMENT
Coast Guard
Vocational rehabilitation and education:
Reservists' education—
Montgomery GI Bill-Selected Reserve; rates payable increase; published 12-18-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Fairchild; published 11-13-97

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
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Occupant crash protection—
Air bag on-off switches; published 11-21-97

TREASURY DEPARTMENT
Thrift Supervision Office
Federal regulatory reform:
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VETERANS AFFAIRS DEPARTMENT
Vocational rehabilitation and education:
Reservists' education—
Montgomery GI Bill-Selected Reserve; rates payable increase; published 12-18-97

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Michigan et al.; comments due by 12-22-97; published 10-23-97

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Karnal bunt disease—
Texas et al.; comments due by 12-24-97; published 11-24-97
Mediterranean fruit fly; comments due by 12-22-97; published 10-21-97

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Atlantic surf clam and ocean quahog; comments due by 12-24-97; published 11-24-97

DEFENSE DEPARTMENT
Closures and realignment:
Closed, transferred, and transferring military ranges containing munitions; appropriate response actions evaluation process; comments due by 12-26-97; published 9-26-97
Federal Acquisition Regulation (FAR):
Alternative dispute resolution (1996); comments due by 12-26-97; published 10-27-97

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Illinois; comments due by 12-26-97; published 11-26-97
New Jersey; comments due by 12-22-97; published 11-20-97
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Tennessee; comments due by 12-26-97; published 11-25-97
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Georgia; comments due by 12-24-97; published 11-24-97
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Cyromazine; comments due by 12-22-97; published 10-22-97
Pyrithiobac sodium salt; comments due by 12-22-97; published 10-22-97

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Oregon; comments due by 12-22-97; published 11-19-97
Texas; comments due by 12-22-97; published 11-19-97
Utah; comments due by 12-22-97; published 11-19-97
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Cable television systems—
Inside wiring; comments due by 12-23-97; published 11-14-97

FEDERAL DEPOSIT INSURANCE CORPORATION
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Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97
Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97

FEDERAL RESERVE SYSTEM
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Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97

GENERAL SERVICES ADMINISTRATION
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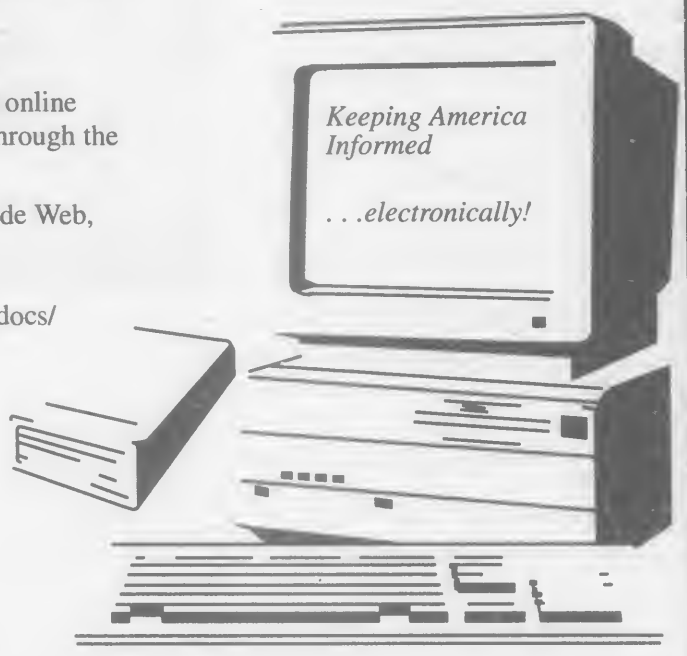

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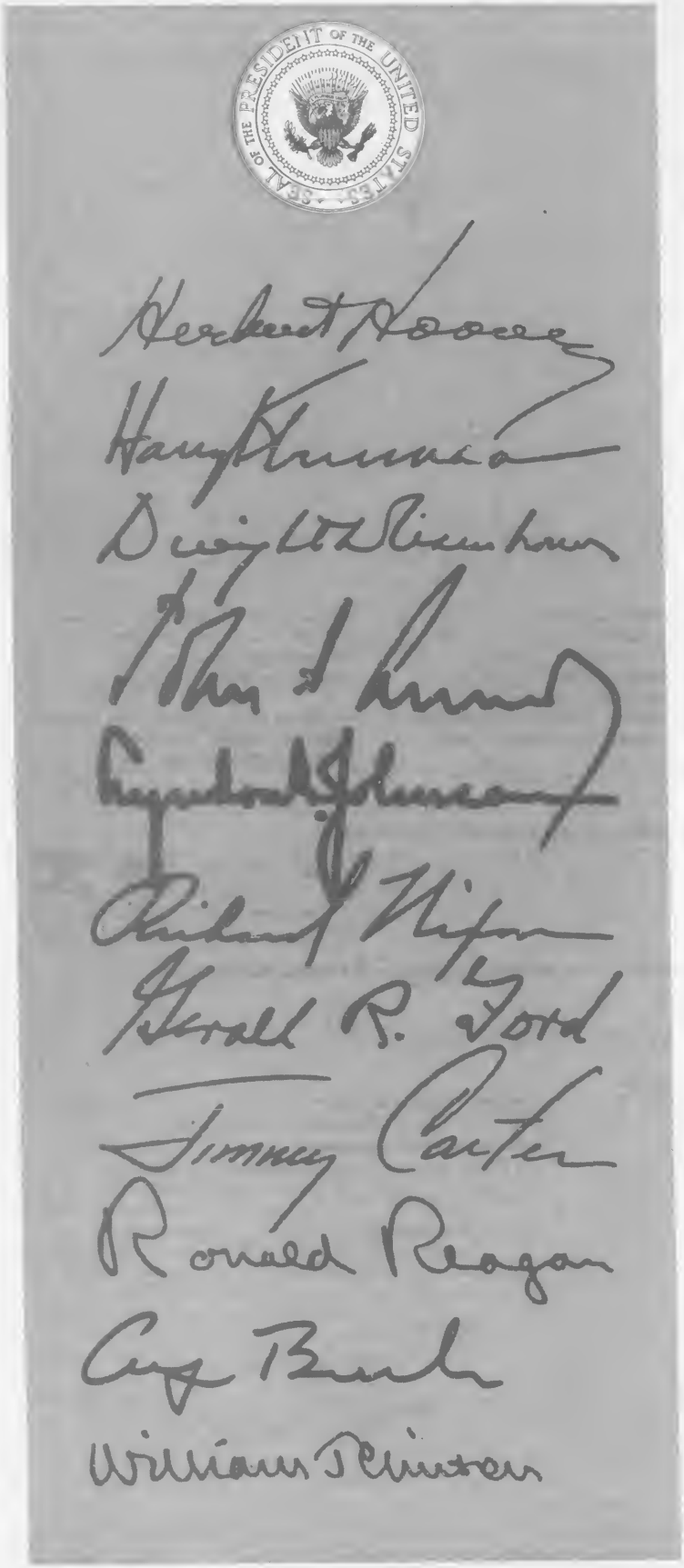

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