

9-29-94

Vol. 59

No. 188

federal register

Thursday
September 29, 1994

United States
Government
Printing Office

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OF DOCUMENTS
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9-29-94

Vol. 59 No. 188

Pages 49569-49780

Thursday
September 29, 1994

Federal Register



FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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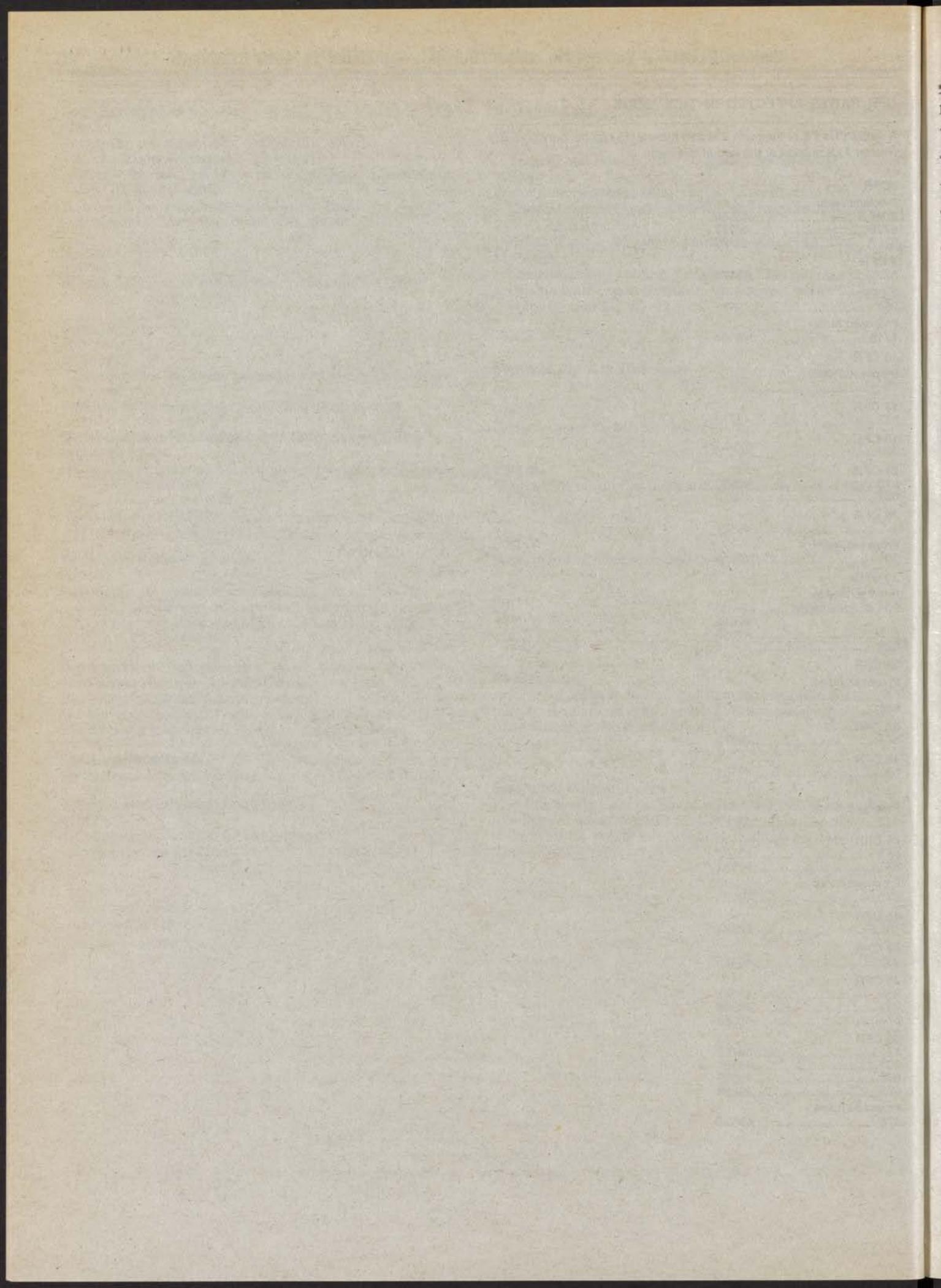
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The President

National Legal Services Week, 1994

By the President of the United States of America

A Proclamation

The preamble to the Constitution reminds us that our great Nation was founded "to establish Justice . . . and secure the Blessings of Liberty. . . ." The very nature of justice demands that it be available to all. True justice cannot be rationed—it cannot be accorded to some while others are denied the full benefit of their rights. Our Founders understood that privilege and responsibility are inextricably linked. The words "Equal Justice under the Law," inscribed over the portal of our highest court, represent a solemn promise made to every American.

Twenty years ago, the Legal Services Corporation was created to help keep that promise, promoting equal access to justice by making high-quality legal assistance in civil matters available to those who would otherwise be unable to attain it.

In designing the Legal Services Corporation the Congress recognized the need for an independent entity, protected from political interference, to support local programs that would be accountable to their own communities. Legal Services was designed to ensure that all Americans needing assistance are provided with legal representatives whose responsibility is to fully protect and defend their clients' best interests according to the highest standards of professional obligation.

For two decades, the Legal Services Corporation has fulfilled that mandate. It supports local legal services programs that operate under the auspices of their own Boards of Directors, which are made up of clients and representatives of the local bar. Today, the Corporation supports 323 programs operating in over 900 neighborhood offices across the Nation. In addition, more than 130,000 private attorneys volunteer their time and energy toward activities associated with local legal services projects.

Legal Services programs extend assistance to more than 1.5 million people every year, vindicating their rights, resolving their disputes, and offering a means of improving their lives. Dedicated attorneys, paralegals, staff, Board members, and volunteers have worked with unflinching commitment, often under adverse conditions, to serve those whose rights and interests they represent. Legal Services has won the respect of the judiciary, the organized bar, and the client community. For many Americans, the existence of legal services has renewed their faith in our government of laws.

On the 20th anniversary of the Legal Services Corporation, I reaffirm our national commitment to equal access to justice, to decency, to fair play. I voice my deep respect for those who have given so much to keep those principles alive over the years.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of September 26 through October 2, 1994, as "National Legal Services Week." I urge all Americans to join me in recognizing the contributions that the Legal Services Corporation and the local programs that it supports have made in fulfilling the promise of equal justice under the law, and I call upon

the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William Clinton

[FR Doc. 94-24310

Filed 9-27-94; 4:32 pm]

Billing code 3195-01-P

Rules and Regulations

Federal Register

Vol. 59, No. 188

Thursday, September 29, 1994

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AF90

Prevailing Rate Systems; Change of Lead Agency Responsibility for Cleveland, OH, Wage Area for Pay- Setting Purposes

AGENCY: Office of Personnel
Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to change the lead agency responsibility for the Cleveland, Ohio, Federal Wage System (FWS) wage area from the National Aeronautics and Space Administration (NASA) to the Department of Veterans Affairs (VA) for pay-setting purposes. This change recognizes the fact that VA is now the major employer of FWS employees in the Cleveland, Ohio, FWS wage area.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT:
Mark Allen, (202) 606-2848.

SUPPLEMENTARY INFORMATION: On June 14, 1994, OPM published a proposed rule (59 FR 30533) to change the lead agency responsibility for the Cleveland, Ohio, wage area for pay-setting purposes. The proposed rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the proposed rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, OPM is amending 5 CFR part 532 as follows:

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix A to subpart B is amended for Cleveland, Ohio, by removing the lead agency "NASA" and adding in its place "VA".

U.S. Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94-24030 Filed 9-28-94; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 967

[Docket No. FV94-967-2FIR]

Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service,
USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which established the quantity of Florida celery which handlers may ship to fresh markets during the 1994-95 marketing season at 6,712,910 crates or 100 percent of producers' base quantities. The 1994-95 marketing season covers the period August 1, 1994, through July 31, 1995. This final rule is intended to lend stability to the industry, and help provide consumers with an adequate supply of the product. As in past marketing seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, because production and shipments are anticipated to be less than the marketable quantity. This action was unanimously recommended by the

Florida Celery Committee (Committee), the agency responsible for local administration of the order.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT:

William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone, (813) 299-4770; or Mark Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone, (202) 205-2830, or FAX (202) 720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 967 (7 CFR part 967), both as amended, regulating the handling of celery grown in Florida, hereinafter referred to as the "order." The order is 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule continues in effect an action which established the quantity of Florida celery (at 6,712,910 crates or 100 percent of producers' base quantities) which handlers may ship to fresh markets during the 1994-95 marketing season which covers the period August 1, 1994, through July 31, 1995. This rule 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 requesting 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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.

There are approximately seven producers of celery in the production area and seven handlers of celery grown in Florida subject to regulation under the celery marketing order. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of celery producers and handlers may be classified as small entities.

This rule is based upon a recommendation and information submitted by the Committee and upon other available information. The Committee met on June 15, 1994, and unanimously recommended a marketable quantity of 6,712,910 crates of fresh celery for the 1994-95 marketing season beginning August 1, 1994. Additionally, a uniform percentage of 100 percent was recommended which will allow each producer, registered pursuant to § 967.37(f) of the order, to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1994-95 supply and demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (402,775 crates) of the 1993-94 total base quantities was made available to new producers and for increases for existing producers. The deadline for requesting changes in base quantities was May 1, 1994. No applications for additional base quantities were received.

This rule will limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1994-95

marketing season to 6,712,910 crates. This marketable quantity is the same as the 1993-94 marketable quantity, and is more than the average number of crates marketed fresh during the 1987-88 through 1992-93 seasons. It is expected that such quantity will be more than actual shipments for the 1994-95 season. Thus, the 6,712,910 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, this rule should lend stability to the industry, and help provide consumers with an adequate supply of the product.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

An interim final rule was published in the *Federal Register* on July 27, 1994 (59 FR 38108). That interim final rule added § 967.329 to establish the quantity of Florida celery which handlers may ship to fresh markets during the 1994-95 marketing season. That rule provided that interested persons could file comments through August 26, 1994. No comments were filed.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is amended as follows:

PART 967—CELERY GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 967 which was published at 59 FR 38108, on July 27, 1994, is adopted as a final rule without change.

Dated: September 26, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.
[FR Doc. 94-24100 Filed 9-28-94; 8:45 am]

BILLING CODE 3410-02-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33-7094; 34-34708; 35-26129; 39-2323; IC-20569]

RIN 3235-AG10

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting an updated edition of the EDGAR Filer Manual and is providing for its incorporation by reference into the Code of Federal Regulations.

EFFECTIVE DATE: The amendment to Regulation S-T will be effective on October 31, 1994. The new edition of the EDGAR Filer Manual (Release 4.0) will be effective on October 31, 1994. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of October 31, 1994.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, David T. Copenhafer at (202) 942-8800; in the Division of Corporation Finance, Barbara C. Jacobs or James R. Budge at (202) 942-2910; in the Division of Investment Management, Anthony A. Vertuno at (202) 942-0591 or Ruth Armfield Sanders at (202) 941-0633.

SUPPLEMENTARY INFORMATION: The Commission today announces the adoption of an updated EDGAR Filer Manual ("Filer Manual"), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.¹ Compliance with the provisions of the Filer Manual is required in order to assure the timely acceptance and processing of filings made in electronic format.² Filers should consult the Filer Manual in conjunction with the Commission's rules governing mandated electronic filing when preparing documents for electronic submission.³ In this update,

¹ The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. See Release No. 33-6986 (April 1, 1993) [58 FR 18638]. Updates to the Filer Manual were adopted on July 8, 1994. See Release No. 33-7073 (July 8, 1994) [59 FR 36262].

² See Rule 301 of Regulation S-T (17 CFR 232.301).

³ See Release Nos. 33-6977 (February 23, 1993) [58 FR 14628], IC-19284 (February 23, 1993) [58 FR 14848], 35-25746 (February 23, 1993) [58 FR 14999], and 33-6980 (February 23, 1993) [58 FR

electronic filers will be required to identify for the EDGAR system the national securities exchanges or national securities associations on or through which the issuer's securities are traded. A number of new form types also will be made available, including several that will allow more flexibility in filing proxy materials. Rule 301 of Regulation S-T also is being amended to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which 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. The revised Filer Manual and the amendment to Rule 301 will be effective on October 31, 1994.

Paper copies of the updated Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1-2, 450 Fifth Street, N.W., Washington D.C. 20549. Electronic format copies will be available on the EDGAR electronic bulletin board. Copies also may be obtained from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638-8241.

Since the Filer Manual relates solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.⁴ It follows that the requirements of the Regulatory Flexibility Act⁵ do not apply.

Statutory Basis

The amendment to Regulation S-T is being adopted under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,⁶ Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,⁷ Section 20 of the Public Utility Holding Company Act of 1935,⁸ Section 319 of the Trust Indenture Act of 1939,⁹ and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.¹⁰

List of Subjects in 17 CFR Part 232

Incorporation by reference, Investment companies, Registration requirements, Reporting and recordkeeping requirements, Securities.

15009) for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing.

⁴ 5 U.S.C. 553(b).

⁵ 5 U.S.C. 601-612.

⁶ 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

⁷ 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w and 78ll.

⁸ 15 U.S.C. 79t.

⁹ 15 U.S.C. 77sss.

¹⁰ 15 U.S.C. 80a-8, 80a-29, 80a-30 and 80a-37.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S-T— GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Electronic filings shall be prepared in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The September 1994 edition of the *EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 4.0)* is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Compliance with the requirements found therein is essential to the timely receipt and acceptance of documents filed with or otherwise submitted to the Commission in electronic format. Paper copies of the EDGAR Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1-2, 450 5th Street, N.W., Washington, DC 20549. They also may be obtained from Disclosure Incorporated by calling (800) 638-8241. Electronic format copies are available through the EDGAR electronic bulletin board. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 848-8199.

By the Commission.

Dated: September 23, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-24045 Filed 9-28-94; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93-4-004; Order No. 563-C]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued September 23, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order Accepting Modifications to the Transaction Point Common Code Data Base.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order making changes to the transaction point common code data base. The Commission's order revises its "Standardized Data Sets and Communication Protocols," available at the Commission's Public Reference and Files Maintenance Branch, to add three additional fields to improve the clarity of the data and the management of the data base.

DATES: This order was issued on September 23, 1994.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1283

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0292

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed

using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Order Accepting Modifications to the Transaction Point Common Code Data Base

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

On July 29, 1994, the Electronic Bulletin Board (EBB) Working Group submitted proposed modifications to the transaction point common code data base that the Commission had accepted in Order No. 563.¹ The Commission hereby adopts the proposed modifications, with one exception discussed below.

On December 23, 1993, the Commission issued a Final Rule in this proceeding requiring pipelines to implement standards and protocols relating to the electronic dissemination of information. The standards and protocols accepted by the Commission reflected agreements reached by industry Working Groups consisting of members from all segments of the gas industry. The standards and protocols

are described in a document entitled "Standardized Data Sets and Communication Protocols," available at the Commission's Public Reference and Files Maintenance Branch.

In the Final Rule, the Commission accepted a consensus approach for developing a common code data base that would identify pipeline transaction points, such as receipt and delivery points. Under the accepted approach, pipelines were required to provide the Petroleum Information Corporation (PI) with information on their transaction points, and PI then would prepare a computerized data base cross-referencing the pipelines' proprietary codes for identifying transaction points with a discrete common code assigned to each point. The data base is to be available by November 1, 1994.² The data sets summarizing the information to be included in the common code data base were included in the Standardized Data Sets and Communication Protocols adopted by the Commission.

In the Final Rule, the Commission recognized that the EBB standardization efforts would be an on-going process that required a flexible procedure for making timely revisions or modifications to the standards and protocols as the industry obtained experience with them and at the same time preserved the opportunity for the industry to comment on proposed changes. The Commission adopted a process in which the industry Working Groups would file their proposed changes with the Commission, and the filing would then be noticed with an opportunity for the industry to file comments.

On July 29, 1994, the industry Working Group filed a consensus proposal to modify the data sets for the common code data base by adding three new fields: "facility type," which provides a standard text description of the facility; "transaction code," which informs users whether a record is an addition, change, or deletion; and "data reference number," which is a unique number that identifies each data base record. The Working Group states that the addition of these fields will improve the clarity of the data and the management of the data base.

Public notice of the Working Group filing was issued on August 4, 1994, with comments due by August 15, 1994. The notice further provided that issues relating to these proposed changes could be raised at an EBB conference to be held on August 11, 1994.

No comments have been received regarding the proposed changes, and the Commission will accept them to be implemented according to the schedule established in Order Nos. 563 and 563-A.³ The "Standardized Data Sets and Communication Protocols" will be modified accordingly and made available at the Commission's Public Reference and Files Maintenance Branch.

The Commission orders:

The data sets in Appendix A are accepted to be implemented according to the schedule established in Order Nos. 563 and 563-A.

By the Commission.
Lois D. Cashell,
Secretary.

Appendix A

COMMON CODE DATA SET FOR GAS TRANSACTION POINTS

(I. Data Elements of the Gas Transaction Point Common Code Record)

Line No.	Field name	Description of field	Status	Data type and explanation
1.	Owner/operator name	The legal name of entity that owns and/or operates the transaction point.	M	A Text field provided by the owner/operator that is responsible for conducting business at the point.
2.	Owner/Operator Company Code.	The company code of the entity that owns/operates the gas transaction point.	M	An alpha-numeric field containing a code that uniquely identifies the owner/operator of the point.
3.	Point Code	The code assigned by the owner/operator to the transaction point.	M	An alpha-numeric field containing the point code for the gas transaction point that is used by the owner/operator.

¹ Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563-A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶30,994 (May 2, 1994), *reh'g denied*, Order No. 563-B, 68 FERC ¶61,002 (1994).

² The Commission, however, did provide that pipelines that do not maintain the geographic

location of receipt points in an easily accessible form may request an extension until May 1, 1995, to complete the process of confirming their points to PI.

³ The complete data set is contained in Appendix A. The Commission notes that, for informational purposes, the Working Group attached to its July 29, 1994 report a copy of Table 1 of its October 12, 1993 filing showing the data sets it initially proposed. That table lists the point locator field as

optional. However, in Order No. 563, the Commission required the point locator field to be mandatory. Order No. 563, III FERC Stats. & Regs. Preambles at 31,014; Order No. 563-A, III FERC Stats. & Regs. Preambles at 31,046. Accordingly, the point locator field in the attached appendix is listed as mandatory in conformity with the requirements of Order Nos. 563 and 563-A.

COMMON CODE DATA SET FOR GAS TRANSACTION POINTS—Continued

[I. Data Elements of the Gas Transaction Point Common Code Record]

Line No.	Field name	Description of field	Status	Data type and explanation
4.	Point type indicator	An indicator for the type of facility at the point. For example, "01" could indicate an interconnect.	M	A positive integer field containing codes to identify the type of facilities located at gas transaction points. (These codes will be developed on a consensus basis between the Code Assigner and the Data Provider).
5.	Flow indicator	An indicator to determine the direction of gas flow in the case of interconnects and storage: R=receipt or flow into the pipeline only D=delivery or flow out of the pipeline only B=both receipt and delivery.	C	A single position alpha field that would be completed only if the point type indicator of the facility is either an interconnect or storage facility.
6.	Point name	The name assigned to the point by the owner/operator.	M	A text field provided by the owner/operator of the gas transaction point.
7.	State	The state in which the gas transaction point is located.	M	A text field containing the name of the state.
8.	County	The county in which the gas transaction point is located.	M	A text field containing the name of the county.
9.	Point Locator	A unique locator for the transaction point	M	An alpha-numeric field containing the geographic coordinates, survey coordinates or pipeline line number and mile marker.
10.	Up/downstream entity name.	The name of the entity that controls capacity upstream or downstream of the point, e.g., at an interconnect.	O	A text field containing the legal name of the entity that owns/operates the facility that is either upstream or downstream from the point. This field would be completed only if the information is available.
11.	Up/downstream point name.	The point name as assigned by the entity that controls capacity upstream or downstream of the gas transaction point, e.g., at an interconnect.	O	A text field provided by the owner/operator of the gas transaction point. This field would be completed only if the information is available.
12.	Up/downstream point code.	The point code as assigned by the entity that controls capacity upstream or downstream of the gas transaction point, e.g., at an interconnect.	O	An alpha-numeric/numeric code assigned by the up/downstream owner/operator that uniquely defines the gas transaction point. This field would be completed only if the information is available.
13.	Joint ownership indicator.	An indicator to determine if the point has joint owners: Y=yes N=no.	M	A single-position alpha field to alert the common Code Assigner that other Data Providers might be reporting this point.
14.	Non-operator point	An indicator to determine if the point is operated by another party, other than the Data Provider: Y=yes, N=no.	M	An alpha-numeric field to indicate whether the gas transaction point is operated by a party other than Data Provider.
15.	Point common Code	A standard common code to be assigned by the Code Assigner to uniquely identify the gas transaction point.	M	An alpha-numeric field containing the common code that is assigned by the Code Assigner.
16.	Confirmation code	A code to indicate the current status of the common code. The code would be "Pending" (P) if the transaction point data is waiting for verification by the owner/operator providing the data; "Verified" (V) after the verification process has been completed; "Declined To Verify" (D) if the owner/operator has declined to verify the data; or "Rejected" (R) if the owner/operator rejects to verify the data because it is not a valid transaction point.	M	A single-position alpha field that contains either a P="Pending," V="Verified," D="Declined To Verify," or R="Rejected" to indicate the status of the common code and its data record.
17.	Date active	The date on which the transaction point becomes or became active. A default value equivalent to January 1, 1960 would be used for all points that are currently active.	M	A date field in a format that is machine-processable. The owner/operator would use this field to notify the Code Assigner of date the data based record representing the proprietary/common code cross-reference becomes active.
18.	Date inactive	The date on which the transaction point is, will be, or became inactive. The owner/operator would use this field to notify the Code Assigner of points that will be permanently inactive on a future date. This is not intended to be used to indicate temporary closure due to such factors as maintenance.	C	A date field in format that is machine-processable. The owner/operator would use this field to notify the Code Assigner of date the data base record representing the proprietary/common code cross-reference becomes inactive. This data element is conditional, based on whether the owner/operator changes, whether the proprietary code or name changes, whether other data elements change, or whether the point is permanently removed from service.

COMMON CODE DATA SET FOR GAS TRANSACTION POINTS—Continued

[I. Data Elements of the Gas Transaction Point Common Code Record]

Line No.	Field name	Description of field	Status	Data type and explanation
19.	Facility type	A standard facility type name assigned by the Code Assigner which also indicates flow direction.	M	A text field containing a standard facility type assigned by the Code Assigner.
20.	Last update	The date on which the transaction point common code record has been changed.	M	A date field in a format that is machine-processable. The Code Assigner would use this field to indicate either when the record was created, modified, or made inactive.
21.	Transaction code	A code assigned by the Code Assigner to indicate whether the record is an (A)dd, (C)hange, or (D)elete.	M	A single-position alpha field assigned by the Code Assigner for transactional purposes.
22.	Data reference number	A random, non-intelligent number assigned by the Code Assigner. In conjunction with "Date active" and "Date inactive" this acts as a file key.	M	A positive integer field assigned by the Code Assigner to help process transactions.

[FR Doc. 94-24120 Filed 9-28-94; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name of approved applications from Pitman-Moore, Inc., to Mallinckrodt Veterinary, Inc.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT:

Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1646.

SUPPLEMENTARY INFORMATION: Pitman-Moore, Inc., Mundelein, IL 60060, has informed FDA of a change of sponsor name to Mallinckrodt Veterinary, Inc. Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, 21 CFR Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Pitman-Moore, Inc." and by alphabetically adding a new entry for "Mallinckrodt Veterinary, Inc."; and in the table in paragraph (c)(2) in the entry for "011716" by removing the sponsor name "Pitman-Moore, Inc." and adding in its place "Mallinckrodt Veterinary, Inc."

Dated: September 21, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94-24147 Filed 9-28-94; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Agri-Bio Corp. The supplemental NADA provides for expanding the use of a currently approved Type A medicated

article containing salinomycin in order to make Type C medicated quail feeds for the prevention of coccidiosis in quail.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT:

Melanie R. Berson, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1643.

SUPPLEMENTARY INFORMATION:

Agri-Bio Corp., P.O. Box 897, Gainesville, GA 30503, is the sponsor of currently approved NADA 128-686. The NADA provides for use of a Type A medicated article containing 30 grams (g) of salinomycin sodium activity per pound to make Type C medicated feeds containing 40 to 60 g of the drug per ton (g/ton) for the prevention of coccidiosis in broiler chickens caused by certain *Eimeria* species. The firm has filed a supplemental NADA which provides for expanding the use of the above-mentioned Type A medicated article to make Type C medicated quail feeds at a drug concentration of 50 g/ton for the prevention of coccidiosis in quail caused by *E. dispersa* and *E. lettyae*. The supplemental NADA is approved as of September 1, 1994, and the regulations are amended in 21 CFR 558.550(b) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals does not qualify for marketing exclusivity because the application does not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) and new human food safety studies (other than bioequivalence or residue studies) essential to the approval of the supplement and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.550 is amended by adding new paragraph (b)(2) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(b) * * *

(2) *Quail*—(i)(a) *Amount per ton.* Salinomycin 50 grams.

(b) *Indications for use.* For the prevention of coccidiosis caused by *E. dispersa* and *E. lettyae*.

(c) *Limitations.* Feed continuously as sole ration. Not approved for use with pellet binders. May be fatal if accidentally fed to adult turkeys or horses.

(ii) [Reserved]

* * * * *

Dated: September 21, 1994.

Robert C. Livingston,
Director, Office of New Animal Drug
Evaluation, Center for Veterinary Medicine.
[FR Doc. 94-24148 Filed 9-28-94; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8564]

RIN 1545-AR59

Computation of Equity Base

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the determination of the equity base for purposes of computing the differential earnings amount and recomputed differential earnings amount, which are used in determining the deduction for policyholder dividends of a mutual life insurance company. The final regulations provide that the equity base includes the amount of any asset valuation reserve and the amount of any interest maintenance reserve reported on the annual statement prescribed by the National Association of Insurance Commissioners (NAIC) for filing with the insurance regulatory authorities of a state. The regulations affect life insurance companies.

DATES: These final regulations are effective September 29, 1994.

These final regulations are applicable for taxable years beginning after December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Katherine Ann Hossofsky, (202) 622-3477 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1993, temporary regulations (TD 8484) relating to the determination of the equity base of a life insurance company under section 809 of the Internal Revenue Code (Code) were published in the *Federal Register* (58 FR 47060). A notice of proposed rulemaking (FI-29-93) cross-referencing the temporary regulations was published in the *Federal Register* (58 FR 47089) on the same day. The proposed and temporary regulations provide that the equity base includes the amount of any asset valuation reserve and the amount of any interest maintenance reserve reported on the

annual statement prescribed by the NAIC for filing with the insurance regulatory authorities of a state.

Three comments on the proposed regulations were received, and a public hearing on the regulations was held on December 3, 1993. After consideration of the comments, the proposed regulations are adopted without change by this Treasury decision.

Explanation of Provision

Section 809(a) of the Code provides that, in the case of any mutual life insurance company, the amount of the deduction allowable under section 808 for policyholder dividends is reduced (but not below zero) by the differential earnings amount. For purposes of the computations under section 809, a life insurance company must determine its equity base. The equity base of a life insurance company includes the capital and surplus of the company as well as any mandatory securities valuation reserve, deficiency reserve, and voluntary reserve or similar liability.

The mandatory securities valuation reserve is the first reserve listed in section 809(b)(5). From the time section 809 was enacted through 1991, the mandatory securities valuation reserve was required to be reported on the NAIC annual statement filed by all life insurance companies. During these years, the NAIC annual statement required insurers to allocate surplus to fund the mandatory securities valuation reserve. Though shown as a liability account on the annual statement, the mandatory securities valuation reserve was not an actual liability in the sense of a debt to another party; rather, it represented a fund of allocated surplus, earmarked as a contingency reserve against fluctuations in the values of a company's investments in stocks and bonds.

For NAIC annual statements covering 1992 and later years, the NAIC replaced the mandatory securities valuation reserve with the asset valuation reserve and interest maintenance reserve. This change reflected the recognition by the NAIC that life insurance companies need to protect against fluctuations in value in mortgages, real estate, and other investments as well as fluctuations in value in stocks and bonds and that interest-related changes in asset values might appropriately be differentiated from other changes. Accordingly, the new reserves cover an expanded class of assets and differentiate between (1) equity and credit-related capital gains and losses, and (2) interest-related capital gains and losses.

The asset valuation reserve reflects changes in the value of equity investments and also changes in the value of debt investments where the changes are credit-related. Both realized and unrealized capital gains and losses are reflected in the asset valuation reserve.

The interest maintenance reserve reflects realized capital gains and losses from bonds, mortgages, and other fixed-income obligations to the extent that they are interest-related. Because the value of U.S. Government securities, together with the value of securities of agencies backed by the full faith and credit of the U.S. Government, are safe from credit-related risks and are subject only to interest-related risks, the capital gains and losses on those securities are allocated solely to the interest maintenance reserve.

The proposed and temporary regulations provide that the equity base includes the amount of any asset valuation reserve and the amount of any interest maintenance reserve reported on the NAIC annual statement. Three comments were received on the proposed regulations.

The first commentator agreed that inclusion of the asset valuation reserve and the interest maintenance reserve in the section 809 equity base is consistent with Congress' decision to include the mandatory securities valuation reserve in the equity base. The commentator stated that, by providing in section 809(b)(5)(A) that the equity base includes the amount of the mandatory securities valuation reserve, Congress determined that the allocation of surplus represented by this reserve, which included credit-related capital gains as well as interest-related capital gains, was properly part of the equity base. The commentator concluded that, absent a legislative change, allocated surplus should continue to be included in the equity base notwithstanding the change in the name of the reserve or the method of allocating surplus to the reserve. Alternatively, the commentator stated that the unaccrued market value increase or decrease in an insurer's liabilities as reflected in the interest maintenance reserve should be included in the equity base because the Conference Report underlying section 809 indicates that Congress intended the equity base to include any reserve for potential or unaccrued liabilities. H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1058 (1984).

This commentator also requested that the final regulations clarify that both positive and negative interest maintenance reserves are included in computing the equity base. Finally,

while noting that the proposed regulations do not address the treatment of interest-related capital gains and losses in computing the section 809 earnings of a life insurance company, the commentator indicated that for calendar years prior to 1992 interest-related capital gains or losses have been included in section 809 earnings no later than the year in which the gains or losses were realized for tax purposes. The commentator stated that this treatment should be continued in the absence of a legislative change.

The second commentator did not take a position regarding the inclusion of the amount of any interest maintenance reserve in the section 809 equity base. Rather, this commentator noted that the regulations deal with the determination of the equity base but are silent on the extent to which interest-related capital gains are to be included in section 809 earnings. If the current inclusion approach of the proposed and temporary regulations is adopted in the final regulations, then this commentator indicated that interest-related capital gains and losses should be included currently in section 809 earnings. In addition, the commentator stated that there should be consistency between the calculations of the equity base made on Form 1120L, U.S. Life Insurance Income Tax Return, and on Form 8390, Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809.

The third commentator agreed that the interest maintenance reserve must be treated consistently for equity base and earnings purposes. However, this commentator urged that the interest maintenance reserve not be included in the section 809 equity base. Instead, interest-related capital gains and losses would be amortized into equity and earnings over the remaining life of the asset sold. The commentator stated that inclusion of the interest maintenance reserve in equity: (1) is inconsistent with the substance and theory of the interest maintenance reserve, which is to treat interest-related realized capital gains and losses as a substitute for future unearned income; (2) fails to reduce the volatility of the life insurance companies' earnings rates; (3) is inconsistent with the requirement under section 809 that all determinations generally be made on the basis of the amounts required to be set forth on the annual statement; and (4) is inconsistent with § 1.809-9(a), which provides that neither the differential earnings rate nor the recomputed differential earnings rate may be negative.

No changes are being made to the regulations in response to these comments. Inclusion of the interest maintenance reserve in the equity base is consistent with the historical treatment of interest-related capital gains and losses under section 809. By providing in section 809(b)(5)(A) that the equity base includes the amount of the mandatory securities valuation reserve, Congress demonstrated its intent to include interest-related capital gains and losses in the equity base. Modification of the annual statement by the NAIC to eliminate and replace the mandatory securities valuation reserve cannot override the specific inclusion that Congress required for these gains and losses. Section 809(g)(3) provides the regulatory authority to adjust under section 809(b)(5) amounts set forth on the annual statement to continue the inclusion of these gains and losses in the equity base. Since the interest maintenance reserve represents an allocation of surplus from interest-related capital gains and losses for which Congress made clear its intentions and provided regulatory authority to preserve its intentions, the inclusion of the interest maintenance reserve in the equity base is appropriate.

The final regulations require any interest maintenance reserve (whether positive or negative) to be included in an insurer's equity base. The reduction of the equity base for any interest-related capital losses reflected in a negative interest maintenance reserve is consistent with the treatment of those losses prior to the replacement of the mandatory securities valuation reserve with the asset valuation reserve and the interest maintenance reserve. Before the change, any interest-related capital losses reduced the amount of net income added to capital and surplus. Thus, any negative interest maintenance reserve should be included as a reduction to the equity base, consistent with the treatment of interest-related capital losses prior to the change.

Under the final regulations, the asset valuation reserve and the interest maintenance reserve must be included in the calculation of the equity base for purposes of section 809. This requirement is reflected on both Form 1120L and Form 8390. See Announcement 93-117, 1993-29 I.R.B. 85. Thus, there is consistency between the calculations of the equity base on Form 1120L and on Form 8390. Finally, although the final regulations do not specifically address this issue, interest-related capital gains and losses continue to be included in section 809 earnings by virtue of section 809(g)(1)(C).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact of small business.

Drafting Information

The principal author of these regulations is Katherine Ann Hossofsky of the Office of the Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.809-10 also issued under 26 U.S.C. 809(b)(2) and (g)(3). * * *

§ 1.809-10T [Redesignated as § 1.809-10]

Par. 2. Section 1.809-10T is redesignated as § 1.809-10 and the word "(temporary)" is removed from the section heading.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: September 9, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94-24012 Filed 9-28-94; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF VETFRANS AFFAIRS**38 CFR Part 17**

RIN 2900-AG82

Transitional Housing Loan Program

AGENCY: Veterans Health Administration.

ACTION: Final rule.

SUMMARY: This document establishes application provisions and selection criteria for loans to non-profit organizations for use in initial startup costs for transitional housing for veterans who are in (or have recently been in) a program for the treatment of substance abuse. This new program is intended to increase the amount of transitional housing available for such veterans who need a period of supportive housing to encourage sobriety maintenance and reestablishment of social and community relationships.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Christine Woods, Administrative Officer, Office of Deputy Associate Director for Psychiatric Rehabilitation Services, at (804) 722-9961 x3628. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

In a document published in the *Federal Register* on August 1, 1994, (59 F.R. 38947) the VA proposed to establish Transitional Housing Loan Program regulations. Comments were solicited for a period of 30 days. No comments were received. The rationale presented in the proposed rule still provides the basis for this final rule. Therefore, based on the rationale set forth in the proposed rule, the VA hereby adopts the provisions of the proposed rule as a final rule without change.

E.O. 12866

This action is exempt from OMB review under E.O. 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the provisions of this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that in all likelihood, only similar entities that are small entities would seek loans under this program. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt

from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, the VA has found good cause for making this final rule effective upon publication in light of the critical need to provide transitional housing to veterans.

List of Subjects

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Daycare, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veteran, Healthcare, Health facilities, Health professionals, Health records, Loans, Medical and dental schools, Medical devices, Medical research, Medical health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans, Veterans Affairs Department.

Approved: September 23, 1994.
Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set out below:

PART 17—MEDICAL

1. The authority citation for Part 17 is revised to read as follows:

Authority: 38 U.S.C. 501, 38 U.S.C. 7721, unless otherwise noted.

2. Part 17 is amended by adding §§ 17.800 through 17.805 and an undesignated center heading preceding section 17.800 to read as follows:

Transitional Housing Loan Program**§ 17.800 Purpose.**

The purpose of the Transitional Housing Loan Program regulations is to establish application provisions and selection criteria for loans to non-profit organizations for use in initial startup costs for transitional housing for veterans who are in (or have recently been in) a program for the treatment of substance abuse. This program is intended to increase the amount of transitional housing available for such veterans who need a period of supportive housing to encourage sobriety maintenance and reestablishment of social and community relationships.

§ 17.801 Definitions.

(a) *Applicant*: A non-profit organization making application for a loan under this program.

(b) *Non-profit organization*: A secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must include a voluntary board and must either maintain or designate an entity to maintain an accounting system which is operated in accordance with generally accepted accounting principles. If not named in, or approved under Title 38 U.S.C. (United States Code), Section 5902, a non-profit organization must provide VA with documentation which demonstrates approval as a non-profit organization under Internal Revenue Code, Section 501.c(3).

(c) *Recipient*: A non-profit organization which has received a loan from VA under this program.

(d) *Veteran*: A person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(Authority: Sec. 8 of Pub. L. 102-54, 105 Stat 271, 38 U.S.C. 501)

§ 17.802 Application provisions.

(a) To obtain a loan under these Transitional Housing Loan Program regulations, an application must be submitted by the applicant in the form prescribed by VA in the application package. The completed application package must be submitted to the Deputy Associate Director for Psychiatric Rehabilitation Services, (302/111C), VA Medical Center, 100 Emancipation Drive, Hampton, VA 23667. An application package may be obtained by writing to the preceding address or telephoning (804) 722-9961 x3628. (This is not a toll-free number)

(b) The application package includes exhibits to be prepared and submitted, including:

- (1) Information concerning the applicant's income, assets, liabilities and credit history,
- (2) Information for VA to verify the applicant's financial information,
- (3) Identification of the official(s) authorized to make financial transactions on behalf of the applicant,
- (4) Information concerning:
 - (i) The history, purpose and composition of the applicant,
 - (ii) The applicant's involvement with recovering substance abusers, including:
 - (A) Type of services provided,
 - (B) Number of persons served,
 - (C) Dates during which each type of service was provided,

(D) Names of at least two references of government or community groups whom the organization has worked with in assisting substance abusers,

(iii) The applicant's plan for the provision of transitional housing to veterans including:

(A) Means of identifying and screening potential residents,

(B) Number of occupants intended to live in the residence for which the loan assistance is requested,

(C) Residence operating policies addressing structure for democratic self-government, expulsion policies for nonpayment, alcohol or illegal drug use or disruptive behavior,

(D) Type of technical assistance available to residents in the event of house management problems,

(E) Anticipated cost of maintaining the residence, including rent and utilities,

(F) Anticipated charge, per veteran, for residing in the residence,

(G) Anticipated means of collecting rent and utilities payments from residents,

(H) A description of the housing unit for which the loan is sought to support, including location, type of neighborhood, brief floor plan description, etc., and why this residence was selected for this endeavor.

(iv) The applicant's plans for use of the loan proceeds.

(Authority: Sec. 8 of Pub. L. 102-54, 105 Stat. 271, 38 U.S.C. 501)

§ 17.803 Order of consideration.

Loan applications will be considered on a first-come-first-serve basis, subject to availability of funds for loans and awards will be made on a first-come-first-serve basis to applicants who meet the criteria for receiving a loan. If no funds are available for loans, applications will be retained in the order of receipt for consideration as funds become available.

(Authority: Sec. 8 of Pub. L. 102-54, 105 Stat. 271, 38 U.S.C. 501)

§ 17.804 Loan approval criteria.

Upon consideration of the application package, loan approval will be based on the following:

(a) Favorable financial history and status,

(1) A minimum of a two-year credit history,

(2) No open liens, judgments, and no unpaid collection accounts,

(3) No more than two instances where payments were ever delinquent beyond 60 days,

(4) Net ratio: (monthly expenses divided by monthly cash flow) that does not exceed 40%.

(5) Gross ratio: (total indebtedness divided by gross annual cash flow) that does not exceed 35%.

(6) At least two favorable credit references,

(b) Demonstrated ability to successfully address the needs of substance abusers as determined by a minimum of one year of successful experience in providing services, such as, provision of housing, vocational training, structured job seeking assistance, organized relapse prevention services, or similar activity. Such experience would involve at least twenty-five substance abusers, and would be experience which could be verified by VA inquiries of government or community groups with whom the applicant has worked in providing these services.

(c) An acceptable plan for operating a residence designed to meet the conditions of a loan under this program, which will include:

(1) Measures to ensure that residents are eligible for residency, i.e., are veterans, are in (or have recently been in) a program for the treatment of substance abuse, are financially able to pay their share of costs of maintaining the residence, and agree to abide by house rules and rent/utilities payment provisions,

(2) Adequate rent/utilities collections to cover cost of maintaining the residence,

(3) Policies that ensure democratic self-run government, including expulsion policies, and

(4) Available technical assistance to residents in the event of house management problems.

(d) Selection of a suitable housing unit for use as a transitional residence in a neighborhood with no known illegal drug activity, and with adequate living space for number of veterans planned for residence (at least one large bedroom for every three veterans, at least one bathroom for every four veterans, adequate common space for entire household)

(e) Agreements, signed by an official authorized to bind the recipient, which include:

(1) The loan payment schedule in accordance with the requirements of Pub. L. 102-54, with the interest rate being the same as the rate the VA is charged to borrow these funds from the U.S. Department of Treasury and with a penalty of 4% of the amount due for each failure to pay an installment by the date specified in the loan agreement involved, and

(2) The applicant's intent to use proceeds of loan only to cover initial startup costs associated with the

residence, such as security deposit, furnishings, household supplies, and any other initial startup costs.

(Authority: Sec. 8 of Pub. L. 102-54, 105 Stat. 271, 38 U.S.C. 501)

§ 17.805 Additional terms of loans.

In the operation of each residence established with the assistance of the loan, the recipient must agree to the following:

(a) The use of alcohol or any illegal drugs in the residence will be prohibited;

(b) Any resident who violates the prohibition of alcohol or any illegal drugs will be expelled from the residence;

(c) The cost of maintaining the residence, including fees for rent and utilities, will be paid by residents;

(d) The residents will, through a majority vote of the residents, otherwise establish policies governing the conditions of the residence, including the manner in which applications for residence are approved;

(e) The residence will be operated solely as a residence for not less than six veterans.

(Authority: Sec. 8 of Pub. L. 102-54, 105 Stat. 271, 38 U.S.C. 501)

[FR Doc. 94-24066 Filed 9-28-94; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-5081-5]

Standards of Performance for New Stationary Sources, Supplemental Delegation of Authority to Knox County, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On June 2, 1994, the Knox County Department of Air Pollution Control requested that EPA delegate authority for implementation and enforcement of additional categories of New Source Performance Standards (NSPS). Since EPA's review of Knox County's pertinent laws, rules, and regulations showed them to be adequate and effective procedures for the implementation and enforcement of these Federal standards, EPA has made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is July 28, 1994.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter

of delegation are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

Knox County Department of Air Pollution Control, City-County Building, Room 339, 400 West Main Avenue, Knoxville, Tennessee 37902.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly delegated standards should not be submitted to the Region IV office, but should instead be submitted to the following address: Knox County Department of Air Pollution Control, City-County Building, Room 339, 400 West Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, United States Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347-3555, x4197.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with Sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards (NSPS).

On May 20, 1977, EPA initially delegated the authority for implementation and enforcement of the NSPS programs to Knox County. A subsequent delegation followed on December 13, 1985, in which Knox County requested an update of its delegation of authority for previously delegated NSPS regulations. On June 2, 1994, Knox County requested a delegation of authority for implementation and enforcement of the following NSPS categories found in 40 CFR part 60.

1. Standard of Performance for Metal Coil Surface Coating Operations, as specified in 40 CFR 60, Subpart TT, as amended by 51 FR 22938, June 24, 1986, as adopted May 25, 1994, except § 60.466(d).

2. Standard of Performance for Petroleum Dry Cleaners, as specified in 40 CFR 60, Subpart JJJ, as amended by 50 FR 49026 (November 27, 1985), as adopted May 25, 1994.

3. Standard of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes, as amended by 58 FR 45948 (August 31, 1993), as

specified in 40 CFR 60, Subpart RRR, and as adopted May 25, 1994, except § 60.703(e).

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for this source category with the conditions set forth in the original delegation letter of May 20, 1977. Knox County sources subject to the requirements of this subpart will now be under the jurisdiction of Knox County.

Since review of the pertinent Knox County laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned category of NSPS, the EPA hereby notifies the public that it has delegated the authority for the source category listed above on July 28, 1994. The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Authority: This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as Amended (42 U.S.C. 7401, 7410, 7411, 7412, and 7601).

Dated: September 1, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94-24121 Filed 9-28-94; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-7111]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the

Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that

the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Citrus	City of Inverness	July 25, 1994, August 1, 1994, <i>Citrus County Chronicle</i> .	The Hon. O.J. Humphries, Mayor of the City of Inverness, 212 West Main Street, Inverness, Florida 34450.	July 18, 1994	120348 B
Illinois: DuPage and Will Counties.	City of Naperville	July 13, 1994, July 20, 1994, <i>Naperville Sun</i> .	The Hon. Samuel T. Macrane, Mayor of the City of Naperville, 400 South Eagle Street, Naperville, Illinois 60566-7020.	June 30, 1994	170213 C
Minnesota: Olmsted County.	City of Rochester	July 29, 1994, August 5, 1994, <i>Post Bulletin</i> .	The Hon. Chuck Hazama, Mayor of the City of Rochester, City Hall, Room 200, Rochester, Minnesota 55902.	July 21, 1994	275246 C
North Carolina: Wake County.	Town of Cary	February 9, 1994, February 16, 1994, <i>The Cary News</i> .	The Hon. Koka E. Booth, Mayor of the Town of Cary, P.O. Box 1147, Cary, North Carolina 27512-1147.	July 1, 1993	370238

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tennessee: Cheatham	Unincorporated areas	January 19, 1994, January 26, 1994, <i>Ashland City Times</i> .	Ms. Linda Fizer, Executive for Cheatham County, 100 Public Square, Suite 105, Ashland City, Tennessee 37015.	December 17, 1993 ...	470026
Virginia: Unincorporated areas of Rockingham County:	Rockingham County ..	July 19, 1994, July 26, 1994, <i>Daily News Record</i> .	Mr. William G. O'Brien, Rockingham County Administrator, 20 East Gay Street, Harrisonburg, Virginia 22801.	July 12, 1994	510133 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: September 20, 1994.

Robert F. Shea,

Acting Associate Director for Mitigation.

[FR Doc. 94-24118 Filed 9-28-94; 8:45 am]

BILLING CODE 6718-03-P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base

flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No

regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
GEORGIA					
Augusta (city), Richmond County (FEMA Docket No. 7079)		At the downstream corporate limits approximately 0.3 mile upstream of U.S. Highway 60 and State Highway 11	*820	Approximately 0.9 mile upstream of confluence with Penn Creek	*794
<i>Savannah River:</i>		At the upstream corporate limits approximately 0.35 mile upstream of U.S. Highway 60 and State Highway 11	*820	<i>Flat Rock Creek Tributary C:</i>	
Approximately 1.35 miles downstream of the confluence of Butler Creek	*122	<i>Delaware Creek:</i>		At confluence with Flat Rock Creek Tributary B	*653
Approximately 1.35 miles upstream of Interstate 20	*151	At county boundary approximately 3.7 miles downstream of County Road	*619	Approximately 1.3 miles upstream of confluence with Flat Rock Creek Tributary B	*689
Maps available for inspection at the City-County Municipal Building, 530 Greene Street, Augusta, Georgia.		Approximately 5 miles upstream of county boundary at the most upstream crossing of County Road	*637	<i>Flat Rock Creek Tributary B:</i>	
		<i>Flat Rock Creek:</i>		At confluence with Flat Rock Creek	*649
Richmond County (Unincorporated Areas) (FEMA Docket No. 7079)		Approximately 1,200 feet downstream of confluence of Flat Rock Creek Tributary B	*648	Approximately 1.5 miles upstream of confluence of Flat Rock Creek Tributary C	*696
<i>Savannah River:</i>		Approximately 1,500 feet upstream of Osage Drive	*717	<i>Flat Rock Creek Tributary D:</i>	
Approximately 0.6 mile upstream of its confluence with McBean Creek	*108	<i>Quapaw Creek:</i>		At confluence with Flat Rock Creek	*675
Approximately 0.9 mile upstream of Sandbar Ferry Road (at City of Augusta corporate limits)	*133	At confluence with Hominy Creek	*643	Approximately 1.6 miles upstream of confluence with Flat Rock Creek	*727
<i>Spirit Creek:</i>		Approximately 1.5 miles upstream of confluence of East Prong Creek	*701	Maps available for inspection at the Osage County Soil and Land Conservation Office, 628 Kihekah, Pawhuska, Oklahoma.	
At confluence with Savannah River	*118	<i>Butler Creek:</i>		(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")	
Approximately 400 feet downstream of State Route 56	*125	At Sunset Boulevard	*677	Dated: September 20, 1994.	
Maps available for inspection at the City-County Municipal Building, 530 Greene Street, Augusta, Georgia.		Approximately 5.4 miles upstream of Sunset Boulevard	*707	Robert F. Shea,	
		<i>Rock Creek:</i>		<i>Acting Associate Director for Mitigation.</i>	
		At confluence with Hominy Creek	*625	[FR Doc. 94-24119 Filed 9-28-94; 8:45 am]	
		Approximately 2.5 miles upstream of County Road	*643	BILLING CODE 6718-03-P	
OKLAHOMA					
Osage County (Unincorporated Areas) (FEMA Docket No. 7091)		<i>Javine Creek:</i>		LEGAL SERVICES CORPORATION	
<i>Arkansas River:</i>		Approximately 600 feet downstream of 144th Street	*641	45 CFR Part 1602	
Approximately 2.0 miles downstream of U.S. Route 60	*922	Approximately 0.7 mile upstream of 144th Street	*655	Procedures for Disclosure of Information Under the Freedom of Information Act	
At Kaw Lake Dam	*951	<i>Penn Creek:</i>		AGENCY: Legal Services Corporation.	
<i>Bird Creek:</i>		Approximately 300 feet downstream of corporate limits	*781	ACTION: Final rule; withdrawal of rule.	
Approximately 1.3 miles upstream of State Route 20	*637	Approximately 0.5 mile upstream of confluence of "B" Creek	*791	SUMMARY: This document withdraws the amendments to the Legal Services Corporation's ("LSC" or "Corporation") regulation implementing the Freedom of Information Act ("FOIA"), which were to become effective on October 2, 1994, to allow opportunity for further consideration by the LSC Boards.	
Approximately 1.5 miles upstream of U.S. Route 60 and State Route 11	*823	<i>Claremore Creek:</i>		EFFECTIVE DATE: Effective September 29, 1994, the amendments to 45 CFR part 1602 published at 58 FR 52918 are withdrawn.	
<i>Sand Creek:</i>		Approximately 150 feet downstream of Missouri-Kansas-Texas Railroad (abandoned) At upstream corporate limits ...	*782 *793	FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, 202-336-8810.	
At county boundary approximately 0.9 mile downstream of State Route 123	*670	<i>Euchee Creek:</i>		SUPPLEMENTARY INFORMATION: A final rule amending 45 CFR Part 1602 was published in the Federal Register on	
Approximately 1.6 miles upstream of confluence with Panther Creek	*690	At downstream county boundary	*691		
<i>Hominy Creek:</i>		At confluence of Euchee Creek Tributary	*699		
Approximately 600 feet downstream of Texas and Pacific Railroad	*624	<i>Euchee Creek Tributary:</i>			
At confluence of Quapaw Creek	*642	At confluence with Arkansas River	*699		
<i>Clear Creek:</i>		Approximately 950 feet upstream of Willow Street	*719		
		<i>Eliza Creek:</i>			
		At downstream county boundary	*670		
		At U.S. Route 60	*715		
		<i>B-Creek:</i>			
		At confluence with Penn Creek	*784		

October 13, 1993, with an effective date of November 12, 1993. 58 FR 52918. Because the Corporation's fiscal year 1994 appropriations act (Pub. L. 103-121, 107 Stat. 1184)—which became law prior to the original effective date of November 12, 1993—operated to delay the effective date of the rule until after October 1, 1994, the Corporation published a notice in the *Federal Register* announcing that the effective date of the final rule was delayed to October 2, 1994, absent superseding action by the Corporation's Board of Directors. 58 FR 65291.

On September 20, 1994, the Corporation's Board voted by notational vote to withdraw the final rule amending 45 CFR Part 1602 so that the rule would not become effective before the Board had an opportunity for further consideration.

Dated: September 22, 1994.

Victor M. Fortuno,
General Counsel.

[FR Doc. 94-23994 Filed 9-28-94; 8:45 am]
BILLING CODE 7050-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-37; RM-8449]

Radio Broadcasting Services; Lihue Kauai, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 251C to Lihue Kauai, Hawaii, as that community's third local FM service, at the request of Linochau Entertainment. See 59 FR 27525, May 27, 1994. Channel 251C can be allotted to Lihue Kauai in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 251C at Lihue Kauai are North Latitude 21-58-48 and West Longitude 159-22-30. With this action, this proceeding is terminated.

DATES: Effective Nov. 7, 1994. The window period for filing applications for Channel 251C at Lihue Kauai, Hawaii, will be open on November 7, 1994, and close on December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 94-37, adopted September 14, 1994, and

released Sept. 21, 1994. 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 contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

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.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Channel 251C at Lihue.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94-23785 Filed 9-28-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 382 and 391

RIN 2125-AA79, 2125-AC85, 2125-AD06, 2125-AC81

Federal Motor Carrier Safety Regulations; Technical Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This document makes technical amendments to indicate that the Office of Management and Budget (OMB) has approved the recordkeeping requirements in the final rules for controlled substances and alcohol use and testing.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Rombro, Office of Motor Carrier Standards, (202) 366-5615, or Mr. David Sett, Office of Chief Counsel, (202) 366-1392, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45

a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On December 23, 1993, and February 15, 1994, the FHWA published final rules on controlled substances and alcohol use and testing of commercial motor vehicle drivers (58 FR 68220 and 59 FR 7484). This document makes technical amendments to parts 382 and 391 to indicate that the Office of Management and Budget has approved the recordkeeping requirements of these final rules.

Rulemaking Analyses and Notices

Because this final rule simply provides notice to the public that the OMB has approved the information collection requirements of two FHWA rulemakings and does not change these rules in any way, the FHWA believes that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B), and that good cause exists to dispense with the 30-day delay in effective date ordinarily required under 5 U.S.C. 553(d). In this purely technical action, the FHWA is not exercising discretion in a way that could be meaningfully affected by public comment.

In addition, due to the technical nature of this final rule, the FHWA has determined that prior notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures, as it is not anticipated that such action would result in the receipt of useful information. Therefore, the FHWA is proceeding directly to a final rule which is effective upon its date of publication.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this regulatory action is not significant under Executive Order 12866 or the regulatory policies and procedures of the DOT. This rulemaking action does not impose any new requirements; it merely provides notice of OMB acceptance of the paperwork requirements of previously published rules. Because it does not amend these rules in any way, this rule will not have any economic impact. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-162), the FHWA has evaluated the effects of this rule on small entities. The FHWA believes that this rule, in simply technically amending the FMCSRs,

would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

The FHWA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and certifies that this action does not have sufficient federalism implications to warrant the preparation of a separate federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This technical amendment provides information collection numbers approved by the Office of Management and Budget for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520. In §§ 382.101 and 391.87, the OMB has assigned control number 2125-0543, which expires on March 1, 1997.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 382 and 391

Alcohol testing, Controlled substances testing, Highways and roads, Motor carriers, Motor vehicle safety.

Issued on: September 23, 1994.

Theodore A. McConnell,
Chief Counsel.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, chapter III, subchapter B, as set forth below.

PART 382—[AMENDED]

1. The authority citation for part 382 is revised to read as follows:

Authority: 49 U.S.C. 31136 and 31302 *et seq.*; 49 U.S.C. 31502; 49 CFR 1.48.

§ 382.101 [Amended]

2. Section 382.101 is amended by adding the following parenthetical language at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 2125-0543)

PART 391—[AMENDED]

3. The authority citation for part 391 is revised to read as follows:

Authority: 49 U.S.C. 504, 31136, and 31502; 49 CFR 1.48.

§ 391.87 [Amended]

4. Section 391.87 is amended by adding the following parenthetical language at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 2125-0543)

[FR Doc. 94-24079 Filed 9-28-94; 8:45 am]

BILLING CODE 4910-22-P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93-31, Notice 02]

RIN 2127-AE78

Federal Motor Vehicle Safety Standards; Warning Devices

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends Federal Motor Vehicle Safety Standard No. 125, *Warning Devices*. As amended, the standard applies only to those warning devices that do not have self-contained energy sources and that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 lbs. Previously, the standard applied to all warning devices that do not have self-contained energy sources and that are designed to be carried in motor vehicles. This final rule provides warning device manufacturers with greater design flexibility and regulatory relief.

DATES: The amendments made by this final rule are effective October 31, 1994. Petitions for reconsideration of this final rule must be filed by October 31, 1994.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the

docket and notice number cited in the heading of this final rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth O. Hardie, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Mr. Hardie's telephone number is: (202) 366-6987.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 125, *Warning Devices*, specifies requirements for warning devices that do not have self-contained energy sources (nonpowered warning devices) and that are designed to be carried in motor vehicles and placed on the roadway to warn approaching traffic of the presence of a stopped vehicle. The standard does not apply to devices designed to be permanently affixed to the vehicle. The purpose of the standard is to reduce deaths and injuries due to rear-end collisions between moving traffic and disabled or stopped vehicles. The standard specifies that the warning devices are to be triangular, open in the center, covered with orange fluorescent and red reflex reflective material, and capable of being erected on the roadway. The characteristics are intended to assure that the warning device can be readily observed during daytime and nighttime lighting conditions, have a standardized shape for quick message recognition, and perform properly when deployed.

Standard No. 125 proscribes manufacturers from marketing other nonpowered warning devices with physical or performance characteristics differing from the standard's specifications. Some, including P.C.S. Safety Corporation, that petitioned for rulemaking to amend Standard No. 125, have contended that the standard is too design restrictive since it prohibits other nonpowered warning devices which may adequately warn approaching drivers of a disabled vehicle.

Notice of Proposed Rulemaking

On May 10, 1993, NHTSA published in the *Federal Register* a notice of proposed rulemaking (NPRM) (See 58 FR 27514). In the NPRM, NHTSA proposed to amend Standard No. 125 by making the standard applicable only to those warning devices that do not have self-contained energy sources and that

are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 lbs. As a rationale for the proposed change, NHTSA tentatively concluded that no longer applying Standard No. 125 to nonpowered warning devices designed to be carried in vehicles with a GVWR of 10,000 pounds or less would provide greater freedom for manufacturers in designing nonpowered warning devices for the general public and would relieve an unnecessary regulatory burden on industry. NHTSA also tentatively concluded that Standard No. 125 should continue to apply to nonpowered warning devices for use in vehicles subject to Federal Highway Administration (FHWA) regulations and to any comparable state regulations, since the FMVSS and FHWA's regulations complement one another. The Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR parts 350-399) of the Federal Highway Administration (FHWA) are applicable to commercial motor vehicles (vehicles that have a GVWR greater than 10,000 pounds) and their operators.

NHTSA further noted that although it regulated nonpowered warning devices designed to be carried in a motor vehicle, the agency has not required that vehicles be equipped with such warning devices. In the May 1993 NPRM, NHTSA also cited two NHTSA-funded studies of warning device efficacy in support of its tentative conclusion that nonpowered warning triangles may not be effective in reducing disabled vehicle-related accident rates. Neither study addressed vehicles stopped on the road. The studies addressed vehicles stopped on the shoulder of the road. (Since many public comments addressed the studies' findings, the studies are more fully discussed below in the section on NHTSA's response to public comments.) In the NPRM, NHTSA further stated its belief that additional data on the efficacy of the nonpowered warning triangles could be collected only after significant expenditure of agency resources. Even if NHTSA devoted its resources to collecting data, it believed the findings resulting from the data might not demonstrate a safety benefit.

NHTSA also acknowledged concern about problems that might occur if nonpowered warning devices designed for use in passenger cars were no longer subject to Standard No. 125. NHTSA invited comments and supporting technical information about any potential problems which commenters might envision.

This rulemaking also responds to a petition for rulemaking from P.C.S. Safety Corporation. P.C.S. apparently wishes to market a nonpowered warning device that does not meet Standard No. 125 specifications. P.C.S. petitioned NHTSA to amend Standard No. 125 to permit the marketing of its device.

Public Comments and NHTSA Response

In response to the NPRM, NHTSA received comments from 16 commenters. Two commenters supported the proposal. One supporter was Dr. Andrew Huang, an inventor of an alternate warning device, without a self-contained energy source, that is designed to be carried in motor vehicles. If the proposal becomes final, Dr. Huang's device would be permitted to be produced for use in vehicles that have a GVWR of 10,000 lbs. or less. Ford Motor Company, the other supporter, stated that the proposal would potentially benefit motor vehicle safety by removing design restrictions that may result in warning devices whose designs and costs are more suitable for purchase and use by drivers of light duty vehicles. Another inventor, Mr. Carl Monk, wrote in favor of changes to specifications for Standard No. 125, since "no one can read the required instructions for assembly at night without lights" and in emergencies, nighttime assembly may be necessary.

Thirteen commenters opposed the proposal to make Standard No. 125 applicable only to nonpowered warning devices designed to be carried in buses and trucks that have a GVWR greater than 10,000 pounds. Most commenters provided reasons for their opposition. Although the comments varied, the commenters' reasons for opposing the proposal can generally be categorized as follows:

1. Studies show Standard No. 125's equilateral triangle design provides the most effective warning of a disabled vehicle.

2. Greater design freedom will dilute the distinctiveness of the warning triangle, and will result in increased motorist confusion, with a potential for increased collisions.

3. NHTSA's not regulating nonpowered warning devices designed to be carried in vehicles with a GVWR of 10,000 lbs. or less would result in state regulation of such warning devices. Motorists would be discouraged from using warning devices, for fear that the use of a particular device would be permitted in one state, but not in other states.

The three issues raised by opposing commenters, additional minor issues,

and NHTSA's response to each issue are discussed below.

1. Studies On Efficacy of the Standard No. 125 Warning Triangle as a Warning Device

Federal Mogul Corporation, K.D. Lamp Company, Sate-Lite Manufacturing, Transportation Safety Equipment Institute (TSEI), Dr. Merrill Allen of Indiana University, and Dr. Helmut Zwahlen of Ohio University, all disagreed with NHTSA's conclusion that studies did not show efficacy of the Standard No. 125 warning device (warning triangles). Sate-Lite and TSEI, in particular, disagreed with NHTSA's position that two NHTSA-funded studies support the conclusion that warning triangles may not be effective in reducing disabled-vehicle related accident rates.

The two studies at issue are: *Study of Safety-Related Devices—Emergency Warning Devices for Disabled Vehicles*, of August 19, 1986 (prepared by NHTSA's Office of Crash Avoidance Research); and *Analysis of the Dismounted Motorist and Road-Worker Model Pedestrian Safety Regulation*, August 1982 (prepared by Ulmer, Leaf, and Blomberg). Among other subjects, both studies discussed field experiments conducted by M.J. Allen, S.D. Miller, and J.L. Short of Indiana University. The field experiments simulated disabled vehicles that were parked on the shoulder of a roadway whose speed limit was 65 mph. The experiments tried to evaluate the responses of passing motorists to a stopped vehicle and warning devices, including warning triangles and flares.

The experiments were based on the assumptions that if warning devices were effective, they would induce measurable decreases in passing vehicle speed and increases in lateral separation between the moving and disabled vehicle and that such measurable changes would signify a decrease in accident potential. In a 1971 Allen, Miller and Short experiment, it was determined that at night, the warning triangles induced a reduction in passing vehicle speed of only 1.5 mph on average. During the day, none of the emergency warning device configurations (i.e., flares alone, flares and triangles, triangles alone, etc.) induced any reduction in passing vehicle speed or any increase in lateral separation, when compared to the situation when no warning devices were placed behind the disabled vehicle. The 1971 Allen *et al* experiment showed that although flares and triangles were about equally effective, the single most effective daytime condition for reducing

speed was three triangles placed at 2, 48, and 100 paces behind the vehicle. This condition, however, only induced a speed reduction of 3-4 mph compared to the disabled vehicle-only condition.

In Standard No. 125, NHTSA does not specify the number of triangles that should be deployed with a stopped vehicle. Figure 2 of Standard No. 125 depicts only one triangle deployed behind the stopped vehicle. At no time during the history of Standard No. 125, has NHTSA ever considered the use of more than one triangle for vehicles with a GVWR of 10,000 lbs. or less.

In 1975, Miller performed a follow-up study along the same roadway. As in the earlier field experiment, disabled vehicles, parked on the shoulder of the roadway, were simulated. Miller's experiment tried to evaluate the responses of passing motorists to a stopped vehicle and warning devices, including triangles and flares. In his follow-up study, Miller added a four-way flasher activation (on the disabled vehicle) as a condition. Miller concluded that during the day, the use of four-way flashers or warning triangles generally had no effect on speed. The 1975 Miller study also indicated that at night, four-way flashers were more effective than warning triangles in inducing a reduction in passing vehicle speed and an increase in lateral separation in the disabled vehicle situation.

In their comments, both TSEI and Sate-Lite cited the August 1986 and August 1982 studies as showing efficacy of the warning triangles. Both TSEI and Sate-Lite appeared to believe that NHTSA believes powered warning devices are more effective than nonpowered warning triangles because the powered devices may induce greater speed reductions and greater lateral separations with respect to passing vehicles. NHTSA has no position on the efficacy of warning devices with self-contained energy sources, since it has no data regarding their effectiveness.

In the NPRM, NHTSA stated that the 1986 and 1982 studies about warning devices evaluated the response of passing motorists to such devices, based on the assumption that measurable changes in passing vehicle speed and lateral separation between the moving and the disabled vehicle signify a decrease in accident potential. While studies based on this assumption may not fully evaluate warning device effectiveness, they do evaluate the response of some drivers when confronted with a warning device.

Sate-Lite in its defense of retaining warning triangle applicability for vehicles with a GVWR of 10,000 lbs. or

less, stated that the effectiveness or primary function of the warning triangle is not necessarily to halt traffic, reduce speed or alter driving activity such as lateral movement, as suggested by NHTSA's discussion of the field experiments' data on the two studies at issue. Sate-Lite stated that the purpose of the warning triangle is to impart awareness to the approaching driver of the presence of a parked or disabled vehicle. Sate-Lite in its discussion of this issue adopted the perspective that the passing motorists may, in fact, have reacted to the warning triangle, assessed the situation, and proceeded past the test site without adjusting speed or separation because the drivers judged that no hazard was involved (or that the motorist reacted well before the site and then resumed normal course and speed). Sate-Lite suggested that an apparently normal parked vehicle that is off the roadway would not be considered hazardous and would cause no overt driving response (although it might prompt changes in visual search behavior or in readiness to respond; changes not detectable by remote measurement).

NHTSA does not find Sate-Lite's interpretation of the field experiments' data to favor use of the warning triangle. Sate-Lite's interpretation does not indicate whether the drivers may have slowed down in advance of the vehicle because they saw just the stopped vehicle or the warning triangle and the stopped vehicle. If it cannot be shown that the Standard No. 125 warning triangle changes driver behavior any more than just the presence of the stopped vehicle, there does not appear to be any demonstrable safety benefit in using the warning triangle.

Dr. Helmut Zwahlen also disagreed that speed reduction and lateral displacement correctly measure accident reduction potential of a warning device. He asserted that more guidance about the roadway conditions ahead, such as that provided in a warning triangle, provides more comfort in driving. However, Dr. Zwahlen provided no criteria for measuring a warning device's accident reduction potential, and except for data showing that the triangle shape is the one most recognizable from a distance, provided no data on the Standard No. 125 warning triangle's efficacy in accident avoidance or reduction.

Dr. Merrill Allen (one of the Indiana University researchers cited in the NHTSA-funded studies) expressed concern that NHTSA has interpreted his research as not supportive of warning triangles. Dr. Allen commented that in reviewing "hundreds" of accident cases

with vehicles stopped in the lane of traffic, he had never seen a case where an accident occurred with the warning triangles in place. Dr. Allen did not specify the number of instances where he observed triangles in place.

NHTSA notes that the Indiana University experiments, with Dr. Allen as a participant, observed a different situation, where warning triangles were used in association with a vehicle on the shoulder of the road. Dr. Allen in his comments, acknowledged that his research (involving vehicles on the shoulder of the road) was "not representative of the major purpose of the warning, namely place a vehicle and triangles or flares in the lane of travel." Dr. Allen offered no references to studies or other evidence of efficacy in using warning triangles for vehicles stopped in the lane of travel. NHTSA is aware of no reliable quantitative statistics relating to the effectiveness of emergency warning devices in preventing accidents with disabled vehicles on or off the roadway. The most meaningful studies that NHTSA is aware of are similar to Dr. Allen's experiments of measuring changes in passing vehicle speed and lateral separation. It continues to be NHTSA's belief that these studies are not supportive of warning triangles' efficacy in reducing disabled vehicle related accident rates.

Apparently in the belief that a FHWA rulemaking concerning fuses/flares is related to NHTSA's proposal to amend Standard No. 125, some commenters described in detail the superiority of warning triangles over fuses/flares as warning devices. Several commenters, including TSEI, Sate-Lite, Federal Mogul, Cortina Tool and Molding, and Dr. Zwahlen, cited a April 1992 *Consumer Reports* article that favorably compared the warning triangle with several powered warning devices. NHTSA, however, has no comment on *Consumer Reports'* research, or other evidence comparing warning triangles with flares, fuses, or other powered warning devices. The agency does not believe that the information about powered warning devices has any bearing upon this rulemaking, which addresses only nonpowered warning devices.

NHTSA does not disagree with commenters that state the equilateral triangle may be the most effective warning device. However, after reviewing the public comments, which did not offer new, probative research information, NHTSA still is not convinced that using the warning triangle is effective either in giving

motorists advance warning of a stopped vehicle or in reducing accidents.

2. Greater Design Flexibility

Federal Mogul, Mr. Jerry Wachtel, K.D. Lamp, Sate-Lite, Cortina Tool and Molding, TSEI, James King and Co., Inc., Dr. Helmut Zwahlen, and Advocates for Highway and Auto Safety each commented that greater flexibility in warning device design, permitting warning devices other than the Standard No. 125 device, will lessen the recognizability of the warning triangle as a symbol of a stopped vehicle. They appeared to state that less recognizability will result in increased motorist confusion, possibly resulting in more collisions.

James King stated that it has manufactured Standard No. 125 warning devices since 1989. James King commented that regulation to ensure uniformity is necessary because the general public cannot assess warning device effectiveness, and that "ineffective reflectors" do not look significantly different from effective ones. James King's comment, favoring Standard No. 125's specification of a nonpowered warning device in a triangular shape, appears to presume that the Standard No. 125 warning device is effective, and warning devices that do not comply with Standard No. 125 are ineffective. However, no data is available to NHTSA that supports the view that warning devices that do not conform to Standard No. 125 will be less effective in preventing accidents than warning devices that do conform to Standard No. 125. NHTSA is conducting this rulemaking to relieve an unnecessary regulatory burden on industry because of the design restrictive nature of Standard No. 125, and because research data suggest that the standard has produced no benefits. Additionally, this final rule will result in greater design freedom for manufacturers to provide the public with warning devices, should the public so desire, without an adverse effect on safety.

James King also appears to believe that because it would manufacture nonpowered Standard No. 125 warning devices designed to be carried on motor vehicles subject to the Federal Highway Administration's regulations, it would face unfair competition from devices that (to the layperson) appear to comply with Standard No. 125, but really do not. For the following reasons, NHTSA does not believe James King would be at such a disadvantage. When this final rule becomes effective, James King would have more flexibility, since it could then manufacture any

nonpowered warning device designed to be carried in vehicles with a GVWR of 10,000 lbs. or less. If it decides to manufacture nonpowered warning devices designed to be carried in buses and trucks that have a GVWR greater than 10,000 lbs., James King, and its competitors, must manufacture devices to Standard No. 125 specifications. Anyone manufacturing a nonpowered device designed to be carried in buses and trucks that have a GVWR greater than 10,000 lbs., that does not meet Standard No. 125 specifications may be subject to an enforcement action by NHTSA. Further, section 393.95 of title 49 of the Code of Federal Regulations is enforced by the FHWA. Section 393.5 states that all bidirectional emergency reflective triangles deployed by commercial motor vehicle operators must satisfy the requirements of Standard No. 125.

Dr. Zwahlen commented that the safety device industry should be kept within a narrow band of performance, physical specifications and test procedures. Dr. Zwahlen stated that he had conducted independent research that showed that the triangle shape was the most recognizable from a distance, comparing the triangle with five other shapes, each with an area of 18 sq. inches. NHTSA does not dispute Dr. Zwahlen's contention that the triangular shape may be the most recognizable shape from a distance. However, Dr. Zwahlen's research appears to presume that drivers use warning devices. Dr. Zwahlen has not shown that drivers are carrying and using warning devices of any type. A 1993 NHTSA survey (discussed below) indicates that few, if any, passenger car and light truck drivers, in fact, use any warning devices when their vehicles are stopped. If drivers do not carry and use warning devices, there is limited practical significance to the fact that the triangular shape is the most recognizable.

Although Standard No. 125 applies to devices designed to be carried in all vehicles, the standard does not require that new vehicles be equipped with them. Further, the agency cannot require that the device be carried in used motor vehicles. As a result, since there is no NHTSA requirement that they carry and use the devices, drivers of passenger cars and light trucks rarely use Standard No. 125 devices when their vehicles are stalled.

That the warning devices are rarely used by passenger car and light truck drivers was indicated in a 1993 survey by two NHTSA engineers. Traveling on approximately 700 miles of highway in the Washington, DC area and between

DC and Newport News, Virginia, the engineers counted a total of 74 stopped vehicles. Based on personal observation, the engineers classified each vehicle type. Of the 74 vehicles, the engineers determined 65 stopped vehicles were passenger cars or light trucks. The engineers observed that no warning device of any type was used for 62 of these, flares were used for 2, and two orange cones were used for the remaining one. None of the drivers of the stopped passenger cars or light trucks used the Standard No. 125 warning device. All of the remaining 9 vehicles were heavy trucks. No device was used for 6 of them; the Standard No. 125 device was used for the other 3 vehicles.

Since it appears use of the warning devices is infrequent with vehicles with a GVWR of 10,000 lbs or less, NHTSA does not believe permitting additional types of nonpowered warning devices will result in motorist confusion or in more collisions. If the usage rate suggested in the NHTSA survey is typical, there would appear to be no possibility of a significant adverse effect on safety if Standard No. 125 were amended to apply only to devices designed to be carried in buses and trucks that have a GVWR greater than 10,000 lbs. In fact, as suggested in Ford Motor Company's comment, if there were no standards for devices designed to be carried in motor vehicles under 10,000 pounds GVWR, nonprofessional drivers, having a greater variety of nonpowered items to choose from, may be motivated to carry a warning device of some sort when they have none now.

3. Potential State Regulation of Warning Devices

TSEI and the American Trucking Associations (ATA) commented that the NPRM, if made final, might result in each state regulating warning devices, since there would no longer be a Federal standard regulating nonpowered devices. TSEI expressed a belief that state regulation would discourage customers from using warning devices, for fear of purchasing a device whose use is permitted in one state, but prohibited in another. ATA favors an NHTSA-promulgated uniform standard for warning devices designed to be carried in vehicles not subject to the Federal Highway Administration's regulations, in order to preclude states from issuing "differing and conflicting standards." It urged no changes in the applicability of Standard No. 125 until NHTSA develops a standard applicable to warning devices designed to be carried in vehicles with a GVWR of 10,000 lbs. or less.

In response to the TSEI and ATA comments, the issue of state regulation of warning devices was indirectly addressed above in section 2, *Greater Design Flexibility*. As noted in section 2, it appears that use of the Standard No. 125 warning device is infrequent. Since driver use of the devices is infrequent in the absence of state regulation, it does not appear that the presence of such regulation would have any significant effect.

4. Other Issues Raised by Commenters

Two commenters, Dr. Allen and Dr. Zwahlen, recommended that NHTSA amend Standard No. 125 to require the warning triangles be carried in and used with motor vehicles. These recommendations are outside the scope of the NPRM. Further, as explained in the NPRM, NHTSA has not required that vehicles be equipped with Standard No. 125 warning triangles because NHTSA has never conclusively determined that the warning triangles are effective. Since NHTSA believes obtaining data on warning triangle efficacy (necessary to support rulemaking to mandate carrying of warning devices) would be expensive and very likely would not result in findings that conclusively support a safety benefit in using triangles, it has not conducted research on warning triangle efficacy. Without such data, the agency is not inclined to require that vehicles be equipped with Standard No. 125 warning triangles.

The Advocates for Highway and Auto Safety commented that NHTSA should focus more on traffic control functions that Standard No. 125 warning triangles provide under emergency conditions, rather than on design features of the warning triangle. They offered several suggestions for how the warning triangles can be improved to better serve traffic control functions. The Advocates' comments address issues that go beyond the scope of the current rulemaking. Thus, NHTSA has not adopted the Advocates' suggestions.

Finally, TSEI asserts that a regulatory flexibility analysis of the effect of this rulemaking on small businesses should have been conducted. TSEI objected to NHTSA's proposal to make Standard No. 125 applicable only to devices designed to be carried in buses and trucks that have a GVWR greater than 10,000 lbs. TSEI's point appeared to be that it was inequitable for NHTSA to propose not to regulate warning devices designed to be carried in passenger cars, after the industry (mainly small manufacturers) tried, "at great cost" to make its devices meet Standard No. 125 specifications. Thus, TSEI requested a

regulatory flexibility analysis (pursuant to 5 U.S.C. §§ 603 and 604) to assess the economic impact of this rulemaking on small entities.

For the following reasons, NHTSA believes this rulemaking may have a slight beneficial effect on small warning device manufacturers, but will not have a significant economic impact on a substantial number of small entities. First, not regulating warning devices designed to be carried in vehicles with a GVWR of 10,000 lbs. or less potentially creates a market for new types of nonpowered warning devices. Because of their expertise in Standard No. 125 devices, warning device manufacturers should be able to take advantage of this lessening of regulations and manufacture comparable devices that drivers of vehicles with a GVWR of 10,000 lbs. or less will buy. However, because use of any warning devices for drivers of vehicles with a GVWR of 10,000 lbs. or less is not mandated, NHTSA does not anticipate significant market demand for these devices.

Second, it appears that there is limited potential for significant loss of sales. Based on its 1993 road survey, NHTSA believes that the current demand for Standard No. 125 devices among drivers of vehicles with a GVWR of 10,000 lbs. or less is apparently very small. Further, the simple fact that other types of nonpowered warning devices may now be manufactured for those vehicles does not mean that sales of those devices will come at the expense of the triangular nonpowered warning devices. Additionally, although a recent Federal Highway Administration final rule (FHWA Docket No. MC-93-19), gives fuses and liquid burning flares equal status with triangles for use as emergency warning devices (with exceptions), this NHTSA final rule does nothing to change the FHWA's requirements for use of bidirectional reflective triangles with commercial motor vehicles that have a GVWR greater than 10,000 lbs. Thus, there appears to be no significant economic impact on small warning device manufacturers as a result of this rulemaking.

Effective Date

In the NPRM, NHTSA proposed that if the proposed rule were made final, the effective date for the final rule would be 30 days after the final rule is published. NHTSA received no comments on the proposed early effective date. This rule relieves a restriction in Standard No. 125. The Standard no longer specifies any restriction on warning devices designed

to be carried in motor vehicles with a GVWR of 10,000 lbs. or less. The lessening of the regulatory restriction will provide drivers of vehicles with a GVWR of 10,000 lbs. or less with greater choices of warning devices to be purchased, and permit manufacturers more flexibility in designing and selling warning devices designed for vehicles with a GVWR of 10,000 lbs. or less. Since this rule relieves a regulatory restriction, NHTSA has concluded that the rule should take effect sooner than 120 days after the issuance of the rule. The agency finds for good cause that this rule should become effective 30 days after it is published.

As earlier noted, this rulemaking responds to a petition for rulemaking from P.C.S. Safety Corporation. On the rule's effective date, if P.C.S.'s nonpowered warning device is designed to be carried in motor vehicles with a GVWR of 10,000 lbs. or less, the P.C.S. device will be permitted to be manufactured and sold.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This action was not reviewed under E.O. 12866, Regulatory Planning and Review. NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures and determined that it is not "significant." This action relieves a regulatory restriction by narrowing the application of the safety standard on nonpowered warning devices so that it is applicable only to devices designed to be carried in motor vehicles that have a GVWR greater than 10,000 lbs. Previously, the standard applied to all nonpowered warning devices designed to be carried in motor vehicles. The net economic impact of this action on manufacturers of nonpowered warning devices designed to be carried in motor vehicles with a GVWR of 10,000 lbs. or less is expected to be slight. The final rule imposes no new or additional requirements. For these reasons, the agency has determined that the economic effects of this rule are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that by permitting

alternative warning devices designed to be carried in vehicles with a GVWR of 10,000 lbs. or less, small warning device manufacturers will have an opportunity to sell these alternative devices, as well as the triangular nonpowered warning devices, to the owners of those vehicles. At the same time, since Standard No. 125 specifies warning devices for buses and trucks that have a GVWR greater than 10,000 lbs., and operators of such vehicles are required to carry the devices, manufacturers of Standard No. 125 devices will continue to have a market for their devices. Accordingly, the agency has not prepared a regulatory flexibility analysis.

Executive Order 12612 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency has also considered the environmental implications of this final rule in accordance with the National Environmental Policy Act of 1969 and has determined that the rule will not significantly affect the human environment.

Paperwork Reduction Act

This rule specifies that the warning devices be marked with certain information, that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. The information collection requirements for 49 CFR Part 571.125 have been submitted to and approved by the OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information has been assigned OMB Control No. 2127-0506, (Warning Devices (Labeling)) and has been approved for use through March 31, 1994. A request for an extension of this collection of information is pending at OMB.

Executive Order 12866 (Civil Justice Reform)

This final rule will not have any retroactive effect. Under 49 U.S.C. section 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain

a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. section 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended to read as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, delegation of authority at 49 CFR 1.50.

2. In § 571.125, S3 is revised to read as follows:

§ 571.125 Standard No. 125; Warning devices.

* * * * *

S3. *Application.* This standard applies to devices, without self-contained energy sources, that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 pounds. These devices are used to warn approaching traffic of the presence of a stopped vehicle, except for devices designed to be permanently affixed to the vehicle.

Issued on: September 23, 1994.
 Christopher A. Hart,
 Deputy Administrator.
 [FR Doc. 94-24055 Filed 9-28-94; 8:45 am]
 BILLING CODE 4910-59-P-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 9312335-4107; I.D. 092294A]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

DATES: Area 4A and 4B were reopened effective September 12, 1994, 12:00 noon, Alaska Daylight Time (ADT), through September 14, 1994, 12:00 noon, ADT. Area 4D was closed effective 3 p.m. ADT August 6, 1994 through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, telephone 907-586-7221; William W. Stelle, Jr., telephone 206-526-6140; or Donald McCaughran, telephone 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery (50 CFR 301.4). The regulations have been approved by the Secretary of State (59 FR 22522, May 2, 1994). On behalf of the IPHC, this inseason action is published in the Federal Register to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1994 Halibut Landing Report No. 15

Commercial Fishery Update In Area 4

The IPHC estimates the following catches for the mid-August fishing periods in Area 4.

Area	August catch (000's lb)	Season catch (000's lb)	Remaining catch limit (000's lb)
4A	1,541	1,672	128
4B	1,679	2,008	92
4D	692	710	0

Area 4D Closed to Halibut Fishing

The catch limit in Area 4D was reached and Area 4D is now closed to halibut fishing for the remainder of 1994.

Area 4A and 4B Reopened on September 12

Although only a small amount of catch limit remains for Areas 4A and 4B, the IPHC anticipates very little fishing effort if these areas are opened concurrently with Area 3 during September. Therefore, Areas 4A and 4B

will be reopened to halibut fishing on September 12 at 12:00 noon ADT, and close on September 14 at 12:00 noon ADT. Fishing period limits (identical to those in Area 3) will be required for both Areas 4A and 4B, to avoid exceeding the catch limit, and are shown in the following table.

Vessel class	Fishing period limits (lb, dressed, heads off)		
	Area 4A	Area 4B	
Length	Letter		
0-25	A	600	600
26-30	B	900	900
31-35	C	2,700	2,700
36-40	D	3,500	3,500
41-45	E	5,600	5,600
46-50	F	7,900	7,900
51-55	G	11,600	11,600
56+	H	20,000	20,000

Vessel operators are reminded that vessel clearances are required prior to fishing, and prior to unloading and/or departure from Area 4. The required clearances for Area 4A may be obtained at designated fish processors in Akutan and Dutch Harbor. The required clearances for Area 4B may only be obtained at the city office in Atka Village, located at Nazan Bay on Atka Island.

Dated: September 22, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-24006 Filed 9-28-94; 8:45 am]

BILLING CODE 3510-22-P

50 CFR Part 672

[Docket No. 931199-4042; I.D. 091694A]

Groundfish of the Gulf of Alaska

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central and Western Regulatory Areas in the Gulf of Alaska (GOA). This action is

necessary to fully utilize the allocation of the total allowable catch (TAC) of Pacific cod by the offshore component in the Central and Western Regulatory Areas of the GOA.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the annual TAC for Pacific cod was established by the final 1994 specifications (59 FR 7647, February 16, 1994), as 3,125 metric tons (mt) for the Central Regulatory Area and 1,663 mt for the Western Regulatory Area. At the same time, the directed fishery for Pacific cod in the GOA by vessels catching Pacific cod for processing by the offshore component was closed under § 672.20(c)(2)(ii) in order to reserve amounts anticipated to

be needed for incidental catch by other fisheries (59 FR 7647, February 16, 1994).

The Director, Alaska Region, NMFS, has determined that, as of September 10, 1994, 2,450 mt for the Central Regulatory Area and 1,423 mt for the Western Regulatory Area remain unharvested by vessels catching Pacific cod for processing by the offshore component. These amounts are in excess of those necessary as incidental catch for other groundfish fisheries. Therefore, NMFS is terminating those closures and is opening directed fishing for Pacific cod in the Central and Western GOA by vessels catching Pacific cod for processing by the offshore component effective at 12 noon, A.l.t., September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

All other closures remain in full force and effect.

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C 1801 *et seq.*

Dated: September 23, 1994

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-24135 Filed 9-28-94; 8:45 am]

BILLING CODE 3510-22-F

50 CFR Part 675

[Docket No. 931100-4043; I.D. 092194D]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch and the "other red rockfish" species group in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to utilize fully the total allowable catches (TACs) of Pacific ocean perch and the "other red rockfish" species group in that subarea.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The directed fisheries for Pacific ocean perch and the "other red rockfish" species group were closed under § 675.20(a)(8) in the final 1994 initial specifications of groundfish harvest (59 FR 7656, February 16, 1994) in order to reserve amounts anticipated to be needed for incidental catch by other fisheries.

The Director, Alaska Region, NMFS, has determined that the remaining 1994 TACs for Pacific ocean perch and the "other red rockfish" species group in

the BS are in excess of the amounts necessary as incidental catch for other groundfish fisheries. Therefore, NMFS is terminating those closures and is opening directed fishing for Pacific ocean perch and the "other red rockfish" species group in the BS, effective from 12 noon, A.l.t., September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

All other closures remain in full force and effect.

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 23, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-24134 Filed 9-28-94; 8:45 am]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 59, No. 188

Thursday, September 29, 1994

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

Rural Electrification Administration

7 CFR Part 1718

RIN 0572-AB06

Loan Security Documents for Electric Borrowers

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) hereby proposes new policies and requirements for the standard form of mortgage ordinarily required of electric distribution borrowers. This proposed rule is intended to continue to provide adequate security for loans made to distribution borrowers, to update and clarify the provisions of the mortgage, to generally confine the scope of the mortgage primarily to basic issues of collateral and loan security, and to support borrower access to other credit sources.

DATES: Written comments must be received by REA or carry a postmark or equivalent by January 26, 1995.

ADDRESSES: Written comments should be addressed to Mr. F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2234-S, 14th Street and Independence Avenue, SW., Washington, DC 20250-1500. REA requires a signed original and 3 copies of all comments (7 CFR 1700.30 (e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Mr. Alex M. Cockey, Jr., Acting Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Electrification Administration, room 4037-S, 14th Street & Independence Avenue, SW., Washington, DC 20250-1500. Telephone: 202-720-9547.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of REA has determined that the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply to this rule. The Administrator of REA has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

Information Collection and Recordkeeping Requirements

The existing recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), under control numbers 0572-0017, 0572-0032, and 0572-0103. Additional information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3201, NEOB, Washington, DC 20503. Attention: Desk Officer for USDA.

Background

Starting in February 1991 with the publication of its proposed rule on pre-loan policies and procedures for electric loans, REA has undertaken a major effort to update, clarify, and simplify its policies and procedures relating to electric borrowers. As part of this overall effort, REA has been working on updating its mortgage and loan contract with electric borrowers, and its policies and procedures governing the granting of an accommodation or subordination of the government's lien on electric borrowers' systems.

Because of the magnitude and complexity of the task, the effort was divided into several phases. The first phase concentrated on updating and streamlining REA's policies and procedures for granting a lien accommodation or subordination under the current mortgage.

On December 2, 1991, REA published an advance notice of proposed rulemaking (ANPR) in the *Federal Register* (56 FR 61201) inviting comments on possible changes to REA's loan security documents and its policies and procedures governing lien accommodations and subordinations. Comments were received from 42 organizations, including comments filed on behalf of the G&T Manager's Association proposing a form of Mortgage Bond and Note Indenture. That proposal was modeled closely on the American Bar Foundation Mortgage Bond Indenture Form published in 1981 (the "Model Indenture") but also included features contained in mortgage indentures previously used by REA assisted borrowers.

On June 30, 1992, REA held a public meeting on REA's loan security documents and its policies and procedures for granting lien accommodations and subordinations under the electric mortgage. Eighteen organizations gave testimony and responded to questions from representatives of REA and the Department of Agriculture's Office of

General Counsel. Written comments were also received following the public meeting from several participants and 14 other organizations, mostly borrowers.

On March 5, 1993, REA published a proposed rule on lien accommodations and subordinations of REA mortgages in the *Federal Register*, at 58 FR 12552. Comments were received from 32 individuals and organizations. After considering the comments, the final rule was published in the *Federal Register* on October 19, 1993 at 58 FR 53835. A significant feature of that new rule is the granting of advance approval for lien accommodations for additional secured notes and refunding notes when specified objective criteria are met.

The proposed rule published here is the result of continuing efforts to update REA's loan security documents, policies and procedures. In addition to reviewing the Model Indenture and the proposed form filed in response to the 1991 ANPR, REA has reviewed numerous other mortgage documents in developing the form being published for comment as part of this proposed rule. These resources included three separate instruments issued by three unrelated, former REA borrowers, namely Chugach Electric Association (Alaska-1991), Guadalupe Valley Electric Cooperative, Inc. (Texas-1991), and Old Dominion Electric Cooperative (Virginia-1992). REA also reviewed mortgage documentation currently being used by the National Rural Utilities Cooperative Finance Corporation ("CFC") and CoBank in securing loans made by them to former REA electric borrowers in various states. In June of 1993, the National Rural Electric Cooperative Association ("NRECA"), a trade association to which most REA electric borrowers belong, proposed to REA a form of distribution mortgage that had been developed by an ad hoc committee sponsored by NRECA. That proposal was also reviewed and considered in developing the form of mortgage included in this proposed rule.

The proposed new form of mortgage for distribution borrowers is intended to achieve the following objectives:

- To continue to provide adequate security for loans made or guaranteed by REA and other mortgagees;
- To update and clarify the provisions of the mortgage;
- To limit the scope of the multi-party mortgage document primarily to basic issues of collateral and loan security, leaving lenders and borrowers the flexibility to address other issues in their respective loan contracts or other documents, which in the case of REA also includes REA regulations; and

- To support borrower access to other credit sources, including lenders that have no prior lending history with rural electric systems, by adopting provisions used in other modern mortgage indentures to the extent possible.

The proposed mortgage published today does not include several "operational controls" that are included in the current mortgage, such as mortgagee approval of extensions or additions to plant. After REA has had an opportunity to evaluate responses to this proposal, it intends to develop and publish for comment an updated form of loan contract for distribution borrowers that correlates with the new form of mortgage and more accurately reflects contemporary REA practices and policies. Although it seems likely that some of these existing operational controls will be updated and included in a new form of REA loan contract, it is anticipated that others will not.

The proposed mortgage published here is for distribution borrowers. REA also intends to develop in the near future proposed standard forms of the mortgage and loan contract for power supply borrowers.

The rest of this discussion addresses the more significant provisions of the proposed mortgage. The discussion focuses on changes from the current mortgage and other significant provisions. For the sake of brevity, provisions are characterized in terms of their primary content and thrust, without attempting to cover every legal detail.

Excepted Property

As with the current mortgage, the proposed mortgage would place a first mortgage lien on most of the borrower's assets, whether currently existing or acquired after the effective date of the mortgage. However, certain types of property covered by the broad conveyancing language used in the current mortgage would be expressly excepted from the lien of the proposed mortgage. Important examples include all cash on hand or in banks; most contracts and contract rights, with some exceptions; shares of stock; bonds; notes; repurchase agreements; and other securities. However, a borrower may choose to subject excepted property to the lien of the mortgage, and in certain circumstances such as upon a default, the mortgagees can compel the excepted property to be placed under the lien of the mortgage. The proposed approach is suggested by the Model Indenture. It is intended to address impracticalities associated with perfecting and administering liens on certain classes of collateral otherwise included in a

"blanket" lien on all assets. The proposed form more closely reflects the longstanding view that electric plant serves as the primary security for secured loans to electric distribution borrowers.

Permitted Encumbrances

The list of permitted encumbrances in the proposed mortgage is somewhat longer compared to the current mortgage but is typical of more contemporary practices. This has been done to alleviate practical problems in obtaining opinions of counsel to the effect that the mortgage is a valid first lien on all of the mortgaged property. These problems have been exacerbated in recent years as developments in the legal profession generally caused the borrowers' attorneys to be less willing to provide approving legal opinions in mortgage transactions without going into great detail in qualifying the application of their opinions to certain types of property (most of which has now been excepted) and routine encumbrances. Experience in the program has shown that the vast majority of such encumbrances are primarily technical in nature and do not materially affect the security value of the collateral. It is expected that those loan settlement delays associated with negotiating legal opinions will be reduced or eliminated by this proposal and that the protection REA has traditionally derived from such opinions will be preserved.

Section 2.01. Additional Notes

Under the current mortgage, REA prior approval is required for a borrower to issue additional notes secured under the mortgage. Under section 2.01 of the proposed mortgage, a borrower not in default under the mortgage may issue additional notes to finance mortgageable property for its utility system, without the approval of REA or other mortgagees, if the following criteria are met:

- The borrower has achieved for each of the 2 calendar years immediately preceding the issuance of the notes a Times Interest Earning Ratio (TIER) of at least 1.35 and a Debt Service Coverage Ratio (DSC) of at least 1.35, on a pro forma basis, after taking into account the effect of the new notes.
- The borrower will have equity greater than or equal to 27% of total assets after taking into account the effect of the additional notes.
- The ratio of the borrower's net utility plant to its long-term debt will be greater than or equal to 1.1 after taking into account the effect of the additional notes.

- Transaction costs included in the additional notes do not exceed 3.5% of the face amount of the notes.

- The maturity of the loan evidenced by the notes must not be less than 5 years and must not exceed the weighted average of the expected remaining useful lives of the assets being financed.

- The principal of the loan evidenced by the notes must be amortized at a rate that will yield a weighted average life not greater than the weighted average life that would result from level payments of principal and interest.

- The principal amount of outstanding notes issued to finance community infrastructure (namely water and waste systems, solid waste disposal facilities, telecommunications and other electronic communications systems, and natural gas distribution systems located in the borrower's service territory) will not be greater than 20% of the principal amount of all outstanding notes, after taking into account the effect of the additional notes.

TIER and DSC are defined in terms of "Modified" TIER and "Modified" DSC, that is, generation and transmission and other capital credits are excluded from margins in calculating the ratios. These measures reflect current revenues and cash flows better than straight TIER and DSC, and thus they better reflect a borrower's ability to meet on-going expenses. In this modified form, the level for TIER has been reduced to 1.35 from the 1.5 currently required in 7 CFR 1710.114. The 1.35 level proposed for this modified form of DSC is the same as that required for the pledging of borrowers' notes under the indenture for issuing collateral trust bonds of CFC.

In calculating TIER, the annual interest expense of the additional notes issued, based on the full face amount of the notes, would be added to the interest expense for each of the two test years. Similarly, in calculating DSC, interest expense, depreciation and amortization expense, and debt service billed for the two test years would be increased respectively by the annual interest expense, annual depreciation and amortization expense, and the annual debt service expense associated with the additional notes and facilities.

In calculating equity as a percentage of total assets, regulatory created assets would be deducted from both equity and total assets as they appear on a borrower's balance sheet. Regulatory created assets are current period expenses that have been deferred by the borrower, and they should be deducted to provide a more accurate picture of a borrower's current equity to assets ratio. Under REA's Uniform System of Accounts, regulatory created assets

equal the sum of amounts properly recordable in Accounts 182.2 Unrecovered Plant and Regulatory Study Costs, and 182.3 Other Regulatory Assets. This same adjustment is used in REA's lien accommodation rule and other regulations.

The proposed requirement of a net utility plant to long-term debt ratio of 1.1 is used in lieu of the more complicated bondable additions tests usually used in utility indentures securing publicly offered debt. This ratio is used in REA's lien accommodation rule (1717.854) as one of the criteria for determining eligibility for advance approval for lien accommodations under the current mortgage, and it is also used by CoBank, set at a higher level, in its 100 percent mortgage. Comments are invited on whether a more traditional bondable additions test would be preferable to the proposed net utility plant to long-term debt ratio.

The proposed criteria that would control the amount of transaction costs financed by a note, the maximum maturity of the note, and the rate of note amortization are intended to help ensure that each note will be supported by adequate collateral throughout the life of the note. The proposed minimum maturity of 5 years is intended to reserve the security of the mortgage to financing that meets the long-term credit needs of borrowers. Shorter term loans generally do not face the same kind of uncertainty and risks involved in long-term loans, and offering them security under the mortgage should be subject to approval by the mortgagees under proposed section 2.03. All four of these criteria are currently used by REA, along with others, to determine eligibility for a lien accommodation (see 7 CFR 1717.852 and 1717.853).

REA estimates that about 64 percent of distribution borrowers would be able to meet the criteria for issuing additional notes under proposed section 2.01. This estimate is based on 1991-92 data for TIER and DSC and 1992 data for equity, total assets, net utility plant, and long-term debt, and assumes that the average note issued will equal 13.5% of a borrower's total assets (the average size of a combined REA-supplemental loan in 1992-93). Borrowers failing to meet the proposed criteria under section 2.01 would need to get the approval of each mortgagee, under proposed section 2.03, to issue additional notes.

As indicated above, issuance of additional notes under section 2.01 would be limited to the financing of mortgageable property for the electric system and the four named community infrastructure purposes. The aggregate

outstanding principal balance of notes issued for community infrastructure would be limited for notes issued under section 2.01 to 20% of the outstanding principal balance of all notes. Borrowers wishing to issue notes in excess of this amount for community infrastructure would need to obtain approval from each mortgagee.

Section 2.02. Refunding or Refinancing Notes

As in issuing additional notes, the current mortgage also requires the approval of the mortgagees for borrowers to refund or refinance existing notes. Under proposed section 2.02 of the new mortgage, borrowers that are not in default under the mortgage could refund or refinance existing notes if the following conditions are met:

- The total amount of outstanding indebtedness evidenced by the new notes is not greater than 103.5% of the then outstanding principal balance of the notes being refunded or refinanced.
- The weighted average life of the new notes is not greater than the weighted average remaining life of the notes being refunded or refinanced.
- The present value of the cost of the refunding or refinancing notes, including all transaction costs and any required investments in the lender, is less than the present value of the cost of the notes being refunded or refinanced.

A lien accommodation would be automatic for notes issued under sections 2.01 and 2.02. The borrower's loan contract with the lender would not be subject to the approval of the other mortgagees. REA expects to propose corresponding amendments to its lien accommodation rule and loan contracts to take the requirements of the new mortgage into account, once the final form of the distribution mortgage has been determined.

Section 2.05. Form of Supplemental Mortgage

It is contemplated that a provision will be developed for inclusion either at this point or as an appendix in the final form of the Mortgage. The provision would set out a succinct form of amendment to be used to facilitate borrowings that do not require consent of the Mortgagees. The parties would be free to agree to other forms of amendment on a case-by-case basis but obviously such a process would be more time consuming and the outcome less certain. REA is specifically soliciting comments on this approach and would welcome suggestions on what would be

an appropriate form for a supplemental mortgage.

Section 3.04. Environmental Obligations

Under this proposed section, the borrower would expressly agree to comply with all applicable water and air pollution control standards and other environmental requirements imposed by Federal or state statutes, regulations, licenses or permits as related to the mortgaged property. The borrower would also agree to defend, indemnify, and hold harmless the mortgagees from and against all liabilities, losses, costs, etc. related to existing or future hazardous waste or hazardous chemical substances on the mortgaged property, any lien or claim related thereto, and any failure of the borrower to comply with the terms of any government agency having any regulatory authority over environmental matters regarding the mortgaged property. The inclusion of this section reflects the trend in modern loan documentation to allocate environmental risks to the borrower since that is the party that manages and controls the day to day operations.

Section 3.08. Restrictions on Additional Permitted Debt

Compared to the current mortgage, proposed section 3.08 would raise the threshold on restricted rentals allowed without the approval of the mortgagees, and also allow certain "permitted debt", in addition to notes issued under proposed Article 2, without the mortgagees' approval. Restricted rentals without mortgagees' approval would be allowed in an amount not to exceed 5% of equity during any 12 consecutive calendar month period, versus 2% currently. The following permitted debt would also be allowed without mortgagees' approval if the borrower is not in default under its mortgage:

- Purchase money indebtedness in non-utility system property in an amount not exceeding 10% of net utility plant.
- Unsecured lease obligations incurred in the ordinary course of business except restricted rentals.
- Unsecured indebtedness for borrowed money in an aggregate amount not exceeding 15% of net utility plant.
- Debt represented by dividends declared but not paid.
- Indebtedness of other operating electric companies acquired by the borrower not exceeding 90% of the net utility plant of the acquired company.

Section 3.10. Limitations on Consolidations and Mergers

Proposed section 3.10 would make certain changes in the conditions under

which the borrower may consolidate or merge with another corporation. Significant among these changes is that the successor corporation would have to meet on a pro forma basis the same TIER, equity to assets ratio, and net utility plant to long-term debt ratio as required under section 2.01 for issuing additional notes.

Section 3.11. Limitations on Transfers of Property

This proposed section would raise the limits under which a borrower could sell, lease or transfer assets for fair market value without the approval of the mortgagees. The current mortgage sets the limits at \$25,000 for each individual asset, and \$100,000 for any 12 month period. Proposed section 3.11 would drop the limit for each individual asset and raise the limit for any 12 month period to 10 % of net utility plant.

Section 3.12. Maintenance of Mortgaged Property

Several changes to existing mortgage requirements on property maintenance would be made under this section.

The proposed mortgage would eliminate the current requirement that borrowers expend for maintenance, renewals and replacements during each three-year period 10 % of the difference between gross operating revenues and the cost of power during the period. REA has come to believe that requiring a fixed percentage expenditure on maintenance is not an effective approach for ensuring that its collateral is adequately maintained. Comments are invited on this question.

Borrowers would still be required to adequately maintain their systems. Mortgagees would continue to have access to inspect the mortgaged property. As a corollary to the more generalized maintenance standard, it is proposed that any mortgagee could direct the borrower to provide to all mortgagees an initial certification by an independent professional engineer acceptable to the mortgagees, as to the condition of the mortgaged property. Such a certification could be requested only once every 3 years.

If the independent engineer certifies that the borrower needs to make repairs or replacements to comply with the maintenance requirements of the mortgage, any mortgagee could request that such recommendations be followed and the borrower would be obligated to comply with them promptly. A year after such request, a second independent certification would be required as to the condition of the property. If deficiencies remain, any

mortgagee could so notify the borrower, who would then be required to cure the deficiencies within 60 days. REA believes that such certifications by independent professional engineers would provide each mortgagee with an effective mechanism to ensure that the mortgaged property is being adequately maintained.

Section 3.13. Insurance; Restoration of Damaged Mortgaged Property

Under this section several changes are proposed to the insurance provisions of the existing mortgage. The borrower, for example, would be required to have insurance coverage in conformance with generally accepted utility industry standards for utilities of the size and character of the borrower. Specific dollar-amount coverage limits would be eliminated from the mortgage. Insurance policies would be required to remain in force for 30 days after written notice to each mortgagee, instead of the current 10 days. REA plans to review its existing regulation on fidelity and insurance requirements (7 CFR part 1788) to determine whether changes are needed.

Section 3.16. Limitation on Dividends, Patronage Refunds and Other Cash Distributions

It is proposed that the controls on distributions in the current mortgage be retained with only minor changes.

Section 3.18. Compliance With Loan Agreements; Notice of Amendments to and Defaults Under Loan Agreements

This section proposes two changes to provisions in the current mortgage. First, borrowers would be required to supply a copy of a loan agreement with another lender, and amendments thereto, only when requested by a mortgagee. Second, the provision in the current mortgage that the terms of the mortgage govern if they are inconsistent with the terms of a loan contract, would be deleted. This is proposed to ensure that a mortgagee could enforce terms in its loan contract agreed to by the borrower, even though they may be more demanding on the borrower than the terms in the mortgage.

Section 3.20. Rates to Provide Revenue Sufficient to Meet TIER and DSC Requirements.

This section proposes requirements that are similar to those in 7 CFR 1710.114, except that the threshold levels set for (modified) TIER and (modified) DSC are set at 1.35, the same as in proposed section 2.01, rather than 1.5 for TIER and 1.25 for DSC as in § 1710.114.

If a borrower fails to achieve a (modified) TIER and (modified) DSC of 1.35 based on the average of the two best years out of the three most recent years, then it would be required to provide each mortgagee with a written plan of remedial action setting forth the actions the borrower shall take to achieve the required TIER and DSC levels on a timely basis. If requested by a mortgagee, the plan would have to be prepared by an independent consultant acceptable to the mortgagees. The mortgagor would be required to take all actions included in its written plan approved by the mortgagees.

If a state regulatory authority having jurisdiction will not approve rates sufficient to achieve the required TIER and DSC levels, the borrower would be required to provide documentation to that effect, along with a modified plan taking the state authority's determination into account. Such modified plan would be subject to the approval of each mortgagee.

Section 4.01. Events of Default

The proposed events of default are patterned after those commonly contained in modern mortgage indentures. There are two notable differences with the current mortgage. First, a default in payment on the notes would not be an event of default unless it lasted for more than 5 business days after the payment is due. Second, defaults with respect to other covenants and conditions contained in the mortgage, loan contracts, or notes would not be an event of default unless they continued for a period of 30 days after a mortgagee has given written notice of default directing the mortgagor to remedy the default.

Section 4.02. Acceleration of Maturity; Rescission and Annulment

This proposed section differs in several respects from the provisions of the current mortgage. A basic difference is that each mortgagee would have equal rights in accelerating its notes, in contrast to the current mortgage where other mortgagees must wait 30 days for REA to act before they can accelerate.

It is proposed that in the event of a default in payment on a mortgagee's notes, that mortgagee may accelerate its notes and so notify the other mortgagees. Upon receipt of actual knowledge of or any notice of acceleration by such mortgagee, any other mortgagee would be able to accelerate its notes.

If any other event of default occurs under the mortgage and is continuing, any mortgagee would be able to accelerate its notes and notify the others

to that effect. Any mortgage could also accelerate if an event of default occurs and is continuing under its loan contract or note. Upon receipt of actual knowledge of or any notice of acceleration by a mortgagee, any other mortgagee would be able to accelerate its notes. After acceleration, if all payment defaults have been cured and all other defaults have been cured to the satisfaction of mortgagees representing at least 80% of the aggregate outstanding principal balance of the notes, then said mortgagees would be able to annul the acceleration.

Section 4.03. Remedies of Mortgagees

Under this section it is proposed that any mortgagee may, upon an event of default, take possession of the property, manage and operate the property, protect and enforce the rights of all of the mortgagees, appoint a receiver, and sell the mortgaged property. Any other mortgagee would be able to join in these proceedings. If the mortgagees do not agree on the method or manner of enforcement of remedies, mortgagees representing a majority of the outstanding principal balance of the notes would be able to direct the method and manner of the remedial actions.

Section 5.03. Special Defeasance

Under this section, in certain circumstances a borrower could deposit funds with a trustee for the benefit of a mortgagee in an amount sufficient to discharge the note. Such a note would no longer be considered to be "outstanding" under the mortgage. The borrower would obtain a release from the lien of the mortgage and the mortgagee would have the trust as security for the payments on the note as they come due. This section has been adapted from the Model Indenture.

Accounting Requirements

So long as REA is on the mortgage, it is proposed that borrowers would be required to follow REA's Uniform System of Accounts. If REA is paid off and is no longer on the mortgage, Generally Accepted Accounting Principles would prevail. This is set forth in proposed section 1.01 in the definition of "Accounting Requirements."

Current Mortgage Provisions Not Included

A number of "operational controls" and other provisions contained in the current mortgage are not included in this proposed mortgage. As indicated above, some of these controls may be retained in REA's new loan contract.

The more significant provisions not included in the proposed mortgage are as follows:

- Mortgagee approval of extensions or additions to the borrower's system.
- Mortgagee approval of sales of electric power and energy in excess of 1,000 Kw.
- Mortgagee approval of contracts for the operation or maintenance or use by others of all or a substantial part of the borrower's property.
- Mortgagee approval of contracts to purchase electric power or energy.
- Mortgagee approval of expenditures for legal, engineering, supervisory, accounting or similar services, other than reasonable, routine expenses.
- Requirement that funds of the borrower be deposited in a Federal Reserve Bank or in depositories that are members of the Federal Deposit Insurance Corporation.
- Mortgagee approval of compensation for members of the borrower's board of directors.
- Mortgagee approval of the borrower's manager and the manager's employment contract.
- Mortgagee approval of investments, loans, and guarantees made by the borrower. For several reasons, including the restrictions imposed on REA (but not other lenders) by section 312 of the Rural Electrification Act of 1936, REA believes it is preferable that such approval rights be included in the loan contract of each mortgagee as each sees fit.
- The requirement in article II, section 4 of the current mortgage that any prepayment of a concurrent (contemporaneous) loan made by REA or the supplemental lender be accompanied by a pro rata prepayment of the other concurrent loan. Since this provision relates only to loans made concurrently with REA, while the mortgage covers both concurrent loans and loans made independently of other loans, REA believes it is appropriate to shift this provision to its loan contract.

Inter-Creditor Agreement

As noted above, shares of stock and other securities, including those held in lenders secured under the proposed mortgage, would be excepted from the lien of the mortgage. It is REA's view that, in the event any notes are accelerated, all such assets, revenues, and other proceeds obtained from the mortgagor by any mortgagee should be shared equally and ratably among all mortgagees along with the mortgaged property. Also, whether or not any notes are accelerated, if a borrower pays only a portion of the aggregate principal and interest due on the notes as a whole,

REA believes such payments should also be shared equally and ratably among the mortgagees. It is REA's intention to try to reach agreement with the other existing mortgagees on a mutually acceptable inter-creditor agreement before the proposed new mortgage is published in final form.

As stated above, the foregoing discussion focuses on the more significant provisions of the proposed mortgage, especially where they differ with provisions in the current mortgage. In addition to receiving written comments, REA stands ready to meet with interested individuals and organizations to discuss their comments and recommendations. Such meetings would be open to any interested person, and they would be "informal", as opposed to a formal hearing. Although any such meetings will not be transcribed, REA will include a summary of any such meeting in the file for this rulemaking. To facilitate scheduling, it would be better for individuals, especially the large number of borrowers affected by this proposed rule, to form one or more groups to represent their interests at such meetings.

List of Subjects in 7 CFR Part 1718

Administrative practice and procedure, Electric power, Electric utilities, Loan programs—energy, Loan security documents, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, REA proposes to amend chapter XVII of title 7 of the Code of Federal Regulations by adding a new part 1718 to read as follows:

PART 1718—LOAN SECURITY DOCUMENTS FOR ELECTRIC BORROWERS

Subpart A—General

Sec.
1718.1–1718.49 [Reserved]

Subpart B—Mortgage for Distribution Borrowers

1718.50 Definitions.
1718.51 Policy.
1718.52 Existing mortgages.
1718.53 Rights of other mortgagees.
1718.54 Availability of forms.

Appendix A to Subpart B of Part 1718—Standard Form of Mortgage for Electric Distribution Borrowers

Authority: 7 U.S.C. 901–950b; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72, unless otherwise noted.

Subpart A—General

§§ 1718.1–1718.49 [Reserved]

Subpart B—Mortgage for Distribution Borrowers

§ 1718.50 Definitions.

Unless otherwise indicated, terms used in this subpart are defined as set forth in 7 CFR 1710.2.

§ 1718.51 Policy.

(a) Adequate loan security must be provided for loans made or guaranteed by REA. The loans are required to be secured by a first mortgage lien on most of the borrower's assets substantially in the form set forth in Appendix A of this subpart. At the discretion of REA, this standard form of mortgage may be adapted to satisfy different legal requirements among the states and individual differences in lending circumstances, provided that such adaptations are consistent with the policies set forth in this subpart.

(b) Some borrowers, such as certain public power districts, may not be able to provide security in the form of a first mortgage lien on their assets. In these cases REA will consider accepting other forms of security, such as resolutions and pledges of revenues.

(c) REA may require supplemental and amending mortgages to protect its security, or in connection with additional loans.

(d) REA may also require such other security instruments (such as loan contracts, security agreements, financing statements, guarantees, and pledges) as it deems appropriate.

(e) All distribution borrowers that receive a loan or loan guarantee from REA on or after [Date 30 days after the final rule is published in the **Federal Register**] will be required to enter into a mortgage with REA that meets the requirements of this subpart. Distribution borrowers that refinance debt secured under their existing mortgage have the option of staying with their existing mortgage or entering into a new mortgage that meets the requirements of this subpart. In the case of either a new loan or refinancing loan, the concurrence of any other lenders secured under the borrower's existing mortgage may be required before the borrower can enter into a new mortgage.

§ 1718.52 Existing mortgages.

Nothing contained in this subpart invalidates, terminates or rescinds any existing mortgage entered into between the borrower and REA and any other mortgagees.

§ 1718.53 Rights of other mortgagees.

Nothing contained in this subpart is intended to alter or affect any rights of any other mortgagee that is a party to an existing mortgage between a borrower and REA.

§ 1718.54 Availability of forms.

Single copies of the mortgage are available from the Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250–1500. This form may be reproduced.

Appendix A to Subpart B—Standard Form of Mortgage for Electric Distribution Borrowers

RESTATED MORTGAGE AND SECURITY AGREEMENT

Made By And Between _____,
Mortgagor and United States of America
and _____, Mortgagee. Dated as of

This instrument grants a security interest by a transmitting utility.

This instrument contains future advance provisions.

This instrument contains after-acquired property provisions.

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Restated Mortgage and Security Agreement, dated as of _____, 19____, (hereinafter sometimes called this "Mortgage") is made by and between _____ (hereinafter called the "Mortgagor"), a corporation existing under the laws of the State of _____, and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Electrification Administration (hereinafter called the "Government"), _____ (Supplemental Lender) _____, (hereinafter called "_____") a _____ existing under the laws of _____, and is intended to confer rights and benefits on both the Government and _____ as well as any and all other lenders pursuant to Article II of this Mortgage that enter into a supplemental mortgage in accordance with section 2.04 of Article II hereof (the Government and any such other lenders being herein sometimes collectively referred to as the "Mortgagees").

Recitals

Whereas, the Mortgagor, the Government and _____ are parties to that certain _____ Mortgage and Security Agreement dated as of _____, 19____, as supplemented, amended or restated (the "Original Mortgage" identified in Schedule "A" of this Mortgage) originally entered into between the Mortgagor, the Government acting by and through the Administrator of the Rural Electrification Administration (the "REA") and _____; and

Whereas, the Mortgagor deems it necessary to borrow money for its corporate purposes and to issue its promissory notes and other debt obligations therefor from time to time in one or more series, and to mortgage and pledge its property hereinafter described or mentioned to secure the payment of the same;

Whereas, the Mortgagor desires to enter into this Mortgage pursuant to which all secured debt of the Mortgagor hereunder shall be secured on parity;

Whereas, this Mortgage restates and consolidates the Original Mortgage while preserving the priority of the Lien under the Original Mortgage securing the payment of Mortgagor's outstanding obligations secured under the Original Mortgage, which indebtedness is described more particularly by listing the Original Notes in Schedule "A" hereto; and

Whereas, all acts necessary to make this Mortgage a valid and binding legal instrument for the security of such notes and obligations, subject to the terms of this Mortgage, have been in all respects duly authorized;

Now, Therefore, This Mortgage Witnesseth: That to secure the payment of the principal of (and premium, if any) and interest on the Original Notes and all Notes issued hereunder according to their tenor and effect, and the performance of all provisions therein and herein contained, and in consideration of the covenants herein contained and the purchase or guarantee of Notes by the guarantors or holders thereof, the Mortgagor has mortgaged, pledged and granted a

continuing security interest in, and by these presents does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, hypothecate, pledge, set over and confirm, pledge, and grant a continuing security interest in for the purposes hereinafter expressed [other language may be required under various state laws], unto the Mortgagees all property, rights, privileges and franchises of the Mortgagor of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein or any other kind or nature, except any Excepted Property, now owned or hereafter acquired by the Mortgagor (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including (without limitation) all and singular the following:

Granting Clause First

A. all of those fee and leasehold interests in real property set forth in Schedule "B" hereto, subject in each case to those matters set forth in such Schedule;

B. all of the Mortgagor's interest in fixtures, easements, permits, licenses and rights-of-way comprising real property, and all other interests in real property, comprising any portion of the System (as herein defined) located in the Counties listed in Schedule "B" hereto;

C. all right, title and interest of the Mortgagor in and to those contracts of the Mortgagor (i) relating to the ownership, operation or maintenance of any generation, transmission or distribution facility owned, whether solely or jointly, by the Mortgagor, (ii) for the purchase of electric power and energy by the Mortgagor and having an original term in excess of 3 years, (iii) for the sale of electric power and energy by the Mortgagor and having an original term in excess of 3 years, and (iv) for the transmission of electric power and energy by or on behalf of the Mortgagor and having an original term in excess of 3 years, including in respect of any of the foregoing, any amendments, supplements and replacements thereto;

D. all the property, rights, privileges, allowances and franchises particularly described in the annexed Schedule "B" are hereby made a part of, and deemed to be described in, this Granting Clause as fully as if set forth in this Granting Clause at length; and

Also All Other Property, real estate, lands, easements, servitudes, licenses, permits, allowances, consents, franchises, privileges, rights of way and other rights in or relating to real estate or the occupancy of the same; all power sites, storage rights, water rights, water locations, water appropriations, ditches, flumes, reservoirs, reservoir sites, canals, raceways, waterways, dams, dam sites, aqueducts, and all other rights or means for appropriating, conveying, storing and supplying water; all rights of way and roads; all plants for the generation of electric and other forms of energy (whether now known or hereafter developed) by steam, water, sunlight, chemical processes and/or (without limitation) all other sources of power (whether now known or hereafter

developed); all power houses, gas plants, street lighting systems, standards and other equipment incidental thereto; all telephone, radio, television and other communications, image and data transmission systems, air conditioning systems and equipment incidental thereto, water wheels, waterworks, water systems, steam and hot water plants, substations, lines, service and supply systems, bridges, culverts, tracks, ice or refrigeration plants and equipment, offices, buildings and other structures and the equipment thereto all machinery, engines, boilers, dynamos, turbines, electric, gas and other machines, prime movers, regulators, meters, transformers, generators (including, but not limited to, engine-driven generators and turbogenerator units), motors, electrical, gas and mechanical appliances, conduits, cables, water, steam, gas or other pipes, gas mains and pipes, service pipes, fittings, valves and connections, pole and transmission lines, towers, overhead conductors and devices, underground conduits, underground conductors and devices, wires, cables, tools, implements, apparatus, storage battery equipment, and all other fixtures and personalty; all municipal and other franchises, consents, certificates or permits; all emissions allowances; all lines for the transmission and distribution of electric current and other forms of energy, gas, steam, water or communications, images and data for any purpose including towers, poles, wires, cables, pipes, conduits, ducts and all apparatus for use in connection therewith, and (except as hereinbefore or hereinafter expressly excepted) all the right, title and interest of the Mortgagor in and to all other property of any kind or nature appertaining to and/or used and/or occupied and/or employed in connection with any property hereinbefore described;

Granting Clause Second

All other property, real, personal or mixed, of whatever kind and description and wheresoever situated, including without limitation goods, accounts, money held in a trust account pursuant hereto or to a Loan Agreement, and general intangibles now owned or which may be hereafter acquired by the Mortgagor, but excluding Excepted Property, now owned or which may be hereafter acquired by the Mortgagor, it being the intention hereof that all property, rights, privileges, allowances and franchisees now owned by the Mortgagor or acquired by the Mortgagor after the date hereof (other than Excepted Property) shall be as fully embraced within and subjected to the lien hereof as if such property were specifically described herein.

Granting Clause Third

Also any Excepted Property that may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien hereof by the Mortgagor or by anyone in its behalf; and any Mortgagee is hereby authorized to receive the same at any time as additional security hereunder for the benefit of all the Mortgagees. Such subjection to the lien hereof of any Excepted Property as additional security may be made subject to any reservations, limitations or conditions

which shall be set forth in a written instrument executed by the Mortgagor or the person so acting in its behalf or by such Mortgagee respecting the use and disposition of such property or the proceeds thereof.

Granting Clause Fourth

Together with (subject to the rights of the Mortgagor set forth on Section 5.01) all and singular the tenements, hereditaments and appurtenances belonging or in anywise appertaining to the aforesaid property or any part thereof, with the reversion and reversions, remainder and remainders and all the tolls, earnings, rents, issues, profits, revenues and other income, products and proceeds of the property subjected or required to be subjected to the lien of this Mortgage, and all other property of any nature appertaining to any of the plants, systems, business or operations of the Mortgagor, whether or not affixed to the realty, used in the operation of any of the premises or plants or the System, or otherwise, which are now owned or acquired by the Mortgagor, and all the estate, right, title and interest of every nature whatsoever, at law as well as in equity, of the Mortgagor in and to the same and every part thereof (other than Excepted Property with respect to any of the foregoing).

Excepted Property

There is, however, expressly excepted and excluded from the lien and operation of this Mortgage the following described property of the Mortgagor, now owned or hereafter acquired (herein sometimes referred to as "Excepted Property"):

A. all cash on hand or in banks (excluding amounts deposited or required to be deposited in a trust account pursuant to this Mortgage), choses in action and judgments, contracts and contract rights (except to the extent set forth in Granting Clause First), shares of stock (including without limitation any interest of the Mortgagor in the National Rural Utilities Cooperative Finance Corporation and in the National Bank for Cooperatives), bonds, notes, repurchase agreements, evidences of indebtedness and other securities, bills, patents, patent licenses and other patent rights, patent applications, trade names and trademarks, other than any securities pledged under this Mortgage, and any other property referred to in this Subdivision which is specifically described in Granting Clause First or is by the express provisions of the Mortgage subjected or required to be subjected to the lien hereof;

B. all rolling stock (except mobile substations), automobiles, buses, trucks, truck cranes, tractors, trailers and similar vehicles and movable equipment, and all tools, accessories and supplies used in connection with any of the foregoing;

C. all vessels, boats, ships, barges and other marine equipment, all airplanes, airplane engines and other flight equipment, and all tools, accessories and supplies used in connection with any of the foregoing;

D. all office furniture, equipment and supplies, including (without limitation) all data processing, accounting and other computer equipment, software and supplies;

E. all leasehold interests for office purposes;

F. all leasehold interests of the Mortgagor under leases for an original term (including any period for which the Mortgagor shall have a right of renewal) of less than five (5) years;

G. all timber and crops (both growing and harvested) and all coal, ore, gas, oil and other minerals (both in place or severed);

H. all electric energy, gas, steam, water, ice, and other materials, forms of energy or products generated, manufactured, produced, or purchased by the Mortgagor for sale, distribution or use in the ordinary course of its business;

I. the last day of the term of each leasehold estate (oral or written) and any agreement therefor, now or hereafter enjoyed by the Mortgagor and whether falling within a general or specific description of property herein; *Provided, However*, that the Mortgagor covenants and agrees that it will hold each such last day in trust for the use and benefit of all of the Mortgagees and Noteholders and that it will dispose of each such last day from time to time in accordance with such written order as the Mortgagee in its discretion may give;

J. all permits, licenses, franchises, contracts, agreements, contract rights and other rights not specifically subjected or required to be subjected to the lien hereof by the express provisions of this Mortgage, whether now owned or hereafter acquired by the Mortgagor, which by their terms or by reason of applicable law would become void or voidable if mortgaged or pledged hereunder by the Mortgagor or which cannot be granted, conveyed, mortgaged, transferred or assigned by this Mortgage without the consent of other parties whose consent is not secured, or without subjecting any Mortgagee to a liability not otherwise contemplated by the provisions of this Mortgage, or which otherwise may not be, hereby lawfully and effectively granted, conveyed, mortgaged, transferred and assigned by the Mortgagor; and

K. the property identified in Schedule "C" hereto.

Provided, However, that (i) if, upon the occurrence of an Event of Default, any Mortgagee, or any receiver appointed pursuant to statutory provision or order of court, shall have entered into possession of all or substantially all of the Mortgaged Property, all the Excepted Property described or referred to in the foregoing Subdivisions A through H, inclusive, then owned or thereafter acquired by the Mortgagor shall immediately, and, in the case of any Excepted Property described or referred to in Subdivisions I through J, inclusive, upon demand of any Mortgagee or such receiver, become subject to the lien hereof to the extent permitted by law, and any Mortgagee or such receiver may, to the extent permitted by law, at the same time likewise take possession thereof, and (ii) whenever all Events of Default shall have been cured and the possession of all or substantially all of the Mortgaged Property shall have been restored to the Mortgagor, such Excepted Property shall again be excepted and excluded from the lien hereof to the extent and otherwise as hereinabove set forth.

However, pursuant to Granting Clause Third, the Mortgagor may subject to the lien

of this Mortgage any Excepted Property, whereupon the same shall cease to be Excepted Property.

Habendum

To Have and To Hold all said property, rights, privileges and franchises of every kind and description, real, personal or mixed, hereby and hereafter (by supplemental mortgage or otherwise) granted, bargained, sold, aliened, remised, released, conveyed, assigned, transferred, mortgaged, encumbered, hypothecated, pledged, setover, confirmed, or subjected to a continuing security interest as aforesaid, together with all the appurtenances thereto appertaining (said properties, rights, privileges and franchises, including any cash and securities hereafter deposited with any Mortgagee (other than any such cash which is specifically stated herein not to be deemed part of the Mortgaged Property)), being herein collectively called the "Mortgaged Property" unto the Mortgagees and the respective assigns of the Mortgagees forever, to secure equally and ratably the payment of the principal of (and premium, if any) and interest on the Notes, according to their terms, without preference, priority or distinction as to interest or principal (except as otherwise specifically provided herein) or as to lien or otherwise of any Note over any other Note by reason of the priority in time of the execution, delivery or maturity thereof or of the assignment or negotiation thereof, or otherwise, and to secure the due performance of all of the covenants, agreements and provisions herein and in the Loan Agreements contained, and for the uses and purposes and upon the terms, conditions, provisos and agreements hereinafter expressed and declared.

Subject, However, to Permitted Encumbrances (as defined in Section 1.01).

Article I

Definitions & Other Provisions of General Application

Section 1.01. *Definitions.* In addition to the terms defined elsewhere in this Mortgage, the terms defined in this Article I shall have the meanings specified herein and under the UCC, unless the context clearly requires otherwise. The terms defined herein include the plural as well as the singular and the singular as well as the plural.

Accounting Requirements shall mean the requirements of any system of accounts prescribed by REA so long as the Government is the holder, insurer or guarantor of any Notes, or, in the absence thereof, the requirements of generally accepted accounting principles applicable to businesses similar to that of the Mortgagor.

Additional Notes shall mean any Notes issued by the Mortgagor to the Government or any other lender pursuant to Article II of this Mortgage including any refunding, renewal, or substitute Notes which may from time to time be executed and delivered by the Mortgagor pursuant to the terms of Article II.

Board shall mean either the Board of Directors or the Board of Trustees, as the case may be, of the Mortgagor.

Business Day shall mean any day that the Government is open for business.

Debt Service Coverage Ratio ("DSC") shall mean the ratio determined as follows: for each calendar year add (i) Patronage Capital or Margins of the Mortgagor, after deducting generation and transmission capital credits and other capital credits, (ii) Interest Expense (as computed in accordance with the principles set forth in the definition of Times Interest Earned Ratio herein) of the Mortgagor and (iii) Depreciation and Amortization Expense of the Mortgagor, and divide the total so obtained by an amount equal to the sum of all payments of principal and interest required to be made on account of Total Long-Term Debt during such calendar year increasing said sum by any addition to interest expense on account of Restricted Rentals as computed with respect to the Times Interest Earned Ratio herein; *provided, however,* that in the event that any Long-Term Debt (being any amount included in Total Long-Term Debt computed as provided above) has been refinanced during such year the payments of principal and interest required to be made during such year on account of such Long-Term Debt shall be based (in lieu of actual payments required to be made on such refinanced Debt) upon the larger of (i) an annualization of the payments required to be made with respect to the refinancing debt during the portion of such year such refinancing debt is outstanding or (ii) the payment of principal and interest required to be made during the following year on account of such refinancing debt.

Depreciation and Amortization Expense shall mean an amount constituting the depreciation and amortization of the Mortgagor as computed pursuant to Accounting Requirements.

Distributions shall have the meaning specified in Section 3.16 hereof.

Electric System shall mean, and shall be broadly construed to encompass and include, all of the Mortgagor's interests in all electric production, transmission, distribution, conservation, load management, general plant and other related facilities, equipment or property and in any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, nuclear or other fuel of any kind or in any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the Mortgagor's generating plants, now existing or hereafter acquired by lease, contract, purchase or otherwise or constructed by the Mortgagor, including any interest or participation of the Mortgagor in any such facilities or any rights to the output or capacity thereof, together with all additions, betterments, extensions and improvements to such Electric System or any part thereof hereafter made and together with all lands, easements and rights-of-way of the Mortgagor and all other works, property or structures of the Mortgagor and contract rights and other tangible and intangible assets of the Mortgagor used or useful in connection with or related to such Electric System, including without limitation a contract right or other contractual arrangement referred to in Granting Clause First, Subclause (C).

Environmental Law and Environmental Laws shall mean all federal, state, and local

laws, regulations, and requirements related to protection of human health or the environment, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the Clean Air Act (42 U.S.C. 7401 *et seq.*), and any amendments and implementing regulations of such acts.

Equity shall mean the aggregate of all of the Mortgagor's equities and margins computed pursuant to Accounting Requirements, but excluding any regulatory created assets.

Event of Default shall have the meaning specified in Section 4.01 hereof.

Excepted Property shall have the meaning stated in the Granting Clauses.

Government shall mean the United States of America acting by and through the Administrator of REA and shall include its successors and assigns.

Government Notes shall mean the Original Notes, and any Additional Notes, issued by the Mortgagor to the Government, or guaranteed or insured as to payment by the Government.

Independent shall mean when used with respect to any specified person or entity means such a person or entity who (1) is in fact independent, (2) does not have any direct financial interest or any material indirect financial interest in the Mortgagor or in any affiliate of the Mortgagor and (3) is not connected with the Mortgagor as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

Interest Expense shall mean an amount constituting the interest expense of the Mortgagor as computed pursuant to Accounting Requirements.

Lien shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of set off, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the UCC.

Loan Agreement shall mean any agreement executed by and between the Mortgagor and the Government or any other lender in connection with the execution and delivery of any Notes secured hereby.

Long-Term Debt shall mean any amount included in Total Long-Term Debt pursuant to Accounting Requirements.

Long-Term Lease shall mean a lease having an unexpired term (taking into account terms of renewal at the option of the lessor, whether or not such lease has previously been renewed) of more than 12 months.

Margins shall mean the sum of amounts recorded as operating margins and non-operating margins as computed in accordance with Accounting Requirements.

Maximum Debt Limit, if any, shall mean the amount more particularly described in Schedule "A" hereof.

Mortgage shall mean this Restated Mortgage and Security Agreement, including any amendments or supplements thereto from time to time.

Mortgageable Property shall mean all Property Additions, and all property owned by the Mortgagor on the date of this instrument which would constitute Property Additions if acquired after that date, but Mortgageable Property shall not include any Excepted Property.

Mortgaged Property shall have the meaning specified as stated in the Habendum to the Granting Clauses.

Mortgagee or Mortgagees shall mean the Government, _____ (the supplemental lender), their successors and assigns as well as any and all other lenders pursuant to Article II of this Mortgage that enter into a supplemental mortgage in accordance with Section 2.04 of Article II hereof, their successors and assigns. The term "Mortgagee" is used herein collectively except where the context clearly indicates otherwise.

Net Utility Plant shall mean the amount constituting the total utility plant of the Mortgagor less depreciation computed in accordance with Accounting Requirements.

Note or Notes shall mean one or more of the Government Notes, and any other Notes which may, from time to time, be secured under this Mortgage.

Noteholder or Noteholders shall mean one or more of the holders of Notes secured by this Mortgage; PROVIDED, however, that in the case of any Notes that have been guaranteed or insured as to payment by REA, as to such Notes Noteholder or Noteholders shall mean REA, exclusively, regardless of whether such notes are in the possession of REA.

Original Mortgage means the instrument(s) identified as such in Schedule "A" hereof.

Original Notes shall mean the Notes listed on Schedule "A" hereto as such, such Notes being instruments evidencing outstanding indebtedness of the Mortgagor (i) to the Government (including indebtedness which has been issued by the Mortgagor to a third party and guaranteed or insured as to payment by the Government) and (ii) to each other Mortgagee on the date of this Mortgage.

Outstanding Notes shall mean as of the date of determination, (i) all Notes theretofore issued, executed and delivered to any Mortgagee and (ii) any Notes guaranteed or insured as to payment by the Government, except (a) Notes referred to in clause (i) or (ii) for which the principal and interest have been fully paid and which have been canceled by the Noteholder, and (b) Notes the payment for which has been provided for pursuant to Section 5.03.

Permitted Debt shall have the meaning specified in Section 3.08.

Permitted Encumbrances shall mean:

(1) as to the property specifically described in Granting Clause First, the restrictions, exceptions, reservations, conditions, limitations, interests and other matters which are set forth or referred to in such descriptions and each of which fits one or more of the clauses of this definition, PROVIDED, such matters do not in the aggregate materially detract from the value of the Mortgaged Property taken as a whole and do not materially impair the use of such property for the purposes for which it is held by the Mortgagor;

(2) liens for taxes, assessments and other governmental charges which are not delinquent;

(3) liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(4) mechanics', workmen's, repairmen's, materialmen's, warehousemen's and carriers' liens and other similar liens arising in the ordinary course of business for charges which are not delinquent, or which are being contested in good faith and have not proceeded to judgment; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(5) liens in respect of judgments or awards with respect to which the Mortgagor shall in good faith currently be prosecuting an appeal or proceedings for review and with respect to which the Mortgagor shall have secured a stay of execution pending such appeal or proceedings for review; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(6) easements and similar rights granted by the Mortgagor over or in respect of any Mortgaged Property, PROVIDED that in the opinion of the Board or a duly authorized officer of the Mortgagor such grant will not impair the usefulness of such property in the conduct of the Mortgagor's business and will not be prejudicial to the interests of the Mortgagees, and similar rights granted by any predecessor in title of the Mortgagor;

(7) easements, leases, reservations or other rights of others in any property of the Mortgagor for streets, roads, bridges, pipes, pipe lines, railroads, electric transmission and distribution lines, telegraph and telephone lines, the removal of oil, gas, coal or other minerals and other similar purposes, flood rights, river control and development rights, sewage and drainage rights, restrictions against pollution and zoning laws and minor defects and irregularities in the record evidence of title, PROVIDED that such easements, leases, reservations, rights, restrictions, laws, defects and irregularities do not materially affect the marketability of title to such property and do not in the aggregate materially impair the use of the Mortgaged Property taken as a whole for the purposes for which it is held by the Mortgagor;

(8) liens upon lands over which easements or rights of way are acquired by the Mortgagor for any of the purposes specified in Clause (7) of this definition, securing indebtedness neither created, assumed nor guaranteed by the Mortgagor nor on account of which it customarily pays interest, which liens do not materially impair the use of such easements or rights of way for the purposes for which they are held by the Mortgagor;

(9) leases existing at the date of this instrument affecting property owned by the Mortgagor at said date which have been previously disclosed to the Mortgagees in writing and leases for a term of not more than two years (including any extensions or renewals) affecting property acquired by the Mortgagor after said date;

(10) terminable or short term leases or permits, or occupancy, which leases or

permits expressly grant to the Mortgagor the right to terminate them at any time on not more than six months' notice and which occupancy does not interfere with the operation of the business of the Mortgagor;

(11) any lien or privilege vested in any lessor, licensor or permittor for rent to become due or for other obligations or acts to be performed, the payment of which rent or performance of which other obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;

(12) liens or privileges of any employees of the Mortgagor for salary or wages earned but not yet payable;

(13) the burdens of any law or governmental regulation or permit requiring the Mortgagor to maintain certain facilities or perform certain acts as a condition of its occupancy of or interference with any public lands or any river or stream or navigable waters;

(14) any irregularities in or deficiencies of title to any rights-of-way for pipe lines, telephone lines, telegraph lines, power lines or appurtenances thereto, or other improvements thereon, and to any real estate used or to be used primarily for right-of-way purposes, PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor shall have obtained from the apparent owner of the lands or estates therein covered by any such right-of-way a sufficient right, by the terms of the instrument granting such right-of-way, to the use thereof for the construction, operation or maintenance of the lines, appurtenances or improvements for which the same are used or are to be used, or PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor has power under eminent domain, or similar statutes, to remove such irregularities or deficiencies;

(15) rights reserved to, or vested in, any municipality or governmental or other public authority to control or regulate any property of the Mortgagor, or to use such property in any manner, which rights do not materially impair the use of such property, for the purposes for which it is held by the Mortgagor;

(16) any obligations or duties, affecting the property of the Mortgagor, to any municipality or governmental or other public authority with respect to any franchise, grant, license or permit;

(17) any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Mortgagor upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Mortgagor;

(18) as to properties of other operating electric companies acquired after the date of this Mortgage by the Mortgagor as permitted by Section 3.10 hereof, reservations and other matters as to which such properties may be subject as more fully set forth in such Section;

(19) any lien required by law or governmental regulations as a condition to

the transaction of any business or the exercise of any privilege or license, or to enable the Mortgagor to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

(20) liens arising out of any defeased mortgage or indenture of the Mortgagor; or

(21) the undivided interest of other owners, and liens on such undivided interests, in property owned jointly with the Mortgagor as well as the rights of such owners to such property pursuant to the ownership contracts.

(22) any lien or privilege vested in any lessor, licensor or permit for rent to become due or for other obligations or acts to be performed, the payment of which rent or the performance of which other obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;

(23) purchase money mortgages permitted by Section 3.08; and

(24) the Original Mortgage.

Property Additions shall mean property as to which the Mortgagor shall provide Title Evidence and which shall be (or, if retired, shall have been) subject to the lien of this Mortgage, which shall be properly chargeable to the Mortgagor's fixed plant accounts under Accounting Requirements (including property acquired to replace property retired and credited to such accounts) and which shall be:

(1) acquired (including acquisition by merger, consolidation, conveyance or transfer) by the Mortgagor after the date hereof, including property in the process of construction, insofar as not reflected on the books of the Mortgagor with respect to periods on or prior to the date hereof, and

(2) used or useful in the business of the Mortgagor conducted with the properties described in the Granting Clauses of this Mortgage, even though separate from and not physically connected with such properties.

"Property Additions" shall also include:

(3) easements and rights-of-way that are useful for the conduct of the business of the Mortgagor, and

(4) property located or constructed on, over or under public highways, rivers or other public property if the Mortgagor has the lawful right under permits, licenses or franchises granted by a governmental body having jurisdiction in the premises or by the law of the State in which such property is located to maintain and operate such property for an unlimited, indeterminate or indefinite period or for the period, if any, specified in such permit, license or franchise or law and to remove such property at the expiration of the period covered by such permit, license or franchise or law, or if the terms of such permit, license, franchise or law require any public authority having the right to take over such property to pay fair consideration therefor.

"Property Additions" shall not include:

(a) good will, going concern value, contracts, agreements, franchises, licenses or permits, whether acquired as such, separate and distinct from the property operated in connection therewith, or acquired as an incident thereto, or

(b) any shares of stock or indebtedness or certificates or evidences of interest therein or other securities, or

(c) any plant or system or other property in which the Mortgagor shall acquire only a leasehold interest, or any betterments, extensions, improvements or additions (other than movable physical personal property which the Mortgagor has the right to remove), of, upon or to any plant or system or other property in which the Mortgagor shall own only a leasehold interest unless (i) the term of the leasehold interest in the property to which such betterment, extension, improvement or addition relates shall extend for at least 75% of the useful life of such betterment, extension, improvement or addition and (ii) the lessor shall have agreed to give the Mortgagee reasonable notice and opportunity to cure any default by the Mortgagor under such lease and not to disturb any Mortgagee's possession of such leasehold estate in the event any Mortgagee succeeds to the Mortgagor's interest in such lease upon the any Mortgagee's exercise of any remedies under this Mortgage so long as there is no default in the performance of the tenant's covenants contained therein, or

(d) any property of the Mortgagor subject to the Permitted Encumbrance described in clause (23) of the definition thereof.

REA shall mean the Rural Electrification Administration of the United States Department of Agriculture or if at any time after the execution of this Mortgage REA is not existing and performing the duties of administering a program of rural electrification as currently assigned to it, then the entity performing such duties at such time.

Restricted Rentals shall mean all rentals required to be paid under finance leases and charged to income, exclusive of any amounts paid under any such lease (whether or not designated therein as rental or additional rental) for maintenance or repairs, insurance, taxes, assessments, water rates or similar charges. For the purpose of this definition the term "finance lease" shall mean any lease having a rental term (including the term for which such lease may be renewed or extended at the option of the lessee) in excess of 3 years and covering property having an initial cost in excess of \$250,000 other than aircraft, ships, barges, automobiles, trucks, trailers, rolling stock and vehicles; office, garage and warehouse space; office equipment and computers.

Security Interest shall mean any assignment, transfer, mortgage, hypothecation or pledge.

Subordinated Indebtedness shall mean secured indebtedness of the Mortgagor, payment of which shall be subordinated to the prior payment of the Notes in accordance with the provisions of Section 3.08 hereof by subordination agreement in form and substance satisfactory to each Mortgagee which approval will not be unreasonably withheld.

Supplemental Mortgage shall mean an instrument of the type described in Section 2.04.

Times Interest Earned Ratio ("TIER") shall mean the ratio determined as follows: for each calendar year: add (i) Patronage Capital or Margins of the Mortgagor after deducting generation and transmission capital credits and other capital credits, (ii) Interest Expense on Total Long-Term Debt of the Mortgagor and (iii) taxes paid, if any, based upon income during the year and divide the total so obtained by Interest Expense on Total Long-Term Debt of the Mortgagor, provided, however, that in computing Interest Expense on Total Long-Term Debt, there shall be added, to the extent not otherwise included, an amount equal to 33 1/3% of the excess of Restricted Rentals paid by the Mortgagor over 2% of the Mortgagor's Equities and Margins.

Title Evidence, with respect to any property, shall mean

(1) an opinion of counsel to the effect that the Mortgagor has title, whether fairly deducible of record or based upon prescriptive rights (or, as to personal property, based on such evidence as counsel shall determine to be sufficient), as in the opinion of counsel is satisfactory for the use thereof in connection with the operations of the Mortgagor, and counsel in giving such opinion may disregard any irregularity or deficiency in the record evidence of title which, in the opinion of such counsel, can be cured by proceedings within the power of the Mortgagor or does not substantially impair the usefulness of such property for the purpose of the Mortgagor and may base such opinion upon his own investigation or upon affidavits, certificates, abstracts of title, statements or investigations made by persons in whom such counsel has confidence or upon examination of a certificate or guaranty of title or policy of title insurance in which he has confidence; or

(2) a mortgagee's policy of title insurance in the amount of the cost to the Mortgagor of the land included in Property Additions, as such cost is determined by the Mortgagor, issued in favor of the Mortgagees by an entity authorized to insure title in the states where the Mortgaged Property is located, showing the Mortgagor as the owner of the subject property and insuring the lien of this Mortgage.

Total Assets shall mean an amount constituting total assets of the Mortgagor as computed pursuant to Accounting Requirements, but excluding any regulatory created assets.

Total Long-Term Debt shall mean an amount constituting the long-term debt of the Mortgagor as computed pursuant to Accounting Requirements.

Total Utility Plant shall mean the amount constituting the total utility plant of the Mortgagor computed in accordance with Accounting Requirements.

Uniform Commercial Code or UCC shall mean the UCC of the state referred to in Section 1.04, and if Mortgaged Property is located in a state other than that state, then as to such Mortgaged Property UCC refers to the UCC in effect in the state where such property is located.

Utility System shall mean the Electric System and all of the Mortgagor's interest in

but not modify the substance of the shell or the master mortgage if it expects to take advantage of § 2.04.]

Article III

Particular Covenants of the Mortgagor

Section 3.01. Payment of Debt Service on Notes: The Mortgagor will duly and punctually pay the principal, premium, if any, and interest on the Notes in accordance with the terms of the Notes, the Loan Contracts, this Mortgage and any Supplemental Mortgage authorizing such Notes.

Section 3.02. Warranty of Title: At the time of the execution and delivery of this instrument, the Mortgagor has good and marketable title in fee simple to the real property specifically described in Granting Clause First as owned in fee and good and marketable title to the interests in real property specifically described in Granting Clause First, subject to no mortgage, lien, charge or encumbrance except as stated therein, and has full power and lawful authority to grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, pledge, set over and confirm said real property and interests in real property in the manner and form aforesaid.

The Mortgagor lawfully owns and is possessed of the other property specifically described in Granting Clause First, subject to no mortgage, lien, charge or encumbrance except as stated therein, and has full power and lawful authority to mortgage, assign, transfer, deliver, pledge and grant a continuing security interest in said property in the manner and form aforesaid.

The Mortgagor hereby does and will forever warrant and defend the title to the property specifically described in Granting Clause First against the claims and demands of all persons whomsoever.

Section 3.03. After-Acquired Property; Further Assurances; Recording: All property of every kind, other than Excepted Property, acquired by the Mortgagor after the date hereof, shall, immediately upon the acquisition thereof by the Mortgagor, and without any further mortgage, conveyance or assignment, become subject to the lien of this Mortgage; Subject, However, to Permitted Encumbrances and the exceptions, if any, to which all of the Mortgagees consent. Nevertheless, the Mortgagor will do, execute, acknowledge and deliver all and every such further acts, conveyances, mortgages, financing statements and assurances as any Mortgagee shall require for accomplishing the purposes of this Mortgage.

The Mortgagor will cause this Mortgage and all Supplemental Mortgages and other instruments of further assurance, including all financing statements covering security interests in personal property, to be promptly recorded, registered and filed, and will execute and file such financing statements and cause to be issued and filed such continuation statements, all in such manner and in such places as may be required by law fully to preserve and protect the rights of all of the Mortgagees and Noteholders hereunder to all property comprising the Mortgaged Property. The Mortgagor will furnish to each Mortgagee:

A. Promptly after the execution and delivery of this instrument and of each Supplemental Mortgage or other instrument of further assurance, an Opinion of Counsel stating that, in the opinion of such Counsel, this instrument and all such Supplemental Mortgages and other instruments of further assurance have been properly recorded, registered and filed to the extent necessary to make effective the lien intended to be created by this Mortgage, and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary fully to preserve and protect the rights of all of the Mortgagees and Noteholders hereunder, or stating that, in the opinion of such Counsel, no such action is necessary to make the lien effective; and

B. Within 30 days after _____ in each year beginning with the year _____, an Opinion of Counsel, dated as of such date, either stating that, in the opinion of such Counsel, such action has been taken with respect to the recording, registering, filing, re-recording, re-registering and re-filing of this instrument and of all Supplemental Mortgages, financing statements, continuation statements or other instruments of further assurances as is necessary to maintain the lien of this Mortgage (including the lien on any property acquired by the Mortgagor after the execution and delivery of this instrument and owned by the Mortgagor at the end of preceding calendar year) and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary to fully preserve and protect the rights of all of the Mortgagees and Noteholders hereunder, or stating that, in the opinion of such Counsel, no such action is necessary to maintain such lien.

Section 3.04. Environmental Obligations: (a) The Mortgagor shall, with respect to all facilities which may be part of the Mortgaged Property, comply with all Environmental Laws.

(b) The Mortgagor shall defend, indemnify, and hold harmless each Mortgagee, its successors and assigns, from and against any and all liabilities, losses, damages, costs, expenses (including but not limited to reasonable attorneys' fees and expenses), causes of actions, administrative proceedings, suits, claims, demands, or judgments of any nature arising out of or in connection with any matter related to the Mortgage Property and any Environmental Law, including but not limited to:

(1) The past, present, or future presence of any hazardous substance, contaminant, pollutant, or hazardous waste on or related to the Mortgaged Property;

(2) Any failure at any time by the undersigned to comply with the terms of any order related to the Mortgaged Property and issued by any federal, state, or municipal department or agency (other than REA) exercising its authority to enforce any Environmental Law; and

(3) Any lien or claim imposed under any Environmental Law related to clause (1).

(c) Within 3 (three) days after receiving knowledge of any liability, losses, damages, costs, expenses (including but not limited to reasonable attorneys' fees and expenses), cause of action, administrative proceeding, suit, claim, demand, judgment, lien, reportable event including but not limited to the release of a hazardous substance, or potential or actual violation or non-compliance arising out of or in connection with the Mortgaged Property and any Environmental Law, the Mortgagor shall provide each Mortgagee with written notice of such matter. With respect to any matter upon which it has provided such notice, the Mortgagor shall immediately take any and all appropriate actions to remedy, cure, defend, or otherwise affirmatively respond to the matter.

Section 3.05. Payment of Taxes: The Mortgagor will pay or cause to be paid as they become due and payable all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Mortgaged Property or any part thereof or upon any income therefrom, and also (to the extent that such payment will not be contrary to any applicable laws) all taxes, assessments and other governmental charges lawfully levied, assessed or imposed upon the lien or interest of the Noteholders or of the Mortgagees in the Mortgaged Property, so that (to the extent aforesaid) the lien of this Mortgage shall at all times be wholly preserved at the cost of the Mortgagor and without expense to the Mortgagees or the Noteholders; PROVIDED, HOWEVER, that the Mortgagor shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and the Mortgagor shall have established and shall maintain adequate reserves on its books for the payment of the same.

Section 3.06. Authority to Execute and Deliver Notes, Loan Agreements and Mortgage; All Action Taken; Enforceable Obligations: The Mortgagor is authorized under its articles of incorporation and bylaws (or code of regulations) and all applicable laws and by corporate action to execute and deliver the Notes, any Additional Notes, the Loan Agreements and this Mortgage. The Notes, the Loan Agreements and this Mortgage are, and any Additional Notes and Loan Agreements when executed and delivered will be, the valid and enforceable obligations of the Mortgagor in accordance with their respective terms.

Section 3.07. Restrictions On Further Encumbrances on Property: Except to secure Additional Notes, the Mortgagor will not, without the prior written consent of each Mortgagee, create or incur or suffer or permit to be created or incurred or to exist any Lien, charge, assignment, pledge, mortgage on any of the Mortgaged Property inferior to, prior to, or on a parity with the Lien of this Mortgage except for the Permitted Encumbrances. Subject to the provisions of Section 3.08, or unless approved by each of the Mortgagees, the Mortgagor will purchase all materials, equipment and replacements to

be incorporated in or used in connection with the Mortgaged Property outright and not subject to any conditional sales agreement, chattel mortgage, bailment, lease or other agreement reserving to the seller any right, title or Lien.

Section 3.08. Restrictions On Additional Permitted Debt: The Mortgagor shall not incur, assume, guarantee or otherwise become liable in respect of any debt for borrowed money and Restricted Rentals (including Subordinated Debt) other than the following: ("Permitted Debt")

(1) Additional Notes issued in compliance with Article II hereof;

(2) Purchase money indebtedness in non-Utility System property, in an amount not exceeding 10% of Net Utility Plant;

(3) Restricted Rentals in an amount not to exceed 5% of Equity during any 12 consecutive calendar month period;

(4) Unsecured lease obligations incurred in the ordinary course of business except Restricted Rentals;

(5) Unsecured indebtedness for borrowed money in an aggregate amount not exceeding 15% of Net Utility Plant;

(6) Debt represented by dividends declared but not paid;

(7) Subordinated Indebtedness approved by each Mortgagee; and

(8) Indebtedness of other operating electric companies hereafter acquired by the Mortgagor not exceeding 90% of the Net Utility Plant of the acquired company.

Provided, However, that the Mortgagor may incur Permitted Debt without the consent of the Mortgagee only so long as there exists no Event of Default hereunder and there has been no continuing occurrence which with the passage of time and giving of notice could become an Event of Default hereunder.

Provided, Further, by executing this Mortgage any consent of REA that the Mortgagor would otherwise be required to obtain under this Section is hereby deemed to be given or waived by REA by operation of law to the extent, but only to the extent, that to impose such a requirement of REA consent would clearly violate existing federal laws or government regulations.

Section 3.09. Preservation of Corporate Existence and Franchises: The Mortgagor will, so long as any Outstanding Notes exist, take or cause to be taken all such action as from time to time may be necessary to preserve its corporate existence and to preserve and renew all franchises, rights of way, easements, permits, and licenses now or hereafter to be granted or upon it conferred the loss of which would have a material adverse affect on the Mortgagor's financial condition or business. The Mortgagor will comply with all laws, ordinances, regulations, orders, decrees and other legal requirements applicable to it or its property the violation of which could have a material adverse affect on the Mortgagor's financial condition or business.

Section 3.10 Limitations on Consolidations and Mergers: The Mortgagor shall not consolidate or merge with any other corporation or convey or transfer the Mortgaged Property substantially as an entirety unless: (1) Such consolidation, merger, conveyance or transfer shall be on

such terms as shall fully preserve the lien and security hereof and the rights and powers of the Mortgagees hereunder; (2) the entity formed by such consolidation or with which the Mortgagor is merged or the corporation which acquires by conveyance or transfer the Mortgaged Property substantially as an entirety shall execute and deliver to the Mortgagees a mortgage supplemental hereto in recordable form and containing an assumption by such successor entity of the due and punctual payment of the principal of and interest on all of the Outstanding Notes and the performance and observance of every covenant and condition of this Mortgage; (3) immediately after giving effect to such transaction, no default hereunder shall have occurred and be continuing; (4) the Mortgagor shall have delivered to the Mortgagees a certificate of its general manager or other officer and an opinion of counsel for the Mortgagor, each of which shall state that such consolidation, merger, conveyance or transfer and such supplemental mortgage comply with this subsection and that all conditions precedent herein provided for relating to such transaction have been complied with; and (5) the entity formed by such consolidation or with which the Mortgagor is merged or the corporation which acquires by conveyance or transfer the Mortgaged Property substantially as an entirety shall be an entity—(A) having Equity equal to at least 27% of its Total Assets on a pro forma basis after giving effect to such transaction, (B) having a pro forma TIER of not less than 1.35 for the preceding calendar year, and (C) having Net Utility Plant equal to or greater than 1.1 times its long-term debt. Upon any consolidation or merger or any conveyance or transfer of the Mortgaged Property substantially as an entirety in accordance with this subsection, the successor entity formed by such consolidation or with which the Mortgagor is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Mortgagor under this Mortgage with the same effect as if such successor entity had been named as the Mortgagor herein.

Section 3.11 Limitations on Transfers of Property: The Mortgagor may not, except as provided in Section 3.10 above, without the prior written approval of each Mortgagee, sell, lease or transfer any Mortgaged Property to any other person or entity (including any subsidiary or affiliate of the Mortgagor), unless (1) there exists no Event of Default or occurrence which with the passing of time and the giving of notice would be an Event of Default, (2) fair market value is obtained for such property, (3) the aggregate value of assets so sold, leased or transferred in any 12-month period is less than 10% of Net Utility Plant, and (4) the proceeds of such sale, lease or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately (i) applied as a prepayment of all Notes equally and ratably, (ii) in the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the Mortgagor's business, not necessarily of the same kind as the property disposed of, which shall forthwith

become subject to the Lien of the Mortgage, or (iii) applied to the acquisition or construction of other Mortgageable Property.

Section 3.12. Maintenance of Mortgaged Property: (a) So long as the Mortgagor holds title to the Mortgaged Property, the Mortgagor will at all times maintain and preserve the Mortgaged Property which is used or useful in the Mortgagor's business and each and every part and parcel thereof in good repair, working order and condition, ordinary wear and tear and acts of God excepted, and in compliance with good utility practice and in compliance with all applicable laws, regulations and orders, and will from time to time make all needed and proper repairs, renewals and replacements, and useful and proper alterations, additions, betterments and improvements, and will, subject to contingencies beyond its reasonable control, at all times use all reasonable diligence to furnish the consumers served by it through the Mortgaged Property, or any part thereof, with an adequate supply of electric power and energy. If any substantial part of the Mortgaged Property is leased by the Mortgagor to any other party, the lease agreement between the Mortgagor and the lessee shall obligate the lessee to comply with the provisions of subsections (a) and (b) of this Section in respect of the leased facilities and to permit the Mortgagor to operate the leased facilities in the event of any failure by the lessee to so comply.

(b) The Mortgagor further agrees upon reasonable written request of any Mortgagee, which request together with the requests of any other Mortgagees shall be made no more frequently than once every three years, to supply promptly to each Mortgagee an initial certification (hereinafter called the "Initial Certification"), in form satisfactory to the requestor, prepared by an Independent professional engineer, who shall be satisfactory to the Mortgagees, as to the condition of the Mortgaged Property. If in the sole judgment of any Mortgagee such Initial Certification discloses the need for improvements to the condition of the Mortgaged Property or any other operations of the Mortgagor, such Mortgagee may send to the Mortgagor a written report of such improvements and the Mortgagor will upon receipt of such written report promptly undertake to accomplish such of these improvements as are required by such Mortgagees. One year after receipt of such written report, the Mortgagor shall submit to each Mortgagee a second certification (herein called the "Second Certification"), in form satisfactory to the Mortgagees, prepared by an Independent professional engineer, who shall be satisfactory to the Mortgagees, as to the condition of the Mortgaged Property and the other operations of the Mortgagor. If in the sole judgment of any Mortgagee such Second Certification discloses inadequacies in the condition of the Mortgaged Property or the other operations of the Mortgagor, any Mortgagee may send to the Mortgagor written notice of these inadequacies, and the Mortgagor shall cure such inadequacies, within sixty (60) days of receipt of such notice.

Section 3.13. Insurance; Restoration of Damaged Mortgaged Property: (a) The

Mortgagor will take out, as the respective risks are incurred, and maintain the classes and amounts of insurance in conformance with generally accepted utility industry standards for such classes and amounts of coverages of utilities of the size and character of the Mortgagor.

(b) The foregoing insurance coverage shall be obtained by means of bond and policy forms approved by regulatory authorities having jurisdiction, and, with respect to insurance upon any part of the Mortgaged Property, shall provide that the insurance shall be payable to the Mortgagees as their interests may appear by means of the standard mortgagee clause without contribution. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 30 days after written notice to each Mortgagee of cancellation.

(c) In the event of damage to or the destruction or loss of any portion of the Mortgaged Property which is used or useful in the Mortgagor's business and which shall be covered by insurance, unless each Mortgagee shall otherwise agree, the Mortgagor shall replace or restore such damaged, destroyed or lost portion so that such Mortgaged Property shall be in substantially the same condition as it was in prior to such damage, destruction or loss, and shall apply the proceeds of the insurance for that purpose. The Mortgagor shall replace the lost portion of such Mortgaged Property or shall commence such restoration promptly after such damage, destruction or loss shall have occurred and shall complete such replacement or restoration as expeditiously as practicable, and shall pay or cause to be paid out of the proceeds of such insurance all costs and expenses in connection therewith.

(d) Sums recovered under any policy or fidelity bond by the Mortgagor for a loss of funds advanced under the Notes or recovered by any Mortgagee or any Noteholder for any loss under such policy or bond shall, unless applied as provided in the preceding paragraph or otherwise be used to finance construction of facilities secured or to be secured by this Mortgage, or unless otherwise directed by the Mortgagees, be applied to the prepayment of the Notes pro rata according to the unpaid principal amounts thereof (such prepayments to be applied to such Notes and installments thereof as may be designated by the respective Mortgagee at the time of any such prepayment), or be used to construct or acquire facilities which will become part of the Mortgaged Property. At the request of any Mortgagee, the Mortgagor shall exercise such rights and remedies which they may have under such policy or fidelity bond and which may be designated by such Mortgagee, and the Mortgagor hereby irrevocably appoints each Mortgagee as its agent to exercise such rights and remedies under such policy or bond as such Mortgagee may choose, and the Mortgagor shall pay all costs and reasonable expenses incurred by the Mortgagee in connection with such exercise.

Section 3.14. Mortgagee Right to Expend Money to Protect Mortgaged Property: The Mortgagor agrees that any Mortgagee from time to time hereunder may, in its sole discretion, after having given 5 Business days prior written notice to Mortgagor, but shall not be obligated to, advance funds on behalf of Mortgagor, in order to insure the Mortgagee's compliance with any covenant, warranty, representation or agreement of the Mortgagor made in or pursuant to this Mortgage or any of the Loan Agreements, to preserve or protect any right or interest of the Mortgagees in the Mortgaged Property or under or pursuant to this Mortgage or any of the Loan Agreements, including without limitation, the payment of any insurance premiums or taxes and the satisfaction or discharge of any judgment or any Lien upon the Mortgaged Property or other property or assets of Mortgagor; provided, however, that the making of any such advance by or through any Mortgagee shall not constitute a waiver by any Mortgagee of any Event of Default with respect to which such advance is made nor relieve the Mortgagor of any such Event of Default. The Mortgagor shall pay to a Mortgagee upon demand all such advances made by such Mortgagee with interest thereon at a rate equal to that on the Note having the highest interest rate but in no event shall such rate be in excess of the maximum rate permitted by applicable law. All such advances shall be included in the obligations and secured by the security interest granted hereunder.

Section 3.15. Time Extensions for Payment of Notes: Any Mortgagee may, at any time or times in succession without notice to or the consent of the Mortgagor, or any other Mortgagee, and upon such terms as such Mortgagee may prescribe, grant to any person, firm or corporation who shall have become obligated to pay all or any part of the principal of (and premium, if any) or interest on any Note held by or indebtedness owed to such Mortgagee or who may be affected by the lien hereby created, an extension of the time for the payment of such principal, (and premium, if any) or interest, and after any such extension the Mortgagor will remain liable for the payment of such Note or indebtedness to the same extent as though it had at the time of such extension consented thereto in writing.

Section 3.16. Limitation on Dividends, Patronage Refunds and Other Cash Distributions: The Mortgagor will not, in any calendar year, without the prior written consent of the Mortgagees, declare or pay any dividends, or pay or determine to pay any patronage refunds, or retire any patronage capital or make any other cash distributions (such dividends, refunds, retirements and other distributions being hereinafter collectively called "Distributions"), to its members, stockholders or consumers if after giving effect to any such Distribution the total Equity of the Mortgagor will not equal or exceed 40% of its total assets and other debts; provided, however, that in any event the Mortgagor may make Distributions to the estates of natural patrons who are deceased to the extent required or permitted by its articles of incorporation and bylaws, and, if such Distributions to such estates do not

exceed 25% of the patronage capital and margins received by the Mortgagor in the next preceding year, make such additional Distributions in any year as will not cause the total Distributions in such year to exceed 25% of the patronage capital and margins so received, and provided, further, however, that in no event will the Mortgagor make any Distributions if there is unpaid when due any installment of principal of (and premium, if any) or interest on the Notes, if the Mortgagor is otherwise in default hereunder or if, after giving effect to any such Distribution, the Mortgagor's total current and accrued assets would be less than its total current and accrued liabilities. For the purpose of this section a "cash distribution" shall be deemed to include any general cancellation or abatement of charges for electric energy or services furnished by the Mortgagor, but not the repayment of a membership fee upon termination of a membership.

Section 3.17. Application of Proceeds from Condemnation: (a) In the event that the Mortgaged Property or any part thereof, shall be taken under the power of eminent domain, all proceeds and avails therefrom may be used to finance construction of facilities secured or to be secured by this Mortgage. Any proceeds not so used shall forthwith be applied by the Mortgagor: first, to the ratable payment of any indebtedness secured by this Mortgage other than principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes, to such installments thereof as may be designated by the respective Mortgagee at the time of any such payment; and fourth, the balance shall be paid to whomsoever shall be entitled thereto.

(b) If any part of the Mortgaged Property shall be taken by eminent domain, each Mortgagee shall release the property so taken from the Mortgaged Property and shall be fully protected in so doing upon being furnished with:

(1) A certificate of a duly authorized officer of the Mortgagor requesting such release, describing the property to be released and stating that such property has been taken by eminent domain and that all conditions precedent herein provided or relating to such release have been complied with; and

(2) an opinion of counsel to the effect that such property has been lawfully taken by exercise of the right of eminent domain, that the award for such property so taken has become final or an appeal therefrom is not advisable in the interests of the Mortgagor, the Mortgagees or the Noteholders and that all conditions precedent herein provided for relating to such release have been complied with.

Section 3.18. Compliance with Loan Agreements; Notice of Amendments to and Defaults under Loan Agreements: The Mortgagor will observe and perform all of the material covenants, agreements, terms and conditions contained in any Loan Agreement entered into in connection with the issuance of any of the Notes, as from time to time amended. The Mortgagor will send promptly to each Mortgagee notice of any default by the Mortgagor under any Loan Agreement

and notice of any amendment to any Loan Agreement. Upon request of any Mortgagee, the Mortgagor will furnish to such Mortgagee single copies of such Loan Agreements and amendments thereto as such Mortgagee may request.

Section 3.19. Rights of Way, etc., Necessary in Business: The Mortgagor will use its best efforts to obtain all such rights of way, easements from landowners and releases from lienors as shall be necessary or advisable in the conduct of its business, and, if requested by any Mortgagee, deliver to such Mortgagee evidence satisfactory to such Mortgagee of the obtaining of such rights of way, easements or releases.

Section 3.20. Rates to Provide Revenue Sufficient to Meet TIER and DSC Requirements: The Mortgagor shall design and implement rates for electric power and energy and for other utility services furnished by it that are designed [when combined with other revenue available to the Mortgagor] (i) to provide sufficient revenue to pay all fixed and variable expenses when and as due, (ii) to provide and maintain reasonable working capital, and (iii) to maintain, on an annual basis, a TIER of not less than 1.35 and a DSC of not less than 1.35. The Mortgagor shall give thirty (30) days prior written notice of any proposed change in its general rate structure to any Mortgagee who has requested in writing that it be notified in advance of such changes. Within ninety (90) days following the end of each calendar year, the Mortgagor shall report, in writing, to each of the Mortgagees the TIER and DSC levels which were achieved during that calendar year. If the average of the two (2) largest annual levels achieved by the Mortgagor out of the three (3) then most recent calendar years results in a TIER of less than 1.35 or a DSC of less than 1.35, the Mortgagor shall within ninety (90) days following the end of the calendar year, provide to each of the Mortgagees a written plan of remedial action, proposed by an Independent consultant acceptable to each of the Mortgagees, for the approval of each Mortgagee. Such plan shall set forth the actions that the Mortgagor shall take in order to achieve the required TIER and DSC levels on a timely basis. The Mortgagor shall take all actions provided for in its written plan approved by the Mortgagees. In the event that any state regulatory authority having jurisdiction decides to disapprove rates sufficient to meet TIER and DSC ratios prescribed in this Mortgage, the Mortgagor will provide appropriate documentation to that effect along with a request that the Mortgagees approve the plan as modified to take the determination of such state authority into account. If each of the Mortgagees consents to such modifications, then the plan as so modified shall constitute the plan required by this section.

The Mortgagor will not furnish or supply or cause to be furnished or supplied any use, output, capacity, or service of the Utility System free of charge to any person, firm or corporation, public or private, and the Mortgagor will enforce the payment of any and all amounts owing to the Mortgagor by reason of the ownership and operation of the Utility System by discontinuing such use,

output, capacity, or service, or by filing suit therefor within 90 days after any such accounts are due, or by both such discontinuance and by filing suit.

Section 3.21. Keeping Books; Inspection by Mortgagee: The Mortgagor will keep proper books of records and account, in which full and correct entries shall be made of all dealings or transactions of or in relation to the Notes and the Utility Systems, properties, business and affairs of the Mortgagor in accordance with the Accounting Requirements. The Mortgagor will at any and all times, upon the written request of any Mortgagee and at the expense of the Mortgagor, permit such Mortgagee by its representatives to inspect the Utility Systems and properties, books of account, records, reports and other papers of the Mortgagor and to take copies and extracts therefrom, and will afford and procure a reasonable opportunity to make any such inspection, and the Mortgagor will furnish to each Mortgagee any and all such information as such Mortgagee may request, with respect to the performance by the Mortgagor of its covenants under this Mortgage, the Notes and the Loan Agreements.

Article IV

Events of Default and Remedies

Section 4.01. Events of Default: Each of the following shall be an "Event of Default" under this Mortgage:

(a) default shall be made in the payment of any installment of or on account of interest on or principal of (or premium, if any associated with) any Note or Notes for more than five (5) Business Days after the same shall be required to be made;

(b) default shall be made in the due observance or performance of any other of the covenants, conditions or agreements on the part of the Mortgagor, in any of the Notes, Loan Agreements or in this Mortgage, and such default shall continue for a period of thirty (30) days after written notice specifying such default and requiring the same to be remedied and stating that such notice is a "Notice of Default" hereunder shall have been given to the Mortgagor by any Mortgagee; PROVIDED, HOWEVER that in the case of a default on the terms of a Note or Loan Agreement of a particular Mortgagee, the "Notice of Default" required under this paragraph may only be given by that Mortgagee;

(c) the Mortgagor shall file a petition in bankruptcy or be adjudicated a bankrupt or insolvent, or shall make an assignment for the benefit of its creditors, or shall consent to the appointment of a receiver of itself or of its property, or shall institute proceedings for its reorganization or proceedings instituted by others for its reorganization shall not be dismissed within sixty (60) days after the institution thereof;

(d) a receiver or liquidator of the Mortgagor or of any substantial portion of its property shall be appointed and the order appointing such receiver or liquidator shall not be vacated within sixty (60) days after the entry thereof;

(e) the Mortgagor shall forfeit or otherwise be deprived of its corporate charter or franchises, permits, easements, or licenses

required to carry on any material portion of its business;

(f) a final judgment for an amount of more than \$_____ shall be entered against the Mortgagor and shall remain unsatisfied or without a stay in respect thereof for a period of sixty (60) days; or,

(g) any material representation or warranty made by the Mortgagor herein, in the Loan Agreements or in any certificate or financial statement delivered hereunder or thereunder shall prove to be false or misleading in any material respect at the time made.

Section 4.02. Acceleration of Maturity; Rescission and Annulment:

(a) If an Event of Default described in Section 4.01(a) has occurred and is continuing, any Mortgagee upon which such default has occurred may declare the principal of all its Notes secured hereunder to be due and payable immediately by a notice in writing to the Mortgagor and to the other Mortgagees (failure to provide said notice to any other Mortgagee shall not effect the validity of any acceleration of the Note or Notes by such Mortgagee), and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes to the contrary notwithstanding. Upon receipt of actual knowledge of or any notice of acceleration by any Mortgagee, any other Mortgagee may declare the principal of all of its Notes to be due and payable immediately by a notice in writing to the Mortgagor and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes or Loan Agreements to the contrary notwithstanding.

(b) If any other Event of Default shall have occurred and be continuing, any Mortgagee may declare the principal (and premium, if any) and accrued interest on all its Notes secured by this Mortgage due and payable and upon such declaration, all unpaid principal (and premium, if any) and interest so declared shall become due and payable immediately, anything contained herein, in any Loan Agreement or in any Note to the contrary notwithstanding.

(c) If at any time after the unpaid principal of (and premium, if any) and accrued interest on any of the Notes shall have been so declared to be due and payable, all payments in respect of principal and interest which shall have become due and payable by the terms of such Note or Notes (other than amounts due as a result of the acceleration of the Notes) shall be paid to the respective Mortgagees, and all other defaults under the Loan Agreements, the Notes and this Mortgage shall have been made good and secured to the satisfaction of the Mortgagees representing at least 80% of the aggregate unpaid principal balance of all of the Notes then Outstanding, then in every such case such Mortgagees, may by written notice to the Mortgagor, annul such declaration and waive such default and the consequences thereof, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 4.03. Remedies of Mortgagees: If one or more of the Events of Default shall occur and be continuing, any Mortgagee personally or by attorney, in its or their discretion, may, in so far as not prohibited by law:

(a) take immediate possession of the Mortgaged Property, collect and receive all credits, outstanding accounts and bills receivable of the Mortgagor and all rents, income, revenues, proceeds and profits pertaining to or arising from the Mortgaged Property, or any part thereof, whether then past due or accruing thereafter, and issue binding receipts therefor; and manage, control and operate the Mortgaged Property as fully as the Mortgagor might do if in possession thereof, including, without limitation, the making of all repairs or replacements deemed necessary or advisable by such Mortgagee in possession;

(b) proceed to protect and enforce the rights of all of the Mortgagees by suits or actions in equity or at law in any court or courts of competent jurisdiction, whether for specific performance of any covenant or any agreement contained herein or in aid of the execution of any power herein granted or for the foreclosure hereof or hereunder or for the sale of the Mortgaged Property, or any part thereof, or to collect the debts hereby secured or for the enforcement of such other or additional appropriate legal or equitable remedies as may be deemed necessary or advisable to protect and enforce the rights and remedies herein granted or conferred, and in the event of the institution of any such action or suit the Mortgagee instituting such action or suit shall have the right to have appointed a receiver of the Mortgaged Property and of all proceeds, rents, income, revenues and profits pertaining thereto or arising therefrom, whether then past due or accruing after the appointment of such receiver, derived, received or had from the time of the commencement of such suit or action, and such receiver shall have all the usual powers and duties of receivers in like and similar cases, to the fullest extent permitted by law, and if application shall be made for the appointment of a receiver the Mortgagor hereby expressly consents that the court to which such application shall be made may make said appointment; and

(c) sell or cause to be sold all and singular the Mortgaged Property or any part thereof, and all right, title, interest, claim and demand of the Mortgagor therein or thereto, at public auction at such place in any county (or its equivalent locality) in which the property to be sold, or any part thereof, is located, at such time and upon such terms as may be specified in a notice of sale, which shall state the time when and the place where the sale is to be held, shall contain a brief general description of the property to be sold, and shall be given by mailing a copy thereof to the Mortgagor at least fifteen (15) days prior to the date fixed for such sale and by publishing the same once in each week for two successive calendar weeks prior to the date of such sale in a newspaper of general circulation published in said locality or, if no such newspaper is published in such locality, in a newspaper of general circulation in such locality, the first such

publication to be not less than fifteen (15) days nor more than thirty (30) days prior to the date fixed for such sale. Any sale to be made under this subparagraph (c) of this Section 4.03 may be adjourned from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and without further notice or publication the sale may be had at the time and place to which the same shall be adjourned; *provided, however,* that in the event another or different notice of sale or another or different manner of conducting the same shall be required by law the notice of sale shall be given or the sale be conducted, as the case may be, in accordance with the applicable provisions of law. The expense incurred by any Mortgagee (including, but not limited to, receiver's fees, counsel fees, cost of advertisement and agents' compensation) in the exercise of any of the remedies provided in this Mortgage shall be secured by this Mortgage.

(d) In the event that a Mortgagee proceeds to enforce remedies under this Section, any other Mortgagee may join in such proceedings. In the event that the Mortgagees are not in agreement with the method or manner of enforcement chosen by any other Mortgagee, the Mortgagees representing a majority of the aggregate unpaid principal balance on the then Outstanding Notes may direct the method and manner in which remedial action will proceed.

Section 4.04. Application of Proceeds from Remedial Actions: Any proceeds or funds arising from the exercise of any rights or the enforcement of any remedies herein provided after the payment or provision for the payment of any and all costs and expenses in connection with the exercise of such rights or the enforcement of such remedies shall be applied first, to the ratable payment of indebtedness hereby secured other than the principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and which shall be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes; and the balance, if any, shall be paid to whomsoever shall be entitled thereto.

Section 4.05. Remedies Cumulative; No Election: Every right or remedy herein conferred upon or reserved to the Mortgagees or to the Noteholders shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law, or in equity, or by statute. The pursuit of any right or remedy shall not be construed as an election.

Section 4.06. Waiver of Appraisal Rights; Marshalling of Assets Not Required: The Mortgagor, for itself and all who may claim through or under it, covenants that it will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any appraisal, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property may be situated, in order to prevent, delay or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or any part thereof, or the final and absolute putting into possession thereof, immediately after such sale, of the

purchaser or purchasers thereof, and the Mortgagor, for itself and all who may claim through or under it, hereby waives the benefit of all such laws unless such waiver shall be forbidden by law. Under no circumstances shall there be any marshalling of assets upon any foreclosure or to other enforcement of this Mortgage.

Section 4.07. Notice of Default: The Mortgagor covenants that it will give immediate written notice to each Mortgagee of the occurrence of any Event of Default or in the event that any right or remedy described in Sections 4.02 and 4.03 hereof is exercised or enforced or any action is taken to exercise or enforce any such right or remedy.

Article V

Possession Until Default-Defeasance Clause

Section 5.01. Possession Until Default: Until some one or more of the Events of Default shall have happened, the Mortgagor shall be suffered and permitted to retain actual possession of the Mortgaged Property, and to manage, operate and use the same and any part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the rents, revenues, issues, earnings, income, products and profits thereof or therefrom, subject to the provisions of this Mortgage.

Section 5.02. Defeasance Generally: If the Mortgagor shall pay or cause to be paid the whole amount of the principal of (and premium, if any) and interest on the Notes at the times and in the manner therein provided, and shall also pay or cause to be paid all other sums payable by the Mortgagor hereunder or under any Loan Agreement and shall keep and perform, all covenants herein required to be kept and performed by it, then and in that case, all property, rights and interest hereby conveyed or assigned or pledged shall revert to the Mortgagor and the estate, right, title and interest of the Mortgagee so paid shall thereupon cease, determine and become void and such Mortgagee, in such case, on written demand of the Mortgagor but at the Mortgagor's cost and expense, shall enter satisfaction of the Mortgage upon the record. In any event, each Mortgagee, upon payment in full to such Mortgagee by the Mortgagor of all principal of (and premium, if any) and interest on any Note held by such Mortgagee and the payment and discharge by the Mortgagor of all charges due to such Mortgagee hereunder or under any Loan Agreement, shall execute and deliver to the Mortgagor such instrument of satisfaction, discharge or release as shall be required by law in the circumstances.

Section 5.03. Special Defeasance: Other than any Notes excluded by the foregoing Sections 5.01 and 5.02 and Notes which have become due and payable, the Mortgagor may cause the Lien of this Mortgage to be defeased with respect to any Note for which it has deposited or caused to be deposited in trust solely for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Note for principal (and premium, if any) and interest to the date of maturity thereof; PROVIDED, HOWEVER, that the depository serving as trustee for such trust must first be accepted as such by the

Mortgagee whose Notes are being defeased under this section. In such event, such a Note will no longer be considered to be an Outstanding Note for purposes of this Mortgage and the Mortgagee shall execute and deliver to the Mortgagor such instrument of satisfaction, discharge or release as shall be required by law in the circumstances.

Article VI

Miscellaneous

Section 6.01. Property Deemed Real Property: It is hereby declared to be the intention of the Mortgagor that any electric generating plant or plants and facilities and all electric transmission and distribution lines, or other Electric System or Utility System facilities, embraced in the Mortgaged Property, including (without limitation) all rights of way and easements granted or given to the Mortgagor or obtained by it to use real property in connection with the construction, operation or maintenance of such plant, lines, facilities or systems, and all other property physically attached to any of the foregoing, shall be deemed to be real property.

Section 6.02. Mortgage to Bind and Benefit Successors and Assigns: All of the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the Mortgagor shall bind its successors and assigns, whether so specified or not, and all titles, rights and remedies hereby granted to or conferred upon the Mortgagees shall pass to and inure to the benefit of the successors and assigns of the Mortgagees and shall be deemed to be granted or conferred for the ratable benefit and security of all who shall from time to time be a Mortgagee. The Mortgagor hereby agrees to execute such consents, acknowledgements and other instruments as may be reasonably requested by any Mortgagee in connection with the assignment, transfer, mortgage, hypothecation or pledge of the rights or interests of such Mortgagee hereunder or under the Notes or in and to any of the Mortgaged Property.

Section 6.03. Headings: The descriptive headings of the various articles and sections of this Mortgage and also the table of contents were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

Section 6.04. Separability Cause: In case any provision of this Mortgage or in the Notes or in the Loan Agreements shall be invalid or unenforceable, the validity, legality and enforceability of the remaining provisions thereof shall not in any way be affected or impaired, nor, nor shall any invalidity or unenforceability as to any Mortgagee hereunder affect or impair the rights hereunder of any other Mortgagee.

Section 6.05. Mortgage Deemed Security Agreement: To the extent that any of the property described or referred to in this Mortgage is governed by the provisions of the UCC this Mortgage is hereby deemed a "security agreement" under the UCC, and, if so elected by any Mortgagee, a "financing statement" under the UCC for said security agreement. The mailing addresses of the Mortgagor as debtor, and the Mortgagees as

secured parties are as set forth in section 6.04 hereof. If any Mortgagee so directs the Mortgagor to do so, the Mortgagor shall file as a financing statement under the UCC for said security agreement and for the benefit of all of the Mortgagees, an instrument other than this Mortgage. In such case, the instrument to be filed shall be in a form customarily accepted by the filing office as a financing statement.

Section 6.06. Indemnification by Mortgagor of Mortgagees: The Mortgagor agrees to indemnify and save harmless each Mortgagee against any liability or damages which any of them may incur or sustain in the exercise and performance of their rightful powers and duties hereunder. For such reimbursement and indemnity, each Mortgagee shall be secured under this Mortgage in the same manner as the Notes and all such reimbursements for expense or damage shall be paid to the Mortgagee incurring or suffering the same with interest at the rate specified in Section 3.14 hereof.

In Witness Whereof, _____ as Mortgagor, has caused this Restated Mortgage and Security Agreement to be signed in its name and its corporate seal to be hereunto affixed and attested by its officers thereunto duly authorized, and UNITED STATES OF AMERICA, as Mortgagee, and _____ as Mortgagee, has caused this Restated Mortgage and Security Agreement to be signed in its name by duly authorized persons, all as of the day and year first above written.

(SEAL) By: _____ President Attest: _____ Title: _____ Executed by the Mortgagor in the presence of: _____

Witnesses UNITED STATES OF AMERICA By: _____ Director, of the Rural Electrification Administration Executed by the United States of America, Mortgagee, in the presence of: _____

Witnesses By: _____ (SEAL) Attest: _____ Title: _____ Executed by the above-named Mortgagee in the presence of: _____

Witnesses Schedule A—Maximum Debt Limit and Other Information

- 1. The Maximum Debt Limit is _____
2. The Original Mortgage as described in the first WHEREAS clause above is _____
3. The outstanding secured indebtedness described in the fourth WHEREAS clause above as evidenced by the Original Notes is as follows:

Schedule B—Property Schedule

The fee and leasehold interests in real property referred to in Section Subclause (a) of Granting Clause One are _____ The counties referred to in Subclause (b) of Granting Clause One are _____

Schedule C—Excepted Property

[List of all Excepted Property.]

Schedule D—Notary Public Certification

STATE OF _____ COUNTY OF _____ On this _____ day of _____, 19____, before me appeared _____ and _____ personally known, by me and having been duly sworn by me, did say that they are the President and Secretary, respectively, of _____, a _____ corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board, and said _____ and _____ acknowledged that the execution of said instrument was a free act and deed of said corporation.

IN WITNESS whereof, I have hereunto set my hand and official seal the day and year last above written.

Notary Public (Notarial Seal) My commission expires: DISTRICT OF COLUMBIA) SS The foregoing instrument was acknowledged before me this _____ day of 19____, by _____ Director, _____ Regional Division of the Rural Electric Administration, acknowledging an agency of the United States of America, on behalf of the Rural Electrification Administration, United States of America.

Notary Public (Notarial Seal) My Commission expires: Dated: September 21, 1994. Bob J. Nash, Under Secretary, Small Community and Rural Development. [FR Doc. 94-23924 Filed 9-28-94; 8:45 am] BILLING CODE 3410-15-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Ch. VII

[Docket No. 940959-4259]

Request for Comments on Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce. ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in

the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BXA is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by October 31, 1994, to assure full consideration in the formulation of export control policies as they relate to foreign policy-based controls.

ADDRESSES: Written comments (three copies) should be sent to Patricia Muldonian, Regulations Branch (Room 4054), Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Bolsteins, Foreign Policy Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 482-4252. Copies of the current 1994 Annual Foreign Policy Report to the Congress can also be requested.

SUPPLEMENTARY INFORMATION: The current foreign policy controls maintained by the Bureau of Export Administration (BXA) are set forth in the Export Administration Regulations (EAR), Parts 776 (Special Commodity Policies and Provisions), 778 (Proliferation Controls), and 785 (Special Country Policies and Provisions). These controls apply to: supercomputers (§ 776.11); crime control and detection commodities (§ 776.14); regional stability commodities and equipment (§ 776.16); equipment and related technical data used in the design, development, production, or use of missiles capable of delivering nuclear weapons (§ 778.7); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§ 778.8); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 778.9); embargoed countries (§ 785.1); countries designated as supporters of acts of international terrorism (§ 785.4(d)); and, Libya (§ 785.7). Attention is also given in this context to the controls on nuclear-related commodities and technical data (§ 778.2), although they are not foreign policy-based controls in the exact sense.

Effective January 21, 1994, the Secretary of Commerce, on the recommendation of the Secretary of

State, extended for one year all foreign policy controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria the Departments of Commerce and State consider in determining whether to continue or revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

6. The ability of the United States to enforce the controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in comments relating to the effects of foreign policy controls on exports of replacement and other parts.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

BXA will consider requests for confidential treatment. The information for which confidential treatment is requested should be submitted to BXA separate from any non-confidential information submitted. The top of each

page should be marked with the term "Confidential Information." BXA will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by BXA as confidential will be protected from public disclosure to the extent permitted by law. Communications between agencies of the United States Government or with foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about inspection and copying of records at this facility may be obtained from Edward J. Linglebach, BXA Freedom of Information Officer, at the above address or by calling (202) 482-5653.

Section 6 of the Export Administration Act of 1979, as amended (EAA), requires a report to congress whenever foreign policy-based export controls are extended. Although the EAA expired on August 20, 1994, the President, invoking the International Emergency Powers Act (IEEPA), continued in effect the provisions of the Act and the Export Administration Regulations, to the extent permitted by law, in Executive Order 12924 of August 19, 1994. Under a policy of conforming actions under the Executive Order to those under the EAA, the Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls and requesting comments on such controls.

Dated: September 23, 1994.

Sue E. Eckert,

Assistant Secretary for Export
Administration.

[FR Doc. 94-24083 Filed 9-28-94; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL-0548-87]

RIN 1545-AE30

Presumptions Where Owner of Large Amount of Cash is Not Identified

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed regulations regarding the presumptions that arise where the owner of a large amount of cash or its equivalent is not identified. The proposed regulations reflect changes to the law made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Technical and Miscellaneous Revenue Act of 1988, and incorporate the rules of current § 301.6867-1T, relating to cash, cash equivalents, specific cash equivalents and the value of cash equivalents. In addition, several new items have been added to the list of specific cash equivalents. The proposed regulations affect individuals who are found in possession of a large amount of cash or its equivalent and the true owners of that cash or its equivalent.

DATES: Written comments and requests for a public hearing must be received by November 28, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (CC:GL-0548-87), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (GL-0548-87), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622-3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR

part 301) under section 6867 of the Internal Revenue Code of 1986 (Code). The regulations reflect the enactment of section 6867 by section 330(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248), and the amendment made by section 1001(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647).

Explanation of Provisions

Section 330(a) of the Tax Equity and Fiscal Responsibility Act of 1982 amended the Code by adding section 6867, designed to be used in making jeopardy or termination assessments, as appropriate, when there is no known owner of large amounts of cash. Section 6867 provides that if an individual in physical possession of cash in excess of \$10,000 does not claim the cash as belonging to that individual or as belonging to another person whose identity is readily ascertainable and who acknowledges ownership of the cash to the IRS, it is presumed that the cash represents gross income of a single individual for the taxable year in which the possession occurs and that the collection of tax will be jeopardized by delay. Section 6867, as originally enacted, made the entire amount of the cash subject to a 50 percent tax rate. Section 1001(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 amended section 6867, effective for taxable years beginning after December 31, 1986, to provide that the tax rate is to be the highest rate of tax for an individual specified in section 1.

Under section 6867, the possessor of cash is treated (solely with respect to the cash) as the taxpayer for the purposes of chapters 63 and 64 of the Code, relating to assessment and collection, and for the purposes of section 7429(a)(1), entitling that individual to a written statement of information concerning the assessment provided for by that section. Because section 6867 does not treat the possessor as the taxpayer for the purposes of sections 7429(a)(2) and 7429(b), relating to administrative and judicial review of termination and jeopardy assessments, the proposed regulations do not permit the possessor of cash to maintain an action under section 7429 for such review.

The possessor of cash may petition the United States Tax Court to challenge the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash. In lieu thereof, the possessor of cash, solely in that person's capacity as possessor of cash, may institute a suit for refund in district court after the deficiency has been collected.

The true owner of cash may maintain an action under section 7429 for administrative and judicial review of the deficiency notice issued to the possessor. However, the true owner may only institute the section 7429 action concerning the notice of deficiency issued to the possessor by making a request for review within 30 days from the date the possessor is given the written statement of information required under section 7429(a)(1). After the deficiency asserted against the possessor of cash has been levied upon, the true owner of cash may bring an action in federal district court, within the time frame specified in section 6532(c), to recover the cash, as provided in section 7426, relating to civil actions by persons other than taxpayers. In addition, the true owner of cash, with the permission of the court, may appear before the United States Tax Court in any proceeding that may be filed by the possessor of the cash challenging the notice of deficiency issued to the possessor as possessor of the cash.

Section 301.6867-1(f) of the proposed regulations incorporates the definitions contained in current § 301.6867-1T, relating to cash, cash equivalents, specific cash equivalents and the value of cash equivalents. In addition, several other items have been identified and added to the list of specific cash equivalents. Section 301.6867-1T will be removed on the date final regulations are filed with the Federal Register.

Proposed Effective Date

The regulations are proposed to be effective on and after the date final regulations are filed with the Federal Register.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations,

consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Jerome D. Sekula of the General Litigation Division of the Office of Chief Counsel, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6867-1 is added to read as follows:

§ 301.6867-1 Presumptions where owner of large amount of cash is not identified.

(a) *General rule.* For purposes of section 6851 (relating to termination assessments) and section 6861 (relating to jeopardy assessments), if cash in excess of \$10,000 is found in the physical possession of an individual who does not claim either ownership of that cash or ownership by some other person whose identity the Commissioner can readily ascertain and who acknowledges ownership of that cash as of the date the cash was found, then, it shall be presumed that—

(1) The cash represents gross income of an unknown single individual; and

(2) That the collection of tax on that income will be jeopardized by delay.

(b) *Rules for assessment.* The Commissioner may make an assessment pursuant to section 6851 or section 6861, as appropriate, using the rules for assessment specified in this paragraph. In the case of any assessment resulting from the application of paragraph (a) of this section—

(1) The entire amount of cash is treated as taxable income for the taxable year in which the cash is found;

(2) The income is treated as taxable at the highest rate of tax specified in section 1 of the Internal Revenue Code; and

(3) Except as provided in paragraph (c), the possessor of the cash is treated (solely with respect to that cash) as the taxpayer for purposes of chapters 63 and 64 and section 7429(a)(1) of the Internal Revenue Code.

(c) *Effect of later substitution of true owner—(1) In general.* If an assessment resulting from the application of paragraph (a) of this section is later abated and replaced by an assessment against the true owner of the cash, the later assessment is treated for purposes of all laws relating to lien, levy, and collection as relating back to the date of the original assessment.

Notwithstanding the preceding sentence, any notice and review provided for by section 7429 and the notice of deficiency issued to the true owner relative to the later assessment are to be made within the prescribed time limits, using the actual date of the later assessment against the true owner.

(2) *Example.* The provisions of paragraph (c)(1) of this section may be illustrated by the following example:

Example. On June 5, 1994, A is found in possession of a bag, containing \$200,000, which A claims he was holding for a friend whose name A cannot remember. Because A does not claim ownership of the cash and does not provide the name of the true owner so that the Commissioner can identify the true owner and have that person acknowledge ownership of the cash, it is presumed that the cash represents gross income of an individual for calendar year 1994, and that the collection of tax on that gross income will be jeopardized by delay. Accordingly, on June 17, 1994, a termination assessment under section 6851 is made against A, in his capacity as possessor of the cash. On June 21, 1994, the written statement of information provided for by section 7429(a)(1) is given A. No request for review under section 7429(a)(2) is made by the true owner within 30 days after the day on which A was furnished the written statement provided for in section 7429(a)(1). Subsequently, individual B comes to the Service and states that he is the owner of the cash. On September 2, 1994, the Service determines that B was the true owner of the cash on June 5, 1994. On September 9, 1994, the Service abates the termination assessment made against A solely as possessor of cash and, after determining that jeopardy exists, replaces it with a termination assessment under section 6851 against B. The lien against B that arises under section 6321 is treated as arising on June 17, 1994. However, within 5 days after September 9, 1994, the Service must give B the written statement of information required by section 7429(a)(1). In addition, a notice of deficiency must be sent to B within 60 days after the later of the due date or the actual filing of B's tax return for 1994, as required by section 6851(b).

(d) *Rights of possessor of cash—(1) Actions permitted.* Section 6867 provides that the possessor of cash is treated as the taxpayer for purposes of chapter 63 (relating to assessment) and chapter 64 (relating to collection). Accordingly, the possessor of cash may file a petition with the United States Tax Court, within the applicable time limits, challenging the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash. In lieu thereof, the possessor of cash may, after the deficiency has been collected, file a refund claim solely in that person's capacity as possessor of cash and, if the refund claim is denied or not timely acted upon by the Service within six months, institute a suit for refund in the appropriate court.

(2) *Actions not permitted.* Section 6867 provides that the possessor of cash is treated as the taxpayer solely for purposes of section 7429(a)(1), and is entitled to the written statement of information provided for by that section. The possessor of cash is not treated as the taxpayer for purposes of sections 7429(a)(2) and 7429(b), relating to administrative and judicial review of termination and jeopardy assessments, and may not maintain an action under section 7429 for such review.

(e) *Rights of true owner of cash—(1) Actions permitted.* The true owner of cash may request administrative review under section 7429(a)(2) and may maintain a civil action under section 7429(b) for judicial review of an assessment under section 6851 or section 6861 made against the possessor solely in that person's capacity as possessor of cash. Such an action, however, must be preceded by a request for review under section 7429(a)(2) made by the true owner within 30 days after the day on which the possessor is furnished the written statement provided for in section 7429(a)(1). In addition, after the deficiency asserted against the possessor of cash has been levied upon, the true owner of cash may bring an action in federal district court to recover the cash, as provided in section 7426, relating to civil actions by persons other than taxpayers. See, however, section 6532(c), relating to the 9-month statute of limitations for suits under section 7426. In addition, the true owner of cash, with the permission of the court, may appear before the United States Tax Court in any proceeding that may be filed by the possessor of the cash challenging the notice of deficiency issued to the possessor solely in that person's capacity as possessor of the cash.

(2) *Actions not permitted.* The true owner of cash may not file a petition

with the United States Tax Court challenging the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash. Notwithstanding the preceding sentence, the true owner of cash may file a petition with the United States Tax Court challenging any notice of deficiency issued to the true owner following the abatement of the assessment made against the possessor of cash.

(f) *Definitions.* For the purposes of this section and section 6867—

(1) *Cash.* The term cash includes any cash equivalents.

(2) *Cash equivalent—(i) In general.* The term *cash equivalent* includes foreign currency, any bearer obligation, and any medium of exchange that is of a type that has been frequently used in illegal activities, as listed in paragraph (f)(2)(ii) of this section.

(ii) *Specific cash equivalents.* For purposes of paragraph (f)(2)(i), the following are also cash equivalents—

- (A) Coins;
- (B) Precious metals;
- (C) Jewelry;
- (D) Precious stones;
- (E) Postage stamps;
- (F) Traveler's checks in any form;
- (G) Negotiable instruments (including personal checks, business checks, official bank checks, cashier's checks, notes, and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery;
- (H) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, notes, and money orders) signed but with the payee's name omitted; and
- (I) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(iii) *Value of cash equivalents.* A cash equivalent is taken into account at its fair market value except in the case of a bearer obligation, in which case it is taken into account at its face value.

(3) *Possessor of cash.* An individual is considered to be the possessor of cash if the cash is found on that individual's person or in that individual's possession or is found in any object, container, vehicle, or area under that individual's custody or control.

(4) *True owner of the cash.* The true owner of cash is the individual who beneficially owns the cash on the date such cash is found in the physical possession of the individual described in paragraph (f)(3) of this section. An agent, bailee, or other custodian of the cash is not the true owner of cash. A true owner of cash does not include an

individual who, subsequent to the date on which the cash is found in the physical possession of the individual described in paragraph (f)(3) of this section, obtains ownership of the cash by purchase, subrogation, descent, or other means.

(g) *Effective date.* This section is effective with respect to cash found in the physical possession of an individual on the date final regulations are published in the **Federal Register**.

§ 301.6867-1T [Removed]

Par. 3. Section 301.6867-1T is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94-24011 Filed 9-28-94; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Arkansas regulatory program (hereinafter, the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Arkansas' proposed statutes pertain to the entities performing permitting activities that are eligible for assistance under the small operator's assistance program (SOAP), costs relating to permitting activities that may be funded under SOAP, Arkansas' responsibility to assume training costs, and operator reimbursement of Arkansas for the cost of services rendered under SOAP. The amendment is intended to revise the Arkansas program to be consistent with SMCRA, as amended.

DATES: Written comments must be received by 4:00 p.m., c.d.t. October 14, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below

during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, Oklahoma 74135-6548

Surface Mining & Reclamation Division, Arkansas Department of Pollution Control & Ecology, P.O. Box 8913, 8001 National Drive, Little Rock, Arkansas 72219-8913, Telephone: (501) 562-6533

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning Arkansas' program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Submission of Proposed Amendment

By letter dated March 31, 1993 (administrative record No. AR-496), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas, at its own initiative, submitted the proposed amendment with the intent of making its statute consistent with sections 507 (c) and (h) of SMCRA, as revised by the Energy Policy Act of 1992 (Pub. L. 102-486). Arkansas proposed to amend the Arkansas Surface Coal Mining and Reclamation Act of 1979 relating to financial assistance under SOAP. The amendment (1) redefined "small operator" to include those operators producing up to 300,000 tons of coal during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit and (2) expanded the costs of certain permitting activities eligible for payment under SOAP.

OSM published a notice in the April 22, 1993, **Federal Register** (58 FR 16634) announcing receipt of the amendment and inviting public comment on its adequacy

(administrative record No. AR-500). The public comment period ended May 25, 1993.

During its review of the amendment, OSM identified concerns relating to the authority to implement regulations for SOAP, the costs related to gathering information for a permit application that can be funded under SOAP, and the liability of the permit applicant for reimbursement of the cost of services if the operator exceeds the allowable production within 12 months of permit issuance. OSM notified Arkansas of the concerns by letter dated June 23, 1993 (administrative record No. AR-507).

By letter dated July 22, 1993, Arkansas responded by submitting additional explanatory information and a revised amendment to address the concerns identified above (administrative record No. AR-505).

During its review of the revised amendment, OSM identified concerns relating to (1) Arkansas' use of the phrase "cross-section maps or plans" and (2) reimbursement of costs if the operator exceeds the allowed actual and attributed annual production of coal. OSM notified Arkansas of the concerns by letter dated October 19, 1993 (administrative record No. AR-513).

Arkansas responded in a letter dated August 26, 1994, by submitting additional revisions to its amendment (administrative record No. AR-521). Arkansas proposes to revise the Arkansas Surface Coal Mining and Reclamation Act of 1979 at section 13 by (1) designating existing paragraph (c)(2) as (c)(2)(A); (2) revising paragraph (c)(2)(A) to specify that the permitting activities eligible for assistance under SOAP must be performed by a qualified public or private laboratory or other public or private entity designated by Arkansas; (3) adding paragraphs (c)(2)(A) (i) through (vi), which specify additional permitting activities for which an operator may receive assistance under SOAP; (4) adding paragraph (c)(2)(B), which pertains to Arkansas' responsibility to assume the cost of training small operators in the preparation of permit applications and compliance with the regulatory program and of the assistance available under SOAP; and (5) adding paragraph (c)(2)(C), which pertains to the operator's responsibility to reimburse Arkansas for the cost of the services rendered under SOAP if the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Arkansas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provision of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major

Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 23, 1994.

Russell F. Price,
Acting Assistant Director, Western Support Center.

[FR Doc. 94-24130 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 904

Arkansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Arkansas regulatory program (hereinafter, the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of the deletion of the statutory provision authorizing the Arkansas Commission on Pollution Control and Ecology to either regulate or not regulate surface coal mining

operations affecting 2 acres or less, and the addition of statutory provisions pertaining to violations and revegetation performance standards for re-mining permits. This amendment is intended to revise the Arkansas program to be consistent with SMCRA.

DATES: Written comments must be received by 4:00 p.m., c.d.t. October 31, 1994. If requested, a public hearing on the proposed amendment will be held on October 24, 1994. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.d.t. on October 14, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135

Arkansas Department of Pollution Control and Ecology, P.O. Box 8913, 8001 National Drive, Little Rock, Arkansas 72219-8913, Telephone: (501) 562-6533

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980 *Federal Register* (45 FR 77003). Subsequent actions concerning Arkansas's program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Proposed Amendment

By letter dated August 26, 1994, Arkansas submitted a proposed amendment to its program pursuant to

SMCRA (administrative record No. AR-522). Arkansas submitted the proposed amendment at its own initiative with the intent of making its coal mining statute consistent with SMCRA. Arkansas proposes to revise the Arkansas Surface Coal Mining and Reclamation Act of 1979 at (1) Section 5, jurisdiction and powers for rules and regulations, (2) section 13, surface coal mining permits, and (3) section 15, environmental protection performance standards.

Specifically, Arkansas proposes to revise section 5(b)(1) by deleting the provision that authorizes the Arkansas Commission on Pollution Control and Ecology to promulgate rules either exempting or regulating surface coal mining operations that affect 2 acres or less; adding section 13(k) indicating that violations incurred under a re-mining permit as the result of an unanticipated event or condition shall not disqualify the holder of that permit from obtaining subsequent surface coal mining permits; and adding section 15(d)(1) indicating that re-mining operations are responsible for successful revegetation for a period of 2 years after the last year of augmented seeding, fertilizing, irrigation or other work to assure compliance with the applicable standards.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. c.d.t., on October 14, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of

30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 22, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94-24131 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 913

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Illinois

regulatory program (hereinafter the "Illinois program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act) pertaining to small operator assistance, vegetation requirements for lands eligible for re-mining, and fees and civil penalties. The proposed amendment is intended to incorporate the additional flexibility afforded by SMCRA, as amended, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m. on October 31, 1994. If requested, a public hearing on the proposed amendment will be held on October 24, 1994. Requests to speak at the hearing must be received by 4:00 p.m. on October 14, 1994.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. James F. Fulton, Director, at the address listed below.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Copies of the Illinois program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Springfield Field Office.

James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 511 West Capitol, Suite 202, Springfield, Illinois 62704, Telephone: (217) 492-4495

Illinois Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, Springfield, Illinois 62791, Telephone: (217) 782-4970

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, Telephone: (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in

the June 1, 1982, Federal Register (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

II. Description of the Proposed Amendment

By letter dated September 9, 1994, (Administrative Record No. IL-1550) Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment at its own initiative. The proposed amendment incorporates statutory changes to the State Act at 225 ILCS 720/2.02, Contents of Permit Application; 3.15, Vegetation; and 9.07, Fees and Forfeitures. The revised statutes were enacted through Public Act 88-599 (HB 2349), and they were signed into law by the Governor of Illinois on September 1, 1994.

Public Act 88-599 amended 225 ILCS 720/2.02(b) of the State Act concerning small operator assistance for consistency with Section 507(c) of the Energy Policy Act of 1992. At subsection (b), Illinois proposes raising the annual coal production cap from 100,000 to 300,000 tons at all locations for eligibility for its small operator assistance program (SOAP). Subsection (b) is also amended by deleting reference to the current services and adding the following new or enhanced services: (1) the determination of probable hydrologic consequences, including the engineering analyses and designs necessary for the determination; (2) the development of cross-section maps and plans; (3) the geologic drilling and statement of results of test borings and core samplings; (4) the collection of archaeological information and any other archaeological and historical information required by the Department, and the preparation of plans necessitated thereby; (5) pre-blast surveys; and (6) the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the Department under this Act. Subsection (b) if further amended by adding the following SOAP assistance reimbursement requirement: A coal operator that has received assistance pursuant to this subsection shall reimburse the regulatory authority for the cost of the services rendered if the program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the

surface coal mining and reclamation permit.

Public Act 88-599 amended 225 ILCS 720/3.15 of the State Act by adding new subsection (e) concerning vegetation requirements for lands eligible for re-mining. Subsection (e) was added for consistency with Section 515(b) of SMCRA, as amended by the Energy Policy Act of 1992.

Proposed subsection (e) reads as follows: On lands eligible for re-mining, the operator shall assume the responsibility for successful revegetation for a period of 2 full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards of the Act. This does not preclude responsible land management practices on portions of the total area as deemed necessary and approved by the Department.

Public Act 88-599 added 30 ILCS 105/6z-36 to the State Finance Act to establish the Coal Mine Regulatory Fund. It also amended 225 ILCS 720/9.07 of the State Act by requiring all fees and civil penalties collected under the State Act be deposited into the Coal Mine Regulatory Fund. Section 6z-36 specifies that moneys in the Fund shall be annually appropriated to the Department of Mines and Minerals for the enforcement of coal mining regulatory laws and rules adopted by the Department under those laws.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Springfield Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under FOR FURTHER INFORMATION CONTACT by 4:00 p.m. on October 14, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one

requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under ADDRESSES. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and

its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 23, 1994.

Tim L. Dieringer,

Acting Assistant Director Eastern Support Center.

[FR Doc. 94-24132 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 948

West Virginia Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; Extension of Public Comment Period.

SUMMARY: OSM is announcing the receipt of additional revisions to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional revisions pertain to a previously proposed amendment (WV-074) to West Virginia's Surface Mining Reclamation Regulations. The proposed revisions concern the transfer, assignment or sale of permit rights; permitting requirements for a shared facility or structure; reporting of changes in ownership and control information; waiver of permit renewal requirements; permit revocation; prospecting roads; contemporaneous reclamation; disposal of coal processing waste and noncoal mine waste; utility installations; small operator assistance; and other matters. The amendment is intended to improve operational efficiency and revise the West Virginia program to be consistent with the corresponding Federal regulations and SMCRA.

DATES: Written comments must be received on or before 4:00 p.m. on October 31, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to James C. Blankenship, Director, Charleston Field Office at the address listed below.

Copies of the proposed amendment, the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the addresses below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Charleston Field Office.

James C. Blankenship, Director,
Charleston Field Office, Office of
Surface Mining Reclamation and
Enforcement, 1027 Virginia Street,
East, Charleston, West Virginia 25301,
Telephone: (304) 347-7158
West Virginia Division of
Environmental Protection, 10
McJunkin Road, Nitro, West Virginia
25143, Telephone: (304) 759-0515

In addition, copies of the proposed amendments are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation
and Enforcement, Morgantown Area
Office, 75 High Street, Room 229, P.O.
Box 886, Morgantown, West Virginia
26507, Telephone: (304) 291-4004
Office of Surface Mining Reclamation
and Enforcement, Beckley Area
Office, 323 Harper Park Drive, Suite 3,

Beckley, West Virginia 25801,
Telephone: (304) 255-5265
Office of Surface Mining Reclamation
and Enforcement, Logan Area Office,
313 Hudgins Street, 2nd Floor, P.O.
Box 506, Logan, West Virginia 25601,
Telephone: (304) 752-2851

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia Program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, *Federal Register* (46 FR 5915). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 948.10, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated June 28, 1993, the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program (Administrative Record Nos. WV 888, WV 889 and WV 893). The amendment contains revisions to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA § 22A-3-1 *et seq.*) and the West Virginia Surface Mining Reclamation Regulations (CSR § 38-2-1 *et seq.*). OSM announced receipt of the proposed amendment in the August 12, 1993, *Federal Register* (58 FR 42903) and invited public comment on its adequacy. The public comment period closed on September 7, 1993.

By letter dated April 1, 1994 OSM informed the WVDEP of more than 100 probable deficiencies in the proposed amendment (Administrative Record No. WV-916). The WVDEP and OSM held meetings on April 25, May 5, June 20, and August 5, 1994, in an effort to resolve these issues. During this time, WVDEP submitted to OSM technical studies, policy statements, legal opinions and explanations in support of the amendment. OSM provided the WVDEP with technical evaluations of the proposed amendment completed by OSM's Eastern Support Center. These documents and a summary of the meetings, including proposed resolutions of the issues, have been included in the Administrative Record

(see Record Nos. WV-916 through 933) and are available for review at the addresses listed above.

In order to resolve several issues, the WVDEP submitted as a revision to the June 28, 1993, amendment, portions of House Bill 4065 which was passed by the West Virginia legislature on March 12, 1994 (Administrative Record No. WV 933). House bill 4065 concerns the establishment of the Division of Environmental Protection and the Surface Mine Board, and revisions to the Abandoned Mine Lands Act and Surface Coal Mining and Reclamation Act.

OSM announced receipt of House Bill 4065 in the August 31, 1994, *Federal Register* (59 FR 44953) and reopened the public comment period for 30 days.

On September 1, 1994, the WVDEP also submitted as part of the June 28, 1993, amendment, additional proposed revisions to the State's Surface Mining Reclamation Regulations (Administrative Record No. WV-937). Many of these revisions are in response to OSM's April 1, 1994, and August 30, 1994, letters to the WVDEP that identified program deficiencies (Administrative Record No's. WV-916 and WV-934). Other revisions have been proposed at the State's initiative. OSM is extending the current public comment period on proposed amendment WV-074 to allow sufficient time for comment on the adequacy of revisions proposed on September 1, 1994. These revisions include the following:

1. CSR 38-2-2.92 Definitions

The WVDEP proposes to add a definition of the word "principals" as it relates to Section 9 of the WVSCMRA.

2. CSR 38-2-3.1(o) Ownership and Control File

The WVDEP proposes to add a provision which will allow permittees, upon request and with the approval of the Director, to submit and maintain a centralized ownership and control file.

3. CSR 38-2-3.4(d)(23) Explosive Storage Facility

The WVDEP proposes to revise its rules to clarify that explosive storage and handling facilities which will remain in place for an extended period of time during the life of the operation must be located on preplan mining maps.

4. CSR 38-2-3.8(a) Support Facilities

The WVDEP proposes to add a provision requiring that each permit application contain a description, plans, and drawings for each support facility to

be constructed, used or maintained within the proposed permit area.

5. CSR 38-2-3.8(d) Shared Facilities or Structures

The WVDEP proposes to add a provision which will provide for the permitting and bonding of a facility or structure that is to be shared by two or more separately permitted mining operations.

6. CSR 38-2-3.25(e) Transfer, Assignment or Sale of Permit Rights

The WVDEP proposes to add a paragraph requiring each assignee who will function as an operator to update and furnish on an annual basis ownership and control information.

7. CSR 38-2-3.26 Ownership and Control Changes

The WVDEP proposes to add provisions governing the reporting of name changes, replacements, and additions to the ownership and control information for any surface mining operation or permittee.

8. CSR 38-2-3.27(a) Permit Renewals

The WVDEP proposes to add a provision which will allow the director to waive the requirements for permit renewal if the permittee certifies in writing that all coal extraction is completed, that all backfilling and regrading will be completed within 120 days prior to the expiration date of the permit and that an application for Phase I bond release will be filed within 30 days following completion of backfilling and regrading.

9. CSR 38-2-3.31(a) Exemption for Government Financed Highway or Other Construction

The WVDEP proposes to revise its rules to allow exemptions from the requirements of the WVSCMRA for county, municipal or other local government-financed highway or other construction.

10. CSR 38-2-3.34(b)(4) Improvidently Issued Permits

The WVDEP proposes to add a provision providing that a permit shall be determined to have been improvidently issued when the permittee had a permit revoked or bond forfeited and has not been reinstated, or the permittee was linked to a permit revocation or bond forfeiture through ownership or control, at the time the permit was issued and an ownership or control link between the permittee and the person whose permit was revoked or whose bond was forfeited still exists, or when the link was severed the permittee

continues to be responsible for the permit revocation or bond forfeiture.

11. CSR 38-2-3.34(d)(1)(E) Recission of Improvidently Issued Permit

The WVDEP proposes to add a provision that provides for automatic suspension and recission unless the permittee or other person responsible for the permit revocation or bond forfeiture has been reinstated pursuant to subsection (c), Section 18 of the WVSCMRA.

12. CSR 38-2-3.34(g) Time of Permit Issuance

The WVDEP proposes to add a provision to clarify that a permit is issued when it is originally approved, as well as when a transfer, assignment, or sale of permit rights is approved.

13. CSR 38-2-4.1(a) Road Classification System

The WVDEP proposes to include haulageways and access roads under its road classification system.

14. CSR 38-2-4.2(a)(7) Design Certification

The WVDEP proposes to clarify that road designs are to be certified as meeting the requirements of the WVSCMRA and implementing rules.

15. CSR 38-2-4.3 Stream Crossings

The WVDEP proposes to reorganize its rules to clarify that the prohibition of roads in stream channels applies to all roads.

16. CSR 38-2-4.4 Infrequently Used Access Roads

The WVDEP proposes to add a provision requiring infrequently used access roads to be designed to ensure environmental protection appropriate for their planned duration and use, and to be constructed in accordance with current prudent engineering practices and any necessary design criteria established by the Director.

17. CSR 38-2-4.69(a)(10)(D) Drainage Design

The WVDEP proposes to revise the requirements for culvert installation so that culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation and the weight of the vehicles using the road.

18. CSR 38-2-4.7(b) Sediment Control Structures

The WVDEP proposes to revise its rules governing sediment storage volume and detention time as applied to drainage from roads to clarify that the

Director may approve lesser storage values than 0.125 acre/feet if compliance with the applicable effluent limits and the general performance standards for roads can be achieved.

19. CSR 38-2-5.4(c)(6)(D) Design Assumptions and Calculations

The WVDEP proposes to add a requirement for permit applicants to include a description of each engineering design assumption and calculation that is used for structures which impound water at an elevation of five feet or more above the upstream toe of the structure and can have a storage volume of 20 acre-feet or more; or which present a hazard to coal miners as determined by an MSHA District Manager.

20. CSR 38-2-5.5 Permanent Impoundments

The WVDEP proposes to clarify that sediment or water retention or impounding structures left in place after final bond release must be authorized by the Director as part of the permit application or a revision to a permit, and that sound future maintenance of the structure must be provided by the landowner.

21. CSR 38-2-11.3(b) Bond Instruments

The WVDEP proposes to require that all collateral bonds be negotiable and guaranteed. Bonds of the Federal land bank or homeowners loan corporation do not satisfy this criteria and, therefore, are no longer acceptable under the proposal.

22. CSR 38-2-11.3(b)(8) Bond Instruments

The WVDEP proposes to clarify that in no case shall the market value of a collateral bond be less than the required bond value.

23. CSR 38-2-11.4(a)(3) Incremental Bonding

The WVDEP proposes to require that independent increments be of sufficient size and configuration so as to provide for efficient and contemporaneous reclamation operations.

24. CSR 38-2-11.6 Site-Specific Bonding

The WVDEP proposes to establish a time limit of ten years of the date of surface mine application (SMA) approval when determining conversion factors for setting site-specific bonds.

25. CSR 38-2-12.3 Bond Adjustments

The WVDEP proposes to add a provision which provides, that upon the

receipt of a permit revision, the Director may review the bond adequacy and, if necessary, increase the amount of the bond.

26. CSR 38-2-12.4(c) Forfeiture of Bonds

The WVDEP proposes to clarify that bond forfeiture sites will be reclaimed in accordance with the approved reclamation plan or modification thereof.

27. CSR 38-2-13.6 Prospecting Roads

The WVDEP proposed to delete its existing performance standards for prospecting roads at CSR 38-2-13.5(b) and establish new requirements at CSR 38-2-13.6.

28. CSR 38-2-14.12(a)(6) Variances from Approximate Original Contour

The WVDEP proposes to revise its criteria for granting variances from approximate original contour to find that a watershed will be considered to be improved if the amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced and the total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water.

29. CSR 38-2-14.14(e)(10) Valley Fills

The WVDEP proposes to limit the maximum grade from the outslope of a valley fill toward the rock core to three percent.

30. CSR 38-2-14.15(a) General Contemporaneous Reclamation

The WVDEP propose to clarify that backfilling and grading of all disturbed area be done in a manner which eliminates spoil piles and depressions, returns all slopes to the angle of repose or such lesser slopes so as to achieve a static safety factor of 1.3 or greater, minimizes erosion and water pollution both off and on the site, supports the postmining land use, and covers all coal seams, acid-producing or toxic-forming materials, and combustible material with non-toxic and non-combustible material.

31. CSR 38-2-14.15(M) Coal Processing Waste Disposal

The WVDEP proposes add provisions governing the placement of coal processing waste in the backfill. Disposal facilities must be designed using current prudent engineering practices and must meet any design criteria established by the regulatory

authority. Designs must be certified by a qualified registered professional engineer.

32. CSR 38-2-14.18 Utility Installations

WVDEP proposes to add a provision requiring that all surface mining operations be conducted in a manner that minimizes damage destruction, or disruption of services provided by utilities.

33. CSR 38-2-14.19 Disposal of Noncoal Waste

WVDEP proposes to add provisions to regulate the disposal of noncoal waste such as grease, lubricants, garbage, abandoned machinery, lumber and other materials generated during mining activities. Under the proposal, final disposal of noncoal waste will be in accordance with a permit issued pursuant to Chapter 22, Article 15 of the Code of West Virginia (Solid Waste Management Act).

34. CSR 38-2-17 Small Operator Assistance

WVDEP proposes to increase the production limit of those operators eligible for assistance under the Small Operator Assistance Program (SOAP) from 100,000 to 300,000 tons and to provide for payment of additional services as authorized under the Energy Policy Act of 1992. WVDEP is also proposing to establish application information requirements for those persons requesting assistance.

35. CSR 38-2-17.6(c) Qualified Laboratories

The WVDEP is proposing to require that a qualified laboratory or contractor be capable of making a determination of the proposed operations probable hydrological consequences.

36. CSR 38-2-17.79(b) Liability of SOAP Operators

The WVDEP proposes to require SOAP applicants to submit written statements which sufficiently demonstrate that the applicant has acted in good faith at all times in order for the Director to waive the applicant's reimbursement obligation.

37. CSR 38-2-20.2(b)(3) Notice of Violations

The WVDEP proposes to revise the initial period allowed for abatement of violations from 15 to 30 days so that its regulations will be consistent with Section 22-3-17(a) of the WVSCMRA.

38. CSR 38-2-20.5(b) Cessation Order Assessments

The WVDEP proposes to delete the words "or modified" to clarify that only remedial measures in the cessation order and not the cessation order itself can be modified.

39. CSR 38-2-20.69(c) Notice of Assessment

The WVDEP proposes to clarify that the Director shall provide a copy of the proposed assessment to the operator within 30 days of the date the Assessment Officer receives the findings of an inspection of the violation.

40. CSR 38-2-22.4(g) Spillway Design

The WVDEP proposes to add the requirement that all impoundments meeting size or other criteria of 30 CFR 77.216(a) must be designed and constructed to safely pass the probably maximum precipitation of a 24 hour storm event.

41. CSR 38-2-22.79(a) Inspection Frequencies

The WVDEP proposes to clarify that inspections of impounding refuse piles will occur during the placement and compaction of coal refuse waste and during critical construction periods.

III. Public Comment Procedures

OSM is extending the comment period on West Virginia program amendment WV-074 to provide the public an opportunity to comment on the proposed revisions in the States regulations. In accordance with 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 21, 1994.

Richard J. Seibel,

Acting Assistant Director, Easter Support Center.

[FR Doc. 94-24133 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF EDUCATION**34 CFR Part 685****Federal Direct Student Loan Program**

RIN 1840-AC05

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: On August 18, 1994, the Department of Education published in the **Federal Register** a notice of proposed rulemaking (NPRM) for the Federal Direct Student Loan Program (59 FR 42646). The Internet address was listed incorrectly under the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Edelstein, telephone: (202) 708-9406. (Internet address: direct___loans@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m., and 8 p.m., Eastern time, Monday through Friday.

Correction

On page 42646, under **ADDRESSES**, the correct Internet address is: "(Internet address: direct___loans@ed.gov)." The remainder of the paragraph following the Internet address is corrected to read as follows: "All comments will be available for public review on the Department's Student Financial Assistance Bulletin Board. The access number for the bulletin board for individuals with communications software and modems is 1-800-429-9933. In addition, Internet users may access the bulletin board by using the TCP/IP telnet command facility (Internet address: directloan.ope.ed.gov)."

Dated: September 22, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94-24019 Filed 9-28-94; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF THE INTERIOR**Bureau of Reclamation****43 CFR Part 432**

RIN 1006-AA34

Fish and Wildlife Service**50 CFR Chapter 1****Central Valley Project—Purposes, Uses, and Allocation of Water Supplies**

AGENCIES: Department of the Interior, Bureau of Reclamation and Fish and Wildlife Service.

ACTION: Notice to extend comment period.

SUMMARY: The Bureau of Reclamation and Fish and Wildlife Service are extending the comment period published in 59 FR 39316, Aug. 2, 1994, to provide the public with additional time to prepare comments concerning the need for rules and regulations to implement certain provisions of the Central Valley Project Improvement Act.

DATES: The deadline for receiving written comments is extended to October 18, 1994.

ADDRESSES: Written comments should be sent to Gary Sackett, Attention: MP-400, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Gary Sackett at the above address, telephone (916) 978-4933 or TDD (916) 978-4417.

Dated: September 23, 1994.

Roger K. Patterson,

Regional Director, Mid-Pacific Region, U.S. Bureau of Reclamation.

Dated: September 23, 1994.

Michael J. Spear,

Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 94-24069 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-94-M

FEDERAL EMERGENCY MANAGEMENT AGENCY**44 CFR Part 67**

[Docket No. FEMA-7112]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the

proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
OHIO	
Gilboa (Village), Putnam County	
<i>Blanchard River:</i>	
Approximately 1,050 feet downstream of Pearl Street	*742
Approximately 1,100 feet upstream of Pearl Street	*744

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Municipal Council Room, 206 West Main Street, Gilboa, Ohio.	
Send comments to The Honorable Richard McCullough, Mayor of the Village of Gilboa, 122 Franklin Street, Gilboa, Ohio 45875.	
Glenford (Village), Perry County	
<i>Jonathan Creek:</i>	
At downstream corporate limits, approximately 550 feet downstream of Main Street	*844
At upstream corporate limits, approximately 1,200 feet upstream of Main Street	*848
Maps available for inspection at the Village Clerk's Residence, 123 Mill Street, Glenford, Ohio.	
Send comments to The Honorable Nolan P. Henderson, Mayor of the Village of Glenford, P.O. Box 22, Glenford, Ohio 43739.	
Malvern (Village), Carroll County	
<i>E.g. Sandy Creek:</i>	
Approximately 600 feet downstream of downstream corporate limit	*994
Approximately 600 feet upstream of upstream corporate limit	*998
Maps available for inspection at the Village Hall, 116 West Main Street, Malvern, Ohio.	
Send comments to The Honorable Dale E. Lewis, Mayor of the Village of Malvern, 116 West Main Street, Malvern, Ohio 44644.	
Bluffton (Village), Allen County	
<i>Riley Creek:</i>	
Approximately 350 feet downstream of corporate limit	*812
Approximately 100 feet upstream of Norfolk and Western Railway	*827
<i>Little Riley Creek:</i>	
At confluence with Riley Creek	*813
Approximately 175 feet upstream of Columbus Grove-Bluffton Road	*822
Maps available for inspection at the Bluffton Village Offices, 100 East Elm Street, Bluffton, Ohio.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Roger Edwards, Mayor of the Village of Bluffton, P.O. Box 63, Bluffton, Ohio 45817.		Upstream corporate limits of the Borough of Seward	*1,102
PENNSYLVANIA Seward (Borough), Westmoreland County <i>Conemaugh River:</i> Downstream corporate limits of the Borough of Seward	*1,099	Maps available for inspection at Ms. Rose Bouch's Home, Corner of Washington Street and Hedges Street, Seward, Pennsylvania. Send comments to Mr. Thomas Mulligan, President of the Seward Borough Council, R.D. #2, Box 338 A, Seward, Pennsylvania 15954.	

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Taylor County (Unincorporated Areas).	Woods Creek	Approximately 350 feet upstream of confluence with Spring Creek.	*30	*31
			Approximately 100 feet upstream of U.S. Route 221 and State Route 55.	None	*50

Maps available for inspection at the Courthouse Basement, 108 North Jefferson Street, Perry, Florida.

Send comments to Mr. Vance R. Howell, Chairman of the Taylor County Board of Commissioners, P.O. Box 620, Perry, Florida 32347.

Kentucky	Taylor Mill (City) Kenton County.	Banklick Creek	Approximately 0.5 mile downstream of State Highway 16.	*503	*499
			Approximately 1,300 feet upstream of State Highway 16.	*503	*499

Maps available for inspection at the City Hall, 5225 Taylor Mill Road, Taylor Mill, Kentucky.

Send comments to The Honorable Mark Kreimberg, Mayor of the City of Taylor Mill, Kenton County, 5225 Taylor Mill Road, Taylor Mill, Kentucky 41015.

Maine	Farmington (Town) Franklin County.	Sandy River	Approximately 0.5 mile downstream of State Route 41.	*338	*340
			Approximately 2.6 miles upstream of State Route 4 bridge (corporate limits).	*385	*389
		Wilson Stream	At confluence with Sandy River	*343	*345
			Approximately 0.4 mile upstream of State Route 133 bridge (corporate limits).	*376	*377
		Temple Stream	At confluence with Sandy River	*359	*355
			Approximately 0.9 mile above Russels Mill Road Bridge (corporate limits).	*454	*457
		Barker Stream	At confluence with Sandy River	*365	*368
			Approximately 800 feet upstream of State Route 27.	None	*533
		Cascade Brook	At confluence with Sandy River	*347	*352
			Approximately 180 feet above State Route 43 bridge (Allens Mill Road).	None	*484
Beaver Brook	At confluence with Sandy River	*360	*357		
	Upstream side of Middle Street bridge	*394	*395		
		Clear Water Pond	None	*563	

Maps available for inspection at the Farmington Municipal Building, 147 Lower Main Street, Farmington, Maine.

Send comments to Ms. Francis Hardy, First Selectman of the Town of Farmington, 147 Lower Main Street, Farmington, Maine 04938.

New Hampshire ...	Freedom (Town) Carroll County.	West Branch	At confluence with Ossipee Lake	None	*414
			Upstream side of Ossipee Lake Road	None	*446
		Ossipee Lake	Entire shoreline within community	None	*414
		Broad Bay	Entire shoreline within community	None	*414
		Leavitt Bay	Entire shoreline within community	None	*414

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Town Office Building, Old Portland Road, Freedom, New Hampshire.

Send comments to Mr. William O. Cutler, Chairman of the Town of Freedom Board of Selectmen, P.O. Box 227, Freedom, New Hampshire 03836.

New Hampshire	Ossipee (Town) Carroll County.	Lovell River	Approximately 0.5 mile upstream of confluence with Ossipee Lake.	*414	*415
			Approximately 1,000 feet upstream of State Route 16/25.	None	*434
		West Branch	Approximately 0.6 mile upstream of confluence with Ossipee Lake.	None	*414
			At upstream corporate limits.	None	*446

Maps available for inspection at the Town Hall, Main Street, Center Ossipee, New Hampshire.

Send comments to Mr. John P. Picard, Chairman of the Town of Ossipee Board of Selectmen, Carroll County, P.O. Box 67, Center Ossipee, New Hampshire 03814.

New York	Windham (Town) Greene County.	Batavia Kill	Approximately 0.7 mile downstream of County Route 12 (South Street).	None	*1,467
			Approximately 1.6 miles upstream of County Route 56.	None	*2,345

Maps available for inspection at the Town Hall, Route 296, Hensonville, New York.

Send comments to Mr. Patrick P. Meehan, Jr., Supervisor of the Town of Windham, Town of Windham, Greene County, P.O. Box 96, Hensonville, New York 12439.

Pennsylvania	Allegheny (Township) Westmoreland County.	Pine Run (Lower Reach) ..	At the CONRAIL	None	*789
			Approximately 700 feet upstream of State Route 56 (Bypass).	None	*815

Maps available for inspection at the Allegheny Community Building, 136 Community Building Road, Leechburg, Pennsylvania.

Send comments to Mrs. Rapheala Stoner, Chairperson of the Allegheny Board of Supervisors, 136 Community Building Road, Leechburg, Pennsylvania 15656.

Pennsylvania	Avalon (Borough) Allegheny County.	Ohio River	Approximately 0.95 mile downstream of Divergence of Ohio River Back Channel.	None	*723
			Approximately 750 feet upstream of Divergence of Ohio River Back Channel.	None	*724

Maps available for inspection at the Borough Hall, 640 California Avenue, Avalon, Pennsylvania.

Send comments to Ms. Joan Welsh, Manager for the Borough of Avalon, 640 California Avenue, Avalon, Pennsylvania 15202.

Pennsylvania	Baldwin (Borough) Allegheny County.	Monongahela River	At confluence of Becks Run	*733	*734
			Approximately 0.42 mile downstream of Glenwood Bridge.	*734	*735

Maps available for inspection at the Zoning Office, 3344 Churchview Avenue, Baldwin, Pennsylvania.

Send comments to Mr. Robert P. Bittle, President of the Borough of Baldwin Council, 3344 Churchview Avenue, Pittsburgh, Pennsylvania 15227.

Pennsylvania	Bellevue (Borough) Allegheny County.	Ohio River	Approximately 750 feet upstream of Divergence of Ohio River Back Channel.	None	*724
			Approximately 0.43 mile downstream of McKees Rocks Bridge.	None	*724

Maps available for inspection at the Borough Hall, 537 Bayne Avenue, Bellevue, Pennsylvania.

Send comments to Mr. Robert T. Grimm, Manager of the Borough of Bellevue, 537 Bayne Avenue, Bellevue, Pennsylvania 15202.

Pennsylvania	Braddock (Borough) Allegheny County.	Monongahela River	At a point approximately 550 feet upstream of Rankin Bridge.	*738	*739
			At a point approximately 0.29 mile downstream of Lock & Dam No. 2.	*739	*740

Maps available for inspection at the Code Enforcement Street, 415 Sixth Street, Braddock, Pennsylvania.

Send comments to Ms. Mildred Devich, President of the Borough of Braddock Council, 415 Sixth Street, Braddock, Pennsylvania 15104.

Pennsylvania	California (Borough) Washington County.	Monongahela River	Approximately 1.3 miles downstream of confluence of Pike Run.	*766	*769
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State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 2.9 miles upstream of the confluence of Pike Run.	*770	*773

Maps available for inspection at the Municipal Building, 114 5th Street, California, Pennsylvania.

Send comments to The Honorable Joseph Dochinez, Mayor of the Borough of California, 218 Pennsylvania Avenue, California, Pennsylvania 15419.

Pennsylvania	Clairton (City) Alle- gheny County.	Monongahela River	Approximately 0.51 mile downstream of Glassport Bridge.	*747	*748
			Approximately 500 feet downstream of confluence of Wylie Run.	*748	*750

Maps available for inspection at the City Engineer's Office, 551 Ravensburg Boulevard, Clairton, Pennsylvania.

Send comments to Mr. Bruce E. Jenkins, Engineering Assistant, 551 Ravensburg Boulevard, Clairton, Pennsylvania 15025-1297.

Pennsylvania	Coal Center (Bor- ough) Washing- ton County.	Monongahela River	Approximately 1,650 feet downstream of confluence of Pike Run.	*767	*770
			Approximately 200 feet upstream of con- fluence of Pike Run.	*767	*770

Maps available for inspection at the Coal Center Borough Building, 132 Water Street, Coal Center, Pennsylvania.

Send comments to The Honorable James Roberts, Mayor of the Borough of Coal Center, P.O. Box 174, Coal Center, Pennsylvania 15423.

Pennsylvania	Collier (Township) Allegheny County.	Robinson Run	Approximately 1.09 miles downstream of Union Avenue.	None	*887
			Approximately 1.25 miles downstream of Union Avenue.	None	*888
		Chartiers Creek	Just downstream of Painters Run Road ...	*795	*797
			Approximately 0.39 mile upstream of State Route 519 (Washington Pike).	*802	*801

Maps available for inspection at the Zoning Office, 2418 Hilltop Road, Collier, Pennsylvania.

Send comments to Mr. Nick Marmula, Chairman of the Township of Collier Board of Commissioners, 2418 Hilltop Road, Presto, Pennsylvania 15142.

Pennsylvania	Coraopolis (Bor- ough) Allegheny County.	Montour Run	At the upstream side of Montour Railroad	*718	*719
			Approximately 750 feet downstream of Coraopolis Boulevard.	*718	*719

Maps available for inspection at the Borough Hall, 1012 Fifth Avenue, Coraopolis, Pennsylvania.

Send comments to The Honorable Orlando Falcione, Mayor of the Borough of Coraopolis, 1012 Fifth Avenue, Coraopolis, Pennsylvania 15108.

Pennsylvania	Crafton (Borough) Allegheny County.	Chartiers Creek	Approximately 1.5 miles upstream of Ingram Avenue.	None	*754
			At Chartiers Avenue	None	*759

Maps available for inspection at the Borough Hall, 100 Stotz Avenue, Crafton, Pennsylvania.

Send comments to Mr. Alvin Handelsman, Engineer for the Borough of Crafton, 1011 Alcon Street, Pittsburgh, Pennsylvania 15220.

Pennsylvania	Cumberland (Town- ship) Greene County.	Monongahela River	Approximately 500 feet downstream of confluence of New Run (downstream corporate limits).	None	*786
			At confluence of Little Whitley Creek (up- stream corporate limits).	None	*794
		Muddy Creek	0.8 mile downstream of Township Route 634.	None	*1,005
			Approximately 470 feet upstream of Leg- islative Route 30102.	None	*1,031

Maps available for inspection at the Cumberland Township Building, 100 Municipal Road, Carmichaels, Pennsylvania.

Send comments to Mr. Philip A. Donaldson, Zoning Officer, Cumberland Township Building, 100 Municipal Road, Carmichaels, Pennsylvania 15320.

Pennsylvania	Delmont (Borough) Westmoreland County.	Turtle Creek (Upper Reach).	Approximately 400 feet downstream of Old William Penn Highway.	None	*1,054
			Approximately 350 feet upstream of Old William Penn Highway.	None	*1,063

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Delmont Borough Office, 77 Greensburg Street, Delmont, Pennsylvania.

Send comments to Ms. Sarah Jane Lamont, President of the Delmont Borough Council, 77 Greensburg Street, Delmont, Pennsylvania 15626.

Pennsylvania	Dravosburg (Borough) Allegheny County.	Monongahela River	Approximately 0.75 mile downstream of Mansfield Bridge.	*745	*746
			Approximately 0.25 mile downstream of Mansfield Bridge.	*745	*746

Maps available for inspection at the Borough Hall, 226 Maple Avenue, Dravosburg, Pennsylvania.

Send comments to Mr. Art Page, President of the Borough of Dravosburg Council, P.O. Box 37, Dravosburg, Pennsylvania 15034.

Pennsylvania	Dunkard (Township) Greene County.	Monongahela River	At confluence of Dunkard Creek	None	*805
			Approximately 0.68 mile upstream of Point Marion Lock and Dam.	None	*809

Maps available for inspection at the Dunkard Township Building, Corner of Grant Street and Taylortown Road, Bobtown, Pennsylvania.

Send comments to Mr. Jerome K. Wiley, Chairman of the Township of Dunkard Board of Supervisors, Box 369, Bobtown, Pennsylvania 15315.

Pennsylvania	Duquesne (City) Allegheny County.	Monongahela River	At a point approximately 0.27 mile upstream of Lock and Dam No. 2.	*740	*741
			At a point approximately 1,200 feet upstream of McKeesport-Duquesne Bridge.	*743	*744

Maps available for inspection at the Building Inspector's Office, 12 South Second Street, Duquesne, Pennsylvania.

Send comments to The Honorable George F. Matt II, Mayor of the City of Duquesne, 12 South Second Street, Duquesne, Pennsylvania 15110.

Pennsylvania	East Huntingdon (Township) Westmoreland County.	Belson Run	Approximately 350 feet upstream of Sunny Lane.	None	*1,138
			Approximately 625 feet upstream of Sunny Lane.	None	*1,139

Maps available for inspection at the East Huntingdon Municipal Building, Route 981, Alverton, Pennsylvania.

Send comments to Mr. Joel B. Suter, Supervisor for the Township of East Huntingdon, P.O. Box 9, Alverton, Pennsylvania 15612.

Pennsylvania	East Pittsburgh (Borough) Allegheny County.	Turtle Creek	Backwater reach from Monongahela River up to Westinghouse Bridge at Lincoln Highway.	None	*741
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Maps available for inspection at the Borough Hall, 516 Bessemer Avenue, East Pittsburgh, Pennsylvania.

Send comments to Mr. James Geric, President of the Borough of East Pittsburgh Council, 516 Bessemer Avenue, East Pittsburgh, Pennsylvania 15112.

Pennsylvania	Elizabeth (Borough) Allegheny County.	Monongahela River	Approximately 0.21 mile downstream of confluence of Fallen Timber Run.	*748	*750
			At confluence of Smiths Run	*749	*750
		Fallen Timber Run	At confluence with Monongahela River	*749	*750
			Approximately 400 feet downstream of Rothey Street (Pennaman Avenue).	None	*752

Maps available for inspection at the Borough Hall, 206 Third Avenue, Elizabeth, Pennsylvania.

Send comments to The Honorable Gerald M. LaFrankie, Mayor of the Borough of Elizabeth, 206 Third Avenue, Elizabeth, Pennsylvania 15037.

Pennsylvania	Elizabeth (Township) Allegheny County.	Monongahela River	Approximately 100 feet upstream of confluence of Wylie Run.	*747	*750
			Approximately 0.43 mile downstream of State Route 51.	*747	*750
		Wylie Run	At confluence with Monongahela River	*747	*750
			Approximately 150 feet downstream of Glassport Road (McKeesport Road).	*747	*750

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Township Hall, 522 Rock Run Road, Township of Elizabeth, Pennsylvania.

Send comments to Mr. Charles Carlock, Chairman of the Township of Elizabeth Board of Supervisors, 522 Rock Run Road, Buena Vista, Pennsylvania 15018.

Pennsylvania	Fairfield (Township) Westmoreland County.	Tubmill Creek	At Tubmill Dam	None	*1,295
			Approximately 550 feet downstream of Tubmill Dam.	None	*1,289

Maps available for inspection at the Fairfield Township Municipal Building, S.R. 1011, Midget Camp Road, Bolivar, Pennsylvania.

Send comments to Mr. Paul J. Altimus, Chairman for the Township of Fairfield, R.D. #1, Box 231A, Bolivar, Pennsylvania 15923.

Pennsylvania	Forward (Township) Allegheny County.	Monongahela River	At confluence of Smiths Run	*749	*750
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Maps available for inspection at the Township Municipal Building, River Road, Forward, Pennsylvania.

Send comments to Mr. Louis Majoris, Chairman of the Township Board of Supervisors, R.D. #3, Box 40-A, Monongahela, Pennsylvania 15063.

Pennsylvania	Franklin Park (Bor- ough) Allegheny County.	Bear Run	Approximately 0.51 mile upstream of Mount Nebo Road.	None	*950
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Maps available for inspection at the Borough Hall, 2428 Rochester Road, Franklin Park, Pennsylvania.

Send comments to Mr. Gerald L. Reichart, Manager of the Borough of Franklin Park, 2428 Rochester Road, Sewickley, Pennsylvania 15143.

Pennsylvania	Glassport (Bor- ough) Allegheny County.	Monongahela River	Approximately 0.34 mile upstream of con- fluence of Harrison Hollow Stream.	*746	*747
			Approximately 0.37 mile upstream of Glassport Bridge.	*747	*748

Maps available for inspection at the Borough Hall, Fifth & Monongahela, Glassport, Pennsylvania.

Send comments to Mr. Anthony Pepe, President of the Borough of Glassport Council, Fifth & Monongahela, Glassport, Pennsylvania 15045.

Pennsylvania	Greensboro (Bor- ough) Greene County.	Monongahela River	Approximately 900 feet downstream of downstream corporate limits.	*799	*800
			At the upstream corporate limits	*800	*801

Maps available for inspection at the Greensboro Borough Building, Main Street, Greensboro, Pennsylvania.

Send comments to Mr. Peter O. Everly, President of the Borough of Greensboro Council, P.O. Box 152, Greensboro, Pennsylvania 15338.

Pennsylvania	Hamilton (Town- ship) Monroe County.	McMichael Creek	At upstream corporate limits	None	*623
			Approximately 150 feet downstream of Turkey Hill Road.	*465	*466

Maps available for inspection at the Township Building, Fenner Street, Hamilton, Pennsylvania.

Send comments to Mr. Alan Everett, Chairman of the Township of Hamilton Board of Supervisors, P.O. Box 285, Sciota, Pennsylvania 18354.

Pennsylvania	Harmar (Township) Allegheny County.	Little Deer Creek	Approximately 150 feet downstream of Jacoby Road.	None	*783
			Approximately 700 feet upstream of Bes- semer and Lake Erie Railroad.	None	*815

Maps available for inspection at the Township Hall, 701 Freeport Road, Harmar, Pennsylvania.

Send comments to Mr. Frederick Domaratz, Chairman of the Township of Harmar Board of Supervisors, 701 Freeport Road, Cheswick, Pennsylvania 15024.

Pennsylvania	Heidelberg (Bor- ough) Allegheny County.	Tributary A to Chartiers Creek.	At confluence with Chartiers Creek to ap- proximately 0.49 mile upstream of con- fluence.	None	*787
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State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Borough Hall, 1631 East Railroad Street, Heidelberg, Pennsylvania.

Send comments to Ms. Denise Breen, President of the Borough of Heidelberg Council, 1631 East Railroad Street, Heidelberg, Pennsylvania 15106.

Pennsylvania	Homestead (Borough) Allegheny County.	Monongahela River	Approximately 600 feet downstream of Pittsburgh Homestead Bridge.	None	*737
			Approximately 4,000 feet upstream of Pittsburgh Homestead Bridge.	None	*737

Maps available for inspection at the Borough Hall, 1705 Maple Street, Homestead, Pennsylvania.

Send comments to Mr. John Cornelius, Manager of the Borough of Homestead, P.O. Box 448, Homestead, Pennsylvania 15120.

Pennsylvania	Jefferson (Borough) Allegheny County.	Lick Run	Approximately 400 feet upstream of Cochrans Mill Road.	None	*963
			At downstream side of Curry Hollow Road.	None	*985
		Monongahela River	Approximately 3,700 feet downstream of Glassport Highway Bridge.	None	*747
			At confluence of Perry Mill Run	*751	*752
Lobbs Run	At confluence with Monongahela River	*751	*752		
	Approximately 100 feet upstream of Walton Road.	*751	*752		

Maps available for inspection at the Borough Hall, 925 Old Clairton Road, Jefferson, Pennsylvania.

Send comments to Mr. Pat Capolupo, President of the Borough of Jefferson Council, 925 Old Clairton Road, Clairton, Pennsylvania 15025.

Pennsylvania	Kilbuck (Township) Allegheny County.	Lowries Run	Approximately 3,300 feet downstream of the approximate center of the multiple lanes of Interstate 279.	None	*798
			Approximately 2,600 feet downstream of the approximate center of the multiple lanes of Interstate 279.	None	*802

Maps available for inspection at the Township Hall, 343 Eicher Road, Kilbuck, Pennsylvania.

Send comments to Mr. Timothy Frew, Chairman of the Township of Kilbuck Board of Supervisors, 343 Eicher Road, Kilbuck, Pennsylvania 15237-1012.

Pennsylvania	Leetsdale (Borough) Allegheny County.	Big Sewickley Creek	At a point approximately 250 feet downstream of Ohio River Boulevard.	*712	*711
			At a point approximately 250 feet upstream of Beaver Road.	*715	*711

Maps available for inspection at the Borough Hall, 85 Broad Street, Leetsdale, Pennsylvania.

Send comments to Mr. James F. Shaughnessy, President of the Borough of Leetsdale Council, 85 Broad Street, Leetsdale, Pennsylvania 15056-1109.

Pennsylvania	Lincoln (Borough) Allegheny County.	Monongahela River	Approximately 0.23 mile upstream from the Glassport Highway Bridge.	*747	*748
			At the confluence with Wylie Run	*749	*750
		Boston Hollow River	Approximately 0.56 mile upstream of Pitt Street Tributary.	None	*866
			Approximately 0.59 mile upstream of Pitt Street Tributary.	None	*868
		Wylie Run	At confluence with the Monongahela River.	*748	*750
	Approximately 0.25 mile upstream of Mill Hill Road.	None	*859		

Maps available for inspection at the Borough Hall, Port View Road, Lincoln, Pennsylvania.

Send comments to The Honorable Florence Swamtack, Mayor of the Borough of Lincoln, R.D. #4, Box 120-B, Elizabeth, Pennsylvania 15037.

Pennsylvania	Luzerne (Township) Fayette County.	Monongahela River	Approximately 1.8 miles downstream of confluence of Rush Run (at downstream corporate limits).	*773	*775
			Approximately 3.6 miles upstream of confluence of Hereford Hollow (at upstream corporate limits).	*787	*789

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Luzerne Township Building, 415 Hopewell Road, Brownsville, Pennsylvania.

Send comments to Mr. William Baker, Chairman of the Luzerne Township Board of Supervisors, 415 Hopewell Road, Brownsville, Pennsylvania 15417.

Pennsylvania	McCandless (Town) Allegheny County.	Girty's Run	Approximately 0.67 mile upstream of Three Degree Road.	None	*1,092
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Maps available for inspection at the Town Hall, Zoning and Planning Office, 9955 Grubbs Road, McCandless, Pennsylvania.

Send comments to Mr. Tobias M. Cordek, Manager of the Town of McCandless, 9955 Grubbs Road, Wexford, Pennsylvania 15090.

Pennsylvania	McKeesport (City) Allegheny County.	Monongahela River	At McKeesport-Duquesne Bridge	*743	*744
			Approximately 0.45 mile downstream of Mansfield Bridge.	*745	*746
		Youghiogheny River	At confluence with Monongahela River	*744	*745
			Approximately 500 feet upstream of 15th Avenue.	*744	*745

Maps available for inspection at the Building Inspector's Office, 201 Lysle Boulevard, McKeesport, Pennsylvania.

Send comments to The Honorable Lou Washowich, Mayor of the City of McKeesport, 201 Lysle Boulevard, McKeesport, Pennsylvania 15132.

Pennsylvania	Monessen (City) Westmoreland County.	Monongahela River	Approximately 0.5 mile upstream of the Donora-Monessen bridge.	*759	*760
			Approximately 1,025 feet upstream of North Charleroi bridge.	*760	*762

Maps available for inspection at the City Hall, 100 Third Street, Monessen, Pennsylvania.

Send comments to The Honorable Robert H. Leone, Mayor of the City of Monessen, 100 Third Street, Monessen, Pennsylvania 15062.

Pennsylvania	Monongahela (City) Washington County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
		Digeon Creek	At confluence with Monongahela River	*755	*756
			Upstream corporate limit	*755	*756

Maps available for inspection at the Monongahela City Hall, 449 West Main Street, Monongahela, Pennsylvania.

Send comments to The Honorable John Moreschi, Mayor of the City of Monongahela, 449 West Main Street, Monongahela, Pennsylvania 15063.

Pennsylvania	Monroeville (Municipality) Allegheny County.	Turtle Creek	At the confluence of Lyons Run	None	*832
			Approximately 1.48 miles upstream of confluence of Abers Creek.	None	*866

Maps available for inspection at the Engineering Office, 2700 Monroeville Boulevard, Monroeville, Pennsylvania.

Send comments to Ms. Mary Ann Nau, Manager of the Municipality of Monroeville, 2700 Monroeville Boulevard, Monroeville, Pennsylvania 15146.

Pennsylvania	Moon (Township) Allegheny County.	McClarens Run	At confluence with Montour Run	None	*867
			Approximately 0.34 mile upstream of Hilton Inn Drive.	None	*920
		Montour Run	Approximately 500 feet upstream of Montour Railroad.	None	*719
			At confluence of McClarens Run	None	*867

Maps available for inspection at the Building Inspector's Office, 1000 Beaver Grade Road, Moon, Pennsylvania.

Send comments to Mr. George Semich, Chairman of the Township of Moon Board of Supervisors, Municipal Center, 1000 Beaver Grade Road, Moon, Pennsylvania 15108.

Pennsylvania	Munhall (Borough) Allegheny County.	Monongahela River	At a point approximately 0.76 mile up- stream of Pittsburgh Homestead Bridge.	None	*737
			At a point approximately 1,250 feet down- stream of Rankin Bridge.	None	*739

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
<p>Maps available for inspection at the Borough Hall, 1900 West Street, Munhall, Pennsylvania. Send comments to Mr. Robert C. Eberhart, Manager of the Borough of Munhall, 1900 West Street, Munhall, Pennsylvania 15120.</p>					
Pennsylvania	New Stanton (Borough) Westmoreland County.	Belson Run	At downstream corporate limits with Hempfield.	None	*1,043
			At upstream corporate limits with Hempfield (near Sandworks Road).	None	*1,133
<p>Maps available for inspection at the Borough Municipal Building, 451 West Center Avenue, New Stanton, Pennsylvania. Send comments to Mrs. Sally J. Taubken, New Stanton Council President, P.O. Box 237, New Stanton, Pennsylvania 15672.</p>					
Pennsylvania	Nicholson (Township) Fayette County.	Monongahela River	At the confluence of Cats Run	*797	*798
			Approximately 1,100 feet downstream of the confluence of Georges Creek.	*801	*800
<p>Maps available for inspection at the Nicholson Township Building, R.D. 2, Smithfield, Pennsylvania. Send comments to Mr. John Black, Chairman of the Township of Nicholson Board of Supervisors, Township Building, R.D. 2, Box 95, Smithfield, Pennsylvania 15478.</p>					
Pennsylvania	North Braddock (Borough) Allegheny County.	Monongahela River	At a point approximately 700 feet downstream of Lock & Dam No. 2.	None	*740
			At a point approximately 250 feet downstream of Port Perry Bridge.	None	*741
<p>Maps available for inspection at the Borough Hall, 600 Anderson Street, North Braddock, Pennsylvania. Send comments to The Honorable Raymond L. McDonough, Mayor of the Borough of North Braddock, 600 Anderson Street, North Braddock, Pennsylvania 15104.</p>					
Pennsylvania	North Huntingdon (Township) Westmoreland County.	Brush Creek	Just upstream of confluence of Bushy Run.	None	*917
			Upstream side of second crossing of CONRAIL.	None	*929
<p>Maps available for inspection at the North Huntingdon Township Hall, 11279 Center Highway, North Huntingdon, Pennsylvania. Send comments to Mr. Eugene Walczyk, Chairman of the Board of Commissioners for the Township of North Huntingdon, 11279 Center Highway, North Huntingdon, Pennsylvania 15642.</p>					
Pennsylvania	North Versailles (Township) Allegheny County.	Monongahela River	At a point approximately 0.55 mile upstream of Port Perry Bridge.	*741	*742
			At a point approximately 0.70 mile downstream of McKeesport/Duquesne Bridge.	*742	*743
<p>Maps available for inspection at the Township Municipal Center, 1401 Greensburg Avenue, North Versailles, Pennsylvania. Send comments to Mr. Edward McGuire, Chairman of the Township of North Versailles, Board of Supervisors, 1401 Greensburg Avenue, North Versailles, Pennsylvania 15137.</p>					
Pennsylvania	Penn Hills (Municipality) Allegheny County.	Thompson Run	Approximately 0.46 mile downstream of South McCully Drive.	None	*839
			Approximately 600 feet upstream of Union Railroad culvert opening (upstream side).	None	*962
<p>Maps available for inspection at the Planning Department, 12245 Frankstown Road, Penn Hills, Pennsylvania. Send comments to The Honorable William DeSantis, Mayor of the Municipality of Penn Hills, 12245 Frankstown Road, Pittsburgh, Pennsylvania 15235.</p>					
Pennsylvania	Penn (Township) Westmoreland County.	Lyons Run	At Pleasant Valley Road (L.R. 64089)	None	*915
			Approximately 1.1 miles upstream of Pleasant Valley Road.	None	*981
		Brush Creek	Upstream side of most upstream crossing of State Route 766.	None	*1,100

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 125 feet upstream of the most upstream crossing of State Route 766.	None	*1,101

Maps available for inspection at the Township Building, Municipal Court, Harrison City, Pennsylvania.

Send comments to Mr. Bill Schaffer, Chairman of the Township of Penn, P.O. Box 452, Harrison City, Pennsylvania 15636.

Pennsylvania	Pittsburgh (City) Allegheny County.	Monongahela River	Approximately 200 feet downstream of South Tenth Street bridge.	*730	*731
			Approximately 1.11 miles upstream of Pittsburgh Homestead bridge.	*737	*738
		Spring Garden Run	Approximately 0.29 mile downstream of Beech Street (Mount Pleasant Road).	None	*906
		Becks Run	At the confluence with the Monongahela River.	*733	*734
			Approximately 0.32 mile upstream of Beck Run Road (most upstream crossing).	None	*819

Maps available for inspection at the Department of City Planning, 4th Floor Civic Building, 200 Ross Street, Pittsburgh, Pennsylvania.

Send comments to The Honorable Tom Murphy, Mayor of the City of Pittsburgh, 512 City County Building, Pittsburgh, Pennsylvania 15219.

Pennsylvania	Port Vue (Borough) Allegheny County.	Youghiogheny River	Approximately 0.12 mile upstream of West 5th Avenue.	*744	*745
			Approximately 500 feet upstream of 15th Avenue.	*744	*745

Maps available for inspection at the Borough Hall, 1191 Romine Avenue, Port Vue, Pennsylvania.

Send comments to Mr. Orlando DiMarco, President of the Borough of Port Vue Council, 1191 Romine Avenue, Port Vue, Pennsylvania 15133.

Pennsylvania	Plum (Borough) Allegheny County.	Pucketa Creek	Just upstream of State Route 366	None	*784
			At county boundary	None	*852

Maps available for inspection at the Planning Department, 4575 New Texas Road, Plum, Pennsylvania.

Send comments to Mr. Al Flickinger, President of the Borough of Plum Council, 4575 New Texas Road, Plum, Pennsylvania 15239.

Pennsylvania	Rankin (Borough) Allegheny County.	Monongahela River	At Rankin Bridge	*738	*739
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Maps available for inspection at the Borough Hall, 320 Hawkins Avenue, Rankin, Pennsylvania.

Send comments to Mr. Pete Veltre, President of the Borough of Rankin Council, 320 Hawkins Avenue, Rankin, Pennsylvania 15104.

Pennsylvania	Salem (Township) Westmoreland County.	Crab Tree Creek	Approximately 0.3 mile downstream of U.S. Route 119.	None	*990
			Approximately 130 feet upstream of L.R. 64054.	None	*1,037

Maps available for inspection at the Township Municipal Building, Congruity Road, Greensburg, Pennsylvania.

Send comments to Mr. Frank Pavlovich, Chairman of the Township of Salem Board of Supervisors, Municipal Building, R.D. #4, Greensburg, Pennsylvania 15601.

Pennsylvania	Scottdale (Borough) Westmoreland County.	Jacob's Creek (Lower Reach).	Approximately 0.5 mile upstream of 5th Avenue.	*1,030	*1,031
			Upstream Borough of Scottdale corporate limits.	*1,035	*1,036
		Stauffer Run	Confluence with Jacob's Creek	*1,035	*1,036
			Approximately 100 feet downstream of Chestnut Street.	*1,035	*1,036

Maps available for inspection at the Scottdale Borough Hall, 10 Mt. Pleasant Road, Scottdale, Pennsylvania.

Send comments to The Honorable Eugene J. Beran, Mayor of the Borough of Scottdale, 600 Eleanor Avenue, Scottdale, Pennsylvania 15683.

Pennsylvania	Sewickley (Township) Westmoreland County.	Youghiogheny River Tributary.	At the corporate limits with Borough of Sutersville.	None	*864
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State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 100 feet downstream of corporate limits with Borough of Sutersville.	None	*860

Maps available for inspection at the Municipal Building, Marshall Road, Irwin, Pennsylvania.
Send comments to Mr. F. Regisvanyo, Chairman of the Board of Supervisors, P.O. Box 28, Herminie, Pennsylvania 15637.

Pennsylvania	South Fayette (Township) Allegheny County.	Robinson Run	Approximately 1.13 miles downstream of Union Avenue.	None	*888
			At the downstream side of Mevey Street .	None	*922

Maps available for inspection at the Township Municipal Building, 515 Millers Run Road, South Fayette, Pennsylvania.
Send comments to Mr. C. Kenneth Chambon, President of the Township of South Fayette Board of Commissioners, 515 Millers Run Road, Morgan, Pennsylvania 15064.

Pennsylvania	Swissvale (Borough) Allegheny County.	Monongahela River	Approximately 1.11 miles upstream of Pittsburgh Homestead Bridge.	None	*738
			Approximately 0.61 mile downstream of Rankin Bridge.	None	*738

Maps available for inspection at the Borough Hall, 7560 Roslyn Street, Swissvale, Pennsylvania.
Send comments to Mr. Thomas J. Esposito, Manager of the Borough of Swissvale, 7560 Roslyn Street, Swissvale, Pennsylvania 15218.

Pennsylvania	Tarentum (Borough) Allegheny County.	Bull Creek	Approximately 50 feet downstream of State Route 28.	None	*758
			Approximately 0.57 mile upstream of State Route 28.	None	*74

Maps available for inspection at the Borough Building, 304 Lock Street, Tarentum, Pennsylvania.
Send comments to Mr. Larry Yeasted, President of the Borough of Tarentum Council, 304 Lock Street, Tarentum, Pennsylvania 15084.

Pennsylvania	Unity (Township) Westmoreland County.	Slate Creek	Approximately 1,700 feet upstream of U.S. Route 30.	*1,141	*1,142
			Approximately 1,200 feet upstream of U.S. Route 30.	*1,135	*1,142

Maps available for inspection at the Unity Township Municipal Building, R.D. 3, Latrobe, Pennsylvania.
Send comments to Mr. Merle L. Musick, Code Enforcement Officer for the Township of Unity, R.D. 3, Box 526K, Latrobe, Pennsylvania 15650.

Pennsylvania	Upper St. Clair (Township) Allegheny County.	Painters Run	Approximately 200 feet downstream of Power Hill Road.	None	*846
			Approximately 400 feet upstream of Painters Run Road.	None	*869

Maps available for inspection at the Township Municipal Building, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania.
Send comments to Mr. Charles Molzer, President of the Township of Upper St. Clair Board of Commission, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania 15241.

Pennsylvania	Washington (Township) Fayette County.	Monongahela River	At downstream corporate limits	*763	*765
			At upstream corporate limits (approximately 0.6 mile upstream of the confluence of Little Redstone Creek).	*765	*767
		Little Redstone Creek	At confluence with Monongahela River	*764	*767
			Approximately 670 feet downstream of State Route 206 bridge.	*766	*767

Maps available for inspection at the Washington Township Offices, 1390 Fayette Avenue, Belle Vernon, Pennsylvania.
Send comments to Mr. Earnest Legg, Chairman of the Washington Township Board of Supervisors, 229 Long Avenue, Belle Vernon, Pennsylvania 15012.

Pennsylvania	Washington (Township) Westmoreland County.	Pucketa Creek	Approximately 725 feet downstream of State Route 380.	None	*919
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State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Pine Run (Upper Reach) ..	Approximately 0.4 mile upstream of Ashbaug Road.	None	*1,071
			Approximately 0.6 mile upstream of Chamber Road (Pine Run Road).	None	*987

Maps available for inspection at the Washington Township Municipal Building, 285 Pine Run Church Road, Apollo, Pennsylvania.
Send comments to Mr. Herbert J. Coulter, Chairperson of the Board of Supervisors, 285 Pine Run Church Road, Apollo, Pennsylvania 15613.

Pennsylvania	West Brownsville (Borough) Washington County.	Monongahela River	Approximately 20 feet downstream of confluence of Lily Run.	*769	*773
			Approximately 1,300 feet downstream of the Brownsville bridge.	*771	*775

Maps available for inspection at the West Brownsville Borough Building, 235 Main Street, West Brownsville, Pennsylvania, or at the home of Mr. Jack J. Sabo, West Brownsville Secretary, 615 Woodlawn Avenue, West Brownsville, Pennsylvania.
Send comments to The Honorable Joseph A. DeSalvo, Mayor of the Borough of West Brownsville, 625 Middle Street, West Brownsville, Pennsylvania 15417.

Pennsylvania	West Elizabeth (Borough) Allegheny County.	Monongahela River	At State Route 51	*749	*750
			Approximately 0.76 mile upstream of State Route 51.	*749	*750

Maps available for inspection at the Borough Building, Corner of 5th & Lincoln, West Elizabeth, Pennsylvania.
Send comments to Mr. John Nikolic, President of the Borough of West Elizabeth Council, 308 Border Street, West Elizabeth, Pennsylvania 15088.

Pennsylvania	West Homestead (Borough) Allegheny County.	Monongahela River	Approximately 650 feet upstream of Glenwood Bridge.	*735	*736
			Approximately 600 feet downstream of Pittsburgh Homestead Bridge.	*736	*737

Maps available for inspection at the Borough Engineer's Office, 401 West 8th Avenue, West Homestead, Pennsylvania.
Send comments to Mr. William Stasko, President of the Borough of West Homestead Council, 401 West 8th Avenue, West Homestead, Pennsylvania 15120.

Pennsylvania	West Mifflin (Borough) Allegheny County.	Monongahela River	Approximately 0.29 mile upstream of Rankin Bridge.	*738	*739
			Approximately 0.78 mile downstream of Glassport Bridge.	*746	*747
		Streets Run	Approximately 840 feet downstream of Tributary No. 1.	None	*807
			Approximately 1.34 miles upstream of Tributary No. 2.	None	*977

Maps available for inspection at the Borough Hall, 4733 Greenspring Avenue, West Mifflin, Pennsylvania.
Send comments to Mr. Kenneth Ruffing, President of the Borough of West Mifflin Council, 4733 Greenspring Avenue, West Mifflin, Pennsylvania 15122.

Pennsylvania	Whitaker (Borough) Allegheny County.	Monongahela River	At a point approximately 0.24 mile downstream of Rankin Bridge.	None	*739
			At a point approximately 0.29 mile upstream of Rankin Bridge.	None	*739

Maps available for inspection at the Borough Hall, 125 Grant Street, Whitaker, Pennsylvania.
Send comments to Mr. Eugene Ratay, President of the Borough of Whitaker Council, 125 Grant Street, Whitaker, Pennsylvania 15120.

Pennsylvania	White Oak (Borough) Allegheny County.	Crooked Run	Approximately 250 feet downstream of Pennsylvania Avenue.	None	*788
			At 5th Avenue	None	*799

Maps available for inspection at the Borough Municipal Building, 2280 Lincoln Way, White Oak, Pennsylvania.
Send comments to Ms. Margaret Kadar, President of the Borough of White Oak Council, 2280 Lincoln Way, White Oak, Pennsylvania 15131.

Pennsylvania	Wilkins (Township) Allegheny County.	Thompson Run	At downstream side of Factory Entrance Drive.	*754	*755
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State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			At downstream side of Union Railroad	*766	*767

Maps available for inspection at the Township Hall, 110 Peffer Road, Wilkins, Pennsylvania.

Send comments to Mr. Michael Madden, President of the Township of Wilkins Board of Commission, 110 Peffer Road, Turtle Creek, Pennsylvania 15145.

South Carolina	Lexington County (Unincorporated Areas).	Senn Branch	Approximately 200 feet downstream of Epharata Drive.	*225	*224
		Tributary SM-3	Just upstream of Hebron Drive	None	*301
			A point approximately 100 feet down- stream of Edmund Highway (Route 302).	*175	*176
		Stoop Creek	Approximately 0.4 mile upstream of dam at Lexington Drive.	None	*214
			Approximately 70 feet upstream of Fair- way Lane.	*201	*200
		Approximately 200 feet downstream of Interstate Highway 26.	*211	*210	

Maps available for inspection at the Lexington County Administration Building, Planning and Development Office, 212 South Lake Drive, Lexington, South Carolina.

Send comments to Mr. Ed Parlar, Lexington County Administrator, 212 South Lake Drive, Lexington, South Carolina 29072.

Tennessee	Dechard (City) Franklin County.	Wagner Creek	Approximately 800 feet upstream of Sharp Springs Road.	*893	*894
		Bluespring Branch	At confluence of Bluespring Branch	None	*960
			At confluence with Wagner Creek	None	*960
				Approximately 1.59 miles upstream of confluence with Wagner Creek.	None

Maps available for inspection at the Dechard City Hall, 1301 West Main Street, Dechard, Tennessee.

Send comments to Mr. Michael Foster, Dechard City Administrator, P.O. Box 488, Dechard, Tennessee 37324.

Tennessee	Franklin County (Unincorporated Areas).	Wagner Creek	At upstream side of Old Cowan Road	None	*950
		Bluespring Branch	Approximately 2.2 miles upstream of Old Cowan Road.	None	*993
			At confluence with Wagner Creek	None	*960
		Sink Hole Area	Approximately 2.2 miles upstream of con- fluence with Wagner Creek.	None	*1,008
			Near the City of Dechard (north of Floyd Street).	None	*948

Maps available for inspection at the Franklin County Courthouse Annex, 110 South High Street, Winchester, Tennessee.

Send comments to Mr. George Fraley, Franklin County Executive, One North Jefferson Street, Winchester, Tennessee 37398.

Tennessee	Lynchburg-Moore County Metropol- itan Government.	East Fork Mulberry Creek	Approximately 200 feet downstream of Louse Creek Road.	None	*738
		Price Branch	Approximately 0.5 mile upstream of Ten- nessee Highway 55.	None	*828
			At confluence with East Fork Mulberry Creek.	None	*775
			Approximately 1.85 miles upstream of confluence with East Fork Mulberry Creek.	None	*825

Maps available for inspection at the Metro Courthouse, Public Square, Lynchburg, Tennessee.

Send comments to Mr. Carl B. Payne, Lynchburg-Moore County Metropolitan Executive, Lynchburg-Moore County Metropolitan Government, P.O. Box 206, Lynchburg, Tennessee 37352.

Tennessee	Polk County (Unin- corporated Areas).	Hiwassee River	Approximately 1.8 miles downstream of Chestvee Creek confluence.	None	*711
		Ocoee River	Approximately 0.42 mile upstream of CSX Transportation bridge.	None	*714
			Approximately 100 feet upstream at the confluence with Hiwassee River.	None	*714

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Immediately downstream of Ocoee Dam #1.	None	*742
Maps available for inspection at the Polk County Courthouse, Main Street, Benton, Tennessee. Send comments to Mr. Hoyt T. Firestone, Polk County Executive, P.O. Box 128, Benton, Tennessee 37307.					
Tennessee	Winchester (City) Franklin County.	Wagner Creek	Approximately 800 feet upstream of Sharp Springs Road. Approximately 1,300 feet upstream of Old Winchester-Decherd Road.	*893 *919	*894 *918
Maps available for inspection at the Winchester City Hall, 7 South High Street, Winchester, Tennessee. Send comments to The Honorable David Bean, Mayor of the City of Winchester, 7 South High Street, Winchester, Tennessee 37398.					
West Virginia	Rivesville (Town) Marion County.	Monongahela River	A point approximately 0.49 mile downstream of Prickett Run (downstream corporate limit). Approximately 600 feet upstream of confluence of Prickett Run.	*867 *867	*866 *868
Maps available for inspection at the Town Hall, 142 Main Street, Rivesville, West Virginia. Send comments to The Honorable Richard Valentine, Mayor of the Town of Rivesville, Town Hall, 142 Main Street, Box 45, Rivesville, West Virginia 26588.					
West Virginia	Mercer County (Unincorporated Areas).	Brush Creek South Fork	Approximately 0.4 mile downstream of the U.S. Route 460 bridge. At the downstream side of County Route 19/33. Approximately 900 feet upstream of County Route 71/6. Approximately 600 feet downstream of confluence of Middle Fork.	*2,396 *2,413 *2,416 *2,442	*2,395 *2,414 *2,415 *2,443
Maps available for inspection at the Mercer County Courthouse, Courthouse Square, Princeton, West Virginia. Send comments to Mr. John Rapp, President of the Mercer County Commission, P.O. Box 5469, Princeton, West Virginia 22740.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 20, 1994.

Robert F. Shea,

Acting Associate Director for Mitigation.

[FR Doc. 94-24117 Filed 9-28-94; 8:45 am]

BILLING CODE 6718-03-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 676

[Docket No. 940845-4245; I.D. 081794A]

RIN 0648-AG98

Limited Access Management of Federal Fisheries In and Off of Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement a regulatory amendment

affecting the Pacific halibut and sablefish fisheries in and off the State of Alaska (Alaska or State). This action explains the methodology used to calculate Community Development Quota (CDQ) compensation for the Pacific halibut and sablefish individual fishing quota (IFQ) program and would codify a systematic procedure for CDQ compensation.

DATES: Comments must be received no later than November 14, 1994.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of this proposed rule and the Regulatory Impact Review (RIR) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The Pacific halibut and sablefish CDQ program was designed to assist in the revitalization of rural communities in Western Alaska by providing those communities with access to fishery resources within their geographical proximity. The CDQ program was developed under the authority, and is consistent with the management objectives, of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the Northern Pacific Halibut Act (Halibut Act).

CDQ Compensation Formula

The CDQ compensation formula would compensate persons for reductions in the amount of Pacific halibut and sablefish available for harvest with IFQ in CDQ areas resulting from allocations of those fishery resources to the CDQ program. Compensated persons would be those who are initially issued quota share (QS) in CDQ areas. This one-time compensation adjustment would be in

the form of QS in each of the non-CDQ areas.

The CDQ compensation formula would affect all persons who are initially issued QS, including those persons who did not participate historically in the Pacific halibut or sablefish fisheries in CDQ areas. The North Pacific Fishery Management Council (Council) intended that all persons who are initially issued QS share the burden of compensating persons for reductions in the amount of Pacific halibut and sablefish available for harvest with IFQ in CDQ areas. This would be accomplished by distributing the compensation burden among all persons who would be initially issued QS by reducing their harvest privilege by a fixed percentage. Even persons who receive compensation would share the burden.

The amount of compensation QS a person receives would equal the reduction in the QS amount of harvestable fishery resources that person would receive in a CDQ area, minus the fixed percentage reduction shared by all persons who would be initially issued QS. Persons eligible for compensation would receive a portion of the total amount of compensation QS in each non-CDQ area. The compensation QS in each non-CDQ area would be proportional to the size of the QS pool of that area. For example, a person who would be eligible for compensation QS for halibut would receive the greatest amount of compensation QS in area 3A, which has the largest QS pool, and the least amount in area 4A, which has the smallest QS pool.

CDQ Compensation Formula Methodology

The following describes how the CDQ compensation formula operates. All total allowable catch (TAC) amounts are the TAC average for the years 1988-1994. First, (1) add the CDQ, based on the TAC average, from all management areas for that species to calculate total CDQ for that species, (2) add the TAC from all management areas for that species to calculate total TAC for that species, and (3) divide the total CDQ by the total TAC. This provides the proportion (percentage) of the total TAC going to the CDQ program for each species.

Second, multiply the proportion (percentage) of the total TAC going to the CDQ program (calculated above) by the TAC for each management area. This provides the total pounds of fish that will be used for CDQ compensation in that management area.

Third, divide the original QS (quota share pool) for each management area by the part of the TAC that will not be used for compensation in that area. This provides the QS per pound of non-compensating TAC.

Fourth, multiply the part of the TAC in each area that will be used for compensation by the QS per pound of noncompensating TAC for that area. This provides the QS created and used for compensation in that area.

Fifth, for each person with QS in a CDQ area, (1) total the IFQ lost by that person to CDQ in all areas and then (2) multiply that total by the quantity one minus the sum of the proportion of the total TAC going to the CDQ program for each species. This provides the pounds used to determine the amount of compensation QS a person will receive for that species.

Sixth, sum the pounds used to determine the amount of compensation QS each person will receive for that species. This provides the total pounds used to determine the compensation QS for all persons for that species.

Seventh, divide the pounds used to determine the amount of compensation QS each person will receive for a species (from step 5) by the total pounds used to determine the compensation QS for all persons for a species (from step 6). This provides the proportion of new QS in each area that a person should receive as compensation.

Eighth, and finally, multiply the proportion of the new QS in each area that the person should receive as compensation by the new QS available for compensation in each area (calculated in step 4). This provides the QS a person would receive as compensation in each area.

Example

If a person was initially issued 5,000 QS for Pacific halibut in regulatory Area 4E, that person would have all 5,000 QS transferred into CDQ compensation QS. This is because 100 percent of the TAC of Pacific halibut in regulatory Area 4E is allocated to the CDQ program. To calculate how much CDQ compensation QS the person would receive in one of the non-CDQ areas (Area 2C is used in this example):

1. Add CDQ from all areas for Pacific halibut (based on the 1988-1994 TAC average). The resulting sum is 1,038,571 lb (471.09 mt).

2. Add the TAC from all areas for Pacific halibut (based on the 1988-1994 average). The resulting sum is 50,581,429 lb (22,943.35 mt).

3. Divide the resulting sum from step 1 by the resulting sum in step 2. The resulting quotient is 0.0205 (or 2.05

percent) and is the proportion of the total TAC allocated to the CDQ program for Pacific halibut.

4. Multiply the resulting quotient in step 3 by the 1988-1994 TAC average for Pacific halibut in area 2C, which is 9,700,000 lb (4,399.85 mt). The resulting product is 198,850 lb (90.20 mt) and is the total pounds of Pacific halibut that will be used as CDQ compensation from area 2C.

5. Divide the QS pool for area 2C, 57,575,315, by the TAC in that area that will not be used as compensation, 9,501,150 lb (4,309.65 mt). The resulting quotient, 6.06, is the QS per pound of noncompensating TAC.

6. Multiply the total pounds of Pacific halibut that will be used as compensation from area 2C, 198,850 lb (90.2 mt), by the QS per pound of non-compensating TAC, which is 6.06. The resulting product, 1,205,031, is how many QS will be created in area 2C to use as compensation.

7. Multiply the proportion of the total TAC going to the CDQ program for Pacific halibut, 0.0205, by the amount of IFQ the person loses to the CDQ program in area 4E, which is 3,239 lb (1.5 mt). The resulting product is 66.

8. Subtract the resulting product in step 7 from the amount of IFQ the person loses to the CDQ program in area 4E, which is 3,239 lb (1.5 mt). The resulting difference is 3,173 lb (1.4 mt).

9. Multiply the proportion of the total TAC going to the CDQ program for Pacific halibut, 0.0205, by the total lost IFQ to CDQ in all areas for Pacific halibut, which is 1,038,571 lb (471.1 mt). The resulting product is 21,291 lb (9.7 mt).

10. Subtract the resulting product in step 9 from the total lost IFQ to CDQ in all areas for Pacific halibut, which is 1,038,571 lb (471.1 mt). The resulting difference is 1,017,280 lb (9.7 mt).

11. Divide the resulting difference in step 8 by the resulting difference in step 10. The resulting quotient, 0.0031, is the proportion of new QS in area 2C the person will receive as compensation.

12. Multiply the resulting quotient in step 11 by the amount of new QS created in area 2C to be used as compensation, which is 1,205,031. The resulting product, 3,736, is the amount of QS the person will receive as compensation in area 2C.

This process would be repeated for each non-CDQ area by using the appropriate numbers for that area. (NOTE: This example uses data that may be changed before the CDQ compensation QS adjustment. For example, the QS pools, and therefore the resulting CDQ compensation QS, may be different than in this calculation

once all applications have been received by NMFS and the initial QS pool is set on October 17, 1994. Although the eventual calculation may employ different numbers, the methodology of the calculation is accurately demonstrated.)

The CDQ compensation formula would be included in the regulations for the IFQ program at § 676.24(i)(3). The formula would replace the current language contained in this paragraph that established January 31 of the first year of fishing under the IFQ program as the date for determining the QS pool for purposes of establishing compensation for CDQ allocations. Eliminating January 31 from this paragraph would permit the issuance of compensation QS at an earlier date. Furthermore, under proposed regulations implementing Amendment 31 to the Fishery Management Plan (FMP) for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and Amendment 35 to the FMP for Groundfish of the Gulf of Alaska, October 17, 1994, is being established as the specific date to determine the quota share pools. Proposed regulations to implement Amendments 31 and 35 were published in the *Federal Register* June 28, 1994 (59 FR 33272). Using October 17, 1994, rather than January 31, as the date to establish the QS pools would relieve a restriction by allowing persons who are initially issued QS more time to transfer QS prior to the first IFQ season. Also, using a specific date ensures that all persons are treated in a similar manner. NMFS would be particularly interested in receiving

public comment on relieving this restriction.

Classification

The RIR prepared for this rule incorporates by reference the final regulatory flexibility analysis (FRFA) prepared for the IFQ program, the program for which the CDQ compensation formula was designed. The FRFA supports the determination that the IFQ program may have a significant impact on a substantial number of small entities. Further information on the FRFA can be obtained by referring to the final rule for the IFQ program, published in the *Federal Register* November 9, 1993 (58 FR 59375). The RIR and the FRFA are available for review (see ADDRESSES).

A collection of information for the IFQ program was approved by the Office of Management and Budget, OMB control number 0648-0272. This action will not affect the collection-of-information requirements already approved for the IFQ program.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 676

Fisheries, Reporting and recordkeeping requirements.

Dated: September 23, 1994.

Samuel W. McKeen,
Acting Program Management Officer,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 676 is proposed to be amended as follows:

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

1. The authority citation for 50 CFR part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. Section 676.24 is amended by revising paragraph (i)(3) to read as follows:

§ 676.24 Western Alaska Community Development Quota Program.

* * * * *

(i) * * *

(3) Compensation of halibut and sablefish QS foregone due to the CDQ program will occur only in the first year of fishing under the IFQ program and will be calculated for each CDQ area using the following formula:

$$Q_N = (Q_C \times QSP_N \times RATE) / (SUM_{CDQ} - [RATE \times SUM_{TAC}] \{ [1 - RATE] - TAC \} (QSP_C \times [CDQ_{PCT} - RATE])$$

where:
 Q_N=quota share in non-CDQ area
 Q_C=quota share in CDQ area
 QSP_N=quota share pool in non-CDQ area
 RATE=SUM_{CDQ}/total allowable catch for all CDQ and non-CDQ areas
 TAC=total allowable catch (average of the TAC for 1988-1994) for CDQ area
 QSP_C=quota share pool in CDQ area
 CDQ_{PCT}=CDQ percentage for CDQ area
 SUM_{CDQ}=sum [total allowable catch for CDQ area × CDQ_{PCT}] (based on average TAC)
 SUM_{TAC}=sum [total allowable catch for CDQ area] (based on average TAC)

* * * * *

[FR Doc. 94-24136 Filed 9-28-94; 8:45 am]

BILLING CODE 3510-22-W

Notices

Federal Register

Vol. 59, No. 188

Thursday, September 29, 1994

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

Kerry and Caren Kennedy Road Right-of-Way; San Bernardino National Forest San Bernardino County, California; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for the proposed road right-of-way for Kerry and Caren Kennedy. Two environmental assessment (EA) documents were prepared; the first dated August 4, 1993, and the second dated December 23, 1993. There were four alternatives considered but none could be selected because of impacts on California spotted owls. The mitigation measures considered in the documents left uncertainty as to whether a finding of no significant impacts could be made.

PROPOSED ACTION: The land, for which permanent access is sought, is owned by the proponents, Kerry and Caren Kennedy. This project and their land are located within the San Gorgonio Ranger District of the San Bernardino National Forest. The Kennedys require this access to enable them to build three to four residences on their land. The project involves approximately 3/4-mile of road reconstruction and less than 1/8-mile of new road construction across National Forest System lands. The Kennedy's property lies in the upper end of a box canyon with steep side walls. Generally, the developable portion of the property lies in and adjacent to the flood plain of Mill Creek. The only reasonable access is via National Forest System lands. Currently, the Kennedys have a temporary right-of-way permit. A portion of the roadbed covered by the temporary permit is in the flood plain. The range of alternatives will consider the level of road improvements necessary to provide permanent access for residential

development. The EIS will be prepared pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C., Sec. 4332(2)(C), the National Forest Management Act (NFMA), 16 U.S.C., Sec. 1604(i), Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. Sec. 3210, and applicable regulations implementing these laws.

POSSIBLE ALTERNATIVES: Four alternatives were developed for detailed consideration. Alternative 1, was the "no action" alternative, which is no change in the existing road. Alternative 2, is the proposed action of upgrading and realigning Falls Road. Alternative 3, considers grading and paving the existing road without widening or otherwise improving it. Alternative 4, is similar to Alternative 2, in that it would also relocate segments of the existing road and widen it, but would only use a gravel, not paved, roadbed.

ISSUES IDENTIFIED: Environmental issues which will be analyzed will be limited to the individual and cumulative impacts of the proposed development on the habitat of California spotted owls. The other previously considered issues outlined in the environmental assessment will not be reconsidered during this analysis, except as they are associated with the impacts on spotted owls.

The Draft EIS is expected to be available for public review by November 30, 1994. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of its availability in the *Federal Register*.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F. 2d 1016,

1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3. The final Environmental Impact Statement is expected to be available about March 15, 1995.

DATES: Comments are requested on this notice concerning the scope of analysis of the draft SEIS. Comments must be received on or before October 31, 1994.

PUBLIC SCOPING: The Forest Service has previously conducted public scoping on this proposal and no additional public scoping, beyond this notice, is planned.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis for the Kerry and Caren Kennedy road right-of-way proposal to Gene Zimmerman, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408-3430.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and preparation of the EIS of Hal Seyden, Planning Program Leader, San Bernardino National Forest, 1824 South Commercenter Circle, San Bernardino, CA 92408-3430 or call (909) 884-6634, extension 3160.

RESPONSIBLE OFFICIAL: Because the proposed action may violate regional direction to protect all spotted owls, the responsible official is Regional Forester G. Lynn Sprague, Pacific Southwest

Region, 630 Sansome Street, San Francisco, CA 94111.

Dated: September 21, 1994.

Gene Zimmerman,

Forest Supervisor.

[FR Doc. 94-24090 Filed 9-28-94; 8:45 am]

BILLING CODE 3410-11-M

Boundary Modification of Butte Valley National Grassland

AGENCY: Forest Service, USDA.

ACTION: Notice of Boundary Modification of Butte Valley National Grassland.

SUMMARY: On September 13, 1994, the Chief, U.S. Forest Service, modified the boundary of the Butte Valley National Grassland, located in Siskiyou County, California. Currently this grassland comprises 18,425 acres of land purchased under the authority of the Bankhead-Jones Farm Tenant Act of 1937, administered by the Goosenet Ranger District of the Klamath National Forest. This boundary modification allows for the inclusion of 1,280 acres of land transferred from the Farmers Home Administration to be administered as a part of this Grassland. A copy of the Chief's Boundary Modification document which includes the legal description of the lands within the addition appears at the end of this notice.

EFFECTIVE DATE: The effective date of this addition was September 13, 1994.

ADDRESSES: A copy of the map showing this boundary modification is on file and available for public inspection in the Office of the Director of Lands, Forest Service, Auditor's Building, 201 14th Street, SW., Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: David Sherman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 205-1248.

Dated: September 20, 1994.

Sterling J. Wilcox,

Acting, Deputy Chief, NFS.

Boundary Modification

Butte Valley National Grassland, Siskiyou County, California

Pursuant to the authority of Title 16, United States Code, sections 1010-1012 and Title 36, Code of Federal Regulations, § 213.2, the boundary of the Butte Valley National Grassland in Siskiyou County, State of California, is

hereby modified to add the following lands:

Mt. Diablo Meridian:

T. 47 N., R. 1 E.,

Section 30, All.

T. 47 N., R. 1 W.,

All of sections 1, 2, 11-14, 22-26, 34 and 35.

T. 46 N., R. 1 W.,

Section 2, All.

Said federal lands will be administered as part of the Butte Valley National Grassland subject to all laws, rules and regulations applicable to the National Forest System. The nonfederal lands within the boundary modification will not be affected by this action.

Dated: September 13, 1994.

Jack Ward Thomas,

Chief, U.S. Forest Service.

[FR Doc. 94-24056 Filed 9-28-94; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Buck Hollow Watershed, Sherman and Wascow Counties, Oregon

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding Of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Soil Conservation Service Regulations (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Buck Hollow Watershed, Sherman and Wasco Counties, Oregon.

FOR FURTHER INFORMATION CONTACT: Robert J. Graham, State Conservationist, Soil Conservation Service, 1220 SW. Third Avenue, Room 1640, Portland, Oregon 97204-2881, telephone (503) 326-2751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert J. Graham, State Conservationist, has determined that preparation and review of an environmental impact statement are not needed for this project.

The project purposes are conservation and proper utilization of land (watershed protection) to rectify water quality problems, specifically related to

salmonid fisheries on privately owned lands. The planned works of improvement include grazing management systems on 60,000 acres, fish stream improvement on 25 miles and cropland management systems on 10,500 acres.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Russell A. Collett at the above address.

No administrative action on implementation of the proposed will be taken until 30 days after the date of this publication in the **Federal Register**. (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.)

Robert J. Graham,

State Conservationist.

[FR Doc. 94-24091 Filed 9-28-94; 8:45 am]

BILLING CODE 3410-16-M

Middle Branch Park River Watershed Supplement No. 2, Cavalier, Pembina, and Walsh Counties, ND

AGENCY: Department of Agriculture, Soil Conservation Service.

ACTION: Notice of a Finding Of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Soil Conservation Service Regulations (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Middle Branch Park River Watershed, Cavalier, Pembina, and Walsh Counties, North Dakota.

DATES: Comment Deadline—October 31, 1994.

ADDRESSES: USDA Soil Conservation Service, 220 E. Rosser Avenue, Bismarck, ND 58501.

FOR FURTHER INFORMATION CONTACT: Ronnie L. Clark, State Conservationist, 701-250-4421.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates the

project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ronnie L. Clark, State Conservationist, has determined the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are flood prevention and watershed protection. The planned works of improvement include an earthfill dam (426,000 cubic yards) with a principal spillway and a reinforced concrete spillway. The recommended plan also includes 3,900 acres of associated land treatment measures on cropland and rangeland fields, and the development of animal waste systems above the dam site.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ronald D. Sando, Assistant State Conservationist (Water Resources), 701-250-4441.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(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.)

William J. Hartman,
Deputy State Conservationist.

[FR Doc. 94-24082 Filed 9-28-94; 8:45 am]

BILLING CODE 3410-16-M

Rattlesnake Creek Watershed, OH

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service, U.S. Department of Agriculture, gives notice of the intent to deauthorize Federal funding for the Rattlesnake Creek Watershed, Clinton, Fayette, Madison, and Greene Counties, Ohio.

FOR FURTHER INFORMATION CONTACT:

Lawrence E. Clark, State Conservationist, Soil Conservation Service, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone (614) 469-6962. Rattlesnake Creek Watershed, Ohio, Notice of intent to deauthorize Federal funding.

SUPPLEMENTARY INFORMATION: A determination has been made by Lawrence E. Clark that the proposed works of improvement for the Rattlesnake Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Lawrence Clark, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management of Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: September 20, 1994.

Lawrence E. Clark,
State Conservationist.

[FR Doc. 94-24033 Filed 9-28-94; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Vida Shahamat

In the Matter of: Vida Shahamat, 6318 Green Spring Avenue, Apartment 208, Baltimore, Maryland 21209, Respondent.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having notified Vida Shahamat (Shahamat) of its intention to initiate an administrative proceeding against her pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. sections 2401-2420 (1991, Supp. 1993, and Pub. L. 103-277, July 5, 1994)) (the Act),¹ and Part 788 of the Export

¹ The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (1991)).

Administration Regulations (currently codified at 15 CFR Parts 768-799 (1994)) (the Regulations), based on allegations that, on or about February 26, 1993, Shahamat ordered, bought, and financed U.S.-origin computer equipment that she intended to export to Iran without obtaining the validated license that she knew was required by the Regulations, and that, on or about March 10, 1993, Shahamat attempted to export that computer equipment to Iran without obtaining the validated license required by § 772.1(b) of the Regulations;

The Department and Shahamat having entered into a Consent Agreement whereby the Department and Shahamat have agreed to settle this matter in accordance with the terms and conditions set forth therein and the terms of the Consent Agreement having been approved by me;

It Is Therefore Ordered, That First, a civil penalty of \$20,000 is assessed against Shahamat. Payment of the \$20,000 civil penalty shall be suspended in its entirety for a period of three years beginning on the date of entry of this Order, and shall thereafter be waived provided that, during the period of suspension, Shahamat has committed no violation of the Act or any regulation, order, or license issued under the Act.

Second, Vida Shahamat, 6318 Green Spring Avenue, Apartment 208, Baltimore, Maryland 21209, shall, for a period of three years from the date of entry of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States and subject to the Regulations.

A. All outstanding individual validated export licenses in which Shahamat appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all Shahamat's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for

reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

C. After notice and opportunity for comment as provided in § 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Shahamat by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

D. As provided by § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (1) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public, and this Order shall be published in the **Federal Register**.

This Order is effective immediately.

Entered this 21st day of September, 1994.

John Despres,

Assistant Secretary, for Export Enforcement.
[FR Doc. 94-24032 Filed 9-28-94; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Intent to Revoke the Antidumping Finding

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of intent to revoke the antidumping finding.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty finding listed below. Domestic interested parties who object to these revocations must submit their comments in writing no later than the last day of October 1994.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Duty Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, D.C. 20230, telephone (202) 482-4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest parties.

Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty order for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Duty Proceeding

Japn
Steel Wire Rope
38 FR 28571
October 15, 1973
A-588-045
Contact: Divina Friedman at (202) 482-3813

If an interested party does not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke pursuant to this notice, we shall conclude that the antidumping finding is no longer of interest to interested parties and shall proceed with the revocation. However, if an interested party does request an administrative review in accordance with the Department's notice of

opportunity to request an administrative review, or a domestic interested party objects to the Department's intent to revoke pursuant to this notice, the Department may continue the finding without further notice to the public.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding by the last day of October 1994. Any submission objecting to revocation must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: September 22, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.
[FR Doc. 94-24137 Filed 9-28-94; 8:45 am]
BILLING CODE 3510-DS-M

[C-614-701]

Certain Steel Wire Nails From New Zealand; Intent To Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty order on certain steel wire nails from New Zealand. Domestic interested parties who object to this revocation must submit their comments in writing not later than the last day of October 1994.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright, or Mercedes Fitchett, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department

of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202)482-2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 355.25(d)(4) (19 CFR 355.25(d)(4) (1993)) of the Department's regulations, we are notifying the public of our intent to revoke the countervailing duty order on certain steel wire nails from New Zealand (52 FR 37196; October 5, 1987) for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with § 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (defined in § 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke this order pursuant to this notice, and no interested party (defined in § 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty order is no longer of interest to interested parties and proceed with the revocation. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party objects to the Department's intent to revoke pursuant to this notice, the Department will continue the duty order without further notice to the public.

Opportunity To Object

Not later than the last day of October 1994, domestic interested parties may object to the Department's intent to revoke this countervailing duty order. Any submission objecting to revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under §§ 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, D.C. 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: September 21, 1994.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.
[FR Doc. 94-24138 Filed 9-28-94; 8:45 am]
BILLING CODE 3510-DS-P

Argonne National Laboratory, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94-065. *Applicant:* Argonne National Laboratory, Argonne, IL 60439. *Instrument:* Rapid Scanning Diode Array. *Manufacturer:* Hi-Tech Scientific Limited, United Kingdom. *Intended Use:* See notice at 59 FR 31208, June 17, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant.

The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the existing instrument.

Pamela Woods

Acting Director, Statutory Import Programs Staff
[FR Doc. 94-24139 Filed 9-28-94; 8:45 am]
BILLING CODE 3510-DS-F

University of California et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94-080. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Electron Microscope, Model JEM 2010. *Manufacturer:* JEOL Ltd., Japan.

Intended Use: See notice at 59 FR 34412, July 5, 1994. *Order Date:* November 19, 1993.

Docket Number: 94-089. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Electron Microscope, Model JEM-3000F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 59 FR 38585, July 29, 1994. *Order Date:* August 10, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Pamela Woods

Acting Director, Statutory Import Programs Staff
[FR Doc. 94-24140 Filed 9-28-94; 8:45 am]
BILLING CODE 3510-DS-F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94-097. *Applicant:* University of Vermont, Purchasing Department (for Cardiology), Waterman Building, Burlington, VT 05405. *Instrument:* Cardiac Monitor, Model Leycom Sigma 5-DF. *Manufacturer:* Cardio Dynamics, The Netherlands.

Intended Use: The instrument will be used to measure left ventricular heart chamber volume changes during the study of heart performance in research animals. **Application Accepted by Commissioner of Customs:** July 28, 1994.

Docket Number: 94-098. **Applicant:** University of Georgia, Cedar Street, Athens, GA 30602-2556. **Instrument:** Mass Spectrometer, Model API-1. **Manufacturer:** PE Sciex, Canada.

Intended Use: The instrument will be used to measure the molecular weight of pure samples of peptides and proteins and the components of sample mixtures separated by on-line microbore high performance liquid chromatography. **Application Accepted by Commissioner of Customs:** July 28, 1994.

Docket Number: 94-099. **Applicant:** National Institutes of Health, NIAID, Laboratory of Viral Diseases, 9000 Rockville Pike, Building 4, Room 229, Bethesda, MD 20892. **Instrument:** Electron Microscope and Accessories, Model CM-100. **Manufacturer:** Philips, The Netherlands. **Intended Use:** The instrument will be used to investigate aspects of the biology of vaccinia virus including virus replication and assembly. This work will entail the use of cell and virus samples which have been fixed and stained using a variety of techniques. **Application Accepted by Commissioner of Customs:** August 1, 1994.

Docket Number: 94-100. **Applicant:** University of Massachusetts Dartmouth, Department of Chemistry, N. Dartmouth, MA 02747. **Instrument:** Pneumatic Drive Accessory for stopped-flow kinetics apparatus, Model Opt.12P. **Manufacturer:** Hi-Tech Scientific, United Kingdom. **Intended Use:** The instrument will be used for the study of the halogen oxidation of uric acid, allantoin and other metabolic waste products. Specifically, the research will involve studying the mechanistic processes and rates of the reactions of chlorine and iodine with uric acid and other similar compounds. In addition, the instrument will be used in course Physical Chemistry Laboratory II in experiments designed to introduce students to the techniques for the study of rates of very fast chemical reactions. **Application Accepted by Commissioner of Customs:** August 2, 1994.

Docket Number: 94-101. **Applicant:** Stanford University, CMR, 105 McCullough, Stanford, CA 94306. **Instrument:** Reflection High Energy Electron Diffraction System, Model EK-2035-R. **Manufacturer:** Staib Instrumente, Germany. **Intended Use:** The instrument will be used for in situ surface investigation of thin film

processes, indicating whether the film growth is crystalline, what crystal structure is formed and whether surface reconstruction occurs. It will also be used to determine the film thickness in situ in the nanometer range. The materials are oxides which require elevated oxygen partial pressures (10^{-2} mbar) in the growth chamber and the use of electrically insulating oxide substrates. **Application Accepted by Commissioner of Customs:** August 4, 1994.

Docket Number: 94-102. **Applicant:** The Scripps Research Institute, 10666 Torrey Pines Road, La Jolla, CA 92037. **Instrument:** NMR Spectrometer, Model Avance DMX750. **Manufacturer:** Bruker, Germany. **Intended Use:** The instrument will be used to study the structure, dynamics and interactions of biomolecules such as proteins and nucleic acids. Investigations of several proteins and oligonucleotides in progress address fundamental biophysical questions related to various aspects of protein and nucleic acid structure, dynamics and function. **Application Accepted by Commissioner of Customs:** August 4, 1994.

Docket Number: 94-103. **Applicant:** North Carolina State University, Campus Box 7212, Raleigh, NC 27695-7212. **Instrument:** Digital Oxygen Electrode. **Manufacturer:** Rank Brothers Ltd., United Kingdom. **Intended Use:** The instrument will be used to measure oxygen uptake in plant tissue, plant mitochondria, intact plant organelle and *E. coli*. **Application Accepted by Commissioner of Customs:** August 4, 1994.

Docket Number: 94-104. **Applicant:** University of California, San Diego, La Jolla, CA 92093. **Instrument:** Imaging Plate X-ray Detector for Protein Crystallography. **Manufacturer:** Mar Research, Germany. **Intended Use:** The instrument will be used to collect data at very high resolution (1.0-1.2Å) from small protein crystals. The aim of this system is to collect data to solve the three-dimensional structure of proteins or enzymes using X-ray diffraction methods at very high resolution. In addition, the instrument will be used on a one-to-one basis in the training of graduate students. **Application Accepted by Commissioner of Customs:** August 31, 1994.

Docket Number: 94-105. **Applicant:** National Institute for Arthritis and Musculoskeletal and Skin Diseases, Building 6, Room 425, Bethesda, MD 20892-2755. **Instrument:** Electron Microscope, Model CM 120. **Manufacturer:** Philips, The Netherlands. **Intended Use:** The instrument will be used to perform cryoelectron

microscopy of biological macromolecules and supramolecular assemblies, including native virus particles, their components, and related sub-viral assemblies. The studies will include analysis of capsid structures of herpes simplex virus type 1, the archetypal herpes virus; the L-A virus of yeast; bacteriophages HK97 and T4; and hepatitis B virus nucleocapsids. **Application Accepted by Commissioner of Customs:** August 31, 1994.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94-24142 Filed 9-28-94; 8:45 am]

BILLING CODE 3510-DS-F

West Virginia University et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. **Decision:** Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94-075. **Applicant:** West Virginia University, Morgantown, WV 26505-6315. **Instrument:** Atom/Radical Source, Model CARS25. **Manufacturer:** Oxford Applied Research, United Kingdom. **Intended Use:** See notice at FR 59 34411, July 5, 1994. **Reasons:** The foreign instrument provides atomic nitrogen or hydrogen in appreciable quantities while minimizing ion production to decrease formation of point defects in the growth and doping of wide band gap semiconductors. **Advice Received From:** National Aeronautics and Space Administration, August 10, 1994.

Docket Number: 94-076. **Applicant:** The Georgia Institute of Technology, Atlanta, GA 30322. **Instrument:** High-Shear Mixing Bleach Reactor, Model CRS1015. **Manufacturer:** CRS Reactor Engineering, Sweden. **Intended Use:** See notice at FR 59 34411, July 5, 1994. **Reasons:** The foreign instrument provides: (1) high shear mixing with medium consistency (10 - 25%) pulp samples, (2) precise, programmable control of oxygen and ozone pressure

and (3) a special impeller for high and for low consistency samples. *Advice Received From:* Forest Service, U.S.D.A., August 10, 1994.

Docket Number: 94-081. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* Fabry-Perot Interferometer System. *Manufacturer:* JRS Instruments, Switzerland. *Intended Use:* See notice at FR 59 38438, July 28, 1994. *Reasons:* The foreign instrument provides: (1) an active isolation system to minimize vibration, (2) a common translation stage to synchronize scanning of the interferometers and (3) maximum jitter during scanning at 10.0 nm. *Advice Received From:* National Institute of Standards and Technology, August 22, 1994.

The National Aeronautics and Space Administration, Forest Service, U.S.D.A. and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94-24141 Filed 9-28-94; 8:45 am]

BILLING CODE 3510-DS-F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94-C0016]

KIDS II, INC., (Formerly Pansy Ellen Products, Inc.) A Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the *Federal Register* in accordance with the terms of 16 CFR 1118.20(f). Published below is a provisionally-accepted Settlement Agreement with KIDS II, INC., (formerly Pansy Ellen Products, Inc.) a corporation.

DATES: Any interested person may ask the Commission not to accept this

agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 14, 1994.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 94-C0016, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 22, 1994.

Sadye E. Dunn,
Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between KIDS II, INC. (formerly Pansy Ellen Products, Inc.), a corporation, (hereinafter "KIDS II"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), which is an independent federal regulatory agency of the United States of America, established by Congress pursuant to Section 4 of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. 2053.

3. KIDS II is a corporation organized and existing under the laws of the State of Georgia, with its principal corporate offices located at 1245 Old Alpharetta Road, Alpharetta, Georgia.

II. Jurisdiction

4. KIDS II manufactured and distributed a juvenile product known as "Graduate Booster Seat I," models 4155 and 4156, (hereinafter "Booster Seat"). The Booster Seat is a "consumer product" within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

5. KIDS II manufactured and distributed the Booster Seat for sale to consumers throughout the United States. KIDS II is a "manufacturer" and "distributor" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)

(1), (4), (5), and (11) of the CPSA, 15 U.S.C. 2052(a) (1), (4), (5) and (11).

III. The Product

6. KIDS II manufactured approximately 680,000 Booster Seats from 1987 through 1991. The Booster Seat is a children's product which, when placed on an adult sized chair, brings toddlers and young children closer to a table, counter or other eating or play surface while seated. The KIDS II Booster Seat features a detachable, adjustable seat that allows consumers to adjust the seat to any one of four heights.

IV. Staff Allegations

7. The staff alleges KIDS II failed to meet its obligations to report information to the Commission under Section 15(b) of the CPSA, 15 U.S.C. 2064(b). Certain Booster Seats manufactured from 1987 through 1991 provide insufficient engagement between the adjustable seat and the base. When occupied by a child, this condition allows the seat either to slide forward and out of the base or to fall straight down onto the chair or other surface upon which the Booster Seat is placed.

Between 1988 and 1992, KIDS II received complaints from consumers alleging Booster Seat failure in the manner explained above, but never reported that information to the Commission. Some of the reported incidents have resulted in bumps, cuts and bruises to the children.

8. The staff contends that KIDS II obtained information which reasonably supported the conclusion that its Booster Seats contained defects which could create a substantial product hazard but failed to report that information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

V. Response of KIDS II

9. KIDS II denies each and all of the staff's allegations with respect to its Booster Seat, including that KIDS II at any time possessed information which reasonably supported the conclusion that its Booster Seats contained defects which could create a substantial product hazard within the meaning of Section 15(a) of the CPSA, 15 U.S.C. 2064(a); and therefore, denies that it failed to meet its obligation to report the information concerning the Booster Seats to the Commission under Section 15(b) of the CPSA, 15 U.S.C. 2064(b).

VI. Agreement of the Parties

10. KIDS II and the staff agree the Commission has jurisdiction in this

matter for purposes of entry and enforcement of this Settlement Agreement and Order.

11. KIDS II knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the staff allegations cited herein, (2) to judicial review or other challenge or contest of the validity of the Commissions Order, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusion of law with regard to the staff allegations.

12. Nothing in this Settlement Agreement and Order shall be deemed by the Commission as an admission by KIDS II of any fault, liability, or statutory violation.

13. KIDS II agrees to pay the Commission a civil penalty in the amount of \$85,000 within 10 days after service of the Final Order upon KIDS II. This payment is made in full settlement of the staff's allegations that KIDS II knowingly violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), by failing to notify the Commission of the allegedly defective Booster Seat. The Commission specifically waives its right to pursue any further payment from KIDS II and its shareholders, partners, officers, directors, employees, and agents with respect to the matters covered by this Settlement Agreement and Order.

14. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the *Federal Register* in accordance with 16 C.F.R. 1118.20(f).

15. The Settlement Agreement and Order becomes effective upon final acceptance by the Commission and its service upon KIDS II.

16. Upon final acceptance of this Settlement Agreement by the Commission, the Commission will issue a press release to advise the public of the Settlement Agreement and Order.

17. This Settlement Agreement is binding upon the Commission and KIDS II, and the assigns or successors of KIDS II.

18. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et. seq.* KIDS II shall comply with the provisions of the Settlement Agreement and Order and a violation of the Order will subject KIDS II to appropriate legal action. In the event of a default of payment, which default continues for ten (10) calendar days beyond the due date of the

payment, KIDS II agrees it shall pay the Commission interest on the \$85,000 owing at a rate computed pursuant to 28 U.S.C. 1961(a). In addition, in the event of a default, KIDS II agrees that it shall raise no defense or objection to such collection action as the Commission deems appropriate and shall pay all costs incurred in such action.

19. The requirements of the Settlement Agreement and Order are in addition to, and not to the exclusion of, other remedies of laws administered by the Commission.

20. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Dated: July 19, 1994.
KIDS II, INC.

J. Dwaine Clarke,
Vice President, Finance.

The Consumer Product Safety Commission.
David Schmeltzer,
Associate Executive Director, Office of
Compliance and Enforcement.

Eric L. Stone,
Acting Director, Division of Administrative
Litigation, Office of Compliance and
Enforcement.

Dated: June 29, 1994.

William J. Moore, Jr.,
Trial Attorney, Division of Administrative
Litigation, Office of Compliance and
Enforcement.

Order

Upon consideration of the Settlement Agreement of the parties, it is hereby *Ordered*, that KIDS II shall pay, within 10 days of final acceptance of this Settlement Agreement and service of this order, civil penalty in the amount of \$85,000 to the Consumer Product Safety Commission.

Provisionally accepted on the 22nd day of September 1994.

By Order of the Commission.

Sadye E. Dunn,
Secretary, Consumer Product Safety
Commission.

[FR Doc. 94-24025 Filed 9-28-94; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Investigative Capability Advisory Board; Meetings

AGENCY: Department of Defense, Advisory Board on the Investigative Capability of the Department of Defense.
ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Advisory Board on the Investigative Capability of the Department of Defense. The purpose of the meeting is to discuss the second draft report of the Advisory Board and issues that remain to be addressed in the report. This meeting is open to the public.

DATE AND TIME: October 7, 1994 from 9:00 a.m.-5:00 p.m.

ADDRESSES: 1700 N. Monroe Street, Suite 1425, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

Mary B. DeRosa, Acting Deputy Staff Director, Advisory Board on the Investigative Capability of the Department of Defense, 1700 N. Moore Street, Suite 1420, Arlington, VA 22209; telephone (703) 696-6055.

Dated: September 22, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-24021 Filed 9-28-94; 8:45 am]

BILLING CODE 5000-04-M

Defense Logistics Agency

Privacy Act of 1974; Delete a Record System.

AGENCY: Defense Logistics Agency, DOD

ACTION: Delete a Record System.

SUMMARY: The Defense Logistics Agency proposes to delete an existing system of records in the DLA inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletion is effective September 29, 1994.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative Management Branch, Planning and Resource Management Division, Defense Logistics Agency, Room 5A120, Cameron Station, Alexandria, VA 11304-6100.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Christensen at (703) 617-7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, can be obtained from the address listed above.

The deleted system is not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report.

Dated: September 23, 1994.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

S322.51 TPDC

SYSTEM NAME:

Training Cohort Data Base (February 22, 1993, 58 FR 10879).

Reason: The Defense Logistics Agency no longer has a requirement to collect or maintain this information. The entire data base has been destroyed.

[FR Doc. 94-24023 Filed 9-28-94; 8:45 am]

BILLING CODE 5000-04-F

Department of the Navy

Privacy Act of 1974; Alteration of a record system.

AGENCY: Department of the Navy, DoD

ACTION: Alteration of a record system.

SUMMARY: The Department of the Navy proposes to alter an existing system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The Department of the Navy proposes to add an additional routine use for the system as follows: 'Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.' Other minor administrative amendments are being made.

DATES: The alteration will be effective without further notice on October 31, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Acting Head, PA/FOIA Branch, Office of the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (703) 614-2004 or DSN 224-2004.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Navy record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and may be obtained from the address above.

An altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on September 19, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and

the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The specific changes to the record system are set forth below followed by the system notice as altered in its entirety.

Dated: September 23, 1994.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

N01070-3

SYSTEM NAME:

Navy Personnel Records System
(February 22, 1993, 58 FR 10696).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete first paragraph and replace with 'Active duty records are located at the Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001; Naval Reserve Personnel Center, New Orleans, LA 70149-7800; and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add the following 'Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.'

NOTIFICATION PROCEDURE:

Delete first paragraph and replace with 'Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of

Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001 or contact the personnel officer were assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.'

RECORD ACCESS PROCEDURES:

Delete first paragraph and replace with 'Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001 or contact the personnel officer were assigned.'

* * * * *

N01070-3

SYSTEM NAME:

Navy Personnel Records System.

SYSTEM LOCATION:

Active duty records are located at the Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001; Naval Reserve Personnel Center, New Orleans, LA 70149-7800; and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Secondary systems are located at the Department of the Navy Activities in the chain of command between the local activity and the headquarters level; Federal Records Storage Centers; National Archives. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel service jackets and service records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of naval personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (officer and enlisted) and the operations of related personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease; of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, Department of Veteran Affairs, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of the Department of Veteran Affairs in the performance of their duties relating to approved research projects.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the

active duty naval service of Members of Congress.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To federal, state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by name and Social Security Number. Manual records may be retrieved by name, Social Security Number, enlisted service number, or officer file number.

SAFEGUARDS:

Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained one year past retirement, removal, or resignation of

the member and then transferred to the National Personnel Records Center (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132-5101 for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 06), Washington, DC 20370-5000; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000 or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel, Arlington Annex, Federal Office Building 2, Washington, DC, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000 or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel (Pers 06), Arlington Annex, Federal Office Building 2, Washington, DC, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally

maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence; educational institutions; federal, state, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94-24022 Filed 9-28-94; 8:45 am]

BILLING CODE 5000-04-F

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Korea concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer of fuel elements from the Republic of Korea to Atomic Energy of Canada, Ltd. for repair. These fuel elements contain 51.9552 kilograms of uranium containing 10.2508 kilograms of the isotope uranium-235 (19.73 percent enrichment). Retransfer document RTD/CA(KO)-2 has been assigned to this retransfer.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, D.C. on September 23, 1994.

Salvador N. Ceja,

Acting Director, International and Regional Security Division, Office of Arms Control and Nonproliferation.

[FR Doc. 94-24125 Filed 9-28-94; 8:45 am]

BILLING CODE 6450-01-M

Alaska Power Administration

Eklutna Project—Notice of Order Confirming and Approving an Adjustment of Power Rates on an Interim Basis

AGENCY: Alaska Power Administration, DOE.

ACTION: Notice of adjustment of power rates—Eklutna Project, rate schedules A-F11, A-N12, and A-W3.

SUMMARY: Notice is hereby given that the Deputy Secretary approved on September 14, 1994, Rate Order No. APA 12 which adjusts the present power rates for the Eklutna Project. This is an interim rate action effective October 1, 1994, for a period of 12 months. This rate is subject to final confirmation and approval by the Federal Energy Regulatory Commission (FERC) for a period of up to five years. FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Linke, Director, Power Division, Alaska Power Administration, 2770 Sherwood Ln., Suite 2B, Juneau, AK 99801, (907) 586-7405.

SUPPLEMENTARY INFORMATION: On May 3, 1994, the Alaska Power Administration (APA) published a Federal Register notice of its intention to adjust current power rates for the Eklutna Project for a period of up to five years. The present rates are 17 mills per kilowatthour for firm energy, 10 mills per kilowatthour for non-firm energy, and 0.3 mills per kilowatthour for wheeling. These rates were approved by FERC Order, Docket No. EF91-1011-000 issued January 25, 1991, for the period October 1, 1990, through September 30, 1994.

Based on comments received during the public information process, APA now proposes that rates be adjusted beginning October 1, 1994, for a period of up to five years. The new rates would be 18.7 mills per kilowatthour for firm energy, 10 mills per kilowatthour for non-firm energy, and 0.3 mills per kilowatthour for wheeling. The Federal Register notice also indicated APA's intention to seek interim approval of the proposed rates by the Deputy Secretary

of Energy pending final confirmation and approval of the rates by FERC.

Following review of APA's proposal within the Department of Energy, on September 14, 1994, I approved on an interim basis Rate Order No. APA-12 which adjusts the present Eklutna Rates for period of up to five years beginning October 1, 1994, subject to final confirmation and approval by FERC.

Issued at Washington, DC on September 14, 1994.

William H. White,

Deputy Secretary.

In the Matter of: Alaska Power Administration—Eklutna Project Power Rates.

Rate Order No. APA-12

Order Confirming and Approving Power Rates on an Interim Basis

September 14, 1994.

This is an interim rate action subject to review and approval of the Federal Energy Regulatory Commission. It is made pursuant to the authorities delegated in DOE Delegation Order No. 0204-108, Amendment No. 3 to that Order.

Background

The Eklutna Project was completed by the U.S. Bureau of Reclamation in 1955. The Alaska Power Administration has operated and maintained the project since 1967. The Eklutna Project is a single-purpose project comprised of a dam, reservoir, 30,000-kw hydroelectric plant, 45 miles of 115-kV transmission lines, and three substations serving the Anchorage and Palmer areas. All project costs are allocated to power. The entire output of the project is under contract to three preference customers in the Anchorage-Palmer area on a take-or-pay basis.

Rate Schedules A-F10, A-N11 and A-W2 now in effect for the Eklutna Project were confirmed and approved by order of the Federal Energy Regulatory Commission, Docket No. EF91-1011-000 issued January 25, 1991 for a period ending September 30, 1994.

Discussion

System Repayment

Studies prepared by the Alaska Power Administration, as required by DOE Policy No. RA 6120.2, demonstrate that the present firm rate must be increased to provide sufficient revenue to meet requirements for the rate period and meet project repayment criteria by the end of the repayment period. On that basis, the Alaska Power Administration proposes an adjustment of the firm rate for a period not to exceed five years. The Administrator of Alaska Power

Administration has certified that the new rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Alaska Power Administration has concluded with Departmental concurrence that this rate action will have no significant environmental impact within the meaning of the Environmental Policy Act of 1969. It is the Alaska Power Administration's determination that the rate adjustment does not exceed the rate of inflation and therefore is categorically excluded from the NEPA process as defined in 40 CFR 1508.4 and is listed as a categorical exclusion for DOE in 10 CFR 1021, Appendix B4.3. The proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding this rate action, including studies and other supporting material, is available for public review in the offices of the Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, Alaska.

Public Notice and Comment

Opportunity for public review and comment on the rate action was announced by notice in the **Federal Register** on May 3, 1994, and in three paid advertisements of newspapers in the market area on May 1, 5, and 8, 1994. The notice provided for a comment period of 90 days following publication in the **Federal Register**. A public information and comment forum was scheduled in Anchorage, Alaska on June 14, 1994, with public comment period ending August 2, 1994. The public information and comment forum was canceled on June 7, 1994, due to lack of interest, in accordance with 10 CFR 903.15(b), 10 CFR 903.15(c) and the Alaska Power Administration's prior notices of the public forum.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 1994, attached

Wholesale Power Rate Schedules A-F11 A-N12, and A-W3. These rate schedules shall remain in effect on an interim basis for a period of 12 months unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

Issued at Washington, DC, this 14th day of September 1994.

William H. White,

Deputy Secretary.

Schedule A-F11

UNITED STATES

DEPARTMENT OF ENERGY

Alaska Power Administration

Eklutna Project, Alaska

Schedule of Rates for Wholesale Firm Power Service

Effective:

October 1, 1994 for a maximum of five years.

Available:

In the area served by the Eklutna Project, Alaska

Character and Conditions of Service:

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate:

Capacity charge: None

Energy charge: All energy at 18.7 mills per kilowatt-hour

Minimum Annual Capacity Charge:

None

Billing Demand:

Not applicable

Adjustments:

For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain power factor at the point of delivery of between 90 percent lagging and 90 percent leading.

For auxiliary power service: Auxiliary power supplies may be used in conjunction with the service hereunder if the parties hereto, prior to the Contractor's utilization of any such auxiliary power supply, have entered into a written operating agreement defining the procedure by which the amount of power and energy will be determined.

Schedule A-N12

UNITED STATES

DEPARTMENT OF ENERGY

Alaska Power Administration

Eklutna Project, Alaska

Schedule of Rates for Wholesale Nonfirm Power Service

Effective:

October 1, 1994 for a maximum of five years.

Available:

In the area served by the Eklutna Project, Alaska

Applicable:

To firm power customers normally maintaining generating facilities or other sources of energy sufficient to supply their requirements.

Character and Conditions of Service:

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate:

Capacity charge: None

Energy Charge: All energy at 10.0 mills per kilowatt-hour

Minimum Charge:

None

Billing Demand:

Not applicable

Adjustments:

For character and conditions of service:

None

For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

Schedule A-W3

UNITED STATES

DEPARTMENT OF ENERGY

Alaska Power Administration

Eklutna Project, Alaska

Schedule of Rates for Wholesale Wheeling Service

Effective:

October 1, 1994 for a maximum of five years.

Available:

In the area served by the Eklutna Project, Alaska

Applicable:

To all non-federal power transmitted over Eklutna Project transmission facilities for the benefit of Project customers.

Character and Conditions of Service:

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate:

Capacity charge: None

Energy Charge: All energy wheeled for others at .3 mills per kilowatt-hour.

Minimum Charge:

None

Billing Demand:

Not applicable

Adjustments:

For character and conditions of service:

None

For transformer and transmission losses: As specified in wheeling contracts.

[FR Doc. 94-24126 Filed 9-28-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. EF94-4021-000, et al.]

Southwestern Power Administration, et al.; Electric Rate and Corporate Regulation Filings

September 22, 1994.

Take notice that the following filings have been made with the Commission:

1. Southwestern Power Administration

[Docket No. EF94-4021-000]

Take notice that the Deputy Secretary, U.S. Department of Energy, on September 14, 1994, submitted to the Federal Energy Regulatory Commission (Commission) for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204-108, as amended November 10, 1993, 58 FR 59717, an annual power rate of \$2,168,136 for the sale of power and energy by the Southwestern Power Administration (Southwestern) from the Sam Rayburn Dam Hydroelectric Project (Rayburn) to the Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC). The rate was confirmed and approved on an interim basis by the Deputy Secretary in Rate Order No. SWPA-31 for the period October 1, 1994, through September 30, 1998, and has been submitted to the Commission for confirmation and approval on a final basis for the same period. The rate supersedes the annual power rate of \$2,076,444, which the Commission approved on a final basis August 11, 1993, under Docket No. EF93-4021-000 for the period April 1, 1993, through September 30, 1997. The annual rate of \$2,168,136 is based on the 1994 Revised Power Repayment Study for Rayburn and represents an annual increase in revenue of \$91,692, or 4.4 percent, to satisfy repayment criteria.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Power Administration

[Docket No. EF94-4081-000]

Take notice that the Deputy Secretary, U.S. Department of Energy, on September 14, 1994, submitted to the Federal Energy Regulatory Commission (Commission) for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204-108, as amended November 10, 1993, 58 FR 59717, an annual power rate of \$294,312 for the sale of power and energy by the Southwestern Power Administration (Southwestern) from the Robert D.

Willis Hydroelectric Project (Willis) to the Sam Rayburn Municipal Power Agency (SRMA). The rate was confirmed and approved on an interim basis by the Deputy Secretary in Rate Order No. SWPA-30 for the period October 1, 1994, through September 30, 1998, and has been submitted to the Commission for confirmation and approval on a final basis for the same period. The rate supersedes the annual power rate of \$284,580, which the Commission approved on a final basis August 11, 1993, under Docket No. EF93-4081-000 for the period April 1, 1993, through September 30, 1997. The annual rate of \$294,312 is based on the 1994 Revised Power Repayment Study for Willis and represents an annual increase in revenue of \$9,732, or 3.4 percent, to satisfy repayment criteria.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Wartsila Diesel Dominicana, S.A.

[Docket No. EG94-97-000]

Wartsila Diesel Dominicana, S.A. ("Dominicana") (c/o Lee M. Goodwin, Reid & Priest, 701 Pennsylvania Avenue, NW., Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application on September 20, 1994 for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Dominicana is a Dominican Republic company formed to develop, own, and/or operate eligible facilities. Dominicana will operate two diesel electric generating facilities in the Dominican Republic. Dominicana states that it also may engage in project development activities associated with its development or acquisition of operating or ownership interests in additional as-yet unidentified eligible facilities and/or exempt wholesale generators that meet the criteria in Section 32 of the Public Utility Holding Company Act.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas Corporation

[Docket No. ER94-960-000]

Take notice that New York Electric & Gas Corporation (NYSEG) on September 12, 1994, tendered for filing an amendment to its February 8, 1994 filing in the above-referenced docket. NYSEG's filings in this docket pertain to an Agreement between NYSEG and Baltimore Gas & Electric Company (BG&E), under which NYSEG may sell and BG&E may purchase energy only or

electric generating capacity and associated energy, as the parties may mutually agree from time to time. The current filing is being made at Commission Staff's request and explains various aspects of the agreement.

NYSEG requests that February 9, 1994 be allowed as an effective date of this filing and requests waiver of the 60-day notice requirement for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission, the Maryland Public Service Commission and BG&E.

Comment date: October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Rochester Gas and Electric Corporation

[Docket No. ER94-1640-000]

Take notice that Rochester Gas and Electric Corporation (RG&E), on September 8, 1994, tendered for filing a Service Agreement for acceptance by the Federal Energy Regulatory Commission (Commission) between RG&E and North American Energy Conservation, Inc. The terms and conditions of service under this Agreement are made pursuant to RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94-1279. RG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Duquesne Light Company

[Docket No. TX94-10-000]

Take notice that on September 16, 1994, Duquesne Light Company filed an application requesting that the Commission order the Allegheny Power System to provide 300 MW of firm transmission service for a twenty-year term. Duquesne has requested firm transmission service that provides flexibility in changing receipt and delivery points, and also has requested non-firm service to the extent Duquesne is not using its full firm reservation. Duquesne has requested that service commence no later than the date any facilities upgrades necessary to provide the service are installed.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

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, 825 North Capitol 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.

Lois D. Cashell,

Secretary,

[FR Doc. 94-24123 Filed 9-28-94; 8:45 am]

BILLING CODE 6717-01-P

[Project No. 2614-021 Kentucky]

City of Hamilton, Ohio; Availability of Environmental Assessment

September 23, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment of license for the Greenup Project, located on the Ohio River, in Greenup County, Kentucky, and has prepared an Environmental Assessment (EA) on an change made to the project's transmission line. In the EA, the Commission staff concluded that the change to the transmission line should be approved with modification. Further, the Commission staff concluded that approval of the proposed amendment would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington,

DC 20426. Please affix Project No. 2614-021 to all comments. For further information, please contact Mr. Jon Cofrancesco at (202) 219-0079.

Lois D. Cashell,

Secretary,

[FR Doc. 94-24049 Filed 9-28-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-282-000]

Northwest Pipeline Corporation; Availability of the Environmental Assessment for the Proposed Hood River Pipeline Loop and Extension Project

September 23, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by Northwest Pipeline Corporation (Northwest) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed Hood River Pipeline Loop and Extension Project in Klickitat County, Washington, including:

- 3.7 miles of loop of 6-inch-diameter pipeline,
- 1.6 miles of new 6-inch-diameter pipeline, and
- a new meter station.

The purpose of the proposed project would be to provide up to 11,000 million British thermal units per day of natural gas to the planned Klickitat Energy Partners cogeneration facility.

The staff has recommended an alternative to the proposed route in the Columbia River Gorge National Scenic Area's agriculturally designated General Management Area. The discussion of the alternatives begins on page 11 of the EA.

The EA has been placed in the public files on the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street NE., Room 3104, Washington, DC 20426, (202) 208-1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Mr. Bob Kopka, Environmental Project Manager, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, Room 7215, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0282.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP94-282-000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Comments should be filed as soon as possible, but must be received no later than October 24, 1994, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. Bob Kopka, Environmental Project Manager.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 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 comments considered.

Additional information about this project is available from Mr. Bob Kopka, Environmental Review and Compliance Branch I, Office of Pipeline Regulations, at (202) 208-0282.

Lois D. Cashell,

Secretary,

[FR Doc. 94-24048 Filed 9-28-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-618-000 and CP93-618-001]

Pacific Gas Transmission Company; Availability of the Environmental Assessment for the Proposed PGT Expansion II Project

September 23, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this environmental assessment (EA) on the natural gas pipeline facilities proposed by Pacific Gas Transmission Company (PGT) in the above dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed PGT Expansion II Project, including two laterals off PGT's existing mainline system:

- Medford Extension: 86.5 miles of new 12-inch-diameter natural gas pipeline;
- Coyote Springs Extension: 18.5 miles of new 12-inch-diameter natural gas pipeline;
- Two new meter stations: the Medford Meter Station and the Coyote Springs Meter Station; and
- Two new service taps and appurtenant facilities.

The purpose of the proposed facilities would be to:

- (1) Provide about 16,400 million British thermal units per day (MMBtu/d) of firm annual transportation service and additional 15,000 MMBtu/d of firm winter transportation service through the Medford Extension; and
- (2) Provide about 41,000 MMBtu/d of firm transportation service through the Coyote Springs Extension. The EA also evaluates alternatives to PGT's proposal.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street NE., Room 3104, Washington, DC 20426, (202) 208-1371.

Copies have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Ms. Alisa Lykens, Environmental Project Manager, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-0766.

Any person wishing to comment on the EA may do so. Written comments must reference Docket Nos. CP93-618-000 and CP93-618-001. Comments should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Comments should be filed as soon as possible, but must be received no later than October 28, 1994, to ensure consideration prior to a Commission

decision on this proposal. A copy of any comments should also be sent to Ms. Alisa Lykens, Environmental Project Manager.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Additional information about this project is available from Ms. Alisa Lykens, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, at (202) 208-0766.

Lois D. Cashell,
Secretary.

[FR Doc. 94-24046 Filed 9-28-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-109-000]

Transcontinental Gas Pipe Line Corporation; Availability of the Environmental Assessment for the Proposed 1995/1996 Southeast Expansion Project

September 23, 1994

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an Environmental Assessment (EA) on the natural gas pipeline facilities proposed by Transcontinental Gas Pipe Line Corporation (Transco) in the above-reverenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed 1995/1996 Southeast Expansion Project. The project involves construction of about 15.1 miles of 42-inch-diameter natural gas pipeline loop in Chilton and Autauga Counties, Alabama; 69,700 hp of new compression at four existing compressor stations; and equipment modifications to allow increased annual operating hours at one existing compressor station. In addition, Georgia Power Company (Georgia Power) plans to construct an electric substation and a 2.4 mile-long power transmission line to serve Compressor Station 120.

The locations of the compressor stations are as follows:

- Compressor Station 90, Marengo County, Alabama.
- Compressor Station 100, Chilton County, Alabama.
- Compressor Station 110, Randolph County, Alabama.
- Compressor Station 120, Henry County, Georgia.
- Compressor Station 150, Iredell County, North Carolina.

The purpose of the proposed project would be to provide additional transportation capacity of 165,000 thousand cubic feet per day (Mcf) of natural gas to Transco's Southeastern market.

The specific issue addressed in the EA include:

- Noise from the compressor stations;
- Construction near residences;
- Protection of groundwater resources;
- Erosion control;
- Stream and wetland crossings;
- Threatened and endangered species; and
- Cultural resources.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street NE., Room 3104, Washington, DC 20426; (202) 208-1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Ms. Laura Turner, Environmental Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-0916.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP94-109-000 and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than October 24, 1994, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Ms. Laura Turner, Environmental Project Manager.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.214).

The date of filing timely motions to intervene in this proceeding has passed. Therefore, parties now 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 comments considered.

Additional information about this project is available from Ms. Laura Turner, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, at (202) 208-0916.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24047 Filed 9-28-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-779-000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

September 22, 1994.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP94-779-000]

Take notice that on September 15, 1994, Natural Gas Pipeline Company of America (Natural) filed an application in Docket No. CP94-779-000 pursuant to section 7(c) of the Natural Gas Act, and Subpart A of Part 157 of the Federal Energy Regulatory Commission's regulations for a certificate of public convenience and necessity authorizing it to construct and operate a new 4,000 HP electric compressor motor as a replacement for an existing 3,000 HP electric compressor at its North Lansing storage field located in Harrison and Gregg Counties, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that the existing motor has experienced maintenance problems and is less efficient than the proposed new motor. Also, the existing compression facilities, to which the new motor will be attached, can operate effectively with a 4,000 HP unit. The incremental cost of the additional 1,000 HP is only about \$50,000 to \$60,000. The total estimated cost of this replacement is approximately \$400,000. Natural further states that the increase in horsepower will allow Natural to inject more gas at North Lansing on a

daily basis. According to Natural, this increase in injection capability will benefit all of Natural's customers who want to take advantage of price savings in their natural gas purchases. Natural states that it is not proposing any changes in its certificated storage inventory or peak day deliverability levels at North Lansing.

Comment date: October 13, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. East Tennessee Natural Gas Company

[Docket No. CP94-781-000]

Take notice that on September 16, 1994, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94-781-000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point for Smelter Service Corp. (Smelter Service) under East Tennessee's blanket certificate issued in Docket No. CP82-412-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to construct and operate a two-inch hot tap, interconnect piping and measurement facilities located near M.P. 3203A-301+1.5 in Maury County, Tennessee. East Tennessee states that these facilities, costing \$37,020, would be paid for by Smelter Service. East Tennessee also states that Smelter Service has requested delivery capability of 800 Dekatherms of natural gas per day which would be used for various sales agreements. East Tennessee asserts that this service would be covered by an Operational Balancing Agreement pursuant to the terms and of its Rate Schedule LMS-MA. Finally, East Tennessee states that it has sufficient capacity to accomplish this delivery without harming its other customers.

Comment date: November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP94-782-000]

Take notice that on September 16, 1994, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP94-782-000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under

the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to upgrade its Meridian and Mountain Home Meter Stations in Ada and Elmore Counties, Idaho, respectively, by partially abandoning existing regulator facilities and appurtenances and construction and operating appropriate replacement facilities to accommodate a request by Intermountain Gas Company (intermountain) for additional delivery capabilities at these points to accommodate significant growth in both areas. The proposed request is being made under Northwest's blanket certificate authority issued in Docket No. CP82-433-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Northwest proposes to remove and retire the two existing 2-inch regulators from the secondary meter run and relocate one of the 4-inch regulators from the primary meter run at the Meridian Meter Station. Northwest states that the existing 4-inch regulator will be re-installed in the secondary meter run which will result in the station not being operated in a monitor configuration. It is stated that this proposed change will increase the maximum design delivery capacity of the Meridian Meter Station from 40,500 Dt per day at 350 psig to approximately 60,097 Dt per day at 390 psig.

Northwest further proposes to remove and retire one existing 2-inch regulator from each meter run at the Mountain Home Meter Station which will result in the station not being run in a monitor configuration, and to modify various appurtenances. It is stated that this change will increase the maximum design delivery capacity of the Mountain Home Meter Station from 5,560 Dt per day at 250 psig to approximately 11,466 Dt per day at 300 psig.

Northwest states that the total costs of the proposed facility upgrades at the Meridian and Mountain Home Meter Stations are estimated to be approximately \$43,700 and \$54,800, respectively. Northwest avers that pursuant to a Facilities Agreement dated August 31, 1994, as amended, Intermountain has agreed to reimburse Northwest for the cost of upgrading the Meridian and Mountain Home Meter Stations in accordance with and pursuant to the facilities reimbursement provisions of Northwest's tariff.

Comment date: November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP94-783-000]

Take notice that on September 16, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP94-783-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a meter station in King County, Washington under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to construct and operate a meter station in King County, Washington to provide firm service to Washington Natural Gas Company. It is stated that the cost would be \$652,600 which would be reimbursed by Washington Natural Gas Company, except for the right-of-way cost.

Comment date: November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gas Transmission Corporation

[Docket No. CP94-786-000]

Take notice that on September 20, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed a prior notice request with the Commission in Docket No. CP94-786-000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point for interruptible transportation service to Ohio Edison Company (Ohio Edison) in Lorain County, Ohio, under Columbia's blanket certificates issued in Docket Nos. CP83-76-000 and CP86-240-000 pursuant to Section 7 of the NGA, all as more fully set forth in the request that is open to the public for inspection.

Columbia proposes to construct and operate a new delivery point to serve Ohio Edison in Lorain County. Columbia's proposed facilities would consist of a 12-inch tap, flow control instrumentation, electronic measurement (to be owned by Ohio Edison), approximately 60 feet of station piping, separator, and associated valves. Columbia states that Ohio Edison would reimburse Columbia approximately \$197,000, which includes gross-up for income tax purposes, for the construction costs for the new delivery point. Columbia would deliver up to

74,250 dekatherms per day and 5,000,000 dekatherms annually under its FERC Rate Schedule ITS and within certificated entitlements to Ohio Edison.

Comment date: November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

6. Koch Gateway Pipeline Company

[Docket No. CP94-788-000]

Take notice that on September 20, 1994, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP94-788-000 a request pursuant to Sections 157.205 and 157.211(a)(2) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install a one-inch tap under Koch Gateway's blanket certificate issued in Docket No. CP82-430-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to install the one-inch tap through which Koch Gateway will deliver natural gas for West Wilmer, Alabama, a community to be served by South Alabama Utility District in Mobile County, Alabama. Koch Gateway currently supplies South Alabama's natural gas requirements under Koch Gateway's No Notice Service rate schedule. No change in the existing service level is proposed.

Comment date: November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, 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 a grant of the certificate and/or 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 applicant to appear or be represented at the hearing.

G. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 94-24124 Filed 9-28-94; 8:45 am]
BILLING CODE 6717-01-P

[Docket No. RP94-96-000, et al.]

**CNG Transmission Corporation;
Informal Settlement Conference**

September 23, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on October 5, 1994, at 10:00 a.m., and if necessary, October 6, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and

receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, contact David R. Cain at (202) 208-0917 or Neil L. Levy at (202) 208-5705.

Lois D. Cashell,
Secretary.

[FR Doc. 94-24059 Filed 9-28-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ER94-1330-000, ER94-1363-000, ER94-1364-000, ER94-1398-000]

**Pennsylvania Power & Light Co.;
Notice of Filing**

September 23, 1994.

Take notice that on September 22, 1994, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission supplemental material relating to the above dockets.

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, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 4, 1994. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 94-24060 Filed 9-28-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER92-776-000]

**Public Service Electric & Gas Co.;
Notice of Filing**

September 23, 1994.

Take notice that on September 19, 1994, Public Service Electric and Gas Company (PSE&G), tendered for filing an unexecuted Second Supplement to the Interruptible Transmission Service Agreement between PSE&G and Continental Energy Associates (CEA), a Limited Partnership (Second Supplement).

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, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 4, 1994. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 94-24061 Filed 9-28-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP94-264-006]

**Southern Natural Gas Co.; Notice of
GSR Revised Tariff Sheets**

September 23, 1994.

Take notice that on September 20, 1994, Southern Natural Gas Company (Southern) submitted as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to reflect an increase in GSR billing units effective September 1, 1994, due to new transportation commitments under rate schedule FT:

First Sub. Eleventh Revised Sheet No. 15
First Sub. Eleventh Revised Sheet No. 17
First Sub. Ninth Revised Sheet No. 29
First Sub. Ninth Revised Sheet No. 30
First Sub. Ninth Revised Sheet No. 31

Additionally, Southern hereby amends its tariff filing of August 31, 1994, in Docket No. RP94-264, et al. by withdrawing therefrom the following tariff sheets:

Eleventh Revised Sheet No. 15
Eleventh Revised Sheet No. 17
Ninth Revised Sheet No. 29
Ninth Revised Sheet No. 30
Ninth Revised Sheet No. 31

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before September 30, 1994. 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 Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94-24062 Filed 9-28-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP94-299-000]

**Texas Eastern Transmission Corp.;
Notice of Technical Conference**

September 23, 1994.

Take notice that a technical conference has been scheduled in the above-captioned proceeding for Wednesday, October 5, 1994 at 1:00 p.m., in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

This conference is limited to the discussion of issues related to storage, the retention of upstream capacity, and segmented capacity rights for small customers.

All interested persons and staff are permitted to attend.

Lois D. Cashell,
Secretary.

[FR Doc. 94-24063 Filed 9-28-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP88-177-005]

**Texas Gas Transmission Corp.; Notice
of Proposed Changes in FERC Gas
Tariff**

September 23, 1994.

Take notice that on September 20, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 the following revised tariff sheets:

Second Revised Sheet No. 1
First Revised Sheet Nos. 24 through 36
First Revised Sheet No. 145
Second Revised Sheet No. 207
First Revised Sheet No. 208
First Revised Sheet No. 218

Texas Gas states that the revised tariff sheets are being filed to comply with Article IV of Texas Gas's Stipulation and Agreement (Settlement) filed on May 16, 1994, which requires the sheets be filed within fifteen (15) days of the effective date of the Settlement. The Settlement was approved by Commission Order on August 4, 1994, in conjunction with several related settlements and resolves a number of long-standing issues, including the allocation of take-or-pay costs pursuant to Order Nos. 500 and 528. The revised

tariff sheets are identical to the pro forma sheets contained in Appendix B of Texas Gas's Settlement and show the refunds and allocation factors consistent with the Settlement. Texas Gas seeks an effective date of September 6, 1994, to correspond with the effective date of the Settlement.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected customers, interested state commissions, and those who are parties on the official service lists of the referenced dockets listed above.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 925 North Capitol Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 30, 1994.

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.

Lois D. Cashell,
Secretary.

[FR Doc. 94-24064 Filed 9-28-94; 8:45 am]
BILLING CODE 6717-01-M

Office of Energy Efficiency and Renewable Energy

[Case No. CD-001]

Energy Conservation Program for Consumer Products; Denial of Miele Appliance Inc.'s Application for Interim Waiver and Publishing of the Company's Petition for Waiver From the Existing Department of Energy Clothes Dryer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter denying an Interim Waiver to Miele Appliance Inc. (Miele) from the existing Department of Energy (DOE or Department) clothes dryer test procedure for its clothes dryer models T1515A, T1520, T1565CA, and T1570C with a reverse tumble feature which Miele contends allows it to use a smaller capacity drum for a larger clothes dryer load. The existing clothes dryer test procedure does not have any recognition of the reverse tumble design feature.

Today's notice also publishes a "Petition for Waiver" from Miele.

Miele's Petition for Waiver requests DOE to grant relief from the DOE clothes dryer test procedure relating to its clothes dryer models T1515A, T1520, T1565CA, and T1570C. The appendices to Miele's letter were not suitable for publication in the *Federal Register* and are available upon request from the contact person listed below.

Miele seeks to revise the definitions of compact and standard size clothes dryers in the test procedure. DOE is soliciting comments and information regarding the Petition for Waiver. Specifically, the Department is seeking technical information/data on how the reverse tumble feature affects test load capacity.

DATES: DOE will accept comments, data, and information not later than October 31, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. CD-001, Mail Stop EE-431, Room 5E-066, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 (202) 586-7140.

FOR FURTHER INFORMATION CONTACT:

P. Marc LaFrance U.S. Department of Energy, Appliance Standards Division, Office of Codes and Standards, Office of Building Technologies, Office of Energy Efficiency and Renewable Energy, Mail Stop EE-431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-8423

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC-72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Program Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, and the Energy Policy Act of 1992, Public Law 102-486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of covered consumer products, including

clothes dryers. The clothes dryer test procedure, among other things, provides a means of calculating an energy factor, a measure of energy efficiency, which is used to determine if a product is compliant with the minimum energy conservation standards. The Department imposed amended energy conservation standards requiring minimum energy factors for four of the five classes of clothes dryers in a final rule (56 FR 22279) issued May 14, 1991, and which is effective for products manufactured on or after May 14, 1994. These test procedures appear at 10 CFR Part 430, Subpart D.

DOE amended the prescribed test procedure by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process (45 FR 64108). Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures (51 FR 42823, November 26, 1986).

The waiver process allows the Assistant Secretary to temporarily waive the test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Miele filed a Petition for Waiver and an Application for Interim Waiver on April 5, 1994 which was amended on

April 20, 1994 and April 22, 1994, regarding its clothes dryers models T1515A, T1520, T1565CA, and T1570C with a reverse tumble feature. Miele states in its April 5, 1994 submission that "The specific design characteristics [reverse tumble feature] of the Miele clothes dryer make the classification of the product as 'compact' totally unrepresentative of the products' true energy consumption characteristics and provides materially inaccurate comparative data." The existing clothes dryer test procedure does not have any recognition of the reverse tumble design feature in determining dryer size or class.

Miele has informed the Department (telephone conversation with Miele's representative, Mr. John A. Hodges, early April, 1994) that if its clothes dryers were tested as a compact (3 pound test load), they would not meet the minimum energy conservation standard for the class of 120 volt, electric, compact capacity clothes dryers. However, the Miele clothes dryers have been tested as standard (7 pound test load) and exceeded the minimum energy conservation standard for the class of electric, standard capacity clothes dryers.

On April 27, 1994, the Department received a letter, dated April 22, 1994, from the Whirlpool Corporation (Whirlpool) opposed to Miele's Petition for Waiver and Application for Interim Waiver. On April 29, 1994, the Department received a letter from the General Electric Company (GE) also opposed to Miele's Petition for Waiver and Application for Interim Waiver. On May 13, 1994, the Department received a letter dated May 5, 1994, from the Speed Queen Company (Speed Queen) opposed to Miele's Petition for Waiver. On May 13, 1994, Miele provided rebuttal comments.

On May 20, 1994, Miele provided additional information on the impact of reverse tumble action on drying large loads. The Department has reviewed all the comments and believes that the majority of these comments relate to engineering issues which should be fully debated during the Petition for Waiver comment period. The Department is interested in the maximum load capability of compact clothes dryers and any data regarding energy consumption with larger loads. Additionally, the Department is interested in seeking technical information/data on how the reverse tumble feature affects load capacity.

Miele states in its initial submission to the Department that "Miele Appliance, Inc. is a small company with under 50 employees and will suffer

great and irreparable economic hardship if it cannot sell its line of clothes dryers as standard." Miele further states that since its clothes dryer is intended to be sold with its standard size front loading clothes washer, "an inability to sell the clothes dryer as standard will cripple sales of washing machines as well." Miele also states that "since the revenue from the sale of laundry products is essential to the financial well being of the company, the regulatory prohibition of sales of the clothes dryers as standard will jeopardize the company and result in loss of employment."

To grant an Interim Waiver, one of three criteria, *supra*, must be met. First, in regards to "economic hardship," Miele has indicated that failure to sell its clothes dryers as "standard size" will impact the sale of its laundry products and result in loss in employment. However, Miele did not specify any historical nor future anticipated revenue loss from these particular models in question. Furthermore, Miele did not provide any financial data relative to its company nor the financial affiliation of its parent company. The Department agrees that the loss of sales of any product will financially affect a company, however, the Department does not believe that Miele has demonstrated that it would cause economic hardship.

Second, in regards to "it appears likely that the Petition for Waiver will be granted," the Department questions whether the Petition for Waiver will be granted. A waiver can be granted for either one of two reasons. The first is if a product has design features which the test procedure is not capable of testing, and the second is if the test procedure provides results which are unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Miele certainly can test its products with the Department's test procedure. However, in regards to the test procedure providing materially inaccurate comparative data, the Department has concern. This concern is primarily raised by the appearance that Miele is actually submitting the Petition for Waiver to allow its products to meet the minimum energy conservation standard versus the test procedure providing results which are materially unrepresentative. The Department believes that Miele has not demonstrated that the results will provide "materially inaccurate comparative data," even though Miele contends its dryers are more efficient with larger loads. The Department hopes to receive additional data in

response to today's publication of the Miele Petition for Waiver.

Third, in regards to "it would be desirable for public policy reasons," Miele has indicated that denial of the Waiver would be destructive to the company and anticompetitive. The Department does not believe that either conclusion was demonstrated by Miele. Further, Miele indicated that denial of the Waiver blocks innovative, improved designs. The company is seeking through the waiver process to meet the minimum standard level by having its machine reclassified as a "standard" clothes dryer rather than a "compact" clothes dryer. With the reverse tumble feature, the Miele clothes dryer does not meet the 120v, compact, electric, clothes dryer minimum energy efficiency standard. Innovative improved designs are not being blocked. The technical merits of the reverse tumble feature must be fully developed in the Petition for Waiver procedure.

Therefore, for the reasons stated above, the Department denies Miele's Application for Interim Waiver for its clothes dryers models T1515A, T1520, T1565CA, and T1570C. Pursuant to paragraph (e) of § 430.27 of Title 10 Code of Federal Regulations Part 430, the following letter denying the Application for Interim Waiver to Miele was issued.

Pursuant to paragraph (b) of 10 CFR part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The Petition contains no confidential information. DOE would appreciate comments, data and other information regarding the Petition, discussed above.

Issued in Washington, DC, September 21, 1994.

Christine A. Ervin,
Assistant Secretary, Energy Efficiency and Renewable Energy.

Department of Energy, Washington, DC
20585, September 21, 1994

Mr. Nick Ord,
Vice-President and General Manager,
Miele Appliances Inc.,
22D Worlds Fair Drive,
Somerset, NJ 08873

Dear Mr. Ord:

This is in response to your Petition for Waiver and Application for Interim Waiver of April 5, 1994, amended on April 20, 1994, and April 22, 1994, from the Department of Energy (DOE or Department) test procedure regarding Miele Appliances Inc. (Miele) clothes dryer models T1515A, T1520, T1565CA, and T1570C.

You have indicated that your clothes dryers have a reverse tumble feature which allows them to use a smaller capacity drum for a larger clothes dryer load. You further stated, "The specific design characteristics of the Miele clothes dryer make the

classification of the product as 'compact' totally unrepresentative of the product's true energy consumption characteristics and provides materially inaccurate comparative data."

For the reasons stated *infra*, the Department denies Miele's Application for Interim Waiver for its clothes dryers models T1515A, T1520, T1565CA, and T1570C.

In order for the Department to be able to grant Miele an Interim Waiver, it must be determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver.

In regards to "economic hardship," Miele has indicated that failure to sell its clothes dryers as "standard size" will impact the sale of its laundry products and result in loss in employment. However, Miele did not specify any historical nor future anticipated revenue loss from these particular models in question. Furthermore, Miele did not provide any financial data relative to its company nor the financial affiliation of its parent company. The Department agrees that the loss of sales of any product will financially affect a company, however the Department does not believe that Miele has demonstrated that it would cause economic hardship.

Second, in regards to "it appears likely that the Petition for Waiver will be granted," the Department questions whether the Petition for Waiver will be granted. A waiver can be granted for either one of two reasons. The first is if a product has design features which the test procedure is not capable of testing, and the second is if the test procedure provides results which are unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Miele certainly can test its products with the Department's test procedure. However, in regards to the test procedure providing materially inaccurate comparative data, the Department has concern. This concern is primarily raised by the appearance that Miele is actually submitting the Petition for Waiver to allow its products to meet the minimum energy conservation standard versus the test procedure providing results which are materially unrepresentative. The Department believes that Miele has not demonstrated that the results will provide "materially inaccurate comparative data," even though Miele contends its dryers are more efficient with larger loads. The Department hopes to receive additional data in response to the publication of the Miele Petition for Waiver.

Third, in regards to "it would be desirable for public policy reasons," Miele has indicated that denial of the Waiver would be destructive to the company and anticompetitive. The Department does not believe that either conclusion was demonstrated by Miele. Further, Miele indicated that denial of the Waiver blocks innovative, improved designs. The company is seeking through the waiver process to meet the minimum standard level by having its machine reclassified as a "standard" clothes

dryer rather than a "compact" clothes dryer. With the reverse tumble feature, the Miele clothes dryer does not meet the 120v, compact, electric, clothes dryer minimum energy efficiency standard. Innovative improved designs are not being blocked. The technical merits of the reverse tumble feature must be fully developed in the Petition for Waiver procedure.

The Department will publish the Petition for Waiver in the *Federal Register* and conduct a formal rulemaking so that the technical merits of the submission can be fully developed.

If there are any questions, please contact Mr. Michael McCabe of my staff at (202)-586-9155.

Sincerely,

Christine A. Ervin,
Assistant Secretary, Energy Efficiency and Renewable Energy

April 5, 1994

Assistant Secretary, Energy Efficiency and Renewable Energy, United States Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585

Re: Application for Interim Waiver and Petition for Waiver, 10 C.F.R., Subpart B, Appendix D—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers

Dear Assistant Secretary:

Miele Appliances, Inc. hereby submits this Application for Interim Waiver and Petition for Waiver pursuant to Title 10 C.F.R. § 430.27. This section provides for waiver of test methods on the grounds that a basic model contains design characteristics that either prevent testing according to the prescribed test procedure or produce data so unrepresentative of a covered product's true energy consumption characteristics as to provide materially inaccurate comparative data.

Miele Appliances, Inc., a Delaware corporation, is a small business with under 50 employees. It currently markets highly efficient, advanced-design vented and condenser (non-vented) clothes dryers to complement its front-loading, horizontal axis washing machines. These products perform as standard size products and handle standard capacity loads. They are marketed as standard capacity products. Integral to the design of Miele's clothes dryers is an advanced drum design that handles a standard load capacity with a drum size of 3.54 cu.ft.

Despite the fact that the Miele clothes dryer has a standard load capacity, the DOE test procedure classifies it as "compact." According to the DOE test method for measuring the energy consumption of clothes dryers, 10 C.F.R. Subpart, B, Appendix D, the Miele clothes dryers are classified as "compact" (*id.* § 1.3) since their drum size of 3.54 cu.ft. is less than the DOE definition of "standard." The definition of "standard" is equal to or greater than 4.4 cubic feet (*id.* § 1.9). The definitions of "standard" and "compact" were adopted by DOE many years

ago¹ and to not take into account the advanced Miele design.

The specific design characteristics of the Miele clothes dryers make the classification of the products as "compact" totally unrepresentative of the products' true energy consumption characteristics and provide materially inaccurate comparative data. This treatment essentially locks Miele out of the market for standard clothes dryers in the United States, which would be manifestly unfair and discriminatory.

To remedy this unfairness and discrimination, Miele Appliances, Inc. urgently requests an Interim Waiver and a Waiver to permit its clothes dryers to be treated as "standard size" for purposes of the test procedure and to determine compliance with the related federal efficiency standard.

Miele clothes dryers are clearly designed to operate as "standard size" dryers. They are designed to pair with Miele's standard clothes washer. They handle a standard load. When tested as "standard size," the clothes dryer easily exceeds the minimum DOE energy requirements for "standard size" clothes dryers (10 C.F.R. § 430.32(h)). More specifically:

- The Miele clothes dryers are designed to complement Miele's front-loading washing machines, Models W1918 and W1930. (See product literature, attached hereto as Appendix 1.) These washing machines are classified by DOE as being of "standard" capacity, since their drum capacity exceeds the 1.6 cubic feet minimum capacity required for classification as "standard". (See independent ETL testing verification, Appendix 2.)

- When the Miele clothes dryers are tested as "standard" appliances according to the prescribed DOE requirements, all models easily comply with the energy consumption requirements. (See independent ETL testing verification, Appendix 3.)

- Miele clothes dryers are able to achieve these "standard" energy efficient rating despite their drum size, because of specific design characteristics, namely:

- Miele clothes dryers have reverse tumble action. Unlike conventional drum dryers, Miele dryers rotate clockwise (60 seconds), stop and then rotate counterclockwise (60 seconds). This procedure is continued through all aspects of the drying cycle. The purpose of this reverse tumble action is to be able to dry a standard load of fabrics evenly, since by rotating in both directions the fabrics cannot roll up a ball. This avoids having the fabrics being dry on the outside and wet/damp on the inside, as would otherwise happen in a product with this drum size.

- Miele clothes dryers have a lower amperage than do larger drum dryers. Miele clothes dryers are rated at 15 amps in contrast to 30 amps to larger drum dryers. Miele clothes dryers also have lower heat output, *i.e.*, the clothes are

¹ The DOE test procedure was adopted in 1981, 46 Fed. Reg. 27326 (May 19, 1981). The definitions of "standard" and "compact" in the test procedure were carried over from definitions adopted in 1977 by the predecessor agency to DOE, the Federal Energy Administration.

dried at lower temperatures than conventional 30 amp dryers.

Miele's line of condenser dryers have additional special design characteristics. Miele condenser dryers do not vent the exhaust air to the outside, but rather convert the hot, humid air to water inside the appliance. This technology benefits those dwellers of high-rise apartments, who in many cases have no way to vent to the outside, or at least not without considerable remodeling/construction expense. This advantageous design characteristic produces a more complex drying process than the regular vented dryer, yet when tested as a "standard" appliance, complies with the DOE energy efficiency standard.

The Miele clothes washer and clothes dryer are marketed and intended to be used as a standard laundry pair. If the clothes dryer were forced to be classified as "compact," it would jeopardize the market for both the clothes washer and clothes dryer. Compact clothes dryers are perceived in the marketplace as being very different from a standard clothes dryer. Compact clothes dryers are perceived as having fewer features and therefore less desirable than standard clothes dryers.

In light of the foregoing, Miele requests an Interim Waiver and Waiver that will make the following amendments to 10 C.F.R., Subpart B, Appendix D, with respect to Miele clothes dryers Models T1515A, T1520, T1565CA, and T1570C [additions underlined]:

1.3 "Compact" or "compact size" means a clothes dryer with a drum capacity of less than 4.4 cubic feet, *except that a clothes dryer with a drum capacity meeting the requirements of Section 1.9 shall be deemed to be a "standard size" clothes dryer and shall be tested pursuant to the testing conditions and test procedures for "standard size" clothes dryers.*

1.9 "Standard size" means a clothes dryer with a drum capacity of 4.4 cubic feet or greater, *except that a clothes dryer with a drum capacity of 3.50 cubic feet or greater with reverse tumble action that alternately rotates the drum clockwise and counterclockwise during the drying cycle to dry a standard size drying load shall be deemed to be "standard size" clothes dryer and shall be tested pursuant to the testing conditions and test procedures for "standard size" clothes dryers.*

Miele Appliances, Inc. requests immediate relief by grant of the proposed Interim Waiver. Grant of an Interim Waiver is fully justified:

Economic Hardship—Miele Appliances, Inc. is a small company with under 50 employees and will suffer great and irreparable economic hardship if it cannot sell its line of clothes dryers as standard. If Miele clothes dryers are not treated as standard, they will in effect be denied effective access to the United States market. Beyond that, since the Miele clothes dryer is intended to be sold as a pair with one of the Miele energy and water efficient standard size front-loading washing machines discussed above (and depicted in Appendix

1), an inability to sell the clothes dryer as standard will cripple sales of the washing machine as well. Since the revenue from the sale of laundry products is essential to the financial well-being of the company, the regulatory prohibition of sales of the clothes dryer as standard will jeopardize the company and result in loss of employment.

Significant investment has already been made in developing Miele clothes dryers that comply with recognized United States safety testing standards. An inability to sell the products as standard size due to regulatory action would not allow Miele to recoup these significant investments, the financial consequences of which would further jeopardize the company.

To comply with the DOE definition of a "standard" clothes dryer, i.e., a drum size equal to or greater than 4.4 cubic feet, Miele would have to initiate great manufacturing and tooling changes in order to produce such a product. The huge investments needed to accomplish this would result in a significant increase in the manufacturing cost of the clothes dryers, which would not benefit consumers and would simply result in substantially higher cost to the consumer. This would render Miele products totally uncompetitive. Consequently, the financial well-being of the company would rapidly deteriorate.

Likely Approval of Waiver—The Petition for Waiver is likely to be granted, because the design characteristics of the clothes dryers are intended to allow the products to function as energy-efficient "standard" clothes dryers. In addition, it is manifestly unfair to classify the Miele clothes dryer as being "compact" even though it performs as a "standard" clothes dryer and is designed to complement the matching Miele clothes washer, which is classified by DOE as being of "standard" capacity. An independent testing company has verified that when tested according to DOE testing procedures as a "standard" clothes dryer, Miele dryers easily comply with the consumption requirements.

Only a relatively small number of clothes dryers will be sold by Miele Appliances, Inc. in the time period between Interim Waiver and Waiver. During this time, whether the clothes dryers are classified as "compact" or "standard," this would have a negligible impact on energy consumed or consumer decisions. Any such impact would be beneficial.

Public Policy Merits—Miele clothes dryers, when classified as "standard" capacity appliances, comply with DOE energy consumption requirements. Therefore, consumers should not be denied access to these energy-efficient appliances, and this is an additional reason why the requested Interim Waiver should receive prompt approval. The basic purpose of the Energy Policy and Conservation Act, as amended by the National Appliance Energy Conservation Act, is to foster purchase of energy-efficient appliances, not hinder such purchases. The granting of the Waiver and Interim Waiver will promote this policy and will result in increased energy savings.

Miele clothes dryers have been shown to be highly energy efficient. These space-

saving products provide an energy efficient solution to families living in city dwellings where space for laundry products is limited. The dryer can energy-efficiently dry a "standard" load size, yet take up a small amount of floor space. The condenser dryer also makes a dryer available to households where for physical, structural reasons a vented dryer could otherwise not be installed. Miele clothes dryers thus offer benefits in the public interest. To encourage and foster the availability of these energy-efficient products is in the public interest.

Standards should not be used as a means to block innovative, improved designs.² Miele's design is an innovative and improved way to dry a standard load of laundry and provides substantial benefits to the public. DOE's rules should accommodate and encourage—not act to block—such a product. Granting the Interim Waiver and Waiver will also eliminate a non-tariff trade barrier.

Furthermore, the success of small business has wide-reaching public policy benefits. In the case of Miele Appliances, Inc., continued employment creation and ongoing investments in its marketing, sales and servicing activities will be fostered by approval of the requested Interim Waiver. Conversely, denial of the requested Waiver and Interim Waiver would be destructive to the company and would be anticompetitive.

Thank you for your timely attention to this request for Interim Waiver and Waiver. We hereby certify that all clothes dryer manufacturers of domestically marked units known to Miele Appliances, Inc. have been notified by letter of this application, copies of which are attached (Appendix 4).

Sincerely,

Nick Ord,
Vice-President and General Manager Miele Appliances, Inc.

Enclosures (Appendices 1-4)

[FR Doc. 94-24127 Filed 9-28-94; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5081-4]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Dynamac

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) and 40 CFR 2.310(h) for authorization to disclose to its contractor, Dynamac of Rockville, Maryland, cost recovery support documentation for the Hastings

² See FTC Advisory Opinion No. 457, TRR ¶ 1718.20 (1971 Transfer Binder); 49 Fed. Reg. 32213 (Aug. 13, 1984); 52 Fed. Reg. 49141, 49147-48 (Dec. 30, 1987).

Ground Water Contamination Superfund Site. This disclosure includes Confidential Business Information (CBI) which has been submitted to EPA Region 7, Waste Management Division, Superfund Branch. Dynamac's principal office is 2275 Research Boulevard, Suite 500, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Glenn Curtis, Superfund Branch, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7726.

SUPPLEMENTARY INFORMATION:

Notice of Required Determinations, Contract Provisions and Opportunity to Comment

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (commonly known as "Superfund"), requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records. EPA has entered into ESS contract No. 68-W4-0039 for management of those records. EPA Region 7 has determined that disclosure of CBI to Dynamac is necessary in order that the contractor may carry out the work requested under the above contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii) and 40 CFR 2.310(h). EPA Region 7 will require that each Dynamac employee working on cost recovery work sign a written agreement that he or she:

(1) Shall use the information only for the purpose of carrying out the work required by the contract;

(2) Shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA regional office; and

(3) Shall return to EPA all copies of the information and any contracts or extracts therefrom (a) upon completion of the contract, (b) upon request of the EPA, or (c) whenever the information is no longer required by Dynamac for performance of work requested under the contract. These non-disclosure statements shall be maintained on file with the EPA Region 7 Project Officer for Dynamac. Dynamac employees will be provided technical direction from their respective EPA contract management staff.

EPA hereby advises affected parties that they have ten (10) working days to comment pursuant to 40 CFR 2.301(h)(2)(iii) and 40 CFR 2.310(h). Comments should be sent to: Glenn

Curtis, Environmental Protection Agency, Region 7, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Dated: September 22, 1994.

William Rice,

Acting Regional Administrator.

[FR Doc. 94-24122 Filed 9-28-94; 8:45 am]

BILLING CODE 6560-50-M

[PP OG3916/T666; FRL 4902-2]

Deltamethrin; Renewal of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed a temporary tolerance for the combined residues of the insecticide Deltamethrin and its metabolites in or on the raw agricultural commodity cottonseed at 0.02 part per million (ppm).

DATES: This temporary tolerance expires June 1, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager, (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-6100.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 24, 1993 (58 FR 62122), stating that a temporary tolerance had been established for the combined residues of the insecticide Deltamethrin (1*R*,3*R*)-3 (2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*s*)- α -cyano-3-phenoxybenzyl ester and its metabolite, *trans*-deltamethrin: (1*S*,3*R*)-3 (2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (*S*)- α -cyano-3-phenoxybenzyl ester and α -*R*-deltamethrin: (1*R*,3*R*)-3 (2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (*R*)- α -cyano-3-phenoxybenzyl ester in or on the raw agricultural commodity cottonseed at 0.02 part per million (ppm). This tolerance is renewed in response to pesticide petition (PP) OG3916, submitted by Hoechst-Roussel Agri-Vet Co., Route 202-206, P.O. Box 2500, Somerville, NJ 08876-1258.

The company has requested a 1-year renewal of a temporary tolerance for residues of the insecticide to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 34147-EUP-3,

which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Hoechst-Roussel Agri-Vet Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires June 1, 1995. Residues not in excess of this amount remaining in or on the above raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: September 21, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-24128 Filed 9-28-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30373; FRL-4913-5]

Receipt of an Application for Pesticide Registration for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application from Monsanto Company for a transgenic plant pesticide for conditional registration containing the new active ingredient *Bacillus thuringiensis* var. *kurstaki* delta endotoxin protein as produced by the Cry1A(c) gene and it controlling sequences. The EPA File Symbol for this application is 524-UTI, and the associated tolerance petition number is PP 4F 4331. This is the second application for registration of a transgenic plant pesticide under section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, in which a plant has been genetically altered to produce a pesticide. Because of its uniqueness the Agency has determined that this application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be submitted by October 31, 1994.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30373] and the (File Symbol 524-UTI) to: Public Response and Program Resources Branch, Field Operations Division (7506C), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 213, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-305-7690).

SUPPLEMENTARY INFORMATION: On February 11, 1994, an application to conditionally register a transgenic plant pesticide *Bacillus thuringiensis* var. *kurstaki* (B.t.k.) Insect Control Protein (Cry1A(c)), containing the new active ingredient *Bacillus thuringiensis* var. *kurstaki* delta endotoxin protein as produced by the Cry1A(c) gene and it controlling sequences at 100 percent was received from Monsanto Company, 700 Chesterfield Village Parkway, St. Louis, MO 63198. The application was assigned EPA File Symbol 524-UTI.

Through the genetic modification of cotton, Monsanto has developed an environmentally compatible alternative for controlling many of the lepidopteran caterpillars which feed on this crop. This Insect Resistant Cotton (IRC) cotton produces the insect control protein derived from the common soil bacterium *Bacillus thuringiensis* var. *kurstaki* (B.t.k.). The protein produced is nearly identical in structure and activity to that found in nature and in commercial B.t.k. formulations, registered by EPA.

The commercialization and use of IRC offers several significant benefits to the grower, the public, and environment. Results from field experiments conducted in the past 4 years throughout the cotton growing regions have demonstrated that IRC is protected season long from the major lepidopteran pests which feed on the foliage and bolls of the cotton plant, while nontarget organisms, including beneficial insects, mammals, and birds are unaffected. Growers planting IRC may not require additional insecticide applications to control these pests. Such a substantial reduction in insecticide use will enhance biological control and the implementation of other pest management strategies for other cotton

insect pests. The purpose of Monsanto's application for pesticide registration and exemption from the requirement of a tolerance, is to acquire a registration so that commercialization of their innovative product can be available for commercial use in control of the pest, the lepidopteran caterpillars on cotton.

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703-305-5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 22, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-24129 Filed 9-28-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

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 1980, Public Law 96-511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418-1379.

Federal Communications Commission

OMB Control No.: 3060-0604.

Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Third Report and Order and Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, PP Docket No. 93-253 (47 CFR Part 24).

FCC Forms: FCC 401, 489, 490, 405, 430, 854.

Expiration Date: 05/31/97.

Estimated Annual Burden: 45,654 total hours; .50-20 hours per response; 10-17,770 respondents.

Description: In the Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking (Third MO&O), the Commission clarified, modified and supplemented the original rules governing the auction of narrowband PCS licenses. For example, the Commission has modified its original definition of small business to include larger concerns, and has codified principles for attributing the interests of various affiliates of the applicant to that applicant. The Commission also has modified the various preferential measures that are available to certain entities designated by Congress, such as increasing the available bidding credits to 40% from 25% in some cases. In order to better ensure that applicants claiming these preferences are entitled to them and to aid the Commission's enforcement efforts, winning bidders are now required to supply additional information on the ownership of the applicant. The Commission has also relaxed its rules pertaining to amendment of FCC Form 175, now permitting applicants to amend their FCC Form 175 applications to reflect ownership changes that do not result in a change in control of the applicant.

OMB Control No.: 3060-0068.

Title: Application for Consent to Assignment of Radio Station Construction Permit or License (For Stations in Services Other Than Broadcast)

FCC Form No.: FCC 702.

Expiration Date: 08/31/97.

Estimated Annual Burden: 5000 total hours; 5 hour per response; 1000 respondents.

Description: FCC Form 702 is used to request Commission approval of assignment of radio station construction authorization or license under 47 C.F.R. parts 21, 23 and 25. The form is reviewed by Commission staff to determine the financial, legal and technical qualifications of the applicant. The form is being revised to display the 08/31/97 expiration date and to incorporate the certification required by 47 C.F.R. part 1, section 1.2002

implementing Section 5301 of the Anti-Drug Abuse Act of 1988. The current October 1991 edition of the form may be used through March 1995.

OMB Control No.: 3060-0485.

Title: Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90-6.

Expiration Date: 12/31/94.

Estimated Annual Burden: 80 total hours; 2 hours per response; 40 respondents.

Description: Title III of the Communications Act of 1934, as amended governs the licensing of all communications services which operate through the use of radio frequencies. Part 22 of the FCC Rules contains the technical and legal requirements for mobile radio stations. Generally, information collections contained in Part 22 are used by the Commission to determine whether the applicant is qualified legally, technically, and/or financially to be licensed or to remain a licensee.

OMB Control No.: 3060-0508.

Title: Rewrite and Update of Part 22 of the Public Mobile Service Rules (CC Docket No. 92-115) and FNPRM

Expiration Date: 05/31/95.

Estimated Annual Burden: 10,600 total hours; 5 hours per response; 2120 respondents

Description: OMB approved the proposals contained in the Further Notice of Proposed Rulemaking (FNPRM) issued in CC Docket 92-115. The FNPRM contained several new and modified requirements including, a proposal to require licensees notifying the Commission of minor modifications to their systems on FCC Form 489, which include Service Area Boundary (SAB) extensions into the adjacent market, to specify whether the 5 year fill-in period for the market has expired and, if so, to state that the SAB extension does not cover any unserved area; a proposal to revise the scale of the maps required to be filed by the Commission's rules from 1:250,000 to 1:500,000; and, also a proposal to require all cellular licenses to submit the certain information regarding the external cell sites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-24077 Filed 9-28-94; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 2030]

Petition for Reconsideration and Clarification of Actions in Rulemaking Proceedings

September 26, 1994.

Petition for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857-3800. Opposition to these petitions must be filed October 14, 1994. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject:

Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast Stations. (Clewiston, Key Colony, Key Largo and Marathon, Florida) (MM Docket No. 93-136, RMs No. 8161, 8309 and 8310).

Number of Petitions Filed: 2.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-24078 Filed 9-28-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before November 28, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington,

DC 20503, (202) 395-7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT:

Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624. Type: New Collection.

Title: Write Your Own (WYO) Company Participation Criteria; New Applicants.

Abstract: Under the WYO program, private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is a guarantor of flood insurance coverage for WYO companies, issued under the WYO Arrangement. To determine eligibility for participation in the WYO program, the Federal Insurance Administration, National Flood Insurance Program is requiring a one-time submission of information required by FEMA interim rule 44 CFR part 62, published at FR 38571, dated Friday, July 29, 1994.

Type of Respondents: Businesses or other for-profit.

Estimate of Total Annual Reporting and Recordkeeping Burden: 68 hours.

Number of Respondents: 10.

Estimated Average Burden Time per Response: 6.8 hours.

Frequency of Response: One-time.

Dated: September 22, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94-24116 Filed 9-28-94; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Delhi Bank Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of

Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 24, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. *Delhi Bank Corp.*, Delhi, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Delaware National Bank of Delhi, Delhi, New York.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *KeyCorp.*, Cleveland, Ohio; to acquire 100 percent of the voting shares of First Citizens Bancorp of Indiana, Anderson, Indiana, and thereby indirectly acquire Citizens Banking Company, Anderson, Indiana.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Amcore Financial, Inc.*, Rockford, Illinois; to acquire 100 percent of the voting shares of NBA Holding Company, Aledo, Illinois, and thereby indirectly acquire Bank of Aledo, Aledo, Illinois.

2. *Pinnacle Banc Group, Inc.*, Oak Brook, Illinois; to merge with Acorn Financial Corporation, Oak Park, Illinois, and thereby indirectly acquire Suburban Trust & Savings Bank, Oak Park, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Community First Bankshares, Inc.*, Fargo, North Dakota; to acquire 24.75 percent of the voting shares of Bank of Colorado Holding Company, Vail, Colorado, and thereby indirectly acquire Vail Bank, Vail, Colorado.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Regency Bancorp.*, Fresno, California; to become a bank holding company by acquiring 100 percent of

the voting shares of Regency Bank, Fresno, California.

Board of Governors of the Federal Reserve System, September 23, 1994

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-24071 Filed 9-28-94; 8:45 am]

BILLING CODE 6210-01-F

Aaron Kaufman, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 19, 1994.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Aaron Kaufman*, Dallas, Texas; *Charles Kaufman*, Austin, Texas; and *Harold Kaufman*, Charlotte, North Carolina; all to acquire 15 percent, for a total of 24.99 percent, of the voting shares of Texas Community Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire Texas Community Bank, N.A., Dallas, Texas.

Board of Governors of the Federal Reserve System, September 23, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-24072 Filed 9-28-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Administration on Aging, HHS.

The Administration on Aging (AoA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511):

Title of Information Collection: State Performance Report: Reporting Requirements for Titles III and VII of the Older Americans Act;

Type of Request: Extension and Revision;

Use: To revise an existing information collection form to conform to the newly-developed National Aging Program Information System (NAPIS) resulting from amendments to the Older Americans Act which directed the Administration on Aging to improve State reporting requirements;

Frequency: Annually;

Respondents: State Agencies on Aging;

Estimated Number of Responses: 57;

Total Estimated Burden Hours: 293,721.

Additional Information or Comments:

Written comments and recommendations for the proposed information collections should be sent within 10 days of the publication of this notice directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: September 23, 1994.

William F. Benson,

Deputy Assistant Secretary for Aging.

A. Justification

1. Explanation of Necessity

The Older Americans Act (OAA) requires annual program performance reports from the States. The 1992 reauthorization of the (OAA) directed the Administration on Aging to develop reporting procedures for use by States to correct deficiencies in current reporting practices. In response to this mandate, AoA has developed a new reporting system known as the National Aging Program Information System (NAPIS) which necessitates as revised form 0980-0199. The current Form 0980-0199 will be divided into two separate forms. The first form will be known as the State Performance Report (SPR) and will require an accounting of performance under Title III and the newly established Title VII. The SPR component of the NAPIS which we are submitting is intended to be phased in over a three year period with levels of detail increasing annually (except for states that elect faster implementation), beginning with program information collected in FY 1995. The second form,

which in the past was included in the SPR, will be known as the State Annual Ombudsman Report to the Administration on Aging and will be the basis for the National Ombudsman Reporting System (NORS).

AoA will test both the SPR and the State Annual Ombudsman Report in FY 1995. The test of the new SPR will focus on the new requirements for registration and data on client characteristics. AoA will seek out the test states through an open solicitation process. The pilot sites will include both states which have the capacity to fully implement all reporting requirements in FY 1995 as well as states that are not as far along in the development of their reporting system capacities. AoA will use the test results to evaluate the feasibility of the proposed reporting specifications. Based on the test results AoA will consider revision of the timing and the substance of the specifications, as appropriate. Approval for such final changes will be requested from OMB by June 30, 1995. However, at this time we fully intend to implement the reporting system on the proposed schedule.

The revised State Annual Ombudsman Report is to be implemented in FY 1995 *at state option*, and required for information collected in FY 1996. Therefore, we ask that OMB extend, also, approval for AoA to use Part V, Long Term Care Ombudsman Program, of our current Form 0980-0199 through FY 1995.

2. Use of Information and Consequence of Not Collecting

The information will be used to meet existing and new statutory requirements under the (OAA) which includes evaluation of program operations; preparation of reports for the Congress and the Office of Management and Budget; policy analysis; response to other Federal agencies; and to other public and private sector agencies and organizations.

If the revised form 0980-0199 is not approved, the Assistant Secretary for Aging will not be able to comply with (OAA) statutory requirements for state program performance information in FY 1995 due to lack of State-by-State data. Introduction of the revised system during FY 1995 would be prohibited. The current form 0980-0199 expires on 12/31/94.

3. Information technology and Reducing Burden

State and Area Agencies on Aging (AAAs) are rapidly automating the collection, processing, and transmission of data. This has a profound effect on estimates of time and cost to produce

program service data. A few States have limited ADP capacity, but virtually all States will, within a very short time, have ADP capacity that was rare 10 years ago. In the past, a large State with many AAAs using a "paper and pencil reporting system" might have used several thousands of hours to produce an annual report. Furthermore, the burden would be much the same each year a similar report was developed. Currently, States that have commonplace and relatively inexpensive ADP capacity perform these tasks in a fraction of the time needed with a paper system. Beyond this, the burden is greater in the first year of reporting than in any subsequent year, because ADP costs load on the front end. AoA has consulted extensively with States in the development of these requirements and has limited the burden to the extent practical and allowable under the OAA.

4. Efforts to Identify Duplication

The information specified for this report is not available from other collection source.

5. Availability of Similar Information

Similar information is not available from any other source.

6. Small Business or other Small Entities—N/A

7. Consequences of Less Frequent Collection

State performance reports are required on an annual basis by statute.

8. Guidelines in 5 CFR 1320.6

The existing State Program Report is consistent with 5 CFR 1320 and this request for extension would have no adverse effect.

9. Outside Consultation

Outside consultation with the aging network on the proposed reporting specifications has been extensive:

1991

AoA issued an Information Memorandum 91-17 (January, 1991) to States indicating a need to improve the State Program Report (SPR). States were provided an opportunity to comment on improvements on the current SPR. 41 States wrote comments and nearly all wanted substantial changes in the SPR, including improvements to the taxonomy, computerization, and changes to facilitate greater accuracy. AoA held a meeting (June, 1991) with a group of State and Area Agency on Aging personnel to discuss major issues.

*Dimensions International Report
(September, 1992-March, 1993)*

AoA funded a contractor, Dimensions International (DI), to develop comprehensive information, analyze program issues and provide recommendations on a reporting system for (OAA) funded programs. DI engaged a Policy Committee and a Technical Committee each of which met twice in Washington, D.C. to provide aging network input to the recommendations. An executive summary of the findings and recommendations is attached.

NORS Work Group Activities (1991-1993)

AoA staff worked with numerous state Long-Term Care (LTC) Ombudsmen over a period of two years to develop an improved reporting system for the Ombudsman Program—the National Ombudsman Reporting System (NORS), which is currently proposed. At AoA's invitation, State Directors on Aging reviewed the product of this extensive work by program staff. Of thirty-two State responses, twenty-five states concurred with the new system, one state did not concur, and six states provided an ambivalent response.

Technical Review Meeting (August, 1993)

AoA convened a two day technical work group with State and Area Agency on Aging Staff from the NY, WA, NC, NY City and Prince Georges County, MD to review a draft of the reporting requirements which AoA submitted to OMB in March of 1994.

Information Memoranda

AoA provided States and AAAs a copy and an opportunity to comment on the DI recommendations in an Information Memorandum (June, 1993).

In March of 1994, an Information Memorandum with a copy of AoA's Previous submission to OMB was provided to States and AAAs. Three major areas of concern were identified in the public comments: (1) timing of the implementation; (2) cost of implementation; and (3) level of reporting detail. In light of these concerns, AoA proposed the following revisions to the previous OMB submission:

- PSA level reporting was eliminated;
- Performance measures were eliminated;
- Client registration has been delayed to FY 1996;
- Services in the three clusters were rearranged;
- Nutritional risk screening was limited to four services—case

management, home delivered and congregate meals and nutrition counseling;

- A number of client descriptors and expenditure related data requirements were dropped; and
- SPR reports will be required to be submitted to AoA electronically. (AoA will provide software specifications to assist States in transmitting the required files.)

State Governors and State Agency on Aging Comments (June, 1994)

AoA, in consultation with OMB, provided proposed reporting specifications to State Governors and Directors of State Agencies on Aging and requested comments.

Nine Governors made comments on the reporting specifications. Most governors that responded indicated support for accurate and useful information gathering; the need for more administrative funds to pay for information gathering; and, that only necessary information be gathered. One Governor said that AoA should collect information on the impact of the services on elderly clients instead of the information which AoA proposes to collect.

37 State Units on Aging and 11 AAAs provided comments. These comments were very diverse and often dealt with technical issues related to services reporting. The more general comments from this group were similar to the comments received from Governors. A more detailed account of the comments is included in the enclosed analysis.

Based on this set of comments, AoA has revised the implementation dates for key components of this reporting system to allow states the option of a phased implementation over a 3 year period. Moreover, the collection of information on transfers between parts of Titles III-B and C and information on modified meals has been dropped. We have again included a required estimate of the percentage of Title III funds in expenditures for certain services, based on comments received. The definition of "new persons served" has been simplified and other definitions were modified to make reporting easier.

10. Confidentiality

To assure confidentiality, CFR 45, Part 1321.19 states "The State Agency on Aging must have procedures to protect the confidentiality of information about older persons collected in the delivery of services." Further regulations, under the U.S. Code, governing Programs for Older Persons require that information may not be disclosed by the service provider

or agency in a manner which identifies the person without the informed consent of the person.

11. Questions of a Sensitive Nature

The State program report as applicable to this request for revision contains no questions of a sensitive nature.

12. Estimated Cost to Federal Government and Respondent

The (OAA) provides funds to States for administration (including ADP and reporting). Most States use for administrative costs approximately five percent of the total funds allocated to them by the OAA. Therefore, large states, such as California and New York State are provided state administrative funds of \$3.7 million and \$3 million respectively, not including required matching funds or administrative funds from other programs which they administer. AAAs are permitted under the (OAA) to use approximately 10% of OAA funds they administer for administrative purposes. In large states, such as California and New York State, AAAs are provided about \$6 million annually for administrative activities such as providing information on services provided. Service providers include the costs of administrative activities in budgets which they negotiate with AAAs. AAAs will continue to limit the administrative costs of service providers. However, the mechanism to allocate additional funds to meet legitimate increased costs for reporting at the services provider level are in place currently. Most of any increase in reporting burden caused by these proposed reporting specifications falls outside state administrative budgets.

AoA has made one-time grants to State Agencies on Aging in FY-94 to assist States with the start-up costs of meeting the NAPIS requirements which we propose to OMB. The one-time state grants are \$45,000 for states, with lesser amounts for some of the territories.

AoA has spent approximately \$640,000 on staff, expenses, and contracts to develop the reporting system proposed. It is estimated that AoA will spend an additional \$900,000 in the rest of FY 1994 combined with FY 1995 on staff, expenses, and contracts to implement the revised reporting system. After FY 1995, the reporting system is estimated to require \$150,000 in AoA staff and expenses each year to maintain and operate, if no major changes are made in the reporting system.

13. Burden of Collection Information

AoA has determined through consultation with states that some states wish to implement all of the proposed reporting requirements in FY 1995. Other states advise us that they must have the option of implementing the system in stages. AoA proposes reporting standards that will permit, at state option, some of the more complicated reporting requirements to be deferred to FY 1996 and a few requirements to FY 1997. This optional phased approach to implementation complicates the estimation of burden hours per year. We are basing our estimate on the burden an average state might encounter if all of the reporting requirements are implemented in the first year. However, we assume that a state that implements the components of the reporting system over a three year period will have a lower first year burden, but annual effort may not substantially decline until the fourth year that the system is employed.

The first year (FY-1995) national reporting burden on the respondents is estimated to be 294,000 hours. The burden will drop to 70,000 hours in each subsequent year in which these reporting components are used.

14. Reasons for Changes in Burden

The estimates of burden reflect an increase in reporting required by 1992 Amendments to the OAA and adjustments to the estimate of the burden required by the existing AoA reporting requirements for these programs.

15. Collection of Statistical Information for Publication and Collection of Information Employing Statistical Methods—N/A.

State Performance Report for Title III and VII of the Older Americans Act (Excluding LTC Ombudsman Report)

For Implementation In Fiscal Year 1995 by the National Network on Aging

Report Sections

- Section I: Estimated Unduplicated Counts of Clients Served
- Section II: Utilization Profile
- Section III: Expenditure Profile
- Section IV: Other Services Profile (Optional)
- Section V: Developmental Accomplishments
- Section VI: Profile of Community Focal Points and Senior Centers
- Section VII: Staffing Profile
- Revised Requirements as of: September 20, 1994

Title III and VII Performance Reporting Requirements

Introduction

The Older Americans Act calls for annual performance reporting by the National Network on Aging. In the 1992 reauthorization of the Older Americans Act, the Administration on Aging (AoA) was directed to develop refined reporting procedures for use by state agencies on aging which correct deficiencies in current reporting practices. As a response to these mandates, AoA is issuing new reporting guidelines for Titles III and VII, to be effective in FY95 with the exception of client registration which will not be required until FY96. As a result, a number of data elements will be delayed until FY96 and in two cases, nutritional risk data for congregate meals and new clients data, until FY97.

This document summarizes the new requirements for the State Program Performance Report (SPR) for Titles III and VII.

The sections of the new SPR include:

Section I: Estimated Unduplicated Counts of Clients Served

- A. Unduplicated Client Count By Type of Service
- B. Unduplicated Client Count By Characteristic

Section II: Utilization Profile

- A. Service Use
- B. Detailed Client Profile for Registered Services (1-6)
- C. Summary Client Profile for Other Registered Services (7-9)

Section III: Service Expenditures Profile

- A. Title III Expenditures By Part And Service
- B. Title VII Expenditures By Chapter

Section IV: Other Services Profile (Optional)

Section V: Developmental Accomplishments

- A. For Home and Community Based Programs
- B. For A System of Elderly Rights

Section VI: Profile of Community Focal Points/Senior Centers

Section VII: Staffing Profile

- A. State Unit on Aging
- B. Area Agency on Aging

On the following pages, the SPR format is exhibited through a series of data tables corresponding with the sections of the SPR listed above. The tables are for presentation purposes only. AoA is requiring electronic transmittal of the annual SPR data. The

SPR data will be transmitted in several data files organized around logical groupings of performance data—clients, units, expenditures and the like. AoA will provide software which can be used by state units on aging to create the required transmittal files. Following the forms, SPR instructions are provided and the specifications for the data files which will be used to electronically transmit the SPR data to AoA.

While the state long term care ombudsman program is now part of Title VII of the Older Americans Act, there are distinct reporting requirements which exist for the ombudsman program. As a result, the state long term ombudsman report format and related instructions are described in a separate package.

Legislative Requirements for Reporting

The SPR is designed, first and foremost, to respond to legal requirements of the Act, while expanding the performance data available to support management and advocacy by AoA and the National Network on Aging.

Section 202(a)(19) of the Older Americans Act outlines the principal requirement for performance reporting, directing AoA to "Collect for each fiscal year, for fiscal years beginning after September 30, 1988, directly or by contract, statistical data regarding programs and activities carried out with funds provided under this Act, including:

- (A) with respect to each type of service provided with such funds:
 - (i) The aggregate amount of such funds expended to provide such service;
 - (ii) the number of individuals who received such service; and
 - (iii) the number of units of such service provided;
- (B) the number of senior centers which received such funds; and
- (C) the extent to which each area agency on aging designated under Section 305(a) satisfied the requirements related to adequate proportions and the giving of preference to those services to older individuals with the greatest economic or social needs, with particular attention to low income minority individuals."

Section 207(a)(4) of the Act requires that AoA prepare and submit a report to the President and to the Congress which includes "statistical data and an analysis of information regarding the effectiveness of the State agency and area agencies on aging in targeting services to older individuals with greatest economic need and older individuals with greatest social need, with particular attention to low income

minority individuals, low-income individuals, and frail individuals (including individuals with any physical or mental functional impairment)* * *

Congress, during the 1992 reauthorization process, expressed strong reservations and concerns about the quality of reporting related to Older Americans Act programs. In response to these concerns, Congress placed new mandates on AoA in section 202(b)(29) to design and implement, for purposes of compliance with Section 202(a)(19) performance reporting requirements listed above, uniform data collection procedures for use by State agencies, including:

(A) uniform definitions and nomenclature;

(B) standardized data collection procedures;

(C) a participant identification and description system;

(D) procedures for collecting information on gaps in services needed by older individuals, as identified by service providers in assisting clients through the provision of the supportive services; and

(E) procedures for the assessment of unmet needs for services under this Act.

Likewise, in the Older Americans Act reauthorization, Congress inserted language requiring the creation of a National Aging Information Center. Among the requirements for the Center is the collection of information, biennially, on the functions, staffing patterns and funding sources of state agencies and area agencies on aging.

Framing a Strategy for Future Reporting

Three specific goals have guided the development of the SPR. They respond to the basic mandates raised by Congress, the information needs of AoA and capacities of the Aging Network to meet federal reporting requirements. The goals are:

1. Integrate performance data for Older Americans Act programs into a broader information acquisition and analysis framework to be developed and supported by AoA. AoA is developing a three-pronged information framework which will include: 1) performance data on OAA funded programs; 2) data on the broader infrastructure of state administered home and community based services for the elderly; and, 3) data on the needs and unmet needs of the elderly population.

2. Improve accuracy and quality of information being reported. This is being accomplished by introducing standard definitions/nomenclature and the requirement of client registration for

selected services. Both steps are designed to address basic concerns raised by Congress about the quality of past performance data submitted by AoA.

3. Focus and expanded the collection of data on clients and their characteristics in ways which help AoA determine if basic targeting provisions of the Act are being met. Additional data on clients are now required for nine services requiring client registration. These additional data items are designed to give Congress, AoA and the rest of the Aging Network a clearer picture of persons being helped by a core set of home and community based services. Statistical reporting priorities include:

- Low income status of persons served (to be defined in the SPR as persons with incomes at or below poverty).

- Minority status of persons served.
- Frailty status of persons served—defined in the Older Americans Act as individuals unable to perform at least two activities of daily living (ADL) with substantial human assistance or due to a cognitive or mental impairment. (Note, the Act allows states the option of defining frailty based on impairments in at least three activities of daily living).

Because of the Congressional requirement for information on the frailty status of persons served, AoA now requires the determination of ADL (activities of daily living) status and IADL (instrumental activities of daily living) status for clients of six services.

While the scope and procedures for reporting has been expanded and strengthened, it must be reiterated that clients may freely refuse to provide the requested information and still participate in the program or receive a needed service without restriction. Specifically, while information is requested on the number of persons whose income is at or below the poverty threshold, the Older Americans Act bars means testing. In no way has the eligibility or participation requirements of the Act been changed. The new SPR procedures make allowances for clients' refusal to provide selected information.

An incremental approach to upgrading reporting capacities has been adopted. In FY94, states will use the current SPR and follow the current data collection guidelines. Beginning in FY95, selected data elements of the new SPR will be implemented, such as information on developmental accomplishments and a profile of state unit on aging and area agency on aging staffing. In FY96 client registration for nine services will be required along with specific counts of unduplicated

clients served for each of the nine services requiring client registration. In FY97 nutrition risk screening for congregate meals will be required along with information on new clients served.

Key features of the revised SPR include the following:

Adoption of Uniform Definitions and Nomenclature—After extensive consultation, AoA has identified fourteen services which will be the focus of annual reporting. There are standard nomenclature and definitions for all fourteen services. They are organized into 3 clusters, each with distinctive reporting requirements:

Cluster 1—Requires client registration and collection of an expanded set of client characteristics information, notably information on the ADL and IADL status. Services in this cluster include:

1. Personal Care
2. Homemaker
3. Chore
4. Home Delivered Meals
5. Adult Day Care/Health
6. Case Management

Cluster 2—Requires client registration and collection of basically the same information at cluster 1 services except for ADL and IADL status. Services in this cluster include:

7. Congregate Meals
8. Nutrition Counseling
9. Assisted Transportation

Cluster 3—Requires collection of information on units of services, expenditures and providers, but does not require client registration or a profile of client characteristics. The services in this cluster are:

10. Transportation
11. Legal Assistance
12. Nutrition Education
13. Information and Assistance
14. Outreach

As can be seen, the level and type of information to be collected on the services varies by cluster. More client information is required on the services in the first cluster, less on the services in the second cluster and very limited information on the services in the last cluster.

For all other services supported by the OAA, summary expenditure information is required. State units may optionally provide information on each of the "other" services related to the mission/purposes of the service, service expenditures, estimated unduplicated persons served and service units. See Section IV. of the SPR.

Participant Identification and Description System—For nine of the fourteen services included in the new SPR performance report format, client

registration is required. It should be noted that states are still required to make *estimates* of clients served through services where client registration is not required.

In the client registration process, it is expected that clients will be assigned a unique client identification number. For registered clients, a uniform set of data on client characteristics will be collected, either at intake or some time during the course of the year. Area agencies must be able to aggregate client data across providers, by service, to produce unduplicated client counts and an accurate profile of the characteristics of the registered clients.

The use of a master client registry does not mean state and area agencies will need to implement a full scale client tracking system. In client tracking systems, clients are uniquely identified and service utilization data are routinely linked or assigned to individual clients. Under the new SPR data collection procedures, neither service providers nor area agencies on aging will be required to track units of service by individual client. However, area agencies on aging will need to maintain a master client registry which is a list of client names accompanied by a unique client identifier, a set of descriptive information on their characteristics and a list of what services the client is currently receiving. In most cases, a computerized client index or registry will be required in order to generate the required PSA level data subsequently compiled into the annual SPR by the state unit on aging.

While area agencies are likely to require computer capacities to maintain the client registry, it is assumed that providers without computers can meet the SPR requirements through manual data collection procedures. However, in such case, area agencies on aging will need to develop the capacity to enter client data into a client registry and assist providers determine if new clients are already registered.

Standardized Data Collection Procedures—AoA has tried to balance the Congressional mandate for standardized data collection procedures with the need to provide the National Network on Aging flexibility in the reporting systems used to collect data. AoA encourages states to refine or modify existing reporting systems to comply with the new requirements, where appropriate. To assure standardization across states, AoA will require the following:

- The requirement for client registration for selected services.

• Standardization of information describing the characteristics of clients served for nine services related to:

- Age, sex, race/ethnicity
- Income status/rural status/living alone

• For a subset of the nine services requiring registration, the requirement for collection of additional information on:

- ADL/IADL Status
- Nutritional risk status

— State units on aging will have considerable flexibility in setting up these procedures and methods for data collection. As feasible, AoA will make resources available to assist SUAs and AAAs in meeting the reporting specifications.

Testing

The proposed changes in the SPR requirements will be phased in. For FY94, states will submit performance data using the current SPR. For FY95, states will implement those elements of the new reporting guidelines, which are either the same as the old requirements or a relatively small change. For FY96, states will be asked to implement a client registration process and, through client registration, collect additional information on clients of nine selected services. In FY97, two additional data elements will be added.

The introduction of client registration data and the collection of additional data on client characteristics in FY96 represent the largest change in requirements. Congress requires a test of the proposed reporting requirements and a report to Congress not later than 1 year after developing the data collection procedures.

The test of the new SPR requirements will occur in FY95, focusing on the new requirements for registration and data on client characteristics. Two basic questions will be addressed in the test: 1) the feasibility of collection of the data elements to be included in the SPR, focusing on client related data; and 2) the implementation tasks and timetable for implementing reporting systems which can satisfy the SPR requirements.

AoA will seek out, through an open solicitation process, a total of six states to test the SPR requirements in FY95. The six pilot states will represent a cross-section of state characteristics, reflecting variations in the size of the program, number of area agencies on aging in place (including at least one single PSA state), existing reporting system capacities, geographic diversity and the breadth of services and clients supported by OAA funding.

Three of the six test states will be selected based on their capacities to implement all elements of the SPR data requirements in FY95. Specifically, they must be able to test the introduction of client registration and the collection of descriptive information on clients served which complies with SPR specifications.

The other three test states will be selected because they do not have reporting systems in place currently responsive to the requirement of client registration and reporting data on client characteristics. AoA will follow the progress of these states in terms of implementation planning, reporting systems development and training of the Aging Network to meet the SPR requirements. The experience of these states will help AoA determine how states are preparing to meet the FY96 reporting requirements in the context of their other responsibilities.

Participating sites will be asked to designate a state unit on aging staff member to serve as a liaison between the state and AoA. An initial baseline profile will be established for each of the six test states, at the beginning of FY95. AoA will review the progress in each test state on a bi-monthly basis, by phone and possibly teleconferences with all six test sites including information on the reporting system design which emerges, implementation tasks and timetables, how the SPR requirements were introduced to the Aging Network within the state, and what issues/difficulties arose in building the reporting systems required to meet the SPR specifications. In all six states, input will be sought from state unit on aging staff and selected staff from area agencies on aging and provider personnel on SPR implementation issues.

In April-May, 1995, AoA will compile the experiences of the test sites to use as a basis for reporting to Congress and finalizing the reporting requirements scheduled to go into effect in FY96. Any revisions to the reporting requirements will be made by June 30, 1995 with states notified of the changes at that time. It should be indicated that AoA will not introduce any new data elements in FY96 or FY97 as a result of the testing process. There will be insufficient time for states to incorporate any such additions and still comply with the FY96 timetable for SPR reporting.

Use of SPR Data

Right now, AoA finds it difficult to meaningfully analyze performance of OAA programs relative to fundamental mandates of the Older Americans Act.

The data currently being collected are too limited and inaccurate. For example, the Older Americans Act provides clear guidance on targeting services to older individuals in greatest social need, including such conditions as physical and mental disabilities, and cultural, social, or geographic isolation, with particular attention to low income minority older individuals. In the absence of specific, accurate descriptive information on clients, AoA cannot determine if this fundamental Congressional mandate is being met. By requiring additional descriptive information on clients served through selected services, AoA will be better able to determine when the basic targeting provisions are being met. Additional client data will also allow AoA to sharpen its program policies, target technical assistance efforts and help shape future discretionary grant programs.

With the added emphasis on greater accountability for the use of federal funds, AoA is now required to include performance indicators as part of the AoA budget justification for the annual budget appropriation for aging programs administered by AoA. Reliable, accurate performance data is proving to be increasingly important to AoA in acting as an advocate for aging programs and services and the critical role of the National Network on Aging.

In 1993 Congress passed the Government Performance and Results Act (GPRA) which calls for the federal government to establish strategic planning and performance measurement in the federal government. By 1997, departments must prepare and transmit to the Office of Management and Budget a strategic plan for program activities. Performance plans will be required for specific program activities. Where possible, the plans will include performance measures to be used in measuring or assessing the relevant outputs, service levels, and outcomes of each program activity; provide a basis for comparing actual program results

with established performance goals; and describe the means to be used to verify and validate measured values.

AoA has been designated as one of the agencies to test these new requirements. To comply with GPRA, AoA must begin now to transform its internal capacities to plan and assess program performance. That means a new data base capacity must be developed in AoA to collect and analyze a diverse array of data. Considering the GPRA requirements and AoA's national leadership role on aging issues, the Administration on Aging must be able to collect and analyze data responsive to three basic AoA responsibilities:

1. Assuring Compliance With the Older Americans Act—For example:

- What services/activities were supported and how many service units were provided?
- What level of expenditures were incurred?
- What type of clients were served and how many, focusing on target populations cited by the Older Americans Act?

2. Strategic Planning and Performance/Results Oriented Management—For example:

- How did actual performance comply with planned performance?
- Was the Network effective in meeting targeting priorities?
- Were the services of acceptable quality?
- Did the Network serve clients cost effectively?

3. Ongoing Advocacy and Program Development—For example:

- Do the Network programs, supported in whole or part, make a difference in clients' lives?
- How are client needs changing?
- To what extent is the Network keeping up with unmet needs?
- Which needs and services will become future priorities?

Over time the SPR must be able to supply accurate data which can be used

to help respond to the basic questions in all three areas of responsibility. In the near term, the SPR will become an important vehicle for collecting performance data pertinent to basic compliance and results oriented management questions. In its current form, the SPR does not include information on clearly defined outcomes or results. However, the new SPR requirements represent the first step toward building improved data to support AoA strategic planning and advocacy. Accurate information on clients, units and expenditures for selected services is considered by AoA to be the first building block toward a results oriented approach to strategic planning and performance measurement at the federal and state level of the Aging Network.

Summary

The new SPR to be implemented in FY95 provides a vehicle for improving the accuracy and utility of performance data submitted by SUAs. The new requirements are designed to focus reporting on selected clients and services and obtain accurate, complete information about these clients and services. Through the issuance of the new SPR, AoA is embarking on a multi-year effort designed to enhance the capacities of the National Network on Aging and AoA to effectively use performance data in support of compliance, management and advocacy responsibilities. AoA is committed to building its own analytic capacities in ways which will assure the submitted SPR data will be put to good use. New data bases are being designed by AoA to process the data. At the same time, AoA is designing related data bases which will be compatible with the SPR data sets and also provide a broader information framework for review of OAA supported programs and services.

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SECTION I. ESTIMATED UNDUPLICATED COUNTS OF CLIENTS SERVED

State ID _____
 Fiscal Year _____

A. Unduplicated Client Count By Type of Service		Total
1. Unduplicated Persons Served For Registered Services *		Deferred until FY96
2. Unduplicated Count of Persons Served For Other Services Supported by the OAA		Deferred until FY96
3. Total Unduplicated Count of Persons Served **		

B. Unduplicated Client Count By Characteristic		Registered Services	Other Services	Total
1. Clients By Minority Status:				
	African American	Deferred until FY96	Deferred until FY96	
	Hispanic Origin	"	"	
	American Indian/Native Alaskan	"	"	
	Asian American/Pacific Islander	"	"	
	Non-Minority	"	"	
2. Rural Clients		"	"	
3. Clients In Poverty		"	"	
4. Clients In Poverty/Minority		"	"	

* Registered services include personal care, homemaker, chore, home delivered meals, adult day care/health, case management, congregate meals, nutrition counseling and assisted transportation.

** A summary total of the estimated unduplicated client count, considering all services supported by the OAA.

Note: This table is for presentation purposes only. SPR data will be transmitted electronically using AoA specified file formats. Since client registration is not required until FY96, complete only the total columns in FY95.

SECTION II. UTILIZATION PROFILE
A. SERVICE USE

State ID _____
Fiscal Year: _____

For Selected Services	Total Number Of Providers	Number Of Minority Providers	# of AAAs Direct Svcs Provision	Total Unduplicated Persons Served	New Persons Served This Year	# of Persons Served - At High Nutrition Risk	Total Service Units
Cluster 1. Registered Services Requiring Detailed Client Profile (See Section II.B.)							
1. Personal Care				Use registration FY96 and after	Required in FY97 and after		
2. Homemaker				"	"		
3. Chore				"	"		
4. Home Delivered Meals				"	"	Required for FY96	**
5. Adult Day Care/Health				"	"		
6. Case Management				"	"	Required for FY96	
Cluster 2. Registered Services Requiring Summary Client Profile (See Section II.C.)							
7. Congregate Meals				"	"	Required for FY97	**
8. Nutrition Counseling				"	"	Required for FY96	
9. Assisted Transport				"	"		
Total Unduplicated Registered Clients ----->				*		** USDA eligible meals	
* Note: This client total should match the total reported in I.A.1.							
Cluster 3. Non-Registered Services (10 -14) No Client Profile Required For Non-Registered Services							
10. Transportation							
11. Legal Assistance							
12. Nutrition Education							
13. Info. and Assistance							
14. Outreach							
Undupl. Count of Providers							9

Note: This table for presentation purposes only.

**SECTION II. SERVICE UTILIZATION
C. SUMMARY CLIENT PROFILE FOR OTHER REGISTERED SERVICES (7-9)
FOR SERVICE:** African American American Indian/Native Alaskan
 Hispanic Asian/Pacific Islander
 Non-Minority

State ID _____
Fiscal Year _____

Total Clients		Age 60-64	Age 65-74	Age 75-84	Age 85+
Total					
Female					
Male					
Rural					
Live Alone					
Clients In Poverty		Age 60-64	Age 65-74	Age 75-84	Age 85+
Total					
Female					
Male					
Rural					
Live Alone					

Total Clients Served (For the Racial/Ethnic Group)

Missing Information By Data Element *	Total Clients	Clients In Poverty
Income		
Age		
Sex		
Rural Status		
Live Alone Status		

* Provide counts of clients whose records do not contain the data elements requested in SPR, either because the data are missing or the client refused to furnish the information.
Note: This table is for presentation purposes only. SPR data will be transmitted electronically using AoA specified file formats.
The information in this table is not required to be reported until FY96. States may voluntarily report the data in FY95.

SECTION III. SERVICE EXPENDITURES PROFILE

State ID	Fiscal Year	A. Title III Expenditures By Part And Service	Total Title III Expenditure	% of Total Service Expenditure	Total Program Income	OAA Title III Expenditures By Part:											
						Part B	Part C1	Part C2	Part C3	Part D	Part E	Part F	Part G				
		1. Personal Care															
		2. Homemaker															
		3. Chore															
		4. Home Del. Meals															
		5. Adult Day Care/Health															
		6. Case Management															
		7. Congregate Meals															
		8. Nutrition Counseling															
		9. Assisted Transport															
		10. Transportation															
		11. Legal Assistance															
		12. Nutrition Education															
		13. Info and Assistance															
		14. Outreach															
		15. Other Services Supported by Title III															

Note: This table is for presentation purposes only. SPR data will be transmitted electronically using AoA file formats.

B. Title VII Expenditures By Chapter	Total Title VII Expenditure	% of Total Service Expenditure
Chapt 2. Ombudsman		
Chapt 3. Elder Abuse		
Chapt 4. Legal Assist.		
Chapt 5. Benefits Assist.		

SECTION IV. OTHER SERVICES PROFILE (Optional)

State ID _____
 Fiscal Year _____

	Service Name (Up to 30 characters)	Service Unit Name (Up to 15 characters)	Mission/Purpose Category	OAA Service Expenditure Amount	% of Total Service Expenditure	Estimated Unduplicated Persons Served	Estimated Service Units
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							
11.							
12.							
13.							
14.							
15.							
16.							
17.							
18.							
19.							
20.							
21.							
22.							
23.							
24.							
25.*							

Mission/Purpose Codes:

- A. Services which address functional limitations
- B. Services which maintain health
- C. Services which protect elder rights
- D. Services which promote socialization/participation
- E. Services which assure access and coordination
- F. Services which support other goals/outcomes

Note: This table is for presentation purposes only. SPR data will be transmitted electronically using AoA specified file formats.

* There are no restrictions on the number of "other" services which may be reported.

For any "other" service being reported, please provide all the data elements -- name, unit name, mission code, expenditure data, persons served and service units.

**SECTION V. DEVELOPMENTAL ACCOMPLISHMENTS
A. FOR HOME AND COMMUNITY BASED PROGRAMS**

State ID _____
Fiscal Year _____

Identification Of Three Top Accomplishments	
1.	
Type of Development:	Enter Code(s)
2.	
Type of Development:	Enter Code(s)
3.	
Type of Development:	Enter Code(s)

- Development Type Codes:**
- 1. Public education/awareness
 - 2. Resource development
 - 3. Training/education
 - 4. Research and development
 - 5. Policy development
 - 6. Legislative development
 - 7. Other

Note: This table is for presentation purposes only. This information will be transmitted as a text file, electronically.

**SECTION V. DEVELOPMENTAL ACCOMPLISHMENTS
B. FOR A SYSTEM OF ELDER RIGHTS**

State ID _____
Fiscal Year _____

Identification Of Three Top Accomplishments

1.

Type of Development: Enter Code(s)

2.

Type of Development: Enter Code(s)

3.

Type of Development: Enter Code(s)

Development Type Codes:

- 1. Public education/awareness
- 2. Resource development

- 3. Training/education
- 4. Research and development

- 5. Policy development
- 6. Legislative development

7. Other

Note: This table is for presentation purposes only. This information will be transmitted as a text file, electronically

SECTION VI. PROFILE OF COMMUNITY FOCAL POINTS AND SENIOR CENTERS

State ID _____
Fiscal Year _____

	Number
1. Total Number of Focal Points Designated Under Section 306(a)(3) of the Act in Operation in the Past Year	
2. Of the Total Number of Focal Points in 1., the Number That Were Senior Centers.	
3. Total Number of Senior Centers in the PSA in the Past Fiscal Year.	
4. Total Number of Senior Centers in 3, That Received Funds During the Past Fiscal Year.	

Note: This table is for presentation purposes only. SPR data will be transmitted electronically using AoA specified file formats.

SECTION VII. STAFFING PROFILE
A. STATE UNIT ON AGING

State ID _____
Fiscal Year _____

SUA Personnel Categories	Number Of FTEs	# Of Minority FTEs	# Of FTEs Paid With OAA Funds
1. Agency Executive/Management Staff			
2. Other Paid Professional Staff (By Functional Responsibility)			
A. Planning			
B. Development			
C. Administration			
D. Service Delivery			
E. Access/Care Coordination			
F. Other			
3. Clerical/Support Staff			
4. Total SUA Staff			

Functional Responsibilities:

- A. Planning -- Includes needs assessment, plan development, budgeting/resource analysis, service inventories, standards development and policy analysis.
- B. Development -- Includes public education, resource development, training and education, research and development and legislative activities.
- C. Administration -- Includes bidding, contract negotiation, reporting, reimbursement, accounting, auditing, monitoring and quality assurance.
- D. Access/Care Coordination -- Includes outreach, screening, assessment, case mgt. and I&R.
- E. Service Delivery -- Includes those activities associated with the direct provision of a service which meets the needs of an individual older person and/or caregiver.

Note: This table is for presentation purposes only. SPR data will be transmitted electronically using AoA specified file formats.

**SECTION VII. STAFFING PROFILE
B. AREA AGENCY ON AGING**

State ID _____
PSA ID _____
Fiscal Year _____

AAA Personnel Categories	Number Of FTEs	# Of Minority FTEs	# Of FTEs Paid With OAA Funds
1. Agency Executive/ Management Staff			
2. Other Paid Professional Staff (By Functional Responsibility)			
A. Planning			
B. Development			
C. Administration			
D. Service Delivery			
E. Access/Care Coordination			
F. Other			
3. Clerical/Support Staff			
4. Volunteers			
5. Total AAA Staff			

Functional Responsibilities:

- A. Planning -- Includes needs assessment, plan development, budgeting/resource analysis, service inventories, standards development and policy analysis.
- B. Development -- Includes public education, resource development, training and education, research and development and legislative activities.
- C. Administration -- Includes bidding, contract negotiation, reporting, reimbursement, accounting, auditing, monitoring and quality assurance.
- D. Access/Care Coordination -- Includes outreach, screening, assessment, case mgt. and I&R.
- E. Service Delivery -- Includes those activities associated with the direct provision of a service which meets the needs of an individual older person and/or caregiver.

Instructions for Completion of the Annual State Performance Report

General Instructions

Development and submission of the Annual State Performance Report (SPR) by state units on aging in compliance with the provisions of the Older Americans Act (OAA) should be guided by the following provisions:

Submission Date—The new SPR will be due November 30 of the federal fiscal year, beginning November 30, 1995.

FY95 Phase-in—Delays in gaining approval of the reporting requirements means that states are not likely to have the final reporting requirements in hand until after FY95 has begun. For that reason, AoA is prepared to accept, for FY95, estimated performance data based on implementation of new data collection and reporting procedures for a portion of FY95, for example, six months, four months, etc.

As background to implementation planning, it is important to remember that many of the new SPR data elements will require implementation of data collection and reporting procedures in FY95. The following data elements must be reported for FY95:

- Estimate of the total unduplicated clients served through Title III and VII.
 - Number of providers (and minority providers) for fourteen listed service categories.
 - Number of AAAs directly providing each of the fourteen listed service categories.
 - Number of persons estimated to have been served for each of nine registered services.
 - Number of service units for each of fourteen listed services.
 - Title III and VII expenditures by service and also by part, for Title III, plus program income data.
 - Developmental accomplishments—home and community based programs plus elder rights.
 - Focal point/senior center profile data.
 - SUA and AAA staffing profile data.
- For FY95, AoA is deferring submission, *except on a voluntary basis*, of the following data elements:
- Unduplicated client counts broken down for registered services versus services which did not require registration (See SPR Section I.)
 - Client characteristics associated with the unduplicated client counts for registered and unregistered services (See SPR Section I.)
 - Counts of new persons served (See SPR Section II.A.)
 - Breakdown of registered clients for services in cluster 1 by client characteristic (See SPR Section II.B.)

- Breakdown of registered clients for services in cluster 2 by client characteristic (See SPR Section II.C.)

- Count of persons served at high nutritional risk (See SPR Section II.A.)

Transmittal—SUAs should submit the SPR data, on diskette, using the data entry and file creation software provided by AoA. Alternatively, SUAs may generate the required transmittal files using their own applications software in conjunction with the standardized file transmittal specifications developed by the Administration on Aging. File transmittal specifications are provided in Appendix II for states electing to develop the data files using their own systems software.

Level of Reporting—Performance data will be reported for the state as a whole. The only exception is the requirement for a staffing profile for each area agency on aging.

Scope of Reporting—The revised SPR is designed to provide information on all clients, service units and expenditures for services which are funded in whole or in part by Older Americans Act funding. Include performance data (clients, providers, units of service, program income etc.) related to the service as a "whole", even if the OAA funding is one of several funding sources used to support the service. This is based on the assumption that all the units of service and persons served etc. are attributable to the presence of the OAA funding.

Instructions for Completion of Individual Sections of the SPR

Completion of Section I: Estimated Unduplicated Count of Clients Served

Section I of the SPR is designed to provide a summary profile of the clients served, through programs funded, in whole or in part, by the Older Americans Act. There are two parts to Section I: (A) Unduplicated Client Count By Type of Service; and (B) Unduplicated Client Count By Characteristic.

Section I.A. Unduplicated Client Count by Type of Service

In Section I.A., enter summary counts of the unduplicated persons served through programs supported by Older Americans Act funding. To increase the reliability and validity of these unduplicated counts, three separate counts should be furnished: (1) Unduplicated counts of persons receiving services where client registration is required (not required until FY96); (2) an estimate of unduplicated clients receiving non

registered services (not required until FY96); and (3) an estimate of the total clients receiving services, which takes into account the two counts/estimates of clients served which are entered on lines 1 and 2.

Line 1—Enter the unduplicated count of persons served for the first nine services listed in Section II.A. (cluster 1 and 2 services). It is expected the count of unduplicated clients for the nine services requiring client registration will be very accurate. The counts entered in line 1 should correspond with the unduplicated client count, across the nine registered services.

Line 2—Enter a best estimate of unduplicated persons served through transportation, legal assistance, nutrition education, information and referral and outreach plus all other services which are supported by OAA Title III and VII funds.

Line 3—Enter a best estimate of the total unduplicated persons served in the state through OAA supported programs. There will, in all likelihood, be an overlap of clients included in lines 1 and 2. A single client may receive a registered service(s) and also be assisted through unregistered services. As a result, line 3 is not simply a sum of lines 1 and 2.

Section I.B. Summary Estimate by Selected Client Characteristics

In Part B, show the characteristics of the persons served. The breakdown of data of client characteristics, by registered services and other services, will not be required until FY96.

[Note: see Appendix I for definitions of the client descriptors used in this section of the SPR.]

Completion of Section II: Utilization Profile

Service utilization will be examined in several ways. The focus is on units of service and clients served. Three different sections are included in the utilization profile. See Sections II.A., B. and C.

Section II.A. Service Utilization

Section II.A. should be completed using the following guidelines.

(1) Provide utilization data for any or all of the 14 listed services, for which OAA Title III and Title VII funds were used to support services provision.

Many states may need to develop a cross-walk between the service names used for in-state reporting and those used in the SPR. For example, if a service called Home Aide II is funded in the state which, in practice, matches the definition of Personal Care [See Appendix I Service Definitions], then

report the performance data for Home Aide II as Personal Care. Feel free to send AoA any explanations which clarify how services funded in the state relate to the SPR listed services.

[Note: some states support what is called respite care. Where possible, include respite care data in the service category which best defines what type of respite is typically provided; for example, personal care, adult day care, homemaker/chore services, etc.]

(2) Include performance data related for the service "as a whole", even if the OAA Title III and VII funding is one of several funding sources used to support the service. For example, document all service units provided and clients served by a service provider, even if the OAA funds only 25% of the total cost of the service. Treat OAA Title V and Title VI funding as other sources of funding in the SPR.

The fourteen services listed in Section II.A. are organized into three clusters. [Note: see Appendix I for service definitions for these fourteen services.] Each cluster has distinctive reporting requirements.

Cluster 1: Registered Services Requiring Detailed Client Profile

All six services included in cluster 1 require registration of clients. For each service, provide the following information:

Total Number of Providers—Enter a count of the number of providers who provide each listed service in the state using OAA Title III or Title VII funding, in whole or part. If an area agency on aging (AAA) provides the service directly, include the AAA in the count of providers.

Also provide the unduplicated number of providers supported with OAA funding across all fourteen services, taking into account that provider organizations are likely to provide multiple services.

Number of Minority Providers—Of the total providers listed in the first column, identify how many are minority organizations. [See Appendix I, for a definition of a minority provider.]

of AAAs Direct Services Provision—Enter the number of AAAs providing each listed service directly, using AAA paid and/or volunteer personnel.

Total Unduplicated Persons Served—Provide an unduplicated count of persons served in the state. The total count should include all persons served during the course of the year, regardless of how many services units individual clients receive.

Provide an unduplicated count of persons served, *across the nine*

registered services. See the box below the Cluster 2 services on Section II.A.. Beginning no later than FY96, the count of unduplicated persons served should be based upon the use of a master client registry of persons served through the nine registered services in each PSA or the state as a whole. The registry will, in most states, be maintained by area agencies on aging (or SUAs in single PSA states).

New Persons Served This Year—By service, identify how many persons were newly registered for the service during the course of the year. Also, provide an unduplicated count of persons served, *across the nine registered services*. See the box below the Cluster 2 services on Section II.A.

[Note: a "new client" is any client who has never been previously registered as a client for the service, either in the current fiscal year or a prior fiscal year by any provider funded with Older Americans Act funds.]

This data item is designed to help AoA learn more about the extent of client turnover. *Submission of data on new clients will not be required to be reported until FY97*. Voluntary reporting prior to that point is encouraged.

The count of new persons served should be based upon the use of a master client registry of persons served through the nine registered services.

of Persons Served-At High Nutritional Risk—For four listed services [home delivered meals, case management, congregate meals and nutrition counseling], identify the unduplicated number of persons served who were determined to be at high nutritional risk. To assure uniformity of the responses, please use the Nutrition Screening Checklist. High nutritional risk is defined as a score of 6 or higher using the Checklist. See Appendix III for the checklist and related instructions.

Provision of information on clients who are at high nutritional risk will be required for home delivered meals, nutrition counseling and case management services beginning in FY96 and in FY97 for congregate meals.

Total Service Units—Enter a total count of service units provided during the year. If there are multiple service providers for the same service, the total is a sum of the service units provided by all providers to all clients. Report all service units, even if the OAA funding and related match funds are not the exclusive source of funding for the provider.

[Note: in the case of meals, enter the number of USDA eligible meals.]

Cluster 2. Registered Services Requiring Summary Client Profile

For services 7-9 on Section II.A., please follow the same directions provided for Cluster 1 services.

Cluster 3. Non-Registered Services

For cluster 3 services, AoA is requesting a more limited set of data: 1) an unduplicated count of providers; 2) a count of minority providers; 3) the number of AAAs directly providing the service; and 4) a count of service units. For these services, it is difficult or inappropriate to require client registration. As a result, the provision of client specific information is not required for cluster 3 services.

Section II.B. Detailed Client Profile for Registered Services (1-6)

For the six services in cluster 1, the SPR requires a "detailed" profile of client characteristics. The profile is a breakdown of the unduplicated count of persons served (by service) by client characteristics. The six services requiring a detailed client profile are:

1. Personal Care
2. Homemaker
3. Chore
4. Home Delivered Meals
5. Social Adult Day Care/Adult Day Health
6. Case Management

Required data elements include:

- Minority status, by individual minority group.
- Age group.
- ADL/IADL status.
- Sex.
- Rural.
- Live alone.
- Poverty status.

To complete Section II.B., the following guidelines apply:

1. Section II.B. Should be completed for *each of the six services* requiring a detailed client profile.
2. For each cluster 1 service, identify how many persons in each of five racial/ethnic groups were served:
 - African American.
 - Hispanic.
 - American Indian/Native Alaskan.
 - Asian/Pacific Islander.
 - Non-Minority.

A separate profile will be developed for each racial/ethnic group, *whose members were served*. The transmittal guidelines provide for a -9 code for records where the racial/ethnic status of the client is missing.

3. Provide for each minority group a count of total clients and total clients in poverty.

[Note: the profile of Non-Poverty Clients will be computed using the counts for

Total Clients and Total Clients In Poverty.]

4. Within the Total Clients category and Total Clients in Poverty category for each racial/ethnic group, provide a breakdown by age and ADL status; then document how many persons in each age/ADL sub-group have no IADLS, 1IADL, 2IADLs etc., how many persons were female or male, how many live in rural areas and how many live alone.

Remember, a separate record is prepared for *each* minority group served for each of the six services.

5. Document missing data. Indicate for each client data element how many client records, by minority group, which do not contain a valid response for the data element, either because of data collection problems or the client refused to provide the required information. See Section II.B. *Missing Information By Data Element* for the client data elements for which a count of missing data is sought. Note that the counts for missing data are specific to Total Clients and Total Clients In Poverty.

In the transmittal guidelines, the data files make provision for reporting the counts of client records with missing data elements. See Appendix II.

Section II.C. Summary Client Profile for Other Registered Services

A summary client profile is required for three services—congregate meals, nutrition counseling and assisted transportation. The client characteristics to be documented for these services include:

- Minority status.
- Age group.
- Sex.
- Rural.
- Live alone.
- Poverty status.

The following guidelines should be used for completion of this Section:

1. For each Cluster 2 service supported with OAA Title III and/or VII funds, identify, by individual racial/ethnic group, the total number of persons served by each of four age groups. Then, for each age group total, indicate how many of the total clients are female or male, live in rural areas and how many live alone.

2. Provide a comparable profile as developed for Total Clients for Clients In Poverty.

3. Document missing data. Follow the same procedures as described for Section II.B. above.

Completion of Section III. Service Expenditures Profile

Section III calls for OAA expenditure data by service and Title III Part and Title VII Chapter. Fourteen services are

highlighted for data collection and analysis. In addition, this section calls for summary expenditure data on the other services supported with OAA funding.

The information to be reported is organized into two segments: A) Title III Expenditures by Part and Service and B) Title VII Expenditures By Chapter. Guidelines for completion of each segment are provided below:

Section III.A. Title Expenditures by Part and Service

Section III.A. is organized by service and Title III part. All Title III parts included in the Act are listed. The columns for Title III Parts currently without an appropriation are shaded. No data should be entered in the shaded columns. To complete this portion of Section III, please follow these guidelines:

(1) Complete this Section for the fourteen listed services and the total of "other" services supported by OAA funds.

(2) Enter the appropriate data on the following information items for the fourteen listed services.

Total Title III Expenditure—Enter the total amount of Title III expenditures for the service in the state. Do not include match in this total, only the federal portion.

[Note, Total Title III expenditures are defined as "outlays/payments made by the AAA or SUA using OAA Title III funds in the form of an advance or a reimbursement for a payment request submitted by a provider for the service.]

Percent of Total Service Expenditure—Indicate the percent of total service expenditures represented by or attributable to OAA Title III federal funding.

Note: Total Service Expenditures are defined as expenditures for the service "contractually linked" to Title III funds through an award of funds (contract or grant) which includes federal OAA Title III funds. When other funding sources and amounts are included in the award, including Title VII funding, then the total expenditures attributable to the multiple sources of funding should be reported. Other sources of funding which may be linked to the OAA funding are match resources, overmatch, program income or other federal and state program funds.

Total Program Income—Enter the estimate of total program income derived as a result of service provision.

OAA Title III Expenditures By Part—Allocate the OAA Title III expenditures by Title III Part. This should be based on fund accounting data or an allocation algorithm in states where OAA funds are bundled and awarded across Title III

parts or bundled with other funding sources.

(3) Provide, on line 15, summary data on the aggregate of expenditures for other services supported with OAA Title III funds.

Section III.B. Title VII Expenditure Summary

In Part B. please report total Title VII expenditures, exclusive of match, by individual chapter. Also, indicate how much of the total service expenditures for the Title VII services were covered by Title VII funding. See the definition of total service expenditures cited above. Include any Title III expenditures used for the Title VII supported services (federal and match) as part of the total service expenditure.

[Note, for Chapter 4, there is no OAA appropriation at this time, so this box is shaded out. Do not enter any expenditure data in this box.]

Completion of Section IV. Other Services Profile (Optional)

In Section IV. state units on aging, *at their option*, may provide descriptive information on other services supported by the OAA.

For each "other" service, SUAs are asked to provide a service name (up to 30 characters), service unit name (up to 15 characters), identify the purpose/mission of the service, total Title III expenditures for the year, the percent of total service expenditures represented by OAA Title III and Title VII funding, as well as an estimate of persons served (unduplicated) and service units.

If other services are individually reported in this Section, please complete all data elements. Note: do not include ombudsman as an other service. A separate set of reporting requirements have been developed for the long term care ombudsman program.

To identify the mission or purpose of the service, use one code (A-F) from the list below which best fits the purpose of the service.

- A. Services Which Address Functional Limitations
- B. Services Which Maintain Health
- C. Services Which Protect Elder Rights
- D. Services Which Promote Socialization/Participation
- E. Services Which Assure Access and Coordination
- F. Services Which Support Other Goals and Purposes

When assigning the services to the mission/purpose categories, consider the following "other" services as potentially falling in each mission/purpose category:

A. Services Which Address Functional Limitations

- Home Modification.
- Home Repair.
- Alternative Living Arrangements/ Supportive services.

B. Services Which Maintain Health

- Medical Alert.
- Health Screening.
- Exercise/Physical Fitness.
- Wellness.

C. Services Which Protect Elder Rights

- Adult Protective Services, Guardianship.
- Consumer Protection Services.
- Crime Prevention Services.
- Protective Payee Services.

D. Services Which Promote Socialization/Participation

- Recreation.
- Friendly Visiting.
- Telephone Reassurance.
- Letter Writing.
- Interpreting/Translation.
- Volunteer Development/ Opportunities.

E. Services Which Assure Access and Coordination

- Counseling.
- Screening.
- Geriatric assessment.
- Home or Roommate Matching.
- Placement services.

F. Services Which Support Other Goals/ Outcomes

- Employment Assistance.
- Utility Assistance.
- Financial Assistance/Material Aid (including discounts).

Completion of Section V. Developmental Accomplishments

This section of the SPR is designed to provide a narrative summary of developmental accomplishments in the state by the SUA and/or AAAs in two areas: 1) development of home and community based programs (Section V.A.) and 2) development of system of elder rights (Section V.B.).

Guidelines for completion of these two sub-sections are as follows:

Section V.A. Developmental Accomplishments for Home and Community Based Programs

State units on aging are requested to identify and describe three key accomplishments during the year which enhanced the array of home and community based services which meet the health and long term care needs of non-institutionalized older persons.

1. In each of the three accomplishment narratives, describe the

result, the potential impact on older persons, the process/steps followed and what organization(s) were primarily responsible for the accomplishment.

2. For each accomplishment, identify the type of development activities which were undertaken. Use one or more of the following development type codes and place the codes at the conclusion of each accomplishment narrative:

- a. Public education/awareness
- b. Resource development
- c. Training/education
- d. Research and development
- e. Policy development
- f. Legislative development
- g. Other

Section V.B. Developmental Accomplishments for a System of Elder Rights

Follow the same guidelines as outlined in Section V.A.

Completion of Section VI. Profile of Community Focal Points and Senior Centers

This section is used to document the status of focal point designations and the use of senior centers by the National Network on Aging. The data elements are self-explanatory.

Completion of Section VII. Staffing Profile

In Section VII, two staffing profiles are required, one for the state unit on aging and one for each area agency on aging. Guidelines for completion of each profile are provided below:

Section VII.A. State Unit on Aging

To complete this section, follow these steps:

1. Categorize all paid SUA staff by the categories listed on lines 1-3. The definitions for each personnel category are provided in Appendix I.

2. Develop the staffing profile based on a snapshot taken on any given day during the fiscal year. The SUA should select what day(s) during the year is appropriate.

3. Determine the total number of full time equivalents (FTEs) for each position category. The number of FTEs should reflect filled or staffed positions at the time of the survey. Do not include authorized but unfilled positions. Add the FTE totals for lines 1, 2 and 3 to create an agency total in line 4.

[Note, full time equivalents (FTEs) should be based on a state definition of what constitutes a full time employee.]

4. For each personnel category, identify how many FTEs are filled by minority staff. Enter this number in the

column titled (Number of Minority FTEs).

5. Identify, by personnel category, how many FTEs are paid for, in full or in part, using OAA funds.

Section VII.B. Area Agency on Aging

Follow the same guidelines as outlined for Section VII.A. Make sure Section VII.B. is completed for each area agency on aging in the state.

[Note: this section includes a count of the volunteers who assist the area agency in carrying out its responsibilities either in direct service provision or any of its planning, development, administration, access/ care coordination roles. Include volunteers in the count of Total AAA staff on line 5.]

Summary

Remember the SPR data will be transmitted electronically. The specifications for the data files to be sent by SUAs to AoA are included in Appendix II to this document. These transmittal guidelines take precedence over the SPR forms as a basis for actually submitting the performance data to AoA.

Remember, the ombudsman annual report is submitted separately, using a special report format and set of instructions.

Appendix I. Definitions

The following definitions should be used when completing the SPR.

A. Client Descriptors

1. Minority Status—Minority older persons are confined to the following designations:

- African American, Not of Hispanic Origin—A person having origins in any of the black racial groups of Africa.

- Hispanic Origin—A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

- American Indian or Alaskan Native—A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

- Asian American/Pacific Islander—A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, Samoa and the Hawaiian Islands.

- Non-Minority—Any person who is not considered a minority.

2. Activities of Daily Living—States may use their own definition of

activities of daily living (ADL) when reporting the number of ADL impairments. AoA will continue to explore options for a standard definition of ADLs working with the Aging Network and other federal agencies. If long term care reform occurs, any definitions of disability used for eligibility determination will be considered in framing a standardized definition of ADLs.

3. Instrumental Activities of Daily Living—States may use their own definition of instrumental activities of daily living (IADL) when reporting the number of IADL impairments. AoA will continue to explore options for a standard definition of IADLs working with the Aging Network and other federal agencies.

4. Poverty—Persons considered to be in poverty are those whose income is at or below the official poverty guideline (as defined each year by the Office of Management and Budget, and adjusted by the Secretary (DHHS) in accordance with subsection 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

5. Living alone—A one person household (using the Census definition of household) where the householder lives by his or herself in an owned or rented place of residence in a non-institutional setting, including board and care facilities, assisted living units and group homes.

B. Service Definitions

Standardized names, definitions, and service units are provided for the fourteen services which are singled out in the SPR for reporting.

1. Personal Care (1 Hour)—Providing personal assistance, stand-by assistance supervision or cues for persons having difficulties with one or more of the following activities of daily living: eating, dressing, bathing, toileting, and transferring in and out of bed.

2. Homemaker (1 Hour)—Providing assistance to persons having difficulty with one or more of the following instrumental activities of daily living: preparing meals, shopping for personal items, managing money, using the telephone or doing light housework.

3. Chore (1 Hour)—Providing assistance to persons having difficulty with one or more of the following instrumental activities of daily living: heavy housework, yard work or sidewalk maintenance.

4. Home Delivered Meals (1 Meal)—Provision, to an eligible client or other eligible participant at the client's place of residence, a meal which:

(a) complies with the Dietary Guidelines for Americans (published by

the Secretaries of the Department of Health and Human Services and the United States Department of Agriculture;

(b) provides, if one meal is served, a minimum of 33 and $\frac{1}{3}$ percent of the current daily Recommended Dietary Allowances (RDA) as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences;

(c) provide, if two meals are served, together, a minimum of 66 and $\frac{2}{3}$ percent of the current daily RDA; although there is no requirement regarding the percentage of the current daily RDA which an individual meal must provide, a second meal shall be balanced and proportional in calories and nutrients; and,

(d) provides, if three meals are served, together, 100 percent of the current daily RDA; although there is no requirement regarding the percentage of the current daily RDA which an individual meal must provide, a second and third meals shall be balanced and proportional in calories and nutrients.

5. Adult Day Care/Adult Day Health (1 hour)—Provision of personal care for dependent adults in a supervised, protective, congregate setting during some portion of a twenty-four hour day. Services offered in conjunction of adult day care/adult health typically include social and recreational activities, training, counseling, meals for adult day care and services such as rehabilitation, medications assistance and home health aid services for adult day health.

6. Case Management (1 Case)—Assistance either in the form of access or care coordination in circumstances where the older person and/or their caregivers are experiencing diminished functioning capacities, personal conditions or other characteristics which require the provision of services by formal service providers. Activities of case management include assessing needs, developing care plans, authorizing services, arranging services, coordinating the provision of services among providers, follow-up and reassessment, as required.

7. Congregate Meals (1 Meal)—Provision, to an eligible client or other eligible participant at a nutrition site, senior center or some other congregate setting, a meal which:

(a) complies with the Dietary Guidelines for Americans (published by the Secretaries of the Department of Health and Human Services and the United States Department of Agriculture;

(b) provides, if one meal is served, a minimum of 33 and $\frac{1}{3}$ percent of the current daily Recommended Dietary

Allowances (RDA) as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences;

(c) provides, if two meals are served, together, a minimum of 66 and $\frac{2}{3}$ percent of the current daily RDA; although there is no requirement regarding the percentage of the current daily RDA which an individual meal must provide, a second meal shall be balanced and proportional in calories and nutrients; and,

(d) provides, if three meals are served, together, 100 percent of the current daily RDA; although there is no requirement regarding the percentage of the current daily RDA which an individual meal must provide, a second and third meals shall be balanced and proportional in calories and nutrients.

8. Nutrition Counseling (1 Hour)—Provision of individualized advice and guidance to individuals, who are at nutritional risk, because of their health or nutritional history, dietary intake, medications use or chronic illnesses, about options and methods for improving their nutritional status, performed by a health professional in accordance with state law and policy.

9. Assisted Transportation (1 One Way Trip)—Provision of assistance, including escort, to a person who has difficulties (physical or cognitive) using regular vehicular transportation.

10. Transportation (1 One Way Trip)—Provision of a means of transportation for a person who requires help in going from one location to another, using a vehicle. Does not include any other activity.

11. Legal Assistance (1 Hour)—Provision of legal advice, counseling and representation by an attorney or other person acting under the supervision of an attorney.

12. Nutrition Education (1 Session)—A program to promote better health by providing accurate and culturally sensitive nutrition, physical fitness, or health (as it relates to nutrition) information and instruction to participants or participants and caregivers in a group or individual setting overseen by a dietitian or individual of comparable expertise.

13. Information and assistance (1 Contact)—A service for older individuals that (A) provides the individuals with current information on opportunities and services available to the individuals within their communities, including information relating to assistive technology; (B) assesses the problems and capacities of the individuals; (C) links the individuals to the opportunities and services that are available; (D) to the

maximum extent practicable, ensures that the individuals receive the services needed by the individuals, and are aware of the opportunities available to the individuals, by establishing adequate follow-up procedures.

14. Outreach (1 Contact)—Interventions initiated by an agency or organization for the purpose of identifying potential clients and encouraging their use of existing services and benefits.

[Note: respite care services which offer temporary, substitute supports or living arrangements for older persons in order to provide a brief period of relief or rest for family members or other caregivers, should be assigned to the service which best matches the form of respite being offered—such as home health aide or personal care. If the respite care service is designed to offer a temporary, alternative living arrangement, do not assign the respite care service to any of the fourteen services. In SPR IV., list this activity as institutional respite care and also include the expenditure/resource data for this service as part of the total for "other service" in Section III.]

C. Other Definitions

A variety of other terms are used in the SPR. Definitions for these terms are as follows:

Agency Executive/Management Staff—Personnel such as SUA director, deputy directors, directors of key divisions and other positions which provide overall leadership and direction for the state agency.

Other Paid Professional Staff—Personnel who are considered professional staff who are not responsible for overall agency management or direction setting but carry out key responsibilities or tasks associated with the SUA in the following areas:

- **Planning**—Includes such responsibilities as needs assessment, plan development, budgeting/resource analysis, inventory, standards developmental and policy analysis.

- **Development**—Includes such responsibilities as public education, resource development, training and education, research and development and legislative activities.

- **Administration**—Includes such responsibilities as bidding, contract negotiation, reporting, reimbursement, accounting, auditing, monitoring, and quality assurance.

- **Access/Care Coordination**—Includes such responsibilities as outreach, screening, assessment, case management, information and referral.

- **Service Delivery**—Includes those activities associated with the direct provision of a service which meets the needs of an individual older person and/or caregiver.

Clerical/Support Staff—All paid personnel who provide support to the management and professional staff.

Minority Provider—A business concern that (a) is at least 51 percent owned by one or more individuals who are either an African American, Hispanic origin, American Indian/Native Alaskan/Native Hawaiian, Asian American/Pacific Islander minority or a publicly owned business having at least 51 percent of its stock owned by one or more minority individuals and (b) has its management and daily business controlled by one or more minority individuals.

New Persons Served—Any client who has never been previously registered as a client for the service, either in the current fiscal year or a prior fiscal year by any provider funded with Older Americans Act funds.

Total OAA Expenditures—Outlays/payments made by the AAA or SUA using OAA federal funds in the form of an advance or a reimbursement for a payment request submitted by a provider for the service.

Percent of Total Service Expenditures—The portion of total service expenditures for the year which were covered by the federal portion of the Older Americans Act funding.

Rural—States may use their own definition of rural until such time as AoA adopts, by rule, a uniform definition of rural.

Appendix II. Title III/VII SPR Transmittal Requirements

To ensure compatibility of State Program Report (SPR) data across states, AoA has developed a standard set of guidelines for transmittal of the Title III and VII SPR data, exclusive of the LTC Ombudsman Program by state units on aging.

AoA will provide software to states which will allow entry of the SPR data and creation of the required data files. Those states with their own data systems may wish to create the data files directly, eliminating the need to reenter summary data into the AoA software package. In such cases, this section of the SPR guidelines provides file transmittal specifications. [Note: only those states choosing to use their own systems software to generate the transmittal files will need to use the specifications outlined in this Appendix.]

The transmittal specifications are organized around a set of data files to

be forwarded by states using diskettes or a modem. Each submitted file must be in the format specified below. It must incorporate the codes for selected data files specified by AoA as well.

General Guidelines

When preparing the files, please observe the following:

1. AoA is requesting that state agencies provide SPR data in a machine readable format, conveyed either by diskette or by modem. The data files can be transmitted as ASCII files, or .DBF files. AoA prefers .DBF for data oriented files but will accept ASCII files which comply with the specifications addressed in this document. In the case of selected narrative information requested in Title III and VII reporting requirements, please provide text files.

2. Use the file names included in the file descriptions provided below.

3. Please embed the state ID in the name of data file submitted by the state. The naming convention should place the state ID as the first two characters of the file name, as a substitute for the XX which is included in each generic file name. For example, Alabama when submitting expenditure data by Part will submit a file named *ALEXPTYP.DBF*.

4. Submit the files no later than 60 days following the end of the federal fiscal year, beginning November 30, 1995;

5. Please use the following codes to denote individual services in the services ID field:

01—Personal Care
02—Homemaker
03—Chore
04—Home Delivered Meals
05—Adult Day Care/Health
06—Case Management
07—Congregate Meals
08—Nutrition Counseling
09—Assisted Transportation
10—Transportation
11—Legal Assistance
12—Nutrition Education
13—Information and Assistance
14—Outreach
99—Other Services

6. Please use the following codes to denote racial/ethnic groups:

1—African-American
2—Hispanic Origin
3—American Indian/Native Alaskan
4—Asian/Pacific Islander
5—Non-Minority (White, not of Hispanic origin)
9—Missing

7. Round all expenditure data to the nearest dollar;

For Title III and Title VII SPR, excluding ombudsman, 10 data files are required along with one optional file.

The record layout is provided for each file including the field number, field name, field type and field width. The field types are coded as follows:

- C = Character
- D = Date
- L = Logical
- N = Numeric

The transmittal files should fit on a single diskette.

1. Unduplicated Client Count File—XXUNDUPL.DBF

This file will contain the summary data on unduplicated clients served through services and programs supported by the Older Americans Act. See SPR Section I, for the table which includes the data requested in this file. The record layout for the file is:

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	Registered Services—Total undup.	N7
4	Other Services—Total unduplicated.	N7
5	Total Unduplicated (All services).	N8
6	Registered Svcs—African American.	N7
7	Registered Svcs—Hispanic-origin.	N7
8	Registered Svcs—American Indian.	N7
9	Registered Svcs—Asian Amer./PI.	N7
10	Registered Svcs—Non-Minority.	N7
11	Registered Svcs—Rural	N7
12	Registered Svcs—Clients in poverty.	N7
13	Registered Svcs—In poverty/minority.	N7
14	Other Svcs—African American.	N7
15	Other Svcs—Hispanic-origin.	N7
16	Other Svcs—American Indian.	N7
17	Other Svcs—Asian Amer./PI.	N7
18	Other Svcs—Non-Minority.	N7
19	Other Svcs—Rural	N7
20	Other Svcs—Clients in poverty.	N7
21	Other Svcs—In poverty/minority.	N7
22	Total—African American	N7
23	Total—Hispanic-origin	N7
24	Total—American Indian	N7
25	Total—Asian American/PI.	N7
26	Total—Non-Minority	N7
27	Total—Rural	N7
28	Total—Clients in poverty	N7
29	Total—In poverty/minority.	N7

2. Abbreviated Client Profile Data File—XXCLBREV.DBF

This file will contain records which contain descriptive information on each client served by five different services which require client registration and an abbreviated set of client characteristics (congregate meals, nutrition counseling, transportation, assisted transportation and legal assistance). See SPR I.I.C. for the data elements.

Field No.	Field name	Type
-----------	------------	------

- 1 State ID C2
- 2 Fiscal Year N4
- 3 Service ID N2

Please use the following codes to denote individual services:

- 07—Congregate Meals
- 08—Nutrition Counseling
- 09—Assisted Transportation

- 4 Race/ethnicity ID N1

(Data fields 5–44 are numeric and 7 positions in width)

- 5 Total Clients, Age 60–64 N7
- 6 Total Clients, Age 60–64, Female
- 7 Total Clients, Age 60–64, Male
- 8 Total Clients, Age 60–64, Rural
- 9 Total Clients, Age 60–64, Alone
- 10–14 .. Repeat for Poverty Clients, Age 60–64
- 15–19 .. Repeat for Total Clients, Age 65–74
- 20–24 .. Repeat for Poverty Clients, Age 65–74
- 25–29 .. Repeat for Total Clients, Age 75–84
- 30–34 .. Repeat for Poverty Clients, Age 75–84
- 35–39 .. Repeat for Total Clients, Age 85+
- 40–44 .. Repeat for Poverty Clients, Age 85+
- 45 Total Clients Served N8 (For the Service).

In fields 45–56 of this file, please provide the count of client records with missing data elements, by type. The format for these fields is numeric and 6 positions wide

- 46 Total Clients—Income data missing. N6
- 47 Total Clients—Age data missing
- 48 Total Clients—Sex data missing
- 49 Total Clients—Rural status data missing
- 50 Total Clients—Live alone status data missing
- 51 Poverty Clients—Age data missing
- 52 Poverty Clients—Sex data missing
- 53 Poverty Clients—Rural status data missing

Field No.	Field name	Type
54	Poverty Clients—Live alone data missing	
55	New Clients (Optional FY95/96; required FY97).	N8
56	# High Nutr. Risk (Required FY97 for Cong Meals and FY96 for Nutr. Counseling).	N8

3. Detailed Client Profile Data File—XXCLDET.DBF

States will use this file format to transmit data which satisfy the requirements for data contained in SPR Section II.B. The record description for this file includes the following:

Field No.	Field name	Type
-----------	------------	------

- 1 State ID C2
- 2 Fiscal Year N4
- 3 Service ID N2

Please use the following codes to denote individual services:

- 01—Personal Care
- 02—Homemaker
- 03—Chore
- 04—Home Delivered Meals
- 05—Adult Day Care/Health
- 06—Case management

- 4 Race/ethnicity ID N1

(Data fields 5–301 are all numeric and 7 positions wide.)

- 5 Total Clients, Age 60–64, Total
- 6 Total Clients, Age 60–64, with 0 ADL, Total
- 7 Total Clients, Age 60–64, with 0 ADL, No IADLs
- 8 Total Clients, Age 60–64, with 0 ADL, 1 IADL
- 9 Total Clients, Age 60–64, with 0 ADL, 2 IADLs
- 10 Total Clients, Age 60–64, with 0 ADL, 3+IADLs
- 11 Total Clients, Age 60–64, with 0 ADL, Female
- 12 Total Clients, Age 60–64, with 0 ADL, Male
- 13 Total Clients, Age 60–64, with 0 ADL, Rural
- 14 Total Clients, Age 60–64, with 0 ADL, Live Alone
- 15 Total Clients, Age 60–64, with 1 ADLs, Total
- 16 Total Clients, Age 60–64, with 1 ADLs, No IADLs
- 17 Total Clients, Age 60–64, with 1 ADLs, 1 IADL

Field No.	Field name	Type
18	Total Clients, Age 60-64, with 1 ADLs, 2 IADLs	
19	Total Clients, Age 60-64, with 1 ADLs, 3+IADLs	
20	Total Clients, Age 60-64, with 1 ADLs, Female	
21	Total Clients, Age 60-64, with 1 ADLs, Male	
22	Total Clients, Age 60-64, with 1 ADLs, Rural	
23	Total Clients, Age 60-64, with 1 ADLs, Live Alone	
24	Total Clients, Age 60-64, with 2 ADLs, Total	
25	Total Clients, Age 60-64, with 2 ADLs, No IADLs	
26	Total Clients, Age 60-64, with 2 ADLs, 1 IADL	
27	Total Clients, Age 60-64, with 2 ADLs, 2 IADLs	
28	Total Clients, Age 60-64, with 2 ADLs, 3+IADLs	
29	Total Clients, Age 60-64, with 2 ADLs, Female	
30	Total Clients, Age 60-64, with 2 ADLs, Male	
31	Total Clients, Age 60-64, with 2 ADLs, Rural	
32	Total Clients, Age 60-64, with 2 ADLs, Live Alone	
33	Total Clients, Age 60-64, with 3+ADLs, Total	
34	Total Clients, Age 60-64, with 3+ADLs, No IADLs	
35	Total Clients, Age 60-64, with 3+ADLs, 1 IADL	
36	Total Clients, Age 60-64, with 3+ADLs, 2 IADLs	
37	Total Clients, Age 60-64, with 3+ADLs, 3+IADLs	
38	Total Clients, Age 60-64, with 3+ADLs, Female	
39	Total Clients, Age 60-64, with 3+ADLs, Male	
40	Total Clients, Age 60-64, with 3+ADLs, Rural	
41	Total Clients, Age 60-64, with 3+ADLs, Live Alone	
42-78	Repeat for Poverty Clients, Age 60-64	
79-115	Repeat for Total Clients, Age 65-74	
116-152	Repeat for Poverty Clients, Age 65-74	

Field No.	Field name	Type
153-189	Repeat for Total Clients, Age 75-84	
190-226	Repeat for Poverty Clients, Age 75-84	
227-263	Repeat for Total Clients, Age 85+	
264-300	Repeat for Poverty Clients, Age 85+	
301	Total Clients Served	
(In the following data fields of this file, please provide the count of missing data elements, by type. The format for the fields is numeric and 6 positions wide)		
302	Total Clients—Income Missing	N6
303	Total Clients—Age Missing	
304	Total Clients—ADL Status Missing	
305	Total Clients—IADL Status Missing	
306	Total Clients—Sex Missing	
307	Total Clients—Rural Status Missing	
308	Total Clients—Live Alone Status Missing	
309	Total Poverty Clients—Age Missing	
310	Total Poverty Clients—ADL Status Missing	
311	Total Poverty Clients—IADL Status Missing	
312	Total Poverty Clients—Sex Missing	
313	Total Poverty Clients—Rural Status Missing	
314	Total Poverty Clients—Live Alone Missing	
315	New Clients (Optional FY95/96; req. FY97)	N8
316	# At High Nutr. (Req. FY96 Case Mgt, HDM)	N8

Because of the number of variables, this file may be segmented into two subfiles, labeled XXCLDET1.DBF and XXCLDET2.DBF. Please indicate in a ReadMe file which variables are in each sub-file. Remember that the first four data elements uniquely identify each record in each subfile

4. Expenditure Data by Type of Resource File—XXEXPTYP.DBF

This file will be used to transmit expenditure data for 14 listed services and aggregate expenditure data for all other services supported by OAA funds. See SPR Section III form for the data elements. Remember, expenditure data should be rounded to the nearest dollar. Use code 99 to denote the information on "other" services. The record layout for each service is defined below:

Field No.	Field name	Type
1	State ID	C2

Field No.	Field name	Type
2	Fiscal Year	N4
3	Service ID	N2
4	Total OAA Expenditure	N8
5	% of Total Serv Exp.	N2
6	Total Program Income \$	N7
7	Part B \$	N8
8	Part C1 \$	N8
9	Part C2 \$	N8
10	Part D \$	N7
11	Part F \$	N7

5. Other Expenditures File—XXOTHEXP.DBF

This file is used to report expenditures on other services or activities not associated with the listed 14 services in the SPR requirements. The record layout for this file is as follows:

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	Title VII Ombudsman \$	N8
4	Title VII Elder Abuse \$	N8
5	Title VII Benefit Assist \$	N8
6	Ombudsman % of Total Serv Exp.	N2
7	Elder Abuse % of Total Serv Exp.	N2
8	Benefits Asst % of Tot Serv Exp.	N2

6. Service Units Data File—XXUNITS.DBF

This file will contain records containing information on service units organized around one or more of fourteen listed services. The record layout is:

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	Personal Care Units	N6
4	Homemaker Units	N6
5	Chore Units	N6
6	Home Delivered Meals Units.	N6
7	Adult Day Care/Health Units.	N6
8	Case Management Units	N6
9	Congregate Meals Units	N6
10	Nutrition Counseling Units.	N6
11	Assisted Transport Units	N6
12	Transportation Units	N6
13	Legal Assistance Units	N6
14	Nutrition Education Units	N6
15	Info and Assistance Units.	N6
16	Outreach Units	N6

**7. Provider Profile File—
XXPROVDR.DBF**

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	Personal Care—Total Providers.	N4
4	Personal Care—# Minority Provdrs.	N4
5	Personal Care—# of AAA Providers.	N4
6	Homemaker—Total	N4
7	Homemaker—# Minority	N4
8	Homemaker—# of AAA Providers.	N4
9	Chore—Total	N4
10	Chore—# Minority	N4
11	Chore—# of AAA Providers.	N4
12	Home Del. Meals—Total	N4
13	Home Del. Meals—# Minority.	N4
14	Home Del. Meals—# of AAA Providers.	N4
15	Adult Day Care/Hlth—Total.	N4
16	Adult Day Care/Hlth—# Minority.	N4
17	Adult Day Care/Hlth—# of AAA Prov..	N4
18	Case Management—Total.	N4
19	Case Management—# Minority.	N4
20	Case Management—# of AAA Providers.	N4
21	Congregate Meals—Total.	N4
22	Congregate Meals—# Minority.	N4
23	Congregate Meals—# of AAA Providers.	N4
24	Nutrition Counseling—Total.	N4
25	Nutrition Counseling—# Minority.	N4
26	Nutrition Counseling—# of AAA Providers.	N4
27	Transportation—Total	N4
28	Transportation—# Minority.	N4
29	Transportation—# of AAA Providers.	N4
30	Assist. Transportation—Total.	N4
31	Assist. Transportation—# Minority.	N4
32	Assist. Transportation—# of AAA Providers.	N4
33	Legal Assistance—Total	N4
34	Legal Assistance—# Minority.	N4
35	Legal Assistance—# of AAA Providers.	N4
36	Nutrition Education—Total.	N4
37	Nutrition Education—# Minority.	N4
38	Nutrition Education—# of AAA Providers.	N4
39	Info and Assistance—Total.	N4

Field No.	Field name	Type
40	Info and Assistance—# Minority.	N4
41	Info and Assistance—# of AAA Providers.	N4
42	Outreach—Total	N4
43	Outreach—# Minority	N4
44	Outreach—# of AAA Providers.	N4
45	Total Providers (14 svcs).	N4
46	Total Minority Providers (14 svcs).	N4

8. Development Accomplishments Data File—XXDEVELOP.TXT (DOS Text file)

This file will contain brief narratives describing the developmental accomplishments in the state related to the development of home and community based programs and a system of elder rights. Please furnish the data in a DOS text file, making sure to include at the end of text describing each narrative the codes identifying the type of developmental activities involved:

1. Public education/awareness
2. Resource development
3. Training/education
4. Research and development
5. Policy development
6. Legislative development
7. Other

**9. Focal Point Data File—
XXFOCAL.DBF**

This file is used to transmit data on focal points required to be reported by states under provisions of the Older Americans Act.

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	Total # of Focal Points Designated Under Section 306(a)(3) of the Act in Operation in the Past Year.	N4
4	Of the Total # of Focal Points Designated Under Section 306(a)(3) of the Act in Operation in the Past Year, the Number That Were Senior Centers.	N4
5	Total Number of Senior Centers in the PSA in the Past Fiscal Year.	N4
6	Total Number of Senior Centers in the PSA in the Past Fiscal Year That Received Funds During the Past Fiscal Year.	N4

**10. Staffing Profile Data File—
XXSTAFF.DBF**

Use one file to transmit both the state unit staffing profile and area agency staffing profiles. Identify the state unit on aging record by placing a -99 in the PSA ID field. To further identify the PSAs/AAAs, please include a ReadMe file with the PSA names and IDs.

Field No.	Field name	Type
1	State ID	C2
2	PSA ID	C6
3	Fiscal Year	N4
4	# of Agency Executive/ Mgt Staff FTEs.	N4
5	# of Agency Executive/ Mgt Staff Minority FTEs.	N4
6	# of Agency Executive/ Mgt Staff FTEs -Pd w/ OAA funds.	N4
7	# of Paid Prof. Staff With Planning Resp. FTEs.	N4
8	# of Paid Prof. Staff With Planning Resp. Minority FTEs.	N4
9	# of Paid Prof. Staff FTEs W/Plan. Resp.-Pd w/OAA funds.	N4
10	# of Paid Professional Staff with Development Resp. FTSS.	N4
11	# of Paid Professional Staff With Development Resp. Minority FTEs.	N4
12	# of Pd Profess. Staff FTEs W/Development Resp.-Pd w/OAA funds.	N4
13	# of Paid Professional Staff With Admin. Resp. FTEs.	N4
14	# of Paid Professional Staff With Admin. Resp. Minority FTEs.	N4
15	# of Pd Profess. Staff FTEs With Admin. Resp.—Paid with OAA funds.	N4
16	# of Paid Professional Staff With Serv. Del. Resp. FTEs.	N4
17	# of Paid Professional Staff With Serv. Del Resp. Minority FTEs.	N4
18	# of Paid Profess. Staff FTEs With Serv. Del. Resp.—Paid with OAA funds.	N4
19	# of Paid Professional Staff With Access Resp. FTEs.	N4
20	# of Paid Professional Staff With Access Resp. Minority FTEs.	N4
21	# of Paid Profess. Staff FTEs With Access Resp.—Paid with OAA funds.	N4

Field No.	Field name	Type
22	# of Paid Professional Staff With Other Resp. FTEs.	N4
23	# of Paid Professional Staff With Other Resp. Minority FTEs.	N4
24	# of Paid Profess. Staff FTEs With Other Resp.—Paid with OAA funds.	N4
25	# of Clerical Staff FTEs .	N4
26	# of Clerical Staff Minority FTEs.	N4
27	# of Clerical Staff FTEs paid with OAA funds.	N4
28	# of Volunteer FTEs (AAAs only).	N4
29	# of Volunteer Minority FTEs (AAAs only).	N4
30	Total Staff FTEs (All)	N4
31	Total Minority Staff FTEs—All.	N4
32	Total Staff FTEs—Pd with OAA funds.	N4

11. Other Services Profile (Optional)—XXOTHSER.DBF

States units on aging may, at their option, submit a file containing

information on other services supported by OAA funds. The format for this file will be as follows:

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	# of Other Services Being Reported.	N2
(Field #3 is used as check to make sure all "other" services are included in the file.)		
4	Service Name	C30
5	Service Unit Name	C15
6	Service Purpose	C1
Please use the following codes to identify the purpose:		
A—Services which address functional limitations		
B—Services which maintain health		
C—Services which protect elder rights		
D—Services which promote socialization/participation		
E—Services which assure access and coordination		
F—Services which support other goals/outcomes		
7	OAA Expenditures	N8
8	% of Total Serv. Exp.	N2
9	Persons Served	N8

Field No.	Field name	Type
10	Service Units	N8
Repeat the above format for additional services		

Appendix III. Nutritional Risk Status Screen

The Nutrition Screening Checklist was developed as part of the Nutrition Screening Initiative jointly sponsored by The American Academy of Family Physicians, The American Dietetic Association and the National Council on the Aging, Inc. The Checklist appears on the next page. It will be used as a tool to determine which clients are at high nutritional risk.

BILLING CODE 4150-04-M

The Warning Signs of poor nutritional health are often overlooked. Use this checklist to find out if you or someone you know is at nutritional risk.

DETERMINE YOUR NUTRITIONAL HEALTH

Read the statements below. Circle the number in the yes column for those that apply to you or someone you know. For each yes answer, score the number in the box. Total your nutritional score.

	YES
I have an illness or condition that made me change the kind and/or amount of food I eat.	2
I eat fewer than 2 meals per day.	3
I eat few fruits or vegetables, or milk products.	2
I have 3 or more drinks of beer, liquor or wine almost every day.	2
I have tooth or mouth problems that make it hard for me to eat.	2
I don't always have enough money to buy the food I need.	4
I eat alone most of the time.	1
I take 3 or more different prescribed or over-the-counter drugs a day.	1
Without wanting to, I have lost or gained 10 pounds in the last 6 months.	2
I am not always physically able to shop, cook and/or feed myself.	2
TOTAL	

Total Your Nutritional Score. If it's —

0-2 Good! Recheck your nutritional score in 6 months.

3-5 You are at moderate nutritional risk. See what can be done to improve your eating habits and lifestyle. Your office on aging, senior nutrition program, senior citizens center or health department can help. Recheck your nutritional score in 3 months.

6 or more You are at high nutritional risk. Bring this checklist the next time you see your doctor, dietitian or other qualified health or social service professional. Talk with them about any problems you may have. Ask for help to improve your nutritional health.

These materials developed and distributed by the Nutrition Screening Initiative, a project of:



AMERICAN ACADEMY
OF FAMILY PHYSICIANS



THE AMERICAN
DIETETIC ASSOCIATION



NATIONAL COUNCIL
ON THE AGING, INC.

Remember that warning signs suggest risk, but do not represent diagnosis of any condition. Turn the page to learn more about the Warning Signs of poor nutritional health.

Instructions for Completing the State Long Term Care Ombudsman Program Reporting Form for The National Ombudsman Reporting System (NORS)

Part I—Cases, Complainants and Complaints

A. Cases Opened.

Provide the total number of cases opened during the reporting period. Use definition of case provided on form.

B. Complainants/Case Closed.

For all cases closed during the reporting period, provide the number of complainants, by type of facility/setting. Refer to discussion of type of facility or other setting under D.1, below.

Use definition of case closed provided on the form. A case is closed when all complaints which are part of the case have been resolved and/or no further ombudsman action can be taken for reasons listed in Part I. E.2.

(A word about the definition of closed cases: Ombudsman sometimes must refer complaints to another agency for resolution. The ombudsman should follow up on these complaints and record the outcome under the appropriate category in Part I, E.2, Complaint Disposition. Disposition categories d. (1) and (2) in Part I, E.2 are for use only in those instances when the agency to which the case was referred fails to act on a complaint or provide a response to the ombudsman's attempts to follow up, or follow-up is otherwise not possible. Since this outcome, although undesirable, occasionally occurs with complaints, it is included in the definition of closed case.)

A complainant is an individual or a party (i.e., husband and wife; siblings) who files one or more complaints with the ombudsman program. A referring agency is not a complainant, but staff of another agency may be aware of a situation and file a complaint about it, thus qualifying as a complainant. The number of complainants will equal the number of cases filed.

If more than one person or party independently file separate complaints about the same situation in the same facility, or the same problem outside of any facility, count as separate cases. If more than one person jointly file complaint(s) about the same situation in the same facility or outside the facility, count as one complainant and one case.

Clarification of selected categories (self-evident categories not repeated):

2. Relative/friend or resident includes relatives who are also guardians or legal representatives but not friends who are also guardians/legal representatives. For friends, use category 3.

6. Physician, other medical staff includes physicians and staff of hospitals, hospices, clinics, visiting nurse programs and similar programs, which are primarily oriented toward medical/health care.

7. Representative of other social services agency or program includes individuals other than ombudsmen or ombudsman volunteers who file complaints (not merely refer other complainants) and are affiliated with such agencies as area agencies on aging, facility licensure and certification, homemaker agencies and similar agencies which are primarily oriented toward social services.

9. Other includes any complainant whose identity is known but who does not fit easily into a listed category. Examples: banker, law enforcement officer. If you report complainants in this category, indicate in the space on the form the types included.

C. Total Complaints

For all cases closed during the reporting period, provide the total number of complaints received. This will be the same number as the combined total from Part I, D, Types of Complaints, including complaints from nursing facilities, board and care and similar types of facilities and other settings. (Do not report complaints in cases which are still open at the end of the reporting period. Save those for the next reporting period, after the case is closed.)

D. Type of Complaints

1. General Instructions for Complaint Categories

For all cases closed during the reporting period, provide the total number of complaints received by the statewide ombudsman program in each of the complaint categories listed. Use the definition of complaint provided in Part I, C, page 1 on the form.

Type of Facility. For each type of complaint, place in the first column the number received involving a skilled nursing facility as defined in section 1819 of the Social Security Act or a nursing facility as defined in section 1919(a) of the Social Security Act.

Place in the second column totals of complaints received from facilities termed board and care homes, adult congregate living facilities, assisted living facilities, foster care facilities and other similar group facility which: provides room, board and personal care services to older individuals and which the ombudsman program is authorized to serve under Section 102(34) (C) and (D) of the Older Americans Act and includes within its purview.

Place in the last section, Q, numbers of ombudsman complaints involving settings other than nursing or board and care or similar facilities, such as home care, hospitals, hospices, shelters, or congregate housing where personal care to residents is not provided. (The categories in Section Q are provided for documenting numbers of complaints only; the form does not include types of complaints for these settings, as such settings are not included within the purview of the Ombudsman Program in the Older Americans Act.)

The first four major headings (Residents Rights, Resident Care, Quality of Life and Administration) are for complaints involving acts of commission or omission by staff or management of the facility, or problems which staff or management has the responsibility to resolve. The fifth major heading is for complaints against individuals or agencies outside the facility, or problems which can be resolved only by outside agencies or individuals.

As stated in the definitions of case and complaint, each case may have more than one complaint. However, each problem, or complaint, will have only one code. Use only one category for each type of problem (i.e., do not check both A.3 and D.26 for the same staff behavior—determine which category is most appropriate to the particular problem) and report only the primary complaint or complaints, not problems which are incidental to, or even causal to, the primary complaint.

For example: A resident complains of lack of fresh water by her bedside and odors in the bathroom. Both problems may be due to any one of the problems listed under M. Staffing, but only the codes for the primary problems reported—lack of water (category J.70) and odors (category K.83)—should be entered on the intake form. (The narrative section on the ombudsman intake form will, of course, reflect the ombudsman's assessment of why the problems occurred and what is required to solve them; but if all of these concerns were coded as complaints, the purpose and value of the complaint categories would be eroded.)

For each other category, list in the space provided on the form other types of complaints included in the number listed.

2. Clarification and Definitions of Selected Complaint Categories

Complaint categories provide only the identification of the problem area, not a statement of the problem. The assumption is that the complaint is about a problem of commission or

omission. Otherwise, there would be no problem and thus no complaint.

Each category has been assigned its own number in order to avoid confusion and aid in aggregating the data by computer. (If States wish to add other categories for their own use, they can place these at the end of the NORS list. However, these must be included in the annual report under one of the 133 categories; i.e., at the end of the year, they must be "folded" into one of the NORS categories, which may include the "other" category listed for each group of types of complaints.)

Many of the categories are self-explanatory. The following definitions/explanations are for those major complaint headings and specific categories where further interpretation is required.

Residents Rights

A. Abuse, Gross Neglect, Exploitation

Use categories in this section for serious complaints of willful mistreatment of residents by facility staff, management, other residents (use category 6) or unknown or outside individuals who have gained access to the resident through negligence or lax security on the part of the facility. (Use P.117 and P.121 for complaints of abuse, exploitation by family members, friends and others whose actions the facility could not reasonably be expected to oversee or regulate.)

For all categories in this part, use the broad definitions of abuse, neglect and exploitation in the Older Americans Act and Paragraph 483.13(b) of the Health Care Financing Administration's Survey Forms and Interpretive Guidelines for the Long Term Care Survey Process, April 1992:

The term abuse means the willful (A) infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain or mental anguish; or (B) deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness. (Older Americans Act, Section 102 [13])

The term (financial) exploitation means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit or gain. (Older Americans Act, Section 102[26])

In addition to the above broad definitions, use the following specific definitions from the HCFA Interpretive Guidelines:

Physical abuse (A.1) includes hitting, slapping, pinching, kicking, etc. It also

includes controlling behavior through corporal punishment.

Examples of effects of abuse include, but are not limited to, substantial or multiple skin bruising, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, suffocation. (from Colorado adult protection statute)

Sexual abuse (A.2) includes, but is not limited to, sexual harassment, sexual coercion, or sexual assault.

Verbal abuse (A.3) refers to any use of oral, written or gestured language that includes disparaging and derogatory terms to residents or their families, or within their hearing distance, to describe residents, regardless of their age, ability to comprehend, or disability. (Use D.3 for less severe forms of staff rudeness or insensitivity; use M.5 if staff is unavailable, unresponsive to residents' needs.)

Mental abuse (A.3) includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation.

Involuntary seclusion (A.3) means separation of a resident from other residents or from his or her room against the resident's will or the will of the resident's legal representative.

Emergency or short term monitored separation will not be considered involuntary seclusion * * * if used for a limited period of time as a therapeutic intervention to reduce agitation. * * *

For financial exploitation (A.4) and gross neglect (A.5), use the definitions of exploitation and deprivation (Part B of abuse definition) in the Older Americans Act, provided above. Use A.5 only for the most extreme forms of willful neglect. Use the appropriate categories under Resident Care, Quality of Life or, in some cases, Administration for less severe forms or manifestations of resident neglect. Use resident-to-resident physical or sexual abuse (A.6) only for complaints of abuse by a resident against one or more other residents which meet the definitions of abuse provided above. For less severe forms of resident-to-resident conflict, use I.66 if conflict is with a roommate or other appropriate category (such as F.51) if it is with a resident other than a roommate.

B. Access to Information

Use the appropriate category for complaints involving access to information or assistance made by or on behalf of the resident or the resident's representative. Use B.9 if ombudsman is denied access in response to a complaint. If there is a general problem with ombudsman access to one or more particular facilities or types of facilities, but no complaint has been filed, do not

use complaint categories. Describe the access problem under Part III, B—Statewide Coverage.

C. Admission, Transfer, Discharge, Eviction

Use the appropriate category for complaints involving placement, whether into, within or outside of the facility. If resident requests assistance in transferring to another facility and there is no stated problem (complaint), record as "information and assistance to individuals," Part III, F.5 on page 13.

D. Autonomy, Choice, Exercise of Rights, Privacy

Use the appropriate category for any complaint involving the resident's right, as stated in the category. If it is a related problem, but not one specific to this heading, use a category under another heading. For example, if the resident is permitted to choose her personal physician but that physician is unavailable, use P.125. Use D.29 if the resident has a communication or language barrier. Use M.96 if staff have the communication or language barrier. Use D.27 for right to smoke. Use K.77 for smoke-polluted air.

E. Financial, Property (Except for Financial Exploitation)

Use the appropriate category for complaints involving non-criminal mismanagement or carelessness with residents' funds and property and billing problems. Use A.4 for complaints involving willful financial exploitation, including, but not limited to, possible criminal activity.

F. Care

Use the appropriate category for complaints involving negligence, lack of attention and poor quality in the care of residents. If the care situation is so poor that the resident is in a condition of overall neglect which is threatening to health and/or life, use A.5, gross neglect.

G. Rehabilitation or Maintenance of Function

Use the appropriate category for complaints involving failure to provide needed rehabilitation or services necessary to resident to maintain the expected level of function.

H. Restraints

Use the appropriate category for any complaint involving the use of physical or chemical restraint.

I. Activities and Social Services

Use categories under this heading for complaints involving social services for

and/or social interaction of residents. Note that transportation is included in category I.65 because community interaction is sometimes (not always) dependent upon transportation. Use I.65 for any complaint involving the resident's need for transportation, for whatever reason.

J. Dietary

Use the appropriate category for complaints involving food and fluid intake. Use J.74 for failure to follow special/therapeutic diet. Use J.75 for inadequate nutrition. Use the appropriate category under A (either 1 or 5) for severe cases of food deprivation.

K. Environment

Use the appropriate category for complaints involving the physical environment of the facility and resident's space. Use K.77 for smoke-polluted air. For lack of supplies, including nursing supplies, use K.85.

L. Policies, Procedures, Attitudes, Resources

Categories under this heading are for acts of commission or omission by facility managers, operators or owners in areas other than staffing or the specific problems included in previous sections, such as policies on advance directives; fair and due process on admissions, transfers and discharges; billing; management of residents' funds. Use L.90 for complaints involving falsification of records.

M. Staffing

Use appropriate categories under this heading for complaints involving staff unavailability, training, turnover, and supervision. Use M.96 for staff language or other communication barrier. (Use D.29 if problem involves resident inability to communicate.) Use M.100 if staff is unresponsive or unavailable. (Use D.26 if staff is available but rude or otherwise disrespectful to resident; use A.3 or other category under A if rudeness or disrespect is so severe that it qualifies as abuse.)

N. Certification/Licensing Agency

Use categories under this heading for all complaints involving decisions, policies, actions or inactions by the agency in the State which licenses nursing facilities and certifies them for participation in Medicaid and Medicare. Use any category which also may apply to decisions, policies, actions or inactions by the agency which licenses board and care or similar facilities, using the board and care/similar column. (If the problem is failure to

license and regulate such facilities, or inadequate regulation, use P.119.) Use N.106 if appropriate intermediate sanctions are required and have not been applied, if intermediate sanctions which are applied are not appropriate, or if intermediate sanctions negatively impact on residents.

O. State Medicaid Agency

Categories in this section are for complaints about Medicaid coverage, benefits and services.

P. System/Others

Use appropriate categories in this section to document the range of complaints against or involving individuals who are not managers/staff of facilities or of the State's licensing and certification or Medicaid agency. Use P.124 for problems involving implementation of the Preadmission Screening and Annual Resident Review (PASSAR) requirements of the Nursing Home Reform Amendments of the Omnibus Budget Reconciliation Act (OBRA) of 1987. Use P.126 for complaints involving the agency in the State charged with investigating reports of adult abuse and exploitation and providing protective services for victims of abuse and exploitation.

Q. Complaints in Other Than Nursing Facility or Board and Care/Similar Settings

Use categories in this section to document any complaints accepted and acted upon by the ombudsman involving individuals living in (1) private residences, (2) hospitals or in hospice care, (3) congregate and/or shared housing not providing personal care, or (4) shelters.

Add totals in both columns, sections A through P, to total for Section Q. Place grand total at Total Complaints on page 7 and in box at C on page 1.

Part I, E. Action on Complaints

1. Verification: Provide, for cases closed during the reporting period, the total number of complaints which were verified, by type of facility. Use the definition of verified on the form. Complaints not included are considered unverified.

(Note: Some States investigate complaints which cannot be verified; other States do not. For this reason, the definition of "case closed" on page 1 of the form includes "complaint cannot be verified" as a reason for closing a case. However, the disposition categories in Part I, E. 2 do not include "complaint unverified." States which do not investigate unverified complaints should use 2.e or another category which best describes the disposition of a particular unverified complaint.)

2. Disposition: Provide, for cases closed during the reporting period, the total number of complaints, by type of facility or setting, for each disposition category. Where there are two possible choices, the ombudsman must choose the one category which best describes the outcome of the complaint. See note above for documentation of unverified complaints. Total must be same as total number of complaints received, as provided on page 7 and in box at C on page 1.

Part I, F. Optional Discussion of Legal Assistance/Remedies: Instruction Provided on Form

Part I, G. Optional Complaint Description: Instruction Provided on Form

Part II—Major Issues: Instruction Provided on Form

Part III—Program Information and Activities

A. Facilities and Beds

Provide, for both nursing facilities and licensed board and care and similar adult care facilities, as instructed on form, the number of facilities which were licensed in the State during the reporting period and the number of beds in those facilities.

B. Program Coverage

Instruction provided on form.

C. Local Programs

Provide, according to type of host organization, the number of regional or local entities which were geographically located outside of the State Office of the Ombudsman and where one or more paid staff and/or volunteers were designated by the State Ombudsman to investigate complaints and represent the State Ombudsman Program. As indicated on form, include regional offices of the State Ombudsman Office.

D. Staff and Volunteers

Instruction provided on form; include all volunteers who worked for the program during the reporting period except those who served only as members of advisory or policy committees.

E. Program Funding

Provide funds expended during the reporting period on the Ombudsman Program as it is defined under Section 712 of the Older Americans Act. Do not include amounts which were budgeted or obligated but not expended. Do not include amounts which were expended on ombudsman activities not authorized under Section 712 (i.e., ombudsman

activity in settings other than long-term care facilities, as defined in the Act). Provide on the third line Title III expenditures for State or local ombudsman activity made by the State from Title III funding under Section 304(d)(1)(B) of the Act. Provide on the fourth line Title III expenditures for local ombudsman activity made by area agencies on aging from Title III funding provided under Section 304(d)(1)(D) of the Act. Provide other funding, by source, as specified on form.

F. Other Ombudsman Activities

Provide the information requested in the appropriate column. Use the State column for activities performed by the State Office of the Ombudsman. Use the local column for activities performed by local or regional designated ombudsman programs or regional offices of the State Ombudsman Program. Provide exact numbers wherever possible; where not possible, provide your best estimate of the numbers requested. Please be sure to record each activity only once, under the most appropriate heading. Do not, for example, count a media interview under both items 10 and 11.

Clarification of items listed on chart:

1. Training for Ombudsman Staff and Volunteers

In the State Office column, give the number of training sessions (meetings) and total hours provided or otherwise arranged by staff of the State Office of the Ombudsman for State or local program staff and volunteers, whether the meetings were held in the State capital or elsewhere in the State. In the local program column give the total number of sessions and total hours provided or otherwise arranged by staff of local ombudsman entities or regional offices for staff and volunteers of the local program. For each, provide the total number of people trained (not an unduplicated count of individuals) during the reporting year. For this item, a session is a meeting, whether it lasts for three hours, all day or all week.

2. Technical Assistance to Local Ombudsman and/or Volunteers

Provide in the State column an estimate of the percentage of total staff time which paid staff of the State Office of the Ombudsman (i.e., State Ombudsman, plus other staff) devote to developing and assisting local programs, whether in person or by telephone. Provide in the local column an estimate of the percentage of total staff time which local program paid staff devote to developing volunteers programs and supporting other staff and volunteers. Include staff time spent in developing

and delivering training as well as in providing informal assistance.

3. Training for Facility Staff

Give the number of sessions provided at both State and local levels and the three most frequent topics of training at each level. (Hours are not requested. It is assumed that most sessions for facility staff are would last for 45 minutes to an hour. If sessions are two hours, count as two sessions; three hours, three sessions, etc.)

4. Consultation to Facilities

Ombudsman often provide information and assistance to facility managers and staff. To capture the extent of this important activity, report the number of such consultations provided during the year. If there are repeated consultations to the same facility, count each consultation separately. Do not count training sessions, documented in F.3. Provide the three most frequent subject areas of consultation.

5. Information and Consultation to Individuals

Provide the number of individuals assisted by telephone or in person on a one-to-one basis on needs ranging from how to select a nursing home to residents' rights to understanding Medicaid. Count each separate request for information or assistance (but not each call related to the same request), whether made by someone who requested assistance earlier in the year or by a new caller. Do not include here participants in community education sessions documented in F.10. Document the three most frequent topics/areas of requests or needs.

6. Resident Visitation

Document the number of facilities (unduplicated count) covered on a regular basis (weekly, bi-weekly, monthly or quarterly) in any ombudsman visitation program established in the State. If there is no visitation program, write N.A.

7. Participation in Facility Survey

Provide the number of facility surveys in which the Ombudsman or designated ombudsman representatives participated, including participation in exit interviews. Do not count survey team contacts to the ombudsman regarding complaints against the facility. (HCFA survey procedure requires surveyors to contact the ombudsman to inquire whether complaints have been received about the facility and obtain information about any complaints. If surveyors fail to make

this contact, document as an ombudsman-filed complaint under complaint category N.108.)

8./9. Work With Resident and Family Councils

Provide the total count of all resident and family council meetings attended by designated ombudsman representatives during the reporting period, for both State and local levels.

10. Community Education

Provide the total number of presentations made to and or other meetings with community groups, students, churches, etc.

11. Work With Media

Provide the information requested at both State and local levels.

12. Monitoring/Work on Laws, Regulations, Government Policies and Actions

Provide, for both state and local levels, a best estimate of the percentage of total paid staff time spent working with other agencies and individuals, both inside and outside of government, on laws, regulations, policies and actions to improve the health, welfare, safety and rights of long-term care residents.

State: _____

Fiscal Year: 199 _____

State Annual Ombudsman Report to the Administration on Aging

Agency or organization which sponsors the State Ombudsman Program: _____

Part I—Cases, Complainants and Complaints

A. Provide the total number of cases opened during reporting period.

Case: Each inquiry brought to, or initiated by, the ombudsman on behalf of a resident or group of residents involving one or more complaints or problems which requires opening of a case file and includes ombudsman investigation, fact gathering, setting of objectives and/or strategy to resolve, and follow-up.

B. Provide the number of cases closed, by type of facility/setting, which were received from the types of complainants listed below.

Closed: Ombudsman activity on a case has stopped for any of the following reasons: (1) resolution or partial resolution, (2) by request of complainant, (3) complaint(s) unresolvable, (4) complaint(s) not verified, (5) resident died and no further investigation was required or (6)

complaint(s) referred to other agency for resolution and final disposition was not obtained and/or reported to ombudsman.

Complainants	Nursing facility	Board and care (or similar)	Other settings
1. Resident			
2. Relative/friend of resident			
3. Non-relative guardian, legal representative			
4. Ombudsman/ombudsman volunteer			
5. Facility administrator/staff			
6. Other medical: physician/staff			
7. Representative of other social service agency or program			
8. Unknown/anonymous			
9. Other; specify types			
Total number of cases closed during the reporting period:			

C. For cases which were closed during the reporting period (those counted in B above), provide the total number of complaints received:

Complaint: A concern brought to, or initiated by, the ombudsman for investigation and action by or on behalf of one or more residents of a long-term

care facility relating to health, safety, welfare or rights of a resident. One or more complaints constitute a case.

D. Types of Complaints, by Type of Facility.

Below and on the following pages provide the total number of complaints for each specific complaint category, for nursing facilities and board and care or

similar type of adult care facility. The first four major headings are for complaints involving action or inaction by staff or management of the facility. The last major heading is for complaints against others outside the facility. See Instructions for additional clarification and definitions of types of facilities and selected complaint categories.

OMBUDSMAN COMPLAINT CATEGORIES

Residents' rights	Nursing facility	Board and care (or similar)
A. Abuse, Gross Neglect, Exploitation:		
1. Abuse, physical (including corporal punishment)		
2. Abuse, sexual		
3. Abuse, verbal/mental (including involuntary seclusion)		
4. Financial exploitation (use E for less severe forms of financial complaints)		
5. Gross neglect (use categories under Resident Care for less severe forms of neglect)		
6. Resident-to-resident physical or sexual abuse		
7. Other—specify		
B. Access to Information:		
8. Access to own records		
9. Access to ombudsman/visitors		
10. Access to facility survey		
11. Information regarding advance directive		
12. Information regarding medical condition, treatment and any changes		
13. Information regarding rights, benefits, services		
14. Information communicated in understandable language		
Other—specify		
C. Admission, Transfer, Discharge, Eviction:		
16. Admission contract and/or procedure		
17. Appeal process—absent, not followed		
18. Bed hold—written notice, refusal to readmit		
19. Discharge/eviction—planning, notice, procedure		
20. Discrimination in admission due to condition, disability		
21. Discrimination in admission due to Medicaid status		
22. Room assignment/room change/intrafacility transfer		
Other—specify		
D. Autonomy, Choice, Exercise of Rights, Privacy:		
24. Choose personal physician, pharmacy		
25. Confinement in facility against will (illegally)		
26. Dignity, respect—staff attitudes		
27. Exercise choice and/or civil rights (includes right to smoke)		
28. Exercise right to refuse care/treatment		
29. Language barrier in daily routine		
30. Participate in care planning by resident and/or designated surrogate		
31. Privacy—telephone, visitors, couples, mail		
32. Privacy in treatment, confidentiality		
33. Response to complaints		

OMBUDSMAN COMPLAINT CATEGORIES—Continued

Residents' rights	Nursing facility	Board and care (or similar)
34. Reprisal, retaliation		
35. Other—specify		
E. Financial, Property (Except for Financial Exploitation):		
36. Billing/charges—notice, approval, questionable, accounting wrong or denied (includes overcharge of private pay residents)		
37. Personal funds—mismanaged, access denied, deposits and other money not returned (report criminal-level misuse of personal funds under A.4)		
38. Personal property lost, stolen, used by others, destroyed		
39. Other—specify		
Resident Care:		
F. Care:		
40. Accidents, improper handling		
41. Call lights, requests for assistance		
42. Care plan/resident assessment—inadequate, failure to follow plan or physician orders (put lack of resident/surrogate involvement under D.30)		
43. Contracture		
44. Medications—administration, organization		
45. Personal hygiene (includes oral hygiene)		
46. Physician services		
47. Pressure sores		
48. Symptoms unattended, no notice to others of change in condition		
49. Toileting		
50. Tubes—neglect of catheter, NG tube (use D.28 for inappropriate/forced use)		
51. Wandering, failure to accommodate/monitor		
52. Other—specify		
G Rehabilitation or Maintenance of Function:		
53. Assistive devices or equipment		
54. Bowel and bladder training		
55. Dental services		
56. Mental health, psychosocial services		
57. Range of motion/ambulation		
58. Therapies—physical, occupational, speech		
59. Vision and hearing		
60. Other—specify		
H. Restraints—Chemical and Physical:		
61. Physical restraint—assessment, use, monitoring		
62. Psychoactive drugs—assessment, use, evaluation		
63. Other—specify		
Quality of Life:		
I. Activities and Social Services:		
64. Activities—choice and appropriateness		
65. Community interaction, transportation		
66. Roommate conflict		
67. Social services—availability/appropriateness/ (use G.56 for mental health, psychosocial counseling/service)		
68. Other—specify		
J. Dietary:		
69. Assistance in eating or assistive devices		
70. Fluid availability/hydration		
71. Menu—quantity, quality, variation, choice		
72. Snacks, time span between meals		
73. Temperature		
74. Therapeutic diet		
75. Weight loss due to inadequate nutrition		
76. Other—specify		
K. Environment:		
77. Air temperature and quality (heating, cooling, ventilation, smoking)		
78. Cleanliness, pests		
79. Equipment/building—disrepair, hazard, poor lighting, fire safety		
80. Furnishings, storage for residents		
81. Infection control		
82. Laundry—lost, condition		
83. Odors		
84. Space for activities, dining		
85. Supplies and linens		
86. Other—specify		
Administration:		
L. Policies, Procedures, Attitudes, Resources (See other complaint headings, of above, for policies on advance directive, due process, billing, management residents' funds):		
87. Abuse investigation/reporting		
88. Administrator(s) unresponsive, unavailable		

OMBUDSMAN COMPLAINT CATEGORIES—Continued

Residents' rights	Nursing facility	Board and care (or similar)
89. Grievance procedure (use C for transfer, discharge appeals)		
90. Inadequate record-keeping		
91. Insufficient funds to operate		
92. Operator inadequately trained		
93. Offering inappropriate level of care (for B&C's/similar)		
94. Resident or family council/committee interfered with, not supported		
95. Other—specify		
M. Staffing:		
96. Communication, language barrier (use D.29 if problem involves resident inability to communicate)		
97. Shortage of staff		
98. Staff training, lack of screening		
99. Staff turn-over, over-use of nursing pools		
100. Staff unresponsive, unavailable		
101. Supervision		
102. Other—specify		
N. Certification/Licensing Agency:		
103. Access to information (including survey)		
104. Complaint, response to		
105. Decertification/closure		
106. Intermediate sanctions		
107. Survey process		
108. Survey process—ombudsman participation		
109. Transfer or eviction hearing		
110. Other—specify		
O. State Medicaid Agency:		
111. Access to information, application		
112. Denial of eligibility		
113. Non-covered services		
114. Personal Needs Allowance		
115. Services		
116. Other—specify		
P. System/Others:		
117. Abuse/abandonment by family member/friend/guardian or, while on visit out of facility, any other person ...		
118. Bed shortage—placement		
119. Board and care/similar facility licensing, regulation		
120. Family conflict		
121. Financial exploitation by family or other not affiliated with facility		
122. Legal—guardianship, conservatorship, power of attorney, wills		
123. Medicare		
124. PASARR		
125. Resident's physician not available		
126. Protective Service Agency		
127. SSA, SSI, VA, Other Benefits		
128. Other—specify		
Total, categories A through P		
Q. Complaints in Other Than Nursing or Board and Care/Similar Settings:		
129. Home care		
130. Hospital or hospice		
131. Public or other congregate housing not providing personal care		
132. Shelters		
133. Other—specify		
Total, Heading Q		
Total Complaints ¹		

¹ (Add total of nursing facility complaints, board and care/similar complaints and complaints in Q, above. Place this number in Part I, C).

E. Action on Complaints: Provide for cases closed during the reporting period the total number of complaints, by type of facility or other setting, for each item listed below.

	Nursing facility	Board and care (or similar)	Other settings
1. Complaints which were verified:			
Verified: It is determined after work [interviews, record inspection, observation, etc.] that the circumstances described in the complaint are substantiated or generally accurate.			
2. Disposition: Provide for all complaints reported in C and D, whether verified or not, the number:			
a. For which government policy or regulatory change or legislative action was required to resolve (this may be addressed in the issues section)			
b. Which were not resolved ¹ to satisfaction of resident or complainant			
c. Which were withdrawn by the resident or complainant			
d. Which were referred to other agency for resolution and:			
(1) report of final disposition was not obtained			
(2) other agency failed to act on complaint			
e. For which no action was needed or appropriate			
f. Which were partially resolved ¹ but some problem remained			
g. Which were resolved ¹ to the satisfaction of resident or complainant			
Total			
Grant Total (Same number as that for total complaints on pages 1 and 7)			

¹ Resolved: The complaint/problem was addressed to the satisfaction of the resident or complainant.

F. Legal Assistance/Remedies (Optional) Discuss on an attached sheet the types and percentages of total complaints for which (a) legal consultation was needed and/or used; (b) regulatory enforcement action was needed and/or used; (c) an administrative appeal or adjudication was needed and/or used; and (d) civil legal action was needed and/or used.

G. Complaint Description (Optional): Provide on an attached sheet a concise description of the most interesting and/or significant individual complaint your program handled during the reporting period. State the problem, how the problem was resolved and the outcome.

Part II—Major Long-Term Care Issues

Describe on attached sheets the priority long-term care issues which your program identified and/or worked on during the reporting period. For each issue, briefly state: (a) The problem, (b) barriers to resolution, and (c) recommendations for system-wide changes needed to resolve the issue, or how the issue was resolved in your State.

Part III—Program Information and Activities

A. Facilities and Beds

1. How many nursing facilities are licensed and operating in your State?
2. How many beds are there in these facilities?

3. Provide the type-name(s) and definition(s) of the types of board and care facilities and any other adult care home similar to a nursing or board and care facility for which your ombudsman program provides services, as authorized under Section 102(19) and (34), 711(6) and 712(a)(3)(A)(i) of the Older Americans Act:

(Continue on back of sheet if insufficient space.)

(a) How many of the board and care and similar adult care facilities described above are licensed in your State?

(b) How many beds are there in these facilities?

B. Program Coverage

In the space below describe how your program provides statewide ombudsman coverage for nursing facilities and board and care or similar adult care facilities, described in Part III, A.3 above. If you are not able to provide statewide coverage, what are the barriers and what do you plan to do to overcome the barriers? Use additional sheet if needed.

Statewide coverage: Residents of both nursing homes and a board and care homes (and similar adult care facilities) and their friends and families throughout the State have access to knowledge of the ombudsman program and how to contact it, and complaints

received from any part of the State are investigated and documented and steps are taken to resolve problems in a timely manner, in accordance with Federal and State requirements.

Nursing Facilities

Board and Care/Similar Adult Care Facility

C. Local Programs

Provide for each type of host organization the number of local or regional ombudsman entities (programs) designated by the State Ombudsman to participate in the statewide ombudsman program:

Local entities hosted by:

- Area agency on aging
- Other local government entity
- Legal services provider
- Social services non-profit agency
- Free-standing ombudsman program
- Regional office of State ombudsman program
- Other; specify

Total Designated Local Ombudsman Entities

D. Staff and Volunteers

Provide numbers of staff and volunteers, as requested, at State and local levels.

Type of staff	Measure	State office	Local programs
Paid program staff	FTE's		
	Number people working full-time on ombudsman program.		
Paid clerical staff	FTE's		

Type of staff	Measure	State office	Local programs
Volunteer ombudsmen certified to address complaints	Number volunteers.		
Certified Volunteer: An individual who has completed a training course prescribed by the State Ombudsman and is approved by the State Ombudsman to participate in the statewide Ombudsman Program.			
Other volunteers	Number volunteers		

E. Program Funding

Provide the amount of funds expended from each source for your statewide program:

Federal—Older Americans Act (OAA) Title VII, Chapter 2	\$
Federal—Older Americans Act (OAA) Title VII, Chapter 3	\$
Federal—OAA Title III provided at State level	\$
Federal—OAA Title III provided at AAA level	\$
Other Federal; specify:	\$
State funds	\$
Local; specify	\$
Total Program Funding	\$

F. Other Ombudsman Activities

Provide below and on the next page information on ombudsman program activities other than work on complaints.

Activity	Measure	State	Local
1. Training for ombudsman staff, and volunteers	Number sessions		
	Number hours		
	Total number of trainees		
	Estimated percentage of total staff time		
2. Technical assistance to local ombudsmen and/or volunteers.			
3. Training for facility staff	Number sessions		
	3 most frequent topics for training		
	3 most frequent areas of consultation		
4. Consultation to facilities (Consultation: providing information and technical assistance, often by telephone).			
5. Information and consultation to individuals (usually by telephone).	Number of consultations	State	
	3 most frequent requests/needs	Local	
6. Resident visitation (other than in response to complaint)	Number of consultations		
	Number Nursing Facilities visited (unduplicated)		
	Number Board and Care (or similar) facilities visited (unduplicated).		
7. Participation in Facility Surveys	Number of surveys		
8. Work with resident councils	Number of meetings attended		
9. Work with family councils	Number of meetings attended		
10. Community Education	Number of sessions		
11. Work with media	Number of interviews/discussions		
	Number of press releases		
12. Monitoring/work on laws, regulations, government policies and actions.	Estimated percentage of total paid staff time		

State Annual Ombudsman Report; File Transmittal Requirements

To ensure compatibility of data submitted as part of the State Annual Ombudsman Report across states, AoA has developed a standard set of guidelines for transmittal of the State Annual Ombudsman Report data by state units on aging.

These specifications are organized around a set of seven data files to be forwarded by states using diskettes or a modem. Each submitted file must be in the format specified below.

General Guidelines

When preparing the files, please observe the following:

1. AoA is requesting that state agencies provide annual report data in a machine readable format, conveyed either by diskette or by modem. The data files can be transmitted as ASCII files, or .DBF files. AoA prefers .DBF for data oriented files but will accept ASCII files which comply with the specifications addressed in this document. In the case of narrative information, please provide text files.

2. Use the file names included in the file descriptions provided below.

3. Please embed the state ID in the name of data file submitted by the state. The naming convention should place the state ID as the first two characters of the file name, replacing the XX in each

file name. For example, Alabama when submitting ombudsman program summary data will submit a file named *ALOMBSUM.DBF*.

4. Submit the files no later than 60 days following the end of the federal fiscal year, beginning November 30, 1995.

5. Round all expenditure data to the nearest dollar.

Like the Title III data sets, AoA has developed transmittal guidelines designed to encourage the use of electronic media. As a reminder, the ombudsman report is only for the state aggregate, not by PSA or other local program component. The files should be transmitted in .DBF format, where

possible. The layout for each transmittal file is as follows:

**1. Summary Performance Data—
XXOMBSUM.DBF**

This file summarizes data contained in Part I.A. B. and C. of the Ombudsman Report format. Please refer to the

Ombudsman Report format and instructions for further definitions and explanations of the data elements to be reported in this file. The file format for this single record file is as follows:

1. State ID	C2
2. Fiscal Year	N4
3. Name of Agency/Organization Sponsor	C30
4. Total Cases Opened During Year	N6

The remaining fields all are numeric and 5 positions wide.

5. Number Cases Closed—NF, Resident	
6. Number Cases Closed—NF, Relative/friend of Resident	
7. Number Cases Closed—NF, Non-relative Guardian, Legal Representative	
8. Number Cases Closed—NF, Ombudsman/Ombudsman Volunteer	
9. Number Cases Closed—NF, Facility Administrator/Staff	
10. Number Cases Closed—NF, Other Medical: Physician/staff	
11. Number Cases Closed—NF, Representative of Other Agency	
12. Number Cases Closed—NF, Unknown/Anonymous	
13. Number Cases Closed—NF, Other (In a separate text file describe Other)	
14. Number Cases Closed—B&C, Resident	
15. Number Cases Closed—B&C, Relative/friend of Resident	
16. Number Cases Closed—B&C, Non-relative Guardian, Legal Representative	
17. Number Cases Closed—B&C, Ombudsman/Ombudsman Volunteer	
18. Number Cases Closed—B&C, Facility Administrator/Staff	
19. Number Cases Closed—B&C, Other Medical: Physician/staff	
20. Number Cases Closed—B&C, Representative of Other Agency	
21. Number Cases Closed—B&C, Unknown/Anonymous	
22. Number Cases Closed—B&C, Other (In a separate text file, describe Other)	
23. Number Cases Closed—Other Settings, Resident	
24. Number Cases Closed—Other Settings, Relative/friend of Resident	
25. Number Cases Closed—Other Settings, Non-relative Guardian, Legal Representative	
26. Number Cases Closed—Other Settings, Ombudsman/Ombudsman Volunteer	
27. Number Cases Closed—Other Settings, Facility Administrator/Staff	
28. Number Cases Closed—Other Settings, Other Medical: Physician/staff	
29. Number Cases Closed—Other Settings, Representative of Other Agency	
30. Number Cases Closed—Other Settings, Unknown/Anonymous	
31. Number Cases Closed—Other Settings, Other (In a separate text file, describe Other)	

**2. Nursing Home and Other Settings
Complaint File—XXNFCPL.DBF**

This single record file is used to transmit the information on the types of complaints. See Part I.D. of the

Ombudsman Report format. In this file the nursing facility complaints are reported along with the information on complaints related to "other settings"; see page 7 of the Ombudsman Report

format. Note, the complaint data for board and care/similar facilities are included in a separate file.

The data elements and format for this file are organized around the individual complaint categories.

1. State ID	C2
2. Complaint Category A.1	N6
3. Complaint Category A.2	N6
Through	
128. Complaint Category P.128. Other	N6
The balance of the data elements in this file pertain to complaints in other settings of care.	
129. Complaints in Home Care settings	N6
130. Complaints in Hospital or Hospice	N6
131. Public/Other Congregate Hsg, Not Providing Personal Care	N6
132. Shelters	N6
133. Other	N6

3. Board and Care Facility Complaint File—XXBCCMPL.DBF

The data elements and format for this single record file are organized around the individual complaint categories.

1. State ID	C2
2. Complaint Category A.1	N6
3. Complaint Category A.2	N6
Through	
128. Complaint Category P.128. Other	N6

4. Action on Complaints File—XXCMPLAC.DBF

This single record file is used to transmit data describe in Part I. E of the Ombudsman Report. The data elements and format are as follows.

1. State ID	C2
2. NF, Verified Complaints	N7
3. NF, Disposition—a	N6
4. NF, Disposition—b	N6
5. NF, Disposition—c	N6
6. NF, Disposition—d.1	N6
7. NF, Disposition—d.2	N6
8. NF, Disposition—e	N6
9. NF, Disposition—f	N6
10. NF Disposition—g	N6
1. B&C, Verified Complaints	N7
12. B&C, Disposition—a	N6
13. B&C, Disposition—b	N6
14. B&C-Disposition—c	N6
15. B&C, Disposition—d.1	N6
16. B&C, Disposition—d.2	N6
17. B&C, Disposition—e	N6
18. B&C, Disposition—f	N6
19. B&C, Disposition—g	N6
20. Other Settings, Verified Complaints	N7
21. Other Settings, Disposition—a	N6
22. Other Settings, Disposition—b	N6
23. Other Settings, Disposition—c	N6
24. Other Settings Disposition—d.1	N6
25. Other Settings, Disposition—d.2	N6
26. Other Settings, Disposition—e	N6
27. Other Settings, Disposition—f	N6
28. Other Settings, Disposition—g	N6

5. Profile Data File—XXPROFLE.DBF

This single record file is used to transmit a variety of descriptive data which helps describe the circumstances and characteristics of the LTC Ombudsman Program in each state. The data elements are as follows:

1. State ID	C2
2. Fiscal Year	N4
3. # of NFs Licensed/Operating in State	N6
4. # of Beds in Lic. NFs	N7
5. # of B&C/Similar Licensed Facilities	N6
6. # of Beds in Lic. B&C/Similar Facilities	N7
7. # of Local/Reg. Ombuds Prog. Hosted By Area Agencies on Aging	N4
8. # of Local/Reg. Ombuds Prog. Hosted By Other Local Govt. Entity	N4
9. #of Local/Reg. Ombuds Prog. Hosted By Legal Services Provider	N4
10. # of Local/Reg. Ombuds Prog. Hosted By Social Services Non-Profit Agency	N4
11. # of Local/Reg. Ombuds Prog. Hosted By Free-standing Ombudsman Prog.	N4
12. # of Local/Reg. Ombuds Prog. Hosted By Reg. Office of State Ombuds Program	N4
13. # of Local/Reg. Ombuds Prog. Hosted By Other Type(s) of Local Entities	N4 ¹
14. # of State office Pd Program Staff FTEs	N4
15. # of State Office Pd Program Staff Working Full Time on Ombudsman Prog.	N4
16. # of State Office Pd Clerical Staff FTEs	N4
17. # of State Office Volunteers Certified To Address Complaints	N4
18. # of State Office Other Volunteers	N4
19. # of Local Program Pd Program Staff FTEs	N5
20. # of Local Program Pd Program Staff Working Full Time on Ombuds Program	N5
21. # of Local Program Paid Clerical Staff FTEs	N6
22. # of Local Program Volunteers Certified to Address Compliants	N5
23. # of Local Programs, Other Volunteers	N5
24. Federal—OAA Title VII, Chapter 2 Funding For Statewide Program	N8
25. Federal—OAA Title VII, Chapter 3 Funding For Statewide Program	N8
26. Federal—OAA Title III Funding (At State Level) For Statewide Program	N8
27. Federal—OAA Title III Funding (At AAA Level) For Statewide Program	N8
28. Other Federal Funding For Statewide Prog	N8
29. State Funding For Statewide Program	N8
30. Local Funding	N8 ²
31. Total Statewide Program Funding	N8

¹ In separate text file, describe other.

² In separate text file, describe local.

6. Ombudsman Activity File—XXOMBACT.DBF

This single record file will be used to transmit required information on Ombudsman activities at the state and local level. See Part III.F. of the Ombudsman Report. The data elements and file layout are as follows:

1. # of Trning Sess for State Ombuds Staff/Volunteers	N5
2. # of Trning Sess for Local Ombuds Staff/Volunteers	N5
3. # of Trning Hrs for State Ombuds Staff/Volunteers	N5
4. # of Trning Hrs for Local Ombuds Staff/Volunteers	N5

5. # of Trainees—State Ombuds Staff/Volunteers	N5
6. # of Trainees—Local Ombuds Staff/Volunteers	N5
7. % of State Staff Time on TA to Local Ombudsmen/Volunteers	N2
8. % of Local Staff Time on TA to Local Ombudsmen/Volunteers	N2
9. # of Trning Sess by State Prog. For Facility Staff	N5
10. # of Trning Sess by Local Prog. For Facility Staff	N5
11. # of State Prog Consults To Facilities	N5
12. # of Local Prog Consults To Facilities	N5
13. # of State Prog Consults To individuals	N5
14. # of Local Prog Consults To individuals	N5
15. # of NFs Visited by State Program	N5
16. # of NFs Visited by Local Programs	N5
17. # of B&C Facilities Visited by State Programs	N5
18. # of B&C Facilities Visited by Local Programs	N5
19. # of Fac. Surveys Participated In by State Programs	N5
20. # of Fac. Surveys Participated In by Local Programs	N5
21. # of Mtg. W/Res. Councils Attended By State Prog	N5
22. # of Mtg. W/Res. Councils Attended By Local Prog	N5
23. # of Mtg. W/Fam. Councils Attended By State Prog	N5
24. # of Mtg. W/Fam. Councils Attended By Local Prog	N5
25. # of Comm. Ed. Sessions Sponsored By State Prog	N5
26. # of Comm. Ed. Sessions Sponsored By Local Prog	N5
27. # of Interviews/Disc. With Media by State Prog	N5
28. # of Interviews/Disc. With Media by Local Prog	N5
29. # of Press Releases By State Programs	N5
30. # of Press Releases By Local Programs	N5
31. % of Total Pd State Staff Time Spent on Monitoring/Work On Laws, Regulations, Government Policies and Actions	N5
32. % of Total Pd Local Staff Time Spent on Monitoring/Work On Laws, Regulations, Government Policies and Actions	N5

4. Narrative Summaries— XXOMBNAW.PP

In addition to the data files, SUAs should prepare an exportable text file. It should contain narrative responses to the open-ended questions in the Ombudsman Report. Specifically provide a narrative for each of the following:

- Part I. F. Legal Assistance/Remedies (Optional submission)
- Part I. G. Complaint Description (Optional submission)
 - Part II. Major Long Term Care Issues
 - Part III. A. Facilities and Beds, Item 3—Type, name and definitions of the types of board and care facilities and any other adult care home similar to a nursing or board and care facility for which your ombudsman program provides services.
 - Part III. C. Program Coverage—Nursing Facilities and board and care/ similar adult care facilities
 - Part III. F. Other Ombudsman Activities:
 - Three most frequent topics for training of facility staff
 - Three most frequent areas of consultation to facilities
 - Three most frequent requests/needs encountered in the provision of consultation to individuals—by state programs and separately by local programs.
 - Explanation or responses to data elements in the Ombudsman Report where "Other" data are reported or states have been asked to specify/ further describe a response, specifically:
 - Number of cases closed—NF, Other

- Number of cases closed—B&C, Other
- Number of cases closed—Other, Other
- Other types of local entities hosting ombudsman programs
- Other federal funding sources
- Local funding sources

[FR Doc. 94-24050 Filed 9-28-94; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-04-7122-02-5746; CACA 31588]

Realty Action—Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Correction.

SUMMARY: This notice supplements the notice published in the *Federal Register* on August 12, 1993 at 58 FR 42982 for land exchange CACA 31588. This notice describes additional lands that may be acquired by the Bureau of Land Management in the above exchange. These lands are similar in habitat to the BLM lands being exchanged. The additional lands that may be acquired are within the following sections:

San Benito County, Silver Creek Area

Mt. Diablo Meridian, California

- T.15S., R.11E.
Secs. 22, 26, 27, and 32 to 36
T.16S., R.11E.
Secs. 1 to 6, 8 to 13, and 16
T.16S., R.12E.
Secs. 7, 16, 22, 27, 35 and 36

Kern County, Lokern Area

- T.28S., R.22E.
Secs. 19 to 21, 28 to 30, and 32 to 34
T.29S., R.21E.
Secs. 24 and 25
T.29S., R.22E.
Secs. 1 to 4, 10 to 17, and 19 to 36
T.29S., R.23E.
Secs. 7, 17 to 21, and 27 to 36
T.30S., R.22E.
Secs. 1 to 5 and 8 to 11
T.30S., R.23E.
Secs. 1 to 6, 7, 9, and 11 to 13
T.30S., R.24E.
Secs. 6 to 9, 15 to 18, 22, 23, and 25

Interested parties may submit written comments concerning these lands to the BLM Area Manager at the following address until November 14, 1994. For further information contact: Bureau of Land Management, Attn: Dan Vaughn, 3801 Pegasus Drive, Bakersfield, California 93308; (805) 391-6125

Dated: September 9, 1994.

James Wesley Abbott,
Area Manager.

[FR Doc. 94-23469 Filed 9-28-94; 8:45 am]
BILLING CODE 4310-40-M

[CA-010-4210-04; CACA 30078]

Realty Action; Exchange of Timber Interest in Public Land in Yuba County, CA

Notice document 92-13116, page 23595, issue of Thursday, June 4, 1992, is hereby amended with the statement that the Bureau of Land Management is proposing to exchange Federal timber interests (only in T. 17N., R. 7 E., MDM, Sec 2: E $\frac{1}{2}$ E $\frac{1}{2}$).

ADDRESSES: For a period of 45 days from publication of this notice in the *Federal Register*, interested parties may submit comments specific to the above described land to the District Manager, c/o Area Manager, Folsom Resource Area Office, 63 Natoma St., Folsom, CA 95630.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley at the above address or by phone at (916) 985-4474.

Rick Cooper,

Acting Area Manager.

[FR Doc. 94-24051 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-40-M

[AZ-050-04-4380-03]

Arizona: Long-Term Visitor Area Program for 1994-1995 and Subsequent Use Seasons; Revision to Existing Supplementary Rules, Yuma District, Arizona, and California Desert District, California and Revision of Long-Term Visitor Area Boundaries Within the California Desert District, El Centro Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of supplementary rules and revision of Long-Term Visitor Area boundaries within the California Desert District, El Centro Resource Area.

SUMMARY: The Bureau of Land Management (BLM) Yuma District and California Desert District announce revisions to the Long-Term Visitor Area Program. The program, which was instituted in 1983, established designated long-term visitor areas and identified an annual long-term use season from September 15 to April 15. During the long-term use season, visitors who wish to camp on public lands in one location for extended periods must stay in the designated long-term visitor areas and purchase a long-term visitor area permit.

EFFECTIVE DATE: September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Todd Suess, Outdoor Recreation Planner, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (602) 726-6300; or John Butz, Outdoor Recreation Planner, California Desert District, 6221 Box Springs Boulevard, Riverside, California 92507-0714, telephone (909) 697-5394.

SUPPLEMENTARY INFORMATION: The purpose of the Long-Term Visitor Area program is to provide areas for long-term winter camping use. The sites designated as long-term visitor areas are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed

during the land management planning process, and environmental assessments were completed for each site location.

The program was established to safely and properly accommodate the increasing demand for long-term winter visitation and to provide natural resource protection through improved management of this use. The designation of long-term visitor areas assures that specific locations are available for long-term use year after year and that inappropriate areas are not used for extended periods.

Visitors may camp without a long-term visitor area permit outside of long-term visitor areas, on public lands not otherwise posted or closed to camping, for up to 14 days in any 28-day period.

Authority for the designation of long-term visitor areas is contained in Title 43, Code of Federal Regulations, Subpart 8372, Sections 0-3 and 0-5(g). Authority for the establishment of a Long-Term Visitor Area program is contained in Title 43, Code of Federal Regulations, Subpart 8372, Section 1, and for the payment of fees in Title 36, Code of Federal Regulations, Subpart 71.

The Authority for establishing supplementary rules is contained in Title 43, Subpart 8365, Section 1-6. The long-term visitor area supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected and will be posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed \$100,000 and/or imprisonment not to exceed 12 months.

The following are the supplemental rules for the designated long-term visitor areas and are in addition to rules of conduct set forth in Title 43, Code of Federal Regulations, Subpart 8365, Section 1-6.

The following supplemental rules apply year long to all public land users who enter the Long-Term Visitor Areas (LTVAs).

1. **THE PERMIT.** A permit is required to camp in a designated LTVA between September 15 and April 15. The permit authorizes the permittee to camp within any designated LTVA using those camping or dwelling unit(s) indicated on the permit between the period September 15 the April 15. There are two types of permits: Long-Term and Short-Visit. The Long-Term permit fee is \$50.00 for the entire season and any part of the season. The Short-Visit permit is \$10.00 for seven consecutive days. The Short-Visit permit may be renewed an

unlimited number of times for the cost of \$10.00 for seven (7) consecutive days. *No refunds are made on permit fees.*

2. **THE PERMIT.** To be valid, the Short-Visit permit or Long-Term permit decal must be affixed at the time of purchase, with the adhesive backing, to the camping unit (i.e., trailer, camper, or motor home) in a clearly visible location. A maximum of two (2) secondary vehicles are permitted.

3. **PERMIT TRANSFERS.** If you sell, trade, or exchange camping vehicles during the use season, remove the permit from your old vehicle before turning it over to the new owner. Present your permit to a BLM officer authorized to sell permits or a BLM office which administers an LTVA. The permit will be revised to cover the new camping unit or you will receive a replacement permit for your new vehicle at no cost. The permit may not be reassigned or transferred by permittee.

4. **PERMIT REVOCATION.** An authorized BLM officer may revoke without reimbursement any LTVA permit issued to any person when the permittee violates any BLM rule or regulation, or when the permittee, permittee's family, or guests' conduct is inconsistent with the goals of BLM's LTVA Program. Failure to return any LTVA permit to any authorized BLM officer upon demand is a violation of this supplemental rule. Any permittee whose permit is revoked must remove all property and leave the LTVA system within 12 hours of notice. The revoked permittee will not be allowed into any other LTVA in Arizona or California for the remainder of the LTVA season.

5. **UNOCCUPIED CAMPING UNITS.** Camping or dwelling unit(s) must not be left unoccupied within any LTVA for periods of greater than 5 days unless approved in advance by an authorized BLM officer.

6. **PARKING.** For your safety and privacy, maintain a minimum of 15 feet of space between dwelling units.

7. **REMOVAL OF WHEELS AND CAMPERS.** Campers, trailers, and other dwelling units must remain mobile. Wheels must remain on all wheeled vehicles. Pickup campers may be set on jacks manufactured for that purpose.

8. **QUIET HOURS.** Quiet hours are from 10 p.m. to 6 a.m. in accordance with applicable state time zone standards.

9. **NOISE.** Operation of audio devices or motorized equipment, including generators, in a manner that makes unreasonable noise that disturbs other visitors is prohibited. Within La Posa and Imperial Dam LTVAs, amplified music is allowed only in locations

designated by BLM or when approved in advance by an authorized BLM officer.

10. ACCESS. Do not block roads or trails commonly in public use with your parked vehicles, stones, wooden barricades, or by any other means.

11. STRUCTURES AND LANDSCAPING. Fixed structures of any type are restricted and must conform to posted policies. This includes but is not limited to fences, dog runs, storage units, and windbreaks. Alterations to the natural landscape are not allowed. Painting rocks or defacing or damaging any natural or archaeological feature is prohibited.

12. LIVESTOCK. Boarding of livestock (horses, cattle, sheep, goats, etc.) within LTVA boundaries is permitted only when approved in advance by an authorized BLM officer.

13. PETS. Pets must be kept on a leash at all times. Keep an eye on your pets. Unattended and unwatched pets may fall prey to coyotes or other desert predators. Pet owners are responsible for cleanup and sanitary disposal of pet waste.

14. CULTURAL RESOURCES. Do not disturb any archaeological or historical values including, but not limited to, petroglyphs, ruins, historic buildings, and artifacts that may occur on public lands.

15. TRASH. Place all trash in designated receptacles. Public trash facilities are shown in the LTVA brochure. Depositing trash or holding tank sewage in vault toilets is prohibited. An LTVA permit is required for trash disposal within all LTVA campgrounds except for the Imperial Dam and Mule Mountain LTVAs.

16. DUMPING. Absolutely no dumping of sewage, gray water, or garbage on the ground. This includes motor oil and any other waste products. The changing of motor oil, vehicular fluids or disposal and possession of these used substances within an LTVA is strictly prohibited. Federal, state, and county sanitation laws and county ordinances specifically forbid these practices. Sanitary dump station locations are shown in the LTVA brochure. LTVA permits are required for dumping within all LTVA campgrounds except for the Imperial Dam and Midland LTVAs.

17. SELF-CONTAINED VEHICLES. In Pilot Knob, Dunes Vista, Midland, Tamarisk, and Hot Springs LTVAs, camping is restricted to self-contained camping units only. Self-contained units must have a permanent affixed waste water holding tank of 10-gallon minimum capacity. Port-a-potty systems, or systems which utilize

portable holding tanks, or permanent holding tanks of less than 10-gallon capacity are not considered to be self-contained. The La Posa, Imperial Dam, and Mule Mountain LTVAs are restricted to self contained camping units, except within 500 feet of a vault or restroom.

18. CAMPFIRES. Campfires are permitted in LTVAs subject to all local, state and federal regulations. Comply with posted rules.

19. WOOD COLLECTION. No wood collection is permitted within the boundaries of Mule Mountain, Imperial Dam, and La Posa LTVAs. Outside these LTVAs and in all other LTVAs, only dead, down, and detached wood may be collected for firewood or hobby purposes. Collection and possession of ironwood is regulated to three pieces, not to exceed 10 pounds total in weight. A maximum of 50 pounds of natural firewood will be allowed per individual or group campfire at any one time. Please contact the nearest BLM office for current regulations concerning firewood collection.

20. SPEED LIMIT. The speed limit in LTVAs is 15 m.p.h. or as otherwise posted.

21. OFF-HIGHWAY VEHICLE USE. Motorized play is prohibited. Motorized vehicles should be used in LTVAs only for access to and from campsites.

22. VEHICLE USE. It is prohibited to operate any vehicle in violation of state or local laws and regulations relating to use, standards, registration, operation, and inspection.

23. FIREARMS. The discharge and use of firearms or weapons is prohibited inside or within 1/2 mile of the LTVAs.

24. VENDING PERMITS. The LTVA permit is not a vending permit. Please contact the nearest BLM office for information on vending or concession permits.

25. AIRCRAFT USE. Landing or taking off of aircraft, including ultralights, is prohibited in LTVAs.

26. HOT SPRING LTVA. Overnight occupancy is prohibited between old Highway 80 and Interstate 8.

27. HOT SPRING LTVA. Food, beverages, glass containers, and soap are prohibited within 50 feet of the hot springs facility in Hot Springs LTVA.

28. MULE MOUNTAIN LTVA. All camping within Wiley's Well and Coon Hollow campgrounds is restricted to designated sites only and is limited to one (1) camping or dwelling unit per site.

29. IMPERIAL DAM AND LA POSA LTVAs. Overnight occupancy is prohibited in desert washes in Imperial Dam and La Posa LTVAs.

30. LA POSA LTVA. Access to La Posa LTVA is restricted to legal access roads along U.S. Highway 95. Construction and use of other access points are prohibited. This includes removal and modification of barricades such as fences, ditches, and berms.

31. POSTED RULES. Observe all posted rules. Individual LTVAs may have additional specific rules. If posted rules differ from these supplemental rules, the posted rules take precedence.

32. OTHER LAWS. LTVA permit holders are required to observe all federal, state, and local laws and regulations applicable to the LTVA and shall keep the LTVA and, specifically, their campsite in a neat, orderly, and sanitary condition.

33. LENGTH OF STAY. Length of stay in a LTVA between April 16 and September 14 is limited to 14 days in a 28-day period. After the 14th day of occupation, campers must move outside of a 25-mile radius of the previous location. *

The following are the revised boundaries for the Long-Term Visitor Areas (LTVA) located within the California Desert District, El Centro Resource Area.

Dunes Vista LTVA

San Bernardino Base Meridian,

T. 16 S., R. 20 E.,
Sec. 14, S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$,
SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$,
E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,
Sec. 23, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$,
N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$,
W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.

17.5 Acres.

Tamarisk LTVA

San Bernardino Base Meridian,

T. 17 S., R. 18 E.,
Sec. 4., NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$.

15 Acres.

Pilot Knob LTVA

San Bernardino Base Meridian,

T. 16 S., R. 21 E.,
Sec. 28., NE $\frac{1}{4}$.

160 Acres.

Hot Springs LTVA

San Bernardino Base Meridian,

T. 16 S., R. 16 E.,
Sec. 12., W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$,
NE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$,
Sec. 13., E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$,
W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,
E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$,
N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

355 Acres.

This notice is published under the authority of Title 43, Code of Federal Regulations, Subpart 8365, Section 1-6.

Ed Hastey,

State Director, California.

Bruce Conrad,

Acting State Director, Arizona.

[FR Doc. 94-24034 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-32-M

[CA-066-02-4410-08]

South Coast Resource Management Plan and Record of Decision, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability, South Coast Resource Management Plan and Record of Decision.

SUMMARY: In accordance with Section 202 of the Federal Land Policy and Management Act of 1976 (43 CFR 1601-1610) and the National Environmental Policy Act of 1969 (40 CFR 1500-1508), the BLM completed the Resource Management Plan (RMP) and Record of Decision (ROD) for the South Coast Planning Area, dated May 26, 1994.

The South Coast RMP/ROD provides guidance and identifies land use decisions to be implemented for management of 129,000 acres of public land and the associated natural resources scattered over Los Angeles, Orange, southwestern San Bernardino, and western San Diego and Riverside Counties. The South Coast RMP/ROD also provides guidance for managing 167,000 acres of federal mineral ownership (where the surface is privately owned).

The South Coast RMP/ROD is the result of a five year planning process with significant public participation. The decisions described in the South Coast RMP/ROD constitute final agency action for the Department of the Interior in accordance with 43 CFR 1610.5-2(b) and are not appealable. Citizens are invited to participate during implementation of these decisions. Copies of the South Coast RMP/ROD are available upon request.

FOR FURTHER INFORMATION CONTACT: Julia Dougan, Area Manager, U.S.D.I. Bureau of Land Management, Palm Springs-South Coast Resource Area, 63-500 Garnet Avenue; P.O. Box 2000, North Palm Springs, CA 92258-2000.

SUPPLEMENTARY INFORMATION: Land use decisions include the designation of eight Areas of Critical Environmental Concern (ACEC): Cedar Canyon ACEC, Potrero ACEC, Santa Ana River Wash ACEC and the Santa Margarita

Ecological Reserve ACEC for the protection of sensitive plant and animal species; the Kuchamaa ACEC for the protection of Native American religious values; the Million Dollar Spring ACEC protects important watershed and riparian values; Johnson Canyon ACEC protects unique vegetation resources and research opportunities; the California Rocks and Islands ACEC will continue for use as a wildlife sanctuary and research field site.

Three Special Recreation Management Areas (SRMA) were identified: the Soboba SRMA, Beauty Mountain SRMA, and the Border Mountains SRMA (Highway 94 corridor). Two segments of the Santa Margarita River are identified as eligible for inclusion in the National Wild and Scenic Rivers System. Use of off-highway vehicles on lands adjacent to Canyon Lake is limited.

Lands identified for disposal will primarily be used as an exchange base to acquire lands within special management areas. When fully implemented, the pattern of public ownership will change from 296 scattered parcels to 15 manageable blocks of public land.

Dated: September 20, 1994.

Julia Dougan,

Area Manager.

[FR Doc. 94-24094 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-40-P

[ID-942-04-332A-02]

Idaho: Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., September 20, 1994.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 11, Township 4 North, Range 1 East, Boise Meridian, Idaho, Group No. 892, was accepted August 5, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: September 20, 1994.

Duane E. Olsen,

Chief, Cadastral Surveyor for Idaho.

[FR Doc. 94-24038 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-GG-M

[CA-940-4210-10; CAS 058318, CACA 7831, CACA 7834, CACA 7835, CACA 7850]

Notice of Proposed Continuation of Withdrawals; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has proposed to continue withdrawals on 424.99 acres for 20 years within the Sequoia, Inyo, and Sierra National Forests and 140.00 acres within the Sequoia National Forest. The segregative effect on these withdrawals remains unchanged.

DATES: Comments should be received on or before December 28, 1994.

ADDRESSES: Comments should be sent to the California State Director, BLM, 2800 Cottage Way, Room E-2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, BLM California State Office, 916-978-4820.

SUPPLEMENTARY INFORMATION:

1. CAS 058318

The land is described as follows:

Mount Diablo Meridian, T. 27 S., R. 32 E.,
Sec. 15, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,
N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 80.00 acres in Kern County. The purpose of this withdrawal is to protect the Hobo Hot Springs Administrative and Public Service Site.

2. CACA 7831

The land is described as follows:

Mount Diablo Meridian, T. 25 S., R. 31 E.,
Sec. 29, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 30, E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 80.00 acres in Kern County. The purpose of this withdrawal is to protect the Fulton Ranger Station.

3. CACA 7834

Mount Diablo Meridian, T. 26 S., R. 31 E.,
Sec. 25, NE $\frac{1}{4}$ NE $\frac{1}{4}$, T. 28 S., R. 32 E.,
Sec. 10, E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$.

The area described contains 60.00 acres in Kern County. The purpose of the withdrawal is to protect the Evans Flat and Havilah Administrative Sites.

4. CACA 7835

Mount Diablo Meridian, T. 24 S., R. 33 E.,
Sec. 13, SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 60.00 acres in Tulare County. The purpose of the withdrawal is to protect the Cannell Meadow Administrative Site.

Mount Diablo Meridian, T. 21 S., R. 34 E.,
Sec. 3, E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 40.00 acres in Tulare County. The purpose of the withdrawal is to protect the Beach Meadow Administrative Site.

Mount Diablo Meridian, T. 22 S., R. 34 E.,

Sec. 5, NE $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains 40.00 acres in Tulare County. The purpose of the withdrawal is to protect the Bonita Meadow Administrative Site.

5. CACA 7850

Mount Diablo Meridian, T. 2 S., R. 26 E.,
Sec. 14, Portion of Lot 3, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,
SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,
E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains 44.99 acres in Mono County. The purpose of the withdrawal is to protect the June Lake Ranger Station.

Mount Diablo Meridian, T. 6 S., R. 30 E.,
Sec. 12, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described contains 80.00 acres in Inyo County. The purpose of the withdrawal is to protect the Wells Meadow Ranger Station.

Mount Diablo Meridian, T. 9 S., R. 25 E.,
Sec. 35, NE $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 40.00 acres in Fresno County. The purpose of the withdrawal is to protect Station #35 (also known as Baldy Administrative Site).

Mount Diablo Meridian, T. 6 S., R. 22 E.,
Sec. 3, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

The area described contains 40.00 acres in Madera County. The purpose of the withdrawal is to protect the Kelty Meadows Station.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: September 20, 1994.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94-24035 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-40-M

[MT-930-4210-06; NDM 83168]

Proposed Withdrawal and Opportunity for Public Meeting; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service proposes to withdraw 1,108.60 acres of public land to protect waterfowl production areas. This notice closes the lands for up to 2 years from the general

land laws and mining. The lands will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by December 28, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, BLM Montana State Office, 406-255-2829.

SUPPLEMENTARY INFORMATION: On August 25, 1994, a petition was approved allowing the U.S. Fish and Wildlife Service to file an application to withdraw the following described public lands from location and entry under the general land laws, including the mining laws, subject to valid existing rights:

Fifth Principal Meridian

- T. 130 N., R. 68 W.,
Sec. 24, lot 6, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$.
T. 132 N., R. 68 W.,
Sec. 20, NE $\frac{1}{4}$ NE $\frac{1}{4}$.
T. 135 N., R. 69 W.,
Sec. 28, N $\frac{1}{2}$ NE $\frac{1}{4}$.
T. 135 N., R. 70 W.,
Sec. 8, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.
T. 141 N., R. 81 W.,
Sec. 26, lots 1 and 2, NE $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$.
T. 142 N., R. 75 W.,
Sec. 12, S $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 14, S $\frac{1}{2}$ SW $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 22, N $\frac{1}{2}$ NE $\frac{1}{4}$;
Sec. 26, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$.
T. 143 N., R. 81 W.,
Sec. 6, lots 1 and 2;
Sec. 18, lot 3.
T. 144 N., R. 83 W.,
Sec. 30, lot 4.
T. 144 N., R. 84 W.,
Sec. 8, lots 1, 2, and 3.
T. 145 N., R. 84 W.,
Sec. 34, lots 3 and 4.
T. 146 N., R. 84 W.,
Sec. 32, lots 1, 4, 5, and 8.
T. 153 N., R. 75 W.,
Sec. 31, lots 2 and 4.

The areas described aggregate 1,108.60 acres in Burleigh, Logan, McHenry, McIntosh, and McLean Counties.

The purpose of the proposed withdrawal is for waterfowl production management for threatened and endangered and neotropical species.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director of the Bureau of Land Management at the address specified above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the

proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director at the address specified above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Temporary uses which are compatible with the intended uses of the proposed withdrawal will be permitted during this segregative period.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Fish and Wildlife Service.

Dated: September 21, 1994.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 94-24092 Filed 9-28-94; 8:45 am]

BILLING CODE 4210-06-P

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C., *et seq.*). Permit No. PRT-745284

Applicant: Pruett, Lawrence & Associates, Bakersfield, California

The applicant requests amendment of their current permit to take (live-trap and release) the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) and the giant kangaroo rat (*Dipodomys ingens*) to include the range of each species within Kern County, California,

to determine the presence or absence of the species for the purpose of enhancement of the survival of the species.

Permit No. PRT-751345

Applicant: Baxter Consulting Services,
Lake Mathews, California

The applicant requests amendment of their current permit to include take (live-trap and release) of the Pacific pocket mouse (*Perognathus longimembris pacificus*) in Los Angeles, Orange, and San Diego Counties, California, to determine the presence or absence of the species for the purpose of enhancement of the survival of the species.

Permit No. PRT-794782

Applicant: Dr. James Deacon, Las Vegas,
Nevada

The applicant requests a permit to take (collect, maintain at differing oxygen concentrations, in situ) eggs and larvae of the Devil's Hole pupfish (*Cyprinodon diabolis*) in Devil's Hole National Monument, Nye County, Nevada to investigate the effects of oxygen levels on the development of the species.

DATES: Written comments on the permit applications must be received on or before October 31, 1994.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents, within 30 days of the date of publication of this notice, to the following office: Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181. Telephone: 503-231-2063; FAX: 503-231-6243. Please refer to the respective permit number for each application when requesting copies of documents.

(Notice: Receipt of Applications for Permits under Section 10(a)(1)(A) of the Endangered Species Act.)

Dated: September 23, 1994.

Cynthia U. Barry,

Associate Manager-Endangered Species,
Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94-24068 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-55-P

Availability of a Draft Recovery Plan for the Kanab Ambersnail (*Oxyloma Haydeni kanabensis*) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Kanab ambersnail (*Oxyloma haydeni kanabensis*). Three populations of the species are known, two in southern Utah and the other within the Grand Canyon of Arizona. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 28, 1994 to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Written comments and materials regarding this plan should be sent to the Field Supervisor at the Salt Lake City address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist (see ADDRESSES above), at telephone 801/524-5001.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

The Kanab ambersnail is a terrestrial snail in the family Succineidae. The empty shell is a light amber color. The live snail has a mottled grayish-amber to yellowish-amber color. The species' shell is thin walled with a right handed, elevated spire and a broad expanded opening. Mature individuals are up to 19 mm (0.75 inch) long, 9 mm (0.33 inch) in diameter, with 3.25 to 3.75 whorls in a drawn out spire. Three populations of the species are known, two in southern Utah and the other within the Grand Canyon of Arizona. The two Utah populations are near the Utah-Arizona border in Kane County. The larger Utah population occurs in Three Lakes Canyon about 10 kilometers (6 miles) northwest of the town of Kanab, Utah. The smaller Utah population is adjacent to the main stem of Kanab Creek in Kanab Creek Canyon. The Arizona population occurs in a spring-fed wetland at Vasey's Paradise about 92 kilometers (57 miles) southeast of the two Utah populations.

The Kanab ambersnail was listed as an endangered species under the authority of the Endangered Species Act (Act), as amended, on April 17, 1993. Critical habitat was proposed on November 15, 1992, for the species' largest Utah population. This species was listed due to loss of historical populations and past and threatened destruction of its limited habitat. Initial recovery efforts will focus on protecting the species population and habitat from habitat destroying activities through the section 6, 7, and 9 prohibitions of the Act for animal species. Biological and ecological research of the species biology and its relationship and interaction with its environment is necessary to guide future management of the species population and habitat to ensure its continued survival and the preservation of the species ecosystem. Additional recovery efforts will focus on inventory of potential habitat and minimum viable population studies of

its known populations. Given the species vulnerability and lack of suitable habitat, it is doubtful that recovery and delisting of the species can occur in the foreseeable future.

Public Comments Solicited

The Service solicits written comments on the recovery plan described above. All comments received by the date specified in the DATES section above will be considered prior to approval of the recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 21, 1994.

Terry T. Terrell,

Regional Director.

[FR Doc. 94-24067 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Golden Gate National Recreation Area, The Presidio of San Francisco, CA: Revision of Park Boundary

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: This notice announces a revision of the boundaries of the Golden Gate National Recreation Area to include within the boundaries the former Public Health Service Hospital complex.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Chandler, General Manager, Presidio of San Francisco, (415) 556-0245.

SUPPLEMENTARY INFORMATION: Notice is hereby provided that the boundaries of the Golden Gate National Recreation Area (GGNRA), established October 27, 1972, pursuant to Public Law 92-589, 86 Stat. 1299, as amended, are revised, effective as of the date of publication of this notice, to include the Public Health Service Hospital (PHSH) complex which comprises approximately 36.5 acres, more or less, and is located on the southwest corner of the Presidio of San Francisco. This complex is also known as the former Marine Hospital Property.

This administrative boundary change is made pursuant to the statutory authority contained in Section 2 of Public Law 92-589 and facilitates inclusion of the PHSH site as a part of the transfer of the Presidio to the GGNRA from the jurisdiction of the United States Army to the jurisdiction of the National Park Service.

The area added to the revised boundaries of the GGNRA is identified

as all that certain real property situated in the County of San Francisco, State of California, described as follows:

Commencing at an 8-inch square granite monument at an angle point in the general southerly boundary line of said Presidio of San Francisco Military Reservation, said monument being located 342.71 feet northerly from, measured at right angles to, the monument line of Lake Street, distant thereon 22.31 feet easterly from the city monument at the southeast corner of 12th Avenue and Lake Street; Thence along said general southerly line, north 1°11'24" east, 151.13 feet to an angle point therein; Thence continuing along said general southerly line, south 77°12'03" west, 395.97 feet to the southeasterly corner of said Marine Hospital Property, said southeasterly corner being also the southeasterly corner of that certain parcel of land described in the Quitclaim Deed to the State of California recorded September 26, 1938, in Book 3331 at page 460, official records of the City and County of San Francisco;

Thence along the southerly line of said parcel (3331 OR 460), south 77°12'03" west, 53.52 feet to the southwesterly corner thereof, said corner being the *Actual Point of Beginning* of this description;

Thence along the westerly line of said parcel (3331 OR 460), the following two courses:

(1) Northeasterly along the arc of a 2039.84 foot radius curve to the right, the center of which curve bears south 72°04'02" east, through a central angle of 13°57'36", an arc distance of 497.00 feet; and

(2) North 31°53'34" east, 86.72 feet to the easterly line of said Marine Hospital Property;

Thence along said easterly line, and along the northerly line of said Marine Hospital Property, the following seven courses:

(1) North 3°55'56" west, 102.23 feet to the center of a 4-inch round concrete monument;

(2) North 11°22'35" east, 170.44 feet to the center of a 4-inch round concrete monument;

(3) North 25°07'37" east, 184.90 feet to a 1-inch iron pipe the center of set in a 6-inch square concrete monument;

(4) North 68°50'08" west, 307.34 feet to a 1-inch iron pipe with lead and copper pin set in a 6-inch square concrete monument;

(5) North 2°34'10" east, 225.08 feet to a 1-inch iron pipe with lead and copper pin set in a 6-inch square concrete monument;

(6) North 52°46'59" east, 209.01 feet to the center of a 1-inch iron pipe set in a 6-inch square concrete monument; and

(7) South 82°10'01" west, 263.98 feet;

Thence leaving said northerly line, south 82°06'18" west, 639.24 feet to a point on the northerly extension of the westerly line of said Marine Hospital Property, distant thereon, north 2°21'26" west, 269.18 feet from the northwesterly corner of said Marine Hospital Property;

Thence along said northerly extension, south 2°21'26" east, 269.18 feet to said northwesterly corner of said Marine Hospital Property;

Thence along said westerly line of said Marine Hospital Property, south 2°21'26" east, 1113.32 feet to a 1-inch iron pipe with

lead and copper pin set in a 6-inch square concrete monument;

Thence leaving said westerly line, north 87°53'30" east, 360.47 feet to a point on the northerly extension of the center line of 15th Avenue;

Thence along said northerly extension of the center line of 15th Avenue, south 2°04'04" east, 57.10 feet to a line which bears south 77°12'03" west from the actual point of beginning;

Thence north 77°12'03" east, 572.98 feet to the *Actual Point of Beginning*.

Containing 36.456 acres more or less.

The bearings and distances included herein are based on the California Coordinate System, NAD 1927, Zone 3. To obtain ground level distance multiply distance shown by 1.0000708. Revised boundary maps may be obtained from the following offices: General Manager, Presidio of San Francisco, Presidio Project Office, National Park Service, Building 102, The Presidio of San Francisco, California 94129-0022; and Regional Director, Western Regional Office, National Park Service, 600 Harrison Street, San Francisco, California 94107

Dated: September 27, 1994.

Roger Kennedy,

Director, National Park Service.

[FR Doc. 94-24189 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-668 (Final)]

Phthalic Anhydride from Venezuela

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (the Act),² that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Venezuela of phthalic anhydride,³ that have been

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² 19 U.S.C. 1673d(b).

³ For purposes of this investigation, phthalic anhydride is defined as an aromatic synthetic organic chemical usually produced from a primary petrochemical called orthoxylene, although it is sometimes produced from naphthalene. Phthalic anhydride is predominantly used in the production of plasticizers, unsaturated polyester resins, and alkyd resins, which in turn are generally used to produce plastics and paints. This investigation covers phthalic anhydride sold in either flaked or molten form. Phthalic anhydride is provided for in

Continued

found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective May 25, 1994, following a preliminary determination by the Department of Commerce that imports of phthalic anhydride from Venezuela were being sold at LTFV within the meaning of section 733(b) of the Act.⁴ Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of June 22, 1994.⁵ The hearing was held in Washington, DC, on August 9, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 21, 1994. The views of the Commission are contained in USITC Publication 2809 (September 1994), entitled "Phthalic Anhydride from Venezuela: Investigation No. 731-TA-668 (Final)."

By order of the Commission.

Issued: September 23, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-24024 Filed 9-28-94; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927-6203 or (202) 927-6246.

subheading 2917.35.00 of the Harmonized Tariff Schedule of the United States (HTS).

⁴ 19 U.S.C. § 1673b(b).

⁵ 59 F.R. 32220.

Comments on the following assessment are due 15 days after the date of availability:

AB-8 (SUB-NO. 29X), The Denver and Rio Grande Western Railroad Company—Discontinuance of Service Exemption—on 173.25 Miles of Trackage in Dickinson, Morris, Lyon, Osage, Franklin, Miami and Johnson Counties, Kansas, and Jackson County, Missouri.

EA available 9/23/94.

AB-401 (SUB-NO. 1), Oregon Pacific & Eastern Railway Company—Abandonment—in Lane County, Oregon. EA available 9/23/94.

Comments on the following assessment are due 30 days after the date of availability:

AB-397 (SUB-NO. 3X), Tulare Valley Railroad Company—Abandonment—in Tulare and Fresno Counties, CA. EA available 9/19/94.

AB-12 (SUB-NO. 172X), Southern Pacific Transportation Company—Discontinuance of Service Exemption—2.40 Miles in Los Angeles County, California—and—AB-409 (SUB-NO. 4X), Los Angeles County Transportation Authority—Notification of Abandonment Under Continuing Exemption—2.40 Miles in Los Angeles County, California. EA available 9/23/94.

AB-422X, Kelley's Creek and Northwestern Railroad Company—Abandonment in Kanawha County, WV. EA available 9/23/94.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94-24098 Filed 9-28-94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States and State of Arizona v. Magma Copper Co.*, Civ. No. 94-639-TUC-RMB, was lodged with the United States District Court for the District of Arizona, on September 8, 1994. That action was brought against defendant pursuant to the Clean Water Act ("the Act") for penalties and injunctive relief as a result of unauthorized discharges from three of the defendant's copper mining facilities located near Globe, Arizona. This decree requires the settlor to pay \$625,000 in civil penalties to the United States and State of Arizona and \$50,000 to the United States Forest Service to improve fish habitat in streams in the area, and

to perform measures at Magma's Pinto Valley Operations to bring it into compliance with the Act. In addition, Magma is required to perform a Supplemental Environmental Project, which consists of remediating contamination at the abandoned Old Dominion Mine Site in Globe, Arizona.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States and State of Arizona v. Magma Copper Co.*, D.J. Ref. 90-5-1-1-3975.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Arizona, 4000 United States Courthouse, 230 North First Avenue, Phoenix, Arizona 85025, at the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005, 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of \$12.25 for the decree (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States and State of Arizona v. Magma Copper Co.*, D.J. Ref. 90-5-1-1-3975.

John C. Cruden,

Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.

[FR Doc. 94-24095 Filed 9-28-94; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Town of North Hempstead*, Civil Action No. CV 90-3486, was lodged on September 16, 1994 with the United States District Court for the Eastern District of New York. Defendant Town of North Hempstead (Town) is the owner and operator of the Port Washington Landfill Site. As a result of the Landfill's operation, the Site became contaminated with hazardous

substances and the Site was placed on the National Priorities List. The Environmental Protection Agency performed a remedial investigation and feasibility study (RI/FS) to identify the nature and extent of the contamination at the Site and the examine how best to remediate the Site.

Under the terms of the proposed decree, the Town will pay the United States the sum of \$2.64 million of the total \$3.5 million in costs incurred in performing the RI/FS as well as for other past costs the United States incurred at the Site. The \$2.64 million will be paid in two equal installments, with the first installment being paid within thirty (30) days of the entry of the decree and the second installment being paid, along with interest, within two years of the entry of the decree. Under an earlier decree entered in 1991, the Town agreed to remediate the Site at an estimated cost of \$45 million, and to reimburse EPA 100% of all future costs EPA incurs in overseeing the remediation of the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Town of North Hempstead*, D.J. reference #90-11-2-514.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, 14th floor, Brooklyn, New York; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C., 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. In requesting a copy, please enclose a check in the amount of \$5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94-24039 Filed 9-28-94, 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (94-076)]

Intent To Grant a Contingent Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant EyeDentify, Inc., of Baton Rouge, Louisiana, a contingent exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,125,730, entitled "Portable Dynamic Fundus Instrument," which was issued on June 30, 1992. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATES: Comments to this notice must be received by November 28, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358-2041.

Dated: September 14, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94-24101 Filed 9-28-94; 8:45 am]

BILLING CODE 7510-01-M

[Notice (94-077)]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant a Patent License.

SUMMARY: NASA hereby gives notice of intent to grant Krug Life Sciences, Inc., of Houston, Texas, an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S.

Patent No. 5,125,730, entitled "Portable Dynamic Fundus Instrument," which was issued on June 30, 1992. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objects to the grant and than recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATES: Comments to this notice must be received by November 28, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358-2041.

Dated: September 14, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94-24102 Filed 9-28-94; 8:45 am]

BILLING CODE 7510-01-M

[Notice (94-075)]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a exclusive patent license.

SUMMARY: NASA intends to grant Rotordynamics-Seal Research (RSR), a corporation of the State of California, having its headquarters in North Highlands, California, an exclusive, royalty-bearing, revocable license to practice U.S. Patent No. 4,545,586, entitled "Damping Seal for Turbomachinery." U.S. Patent No. 4,545,586 is for damping rotor vibrations in turbomachinery. The patent license will be for a limited number of years and will contain appropriate terms and conditions in accordance with the NASA Patent Licensing Regulations, 14 C.F.R. 1245.200 *et seq.* NASA will grant the patent license in accordance with its licensing regulations unless the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation, within 60 days of the date of this notice. The

Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATES: Written objections to this proposed license grant must be received by November 28, 1994.

ADDRESSES: Written objections should be sent to: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358-2041.

Dated: September 14, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94-24103 Filed 9-28-94; 8:45 am]

BILLING CODE 7510-01-M

[Notice (94-074)]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant a Patent License.

SUMMARY: NASA hereby gives notice of intent to grant Tecnico Corporation, of Chesapeake, Virginia, an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in NASA Case No. LAR-15,217-1 entitled "Molding of Complex Composite Parts Utilizing Modified Silicon Dubber Tooling," which was filed on August 12, 1994. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATES: Comments to this notice must be received by November 28, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358-2041.

Dated: September 14, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94-24104 Filed 9-28-94; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biochemistry and Molecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Advisory Panel for Biochemistry and Molecular Structure and Function in the Division of Molecular and Cellular Biosciences. Panel C

Name: Advisory Panel for Biochemistry and Molecular Structure and Function

Date and Time: Thursday and Friday October 20 and 21, 1994, 8:30 a.m. to 5 p.m.

Place: The Inn At Foggy Bottom, 824 New Hampshire Avenue, NW., Washington, DC. 20037.

Type of Meeting: Closed.

Contact Persons: Dr. Robert L. Uffen, Program Director and Brenda Flam, Program Manager for Metabolic Biochemistry, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22201. Telephone: (703) 306-1443.

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to the Metabolic Biochemistry Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Metabolic Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24113 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Cognitive, Psychological & Language Sciences; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the

following three meetings for the Advisory Panel for Cognitive, Psychological & Language Sciences (#1758).

Name: Advisory Panel for Cognitive, Psychological & Language Sciences (#1758).

Date & Time: October 20-21, 1994; 8:30 a.m.-6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Contact Person: Paul G. Chapin, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1731.

Agenda: To review and evaluate Linguistics proposals as part of the selection process for awards.

Name: Advisory Panel for Cognitive, Psychological & Language Sciences (#1758).

Date & Time: November 8-10, 1994, 8:30 a.m.-6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 340, Arlington, VA 22230.

Contact Person: Merry Bullock, Program Director for Human Cognition and Perception, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1732.

Agenda: To review and evaluate Human Cognition and Perception proposals as part of the selection process for awards.

Name: Advisory Panel for Cognitive, Psychological & Language Sciences (#1758).

Date & Time: November 14-15, 1994; 8:30 a.m.-6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 380, Arlington, VA 22230.

Contact Person: Leslie Zebrowitz, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1728.

Agenda: To review and evaluate Social Psychology proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24109 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Developmental Mechanisms; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Developmental Mechanisms.

Date and Time: October 19-21, 1994, 8:30 am to 5:00 pm.

Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Judith Verbeke, Program Director, Developmental Mechanisms, Room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306-1417

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support

Agenda: To review and evaluate Developmental Mechanism proposals as part of the selection process for awards

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24112 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

Earth Sciences Proposal Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (#1569).

Date and Time: October 19-21, 1994; 8:30 a.m. to 6 p.m.

Place: UNAVCO-UCAR, 3450 Mitchell Lane, Boulder, CO 80301.

Type of Meeting: Closed.

Contact Person: Dr. Daniel F. Weill, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306-1558.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Instrumentation & Facilities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a

proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24110 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Engineering; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering.

Date and Time: October 20-21. 9:30 a.m.-5 p.m., Thursday, October 20, 8:30 a.m.-12 Noon, Friday, October 21.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235 (National Science Board mtg room), Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. William S. Butcher, Advisory Committee for Engineering, National Science Foundation, 4201 Wilson Boulevard, Room 505, Arlington, VA 22230.

Minutes: Dr. William S. Butcher at the above address.

Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24108 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

Committee on Equal Opportunities in Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE) (1173).

Date and Time: October 20, 1994; 8:30 a.m.-5 p.m. (Open). October 21, 1994; 8:30 a.m.-12 Noon (Open).

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Wanda E. Ward, Executive Secretary, CEOSE, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230. Telephone: (703) 306-1604.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Purpose of Meeting: To discuss national policy issues, including human resource development and the human capital initiative; to review issues about and assessments of participation rates of all segments of society in science and engineering; and planning of the Report to Congress.

Summary Agenda:

October 20: 8:30 a.m. to 12 Noon—

Discussion of national policy issues, including human resource development and the human capital initiative;

1:30 p.m. to 5 p.m.—Discussion of issues about and assessments of the participation rates of all segments of society in science and engineering, and planning of the Report to Congress;

5 p.m.—Recess and Reception

October 21: 8:30 a.m. to 12 Noon—

Discussion of equity considerations in effective intervention programs to increase the participation of women, minorities and persons with disabilities in science and engineering; future directions.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24105 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

Federal Networking Council Advisory Committee

In accordance with the Federal Advisory Committee Act (Public Law 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Federal Networking Council Advisory Committee (#1177).

Date and Time: October 18, 1994; 9:00 a.m. to 5:30 p.m. and October 19, 1994; 9:00 a.m. to 1:00 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Ms. Lynn Behnke, Assistant Coordinator, Federal Networking Council DynCorp, 4001 N. Fairfax Drive, Suite 200, Arlington, VA 22203-1614, Telephone: (703) 522-6410, Fax: (703) 522-7161. Internet: behnke@arpa.mil.

Purpose of Meeting: The purpose of this meeting is for the Advisory Committee to provide the Federal Networking Council (FNC) with technical, tactical, and strategic advice, concerning policies and issues raised in the implementation and deployment of the National Research and Education Network (NREN) Program.

Agenda: Migration to the New Architecture, Federal Internet Umbrella Security Plan, Next Generation IP, International Networking, Education and Library Issues.

Luncheon: There will be a charge to attendees wishing to purchase a box lunch either one or both days. To obtain a registration form, contact Ms. Behnke by

telephone, fax, or electronic mail at the numbers above. Forms must be received by October 12, 1994.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24107 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 21, 1994; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Howard Moraff, Acting Deputy Division Director, Robotics and Intelligence Systems, Rm. 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306-1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information Technology and Organizations proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24114 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel in Long Term Projects in Environmental Biology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Long-Term Projects in Environmental Biology.

Date and Time: October 17 & 18, 1994.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. James R. Estes, Division of Environmental Biology, Room 635, National Science Foundation, 4201

Wilson Boulevard, Arlington, VA 22230.

Telephone: (703) 306-1483.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Collections in Systematics and Ecology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24111 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158)

Date and Time: October 20-21, 1994; 9:00 a.m. to 5:00 p.m.

Place: Room 365, 4201 Wilson Boulevard, Arlington, VA

Type of Meeting: Part-Open

Contact Person: Dr. Karen Sigvardt, Program Director, Neuroendocrinology, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306-1424

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: October 21; 11:00 a.m. to 12:00 p.m., to discuss goals and assessment procedures. Closed Session: October 20; 9:00 a.m. to 5:00 p.m., and October 21, 9:00 a.m. to 11:00 a.m. and 12:00 p.m. to 5:00 p.m. To review and evaluate Neuroendocrinology proposals as part of the select process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24106 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on November 7-8, 1994. The location of the meeting will be Room T-2B3, Two White Flint North (TWFN) Building, 11545 Rockville Pike, Rockville, MD.

The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA) and will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The main purpose of this meeting is to review plans for confirmatory research in support of certification review of the CANDU 3 nuclear power plant design. Participants in the discussions will include representatives of the applicant (AECL Technologies Inc.) as well as NRC staff.

The planned schedule is as follows:

Monday, November 7

- 8:30-8:45 Opening remarks by the NSRRC Chairman and by the Director of RES
- 8:45-2:45 Applicant's presentation of CANDU 3 design and supporting research. (Applicant) (Break 10:30-10:45; lunch break 12-1:15)
- 3-3:30 Presentation of technical issues identified by the NRC Office of Nuclear Reactor Regulation (NRC staff)
- 3:30-4:15 NRC's confirmatory research plan overview (NRC staff)
- 4:15-5:30 Issue-by-issue presentation and discussion of NRC research plans. (The issues tentatively scheduled for discussion during this period are thermal hydraulics, reactor physics, and fuel behavior.) (NRC staff)

Tuesday, November 8

8:30-10:45 Issue-by-issue presentation and discussion of NRC research plans, continued. (The issues tentatively scheduled for discussion during this period are severe accidents, source terms, materials and structures, instrumentation and control, and probabilistic risk assessment.) (NRC staff)

11-11:30 Recapitulation (Director, RES)

11:30-5 Committee discussion (including further questions for staff and applicant and deliberations toward formulation of advice). (NSRRC) (Lunch break 12:15-1:30; break 3-3:15)

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the Committee chairperson in accordance with procedures established by the Committee. A verbatim transcription will be made of the NSRRC meeting and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Any inquiries regarding this notice, any subsequent changes in the status and schedule of the meeting, the filing of written statements, requests to speak at the meeting, or for the transcript, may be made to the Designated Federal Officer, Mr. George Sege (telephone: 301/415-6593), between 8:15 a.m. and 5 p.m.

Dated at Rockville, Maryland, this 23d day of September 1994.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 94-24076 Filed 9-28-94; 8:45 am]

BILLING CODE 7590-01-M

Petitions Filed Under 10 CFR 2.206; Improved Reviewing Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Petitions Under 10 CFR 2.206; Implementation of Improved Reviewing Procedures.

SUMMARY: The Nuclear Regulatory Commission has improved the primary mechanism available to the public for raising potential safety issues involving NRC-licensed facilities under the provisions of 10 CFR 2.206.

The § 2.206 petition process, contained in Part 2 of NRC's regulations, provides members of the public with the means to request evaluation and resolution of potential health and safety issues associated with facilities that have been licensed by the NRC. Consistent with current efforts to

enhance public participation in the decisionmaking process, the Commission undertook a review of the § 2.206 process to make it more effective, understandable, and as credible as possible.

As a result, the NRC has adopted procedures to increase meaningful participation of the petitioner in the § 2.206 process and to improve communications between the NRC and the petitioners. In addition to being kept informed of the status of the petition and being provided with a copy of the licensee's response to the petition, petitioners will be given an opportunity to participate in NRC-licensee meetings on the petition.

There will also be a provision for offering an informal public hearing at an open meeting on petitions with present new information on, or a new approach to evaluating, a significant safety issue. This provision and the associated criteria will be applicable also to petitions that allege violations of NRC requirements. The informal public hearings will be transcribed. If warranted, the NRC will take action to resolve a public health or safety problem before resolution of the § 2.206 petition.

A formal Director's Decision, signed by the director of the appropriate program office, will continue to set forth results of staff reviews governing § 2.206 petitions. However, for qualifying petitions, the director now will have the additional benefit of information elicited from the informal public hearing.

A new Management Directive and Handbook 8.11 have been prepared to ensure agency-wide implementation of the improved § 2.206 petition process.

A pamphlet describing the new practice and procedures has been prepared for public information. Copies of the pamphlet may be obtained from the Government Printing Office, telephone (202) 512-2249.

To further enhance meaningful participation by the petitioners and the public in the § 2.206 petition process, an electronic bulletin board system (BBS) has been established to provide information on the status of all pending petitions. The status of each pending petition will be updated monthly. The BBS can be accessed directly by a toll free number, (800) 303-9672, at modem speeds up to 9600 Baud with communication parameters set at 8 data bits, no parity, 1 stop bit, full duplex, and ANSI terminal emulation. Select the "Subsystem/Databases" option from the "NRC Main Menu" and then the "Public Petitions" option. The BBS can also be accessed from the FedWorld by using

Internet and Telnet access: fedworld.gov (192.239.92.3); FTP site access: ftp.fedworld.gov (192.239.92.205); and World Wide Web (Home Page): www.fedworld.gov (this is the URL). If assistance is needed, contact the Public Petitions BBS Operator, Tom Dunning, by calling (301) 504-1189, between 8:00 a.m. and 4:30 p.m. eastern standard time.

FOR FURTHER INFORMATION CONTACT:

Mohan Thadani, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-1430.

Dated at Rockville, Maryland, this 23rd day of September 1994.

For the Nuclear Regulatory Commission.

James I. Milhoan,

Acting Executive Director for Operations.

[FR Doc. 94-24073 Filed 9-28-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-11119, License No. 48-04193-03 EA 94-074]

John L. Doyne Hospital, Milwaukee, WI; Order Imposing Civil Monetary Penalty

I

John L. Doyne Hospital, previously, Milwaukee County Medical Complex (Licensee), is the holder of Byproduct Material License No. 48-04193-03 issued by the Nuclear Regulatory Commission (NRC or Commission) on May 5, 1975. The license was amended in its entirety on January 8, 1993, was due to expire on November 30, 1993, and is currently in timely renewal status pursuant to 10 CFR 2.109. The license authorizes the Licensee to possess Cobalt-60 sealed teletherapy sources for treatment of humans, human research, irradiation of biological materials including animals and non-biological materials (excluding flammable and explosive materials), and for Licensee instrument calibrations.

II

An inspection of the Licensee's activities was conducted on March 21 through April 14, 1994. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 23, 1994. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in two letters, both dated July 20, 1994. In its

response, the Licensee requested 100 percent mitigation of the civil penalty based on its view of the proper application of the civil penalty adjustment factors in the areas of identification, corrective action, and licensee performance.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in Appendix A to this order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of \$3,750 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether on the basis of Violations I.A. and I.B., admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 20th day of September 1994.

For the Nuclear Regulatory Commission.

James Lieberman,
Director, Office of Enforcement.

Appendix A

Evaluation and Conclusion Regarding Violations Assessed a Civil Penalty

On June 23, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for two violations identified during an NRC inspection on March 21 through April 14, 1994. John L. Doyno Hospital responded to the Notice in two letters, both dated July 20, 1994. In its response, the Licensee requests 100 percent mitigation of the civil penalty based on its disagreement with the NRC Staff's application of the civil penalty adjustment factors in the areas of identification, corrective action, and licensee performance. The NRC's evaluation and conclusions regarding the Licensee's request are as follows:

Restatement of the Violations

Violation I.A.

10 CFR 20.101(a) limits the whole body radiation dose of an individual in a restricted area to 1.25 rems per calendar quarter, except as provided by 10 CFR 20.101(b). Paragraph (b) allows a whole body radiation dose of 3.0 rems per calendar quarter provided specified conditions are met.

Contrary to the above, an individual working in a restricted area received a whole body radiation dose of 1.33 rem during the first calendar quarter of 1993 and the conditions of paragraph (b) were not met.

Violation I.B.

10 CFR 20.201(b) requires that each licensee make such surveys as (1) may be necessary for the licensee to comply with the regulations in Part 20, and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a) "survey" means an evaluation of the hazards associated with the presence of radioactive materials under a specific set of conditions.

Contrary to the above, on February 3, 1993, the licensee did not make a survey (evaluation) of a radiation hazard to assure compliance with 10 CFR 20.101(a) in that two individuals entered a teletherapy room, while the cobalt-60 source was in an exposed position and did not evaluate the radiation hazard by surveying the radiation field or by observing the warning light on the control panel.

Summary of Licensee's Request for Mitigation

1. Identification

The Licensee contends that the incident surrounding the alleged violations was self identified and self evident. The Licensee also notes that the NRC described the incident as a self-disclosing event in the cover letter of the Notice of Violation.

2. Corrective Action

The Licensee quotes the NRC's statement from the June 23, 1994 letter that, "The staff

recognizes that immediate corrective action was taken." According to the Licensee, the corrective action included an improved console light, an additional light at the entry door at eye level, an indicator light in the entry way, a radiation monitor with two visual and one audio alarms, and a policy and procedure that requires a person to be stationed near the door to prevent inadvertent entry to the room when the door interlock has been defeated and the source is in the exposed position. The Licensee notes that the incident was discussed at the February and May 1993 Radiation Safety Committee meetings demonstrating the involvement of the management of the Licensee. The Licensee disagrees with the NRC statement in the June 23, 1994 letter that the Licensee was not aggressive in publicizing the event to other staff members to help prevent similar events from recurring. The Licensee states that within hours of the incident, individuals directly involved with both cobalt-60 teletherapy units and most of the persons who work in the department knew of the incident. According to the Licensee, the incident was a unique situation that happened during initial acceptance testing and final stages of installation of the teletherapy unit with the room entrance door interlock defeated. The Licensee further claims that this is a very unique set of circumstances and given this situation it is not likely that a similar event could occur.

The Licensee also notes that its internal information notice, the "Surveyor" is used to disseminate information to authorized users and handlers of unsealed sources of radioactive materials in research applications on an individual basis. According to the Licensee, the "Surveyor" was not intended, nor ever expressed in the enforcement conference, to be exclusively devoted to this event, and the scope of the "Surveyor" was to be the results of the NRC inspection as it related to unsealed radioactive materials use in research applications. The Licensee states that the "Surveyor" was not published at the time of the enforcement conference because the Licensee did not receive the apparent violations letter until May 17, 1994, only four working days prior to the enforcement conference.

3. Licensee Performance

The Licensee believes that the violations assessed a civil penalty represent an isolated failure and suggests that mitigation of the civil penalty is appropriate to recognize and encourage good or improving Licensee performance.

NRC Evaluation of Licensee's Request for Mitigation

1. Identification

The NRC Enforcement Policy, Section VI.B.2(a), states that the base civil penalty may be escalated up to 50 percent if the NRC identifies a violation. Although the Licensee was aware of the self-disclosing event in February 1993, it did not conclude that a violation had occurred. The NRC identified the violations during the inspection conducted in March 1994. Specifically, the NRC identified to the Licensee that it violated 10 CFR 20.101 when an individual

received a whole body dose of 1.33 rem in the first calendar quarter of 1993, an amount in excess of the 1.25 rem quarterly dose limit. The quarterly dose limit was 1.25 rem instead of 3 rem because the Licensee did not have a Form NRC-4 on file for the individual prior to the event. After the NRC identified the violation, the Licensee reported it to NRC in a written report dated April 15, 1994. That report should have been submitted to NRC in March of 1993 as required by 10 CFR 20.405. The NRC also identified, during the inspection in March 1994, that the Licensee had violated 10 CFR 20.201(b) when the two individuals entered a teletherapy room in February 1993, while the cobalt-60 source was in an exposed position, and did not evaluate the radiation hazard by surveying the radiation field or by observing the warning light on the control panel.

Based on the above, the NRC concludes that 50 percent escalation of the base civil penalty is warranted for NRC identification.

2. Corrective Action

The Enforcement Policy, Section VI.B.2(b), states that the purpose of the corrective action factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulation(s), or other requirements, and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation to prevent occurrence of similar violations. The Licensee's corrective actions to be considered under this factor generally begin after the Licensee clearly understands the scope of the violation.

NRC acknowledges the corrective actions described by the Licensee in its letters, both dated July 20, 1994. However, according to the Enforcement Policy, some corrective actions are always expected; therefore, corrective action that is considered average but acceptable will normally result in no adjustment to the base civil penalty. Additionally, the corrective actions described by the Licensee were narrowly focused on preventing an entry into the teletherapy room when the source is exposed and do not comprehensively address the larger issues of preventing personnel exposures that occur as a result of the failure to make surveys during actual or suspected off-normal conditions.

The NRC acknowledges the Licensee's clarification that the "Surveyor" is an information notice for matters concerning unsealed radioactive materials use in research applications and is not applicable to the teletherapy units. Nevertheless, the NRC is concerned with the Licensee's lack of certain corrective actions following the identification of the violations in March 1994. First, relative to Violation I.A, the Licensee had not, as late as its July 20, 1994 response, recognized that the Form NRC-4 was required by regulation to be completed and on file prior to allowing an individual to exceed the 1.25 rem quarterly dose limit. Second, relative to Violation I.B, the Licensee's July 20, 1994 response fails to propose any corrective actions for preventing

inadequate surveys in the future. The NRC's June 23, 1994 letter highlighted significant NRC concerns about the event in that it involved two of the Licensee's experienced personnel, the physicist and the Radiation Safety Officer. Both individuals entered the teletherapy room with the source exposed. The physicist had no radiation detection survey instruments, and the Radiation Safety Officer had a survey meter with the audible alarm turned off; he also did not immediately look at the meter itself and only recognized that the sources was exposed after they were inside the room. This concern was not addressed by the Licensee in its corrective actions.

Based on the above, the NRC concludes that no mitigation is warranted for the corrective action factor.

3. Licensee Performance

The NRC Enforcement Policy, Section VI.B.2(c), states that the licensee performance factor should not be applied for those cases where the licensee has not been in existence long enough to establish a prior performance or inspection history. Similarly, mitigation based on this factor is not normally appropriate where the area of concern has not been previously inspected, unless overall performance is good. The NRC had not inspected the teletherapy license since 1986 because of its inactive status for medical use, and therefore, the NRC had no recent history upon which to judge the Licensee's performance. Moreover, there has been a decline in overall performance, as evidenced by the 14 violations in Section II of the Notice of Violation that were not assessed a civil penalty.

Based on the above, the NRC concludes that no mitigation is warranted for the licensee performance factor.

NRC Conclusion

Based on its evaluation of the Licensee's response, the NRC staff concludes that an adequate basis for mitigation of the civil penalty has not been provided by the Licensee. Accordingly, NRC concludes that a civil monetary penalty of \$3,750 should be imposed by order.

Appendix B

Evaluation and Conclusion Regarding Violations Not Assessed a Civil Penalty

Of the violations not assessed a civil penalty, the Licensee admitted Violations II.A, II.B, and II.D through II.M, and denied Violations II.C and II.N.

Restatement of Violation II.C

Condition 16B of License 48-04193-03 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in a letter dated December 11, 1992.

The section entitled "Safety Device Checks" of that letter states, in part, that the electrical stops will be tested for proper operation before each patient or monthly, whichever is greater.

Contrary to the above, the electrical stops were not tested for proper operation monthly or before a patient was treated in November 1993.

Summary of the Licensee's Response to Violation II.C

The Licensee indicates that the electrical stops were tested after completing the installation of the unit in April 1993. Documentation of this testing was submitted to the NRC in a letter dated May 5, 1993. The Licensee, therefore, concludes that Condition 16B of License No. 48-04193 was met because the electrical stops were tested prior to the patient being treated in November 1993.

NRC Evaluation of the Licensee's Response to Violation II.C

Licensee Condition 16 specifically states that the NRC regulations shall govern unless the statements, representations, and procedures in the licensee's application and correspondence are more restrictive than the regulations. 10 CFR 35.634(d)(3) requires that a licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month that assure proper operation of the electrical stops. The Licensee's commitment as referenced in License Condition 16B cannot be less restrictive than the regulation unless an exemption is obtained. The test of the electrical stops following installation of the unit in April 1993 does not meet the minimum regulatory requirement to test once per month. Therefore, the NRC concludes that Violation II.C did occur as stated.

Restatement of Violation II.N

10 CFR 35.32(a)(1) requires, in part, that the licensee establish and maintain a written quality management program which must include written policies and procedures to meet the objectives that, prior to the administration, a written directive is prepared for any brachytherapy radiation dose.

Item 3 of the licensee's quality management program states, in part, that a written directive will be used for every brachytherapy patient and will include specific information, including the isotope, total number of sources, and the total time or dose to be delivered.

10 CFR 35.2 defines a written directive as an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation and containing certain other specific information. As described in Item (6) of the QMP all other brachytherapy shall include the following specific information:

(i) Prior to implantation: the radioisotope, number of sources, and source strength and;

(ii) After implantation, but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or equivalently, the total dose).

Contrary to the above, the written directive for a brachytherapy patient did not contain all the required information. For example, the written directive for the iridium-192 implant on January 19, 1993 specified the number of ribbons rather than the number of seeds.

Summary of the Licensee's Response to Violation II.N

The Licensee references 10 CFR 35.400 which states, in part, that "a licensee shall use the following sources * * * iridium-192 as seeds encased in nylon ribbon," and concludes that a ribbon is a source. The licensee asserts that sources of iridium-192 as seeds encased in nylon ribbon cannot be directly compared to sources such as cesium-137 because cesium-137 sources as needles or applicator cells are readily identifiable and only a few are used at one time for patient treatment, in comparison to the potential use of hundreds of seeds per treatment utilizing iridium-192 seeds encased in nylon ribbon. According to the Licensee, counting the number of cesium-137 sources takes only a relatively short time since few are used and they are large enough to be seen from a distance; whereas counting the number of seeds encased in a nylon ribbon would take significantly longer due to the small size and the handling necessary to be able to accurately determine several hundred seeds contained in 10, 20 or more ribbons. According to the Licensee, this would add to hand exposure, and some whole body exposure, with no benefit to the source preparer or the patient, and would be contrary to ALARA principles.

NRC Evaluation of the Licensee's Response to Violation II.N

10 CFR 35.2, "Definitions," states that brachytherapy source means an individual sealed source or a manufacturer-assembled source train that is not designed to be disassembled by the user. A nylon ribbon containing iridium-192 seeds is not a brachytherapy source because it can be cut by the user to contain any given number of iridium seeds. An iridium-192 seed is an individual sealed source because it is not designed to be disassembled by the user. Therefore, the NRC concludes that Violation II.N occurred as stated.

Appendix B

NRC acknowledges that the requirement involves some exposure, which should be minimized through training and the use of proper equipment. The requirement benefits the patient because it helps to assure that the radiation dose delivered is the dose intended by the prescribing physician.

NRC Conclusion

The Licensee has not provided an adequate basis for withdrawal of Violations II.C and II.N. Therefore, the NRC concludes that Violations II.C and II.N occurred as stated in the Notice.

[FR Doc. 94-24075 Filed 9-28-94; 8:45 am]
BILLING CODE 7590-01-M

[Docket No.: 40-8027]

Applications, Hearings, Determinations, etc.; Sequoyah Fuels Corp.

AGENCY: Nuclear Regulatory Commission.

ACTION: Sequoyah Fuels Corporation, Gore, Oklahoma Consideration of Amendment to Source Material License and Opportunity for a Hearing.

This is a notice to inform the public that the U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Source Material License No. SUB-1010, issued to Sequoyah Fuels Corporation (SFC), at the Sequoyah Facility, Gore, Oklahoma. The licensee requested the amendment in a letter dated July 19, 1994 for changes to implement the new 10 CFR Part 20 and other administrative changes at SFC. These changes include changes in nomenclature to conform with the SI standards, and deletion of reference to production-related activities that ceased with the 1993 shutdown.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2" (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this Federal Register notice.

The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requester in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Sequoyah Fuels Corporation, to the attention of Mr. John H. Ellis, President, P.O. Box 610, Gore, OK 74435; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the NRC's "Informal Hearing Procedures for Adjudications in Material Licensing Proceedings" in 10 CFR Part 2, subpart L.

For further details with respect to this action, see the application for amendment dated May 6, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555 and at the local public document room located at Stanley Tubbs Memorial Library, 101 E. Cherokee, Sallisaw, Oklahoma 74955.

Dated at Rockville, Maryland, this 21st day of September, 1994.

For the Nuclear Regulatory Commission,
John H. Austin,
Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94-24074 Filed 9-28-94; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF SPECIAL COUNSEL

Agency Forms Submitted for Office of Management and Budget (OMB) Review Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, as amended (44 U.S.C. Chapter 35), the U.S. Office of Special Counsel (OSC) has submitted a proposal for the collection of information to OMB for review and approval.

(1) *Collection title:* OSC Customer Surveys.

(2) *Forms submitted:* OSC Forms 48-48c.

(3) *OMB Number:* New Information Collection.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* New collection.

(6) *Frequency of response:* Once per matter completed by OSC (maximum).

(7) *Respondents:* Federal employees will be the primary respondents. State or local government employees, businesses or other for-profit entities, non-profit institutions, and small businesses or organizations may be respondents on an occasional, infrequent basis.

(8) *Estimated annual number of respondents:* 2,320 (maximum).

(9) *Total annual responses:* 2,230 (maximum).

(10) *Average time per response:* .2708 hours.

(11) *Total annual reporting hours:* 628.256.

(12) *Collection description:* Four written surveys seeking qualitative information in completed cases from individuals who have (a) alleged prohibited personnel practices; (b) alleged prohibited personnel practices or Hatch Act violations resolved after full field investigation by OSC; (c) received written Hatch Act advisory opinions, or alleged Hatch Act violations resolved without field investigation; and (4) disclosed possible wrongdoing by federal agencies to OSC.

ADDRESSES: Comments regarding the information collection should be addressed to Erin M. McDonnell, Associate Special Counsel for Planning and Advice, U.S. Office of Special Counsel, 1730 M Street, NW., Suite 300, Washington, DC 20036-4505; and the OMB reviewer, Joseph F. Lackey, Office of Management and Budget, New Executive Office Building, Room 10235, 1725-17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Erin M. McDonnell, Associate Special Counsel for Planning and Advice, U.S. Office of Special Counsel, 1730 M Street, NW., Suite 300, Washington, DC 20036-4505, (202) 653-8971 [phone], (202) 653-5151 [fax].

SUPPLEMENTARY INFORMATION: Copies of the forms and supporting documents can be obtained from Erin M. McDonnell, Associate Special Counsel for Planning and Advice, at the address shown above.

Dated: September 22, 1994.

James A. Kahl,
Deputy Special Counsel.

U.S. Office of Special Counsel; Generic Clearance Request for Approval of Customer Survey Activities

Date: September 22, 1994.

Contact: Erin M. McDonnell, (202) 653-8971.

I. Introduction

The U.S. Office of Special Counsel (OSC) requests that the Office of Management and Budget (OMB) issue a generic clearance of customer surveys that OSC intends to send to individuals who seek the agency's assistance. In developing these customer surveys, OSC was guided by OMB's "Resource Manual for Customer Surveys" (October 1993 edition).

While OSC is not subject to the requirements of Executive Order 12862,¹ OSC is placing increased emphasis on customer service activities consistent with the principles and objectives of the executive order. In the spirit of the order, OSC provided an update on current and planned customer services activities to the National Performance Review on September 8, 1994.

A. Overview of OSC's Activities

The U.S. Office of Special Counsel is an independent agency responsible for:

- The investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. 2302(b) (including reprisal for whistleblowing), and other activities prohibited by civil service law, rule or regulation, and the initiation of corrective and disciplinary actions when such remedial actions are warranted;
- The interpretation and enforcement of Hatch Act provisions on political activity in Chapters 15 and 73 of Title 5 of the U.S. Code; and
- The provision of a secure channel through which federal employees may make disclosures of information evidencing violations of law, rule or regulation, gross waste of funds, gross mismanagement, abuse of authority, or a substantial and specific danger to public health or safety, without disclosure of the employee's identity (except with the employee's consent).

Allegations of prohibited personnel practices and other activities prohibited by civil service law, rule or regulation, and allegations of Hatch Act violations are initially reviewed by OSC's Complaints Examining Unit (CEU). After a thorough initial investigation, CEU refers matters stating a potentially valid statutory claim to the Investigation Division for full field investigation. Finally, the Prosecution Division reviews completed field investigations to determine whether the inquiry has established any violation of law, rule or

¹ Pursuant to discussions with Mr. Greg Wood at the National Performance Review, we understand that OSC is not subject to the executive order because, with limited exceptions, OSC's direct customers are employees of the federal government.

regulation, and whether the matter warrants corrective or disciplinary action, or both. If such action is appropriate, matters may be resolved through negotiation with the parties involved or, if those efforts are unsuccessful, through litigation before the U.S. Merit Systems Protection Board. In Fiscal Year (FY) 1993, OSC received 2,256 new matters containing allegations of prohibited personnel practices, Hatch Act violations or other allegations of wrongdoing, and we completed actions in 1,951 such matters.

In addition to the Hatch Act activities described above, OSC also interprets and provides advice about that Act. During FY 1993, OSC's Hatch Act Unit issued 219 written advisory opinions, provided 1,109 oral advisory opinions in response to telephone inquiries, and responded to an additional 718 telephone inquiries requesting general information.

Finally, OSC's Disclosure Unit (the agency's secure channel for whistleblower disclosures) receives and evaluates disclosures from federal employees about violations of law, rules or regulations, or other wrongdoing involving federal agencies. In some instances, OSC is required to refer these allegations to the head of the agency involved for an investigation and a report. In other cases, OSC may require the agency head to review the matter and inform OSC of what actions, in any, will be taken. In FY 1993, OSC's Disclosure Unit received and considered 209 disclosure matters, and resolved 78 such matters.

B. OSC's Proposed Customer Survey Efforts

OSC plans to use four different written surveys to elicit qualitative information from customers served by the agency. The surveys will be sent to—

- Individual's alleging prohibited personnel practices whose cases have been completed by OSC after review by the Complaints Examining Unit (Attachment A);
- Individuals alleging prohibited personnel practices or Health Act violations whose cases have been completed by OSC (regardless of the disposition) after a full field investigation and review by the Prosecution Division (Attachment B);
- Individuals who have received written advisory opinions about allowable and unallowable political activity under the Hatch Act, or whose Hatch Act complaints have been resolved without a full field investigation (Attachment C); and

• Individuals whose disclosures of possible wrongdoing by federal agencies have been acted on by the OSC Disclosure Unit (regardless of the disposition of the case) (Attachment D).

OSC plans to distribute the four survey forms on a trial basis to approximately 180 customers, selected from OSC computer lists of matters completed in FY 1994. These customers will represent a stratified cross-section of individuals in each of the four customer groups to which the surveys relate. Based upon feedback from these customers, OSC will make necessary revisions to the survey forms and will determine the scope and frequency of survey activity planned for the balance of the three-year authorization period sought by this request.

Attachment E details OSC's customer survey efforts (with projected burden hours if it adopts the most comprehensive strategy—i.e., surveys of customers in all completed OSC cases for calendar years 1995–97. Of course, OSC will notify OMB of the surveying strategy it adopts after the trial period. Similarly, to the extent that the survey forms need to be significantly revised or supplemented due to intervening developments, such as amendments to OSC's statutory authority, we will also notify OMB.²

OSC agrees to prepare and submit annual progress reports on its customer survey efforts as necessary at the end of calendar years 1995–1997. Any reports submitted will include the number of burden hours used, a summary of activities undertaken and the results achieved, and will address any revisions required in the clearance.

OSC plans to continue to draw upon the experience of other government agencies with customer survey plans, and to exchange information about best practices and successes with those plans and survey activities. Funds permitting, we also hope to make use of training opportunities offered by the Joint Program in Survey Methodology and other sources to assist us in refining our survey methodologies.

While OSC cannot promise particular results in advance in any given case, the Special Counsel has made it a priority of the agency to do as much as we legally can for individuals who seek the agency's assistance. This emphasis on customer service encompasses many things, including providing timely

responses, treating customers courteously and respectfully, and resolving reasonable doubts in favor of persons who come to OSC for help. Consistent with the priority the Special Counsel has placed on customer service, she has appointed a senior official, Associate Special Counsel for Planning and Advice Erin M. McDonnell, to oversee and direct the agency's customer surveying efforts. All of these endeavors reflect OSC's commitment to provide the highest quality of service to its customers.

II. Supporting Statement

A. Justification

1. *Circumstances of information collection.* OSC is requesting generic approval to conduct qualitative customer satisfaction surveys over the next three years, which are designed to determine federal employees' and other customers' satisfaction with OSC's current services. (See Attachment E.) These surveys are voluntary and they do not solicit information that is required by law or regulation.

2. *Purposes of collective/consequences of not collecting the information.* Approval of this information collection will enable OSC management and staff to obtain information necessary to:

- Explore customer perceptions, expectations and experience with OSC;
- Assess levels of customer satisfaction;
- Identify areas where improvements can be made;
- Link results with management planning and other agency operations;
- Establish customer service standards and actionable measures;
- Improve external relations with customers; and
- Build customer awareness at all levels of the organization.

As indicated in the introduction to this request, it is an agency priority to ensure the efficiency and effectiveness of the service provided by OSC to individuals seeking its assistance. Failure to pursue the collection of the information sought will deprive the agency of information necessary to perform the functions listed above. OSC will make all survey results to Congress and other requestors in accordance with applicable laws and regulations.

3. *Use of improved information technology to reduce burden, or technical or legal obstacles to reducing burden:* Improved information technology will be used whenever practicable to reduce the burden on the public. There are no technical or legal obstacles to reducing this burden.

4. *Efforts to identify duplication:* Duplication of effort or information collected will be avoided by surveying a customer only once for each matter he or she submits to OSC. OSC's customer survey program will also include training of staff involved in survey activities by the senior agency official responsible for coordinating the program. Such training will alert the staff to implementation issues, including duplication of effort or information collected.

5. *Reason(s) for inability to use or modify similar information already available for intended purposes:* OSC is not aware of any prior survey of all categories of its customers. Indeed, the most recent General Accounting Office review of OSC operations (dated November 1993) focused only on the agency's handling of whistleblower reprisal cases. Moreover, that GAO survey did not reflect new procedures implemented by the Special Counsel (the head of the agency) over the past two years.

6. *Methods used to minimize burden on small businesses or other entities:* Very few small businesses or other small entities will be affected by these efforts. To the extent that a small business may be a customer (e.g., by making a Hatch Act complaint), the burden will be kept to a minimum by asking for opinions on a voluntary basis, and by asking for only the information needed to obtain opinions on OSC's performance in areas of concern.

7. *Consequence to federal program or policy activities of less frequent collections:* Failure to conduct a trial distribution of surveys to the four customer categories identified by OSC would deprive the agency of an effective tool for refinement of the surveys as necessary to improve their utility and minimize the burden on respondents. In making its decision about the scope and frequency of survey activity after the trial distribution, OSC will take appropriate steps to assure that the collections of information are the least burdensome necessary to accomplish agency functions and achieve program objectives.

8. *Special circumstances that require collection to be conducted in a manner inconsistent with the guidelines in 5 C.F.R. 1320.6:* These collections will be conducted in accordance with the guidelines in 5 C.F.R. 1320.6.

9. *Efforts to consult with persons outside the agency:* OSC's survey plan was developed after review of the OMB Resource Manual for Customer Surveys. We have also consulted with several federal agencies—including the Departments of Justice and Commerce,

² For example, enactment of new authorizing legislation pending in Congress, under which OSC would be given jurisdiction to investigate complaints from employees of government corporations alleging reprisal for whistleblowing, would increase the numbers of individuals subject to OSC's proposed survey activity.

and the Office of Personnel Management—and will continue these efforts. Moreover, survey recipients will be invited to comment on the surveys during the test period.

10. *Assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation or agency policy:* Individuals and organizations contacted will be assured of the confidentiality of their replies under 5 U.S.C. 1212(g) and 1213(h)-(i), 5 U.S.C. 552 (Freedom of Information Act), and 5 U.S.C. 552a, (Privacy Act of 1974) A Privacy Act notice will appear on the surveys or the accompanying cover letters. Moreover, survey respondents are not required to provide their names or other identifying information on the survey form. If this information is not supplied, the respondent cannot be identified.

11. *Justification for questions of a sensitive nature:* No sensitive information will be collected.

12. *Estimates of annualized cost to the federal government and respondents, and description of method:* The costs to the federal government of OSC's customer survey efforts are expected to consist of mailing charges for surveys and any follow-up notices, pre-paid return envelopes, and the associated overhead costs of document preparation, mailing and analysis. The cost to respondents will consist of their time in reading and responding to the survey, the value of which is unknown.

13. *Estimates of burden of collection of information:* After the trial period, if OSC decides to survey all customers in all completed cases, the total burden on the public for completion of the four types of surveys under this generic clearance is estimated to be 1,849 hours. This is based upon an estimated review and completion time of 15 minutes each for three of the surveys (Attachments A, C and D) and 20 minutes for the fourth (Attachment B). Under this type of surveying, the annual burden (rounded to the next higher whole number) is estimated to be 620 hours in FY 1995; 599 hours in FY 1996; and 630 hours in FY 1997.

14. *Reasons for changes in burden:* Not applicable.

15. *Collections of information for statistical use.* Not applicable.

B. Collections of Information Employing Statistical Methods

As discussed above, OSC will distribute the four surveys (Attachments A-D) on a trial basis. Based on OSC's assessment of the results of this trial mailing, we will determine the scope and frequency of survey activity

planned for the balance of the three-year authorization period.

OSC may determine after the trial distribution to survey all OSC customers in cases closed between FY 1995-1997, or to survey selected samples of customers in one (and possibly more) categories, depending upon workload, cost, and other relevant factors. Should any of the four surveys use statistical methods to select respondents, OSC will supply the information specified in Items 1-5 of OMB's guidelines on preparation of supporting statements for requests for OMB approval of collections of information under the Paperwork Reduction act.

Attachments

Attachment A

OSC Form 48 (9/94)

OMB Control No. _____

Expiration _____

Office of Special Counsel Customer Survey

The Office of Special Counsel (OSC) recently completed action on your complaint alleging that your agency committed a prohibited personnel practice. We closed our file in this matter for the reasons expressed in the OSC closure letter. In order to better serve you and other federal employees, we hope that you will take a few minutes to answer this questionnaire and return it in the postage paid envelope.

For each question below, please *circle* the most appropriate response.

1. How did you hear about OSC?
 - a. Friend/co-worker
 - b. Employee relations/personnel office
 - c. Inspector General's office
 - d. Congressional office
 - e. Newspaper, television or radio
 - f. Other (please explain) _____
2. How long after you filed your complaint did you receive a letter acknowledging receipt of your complaint by OSC?
 - a. Less than one month
 - b. More than one month
 - c. I never received an acknowledgement letter from OSC
3. How long after you filed your complaint did a member of OSC's complaint examination staff contact you?
 - a. Less than one month
 - b. More than one month
 - c. I was never contacted by OSC complaint examination staff
4. Did OSC's complaint examination staff member explain to you the types of prohibited personnel practices that might apply to your

case, and OSC's authority to seek corrective action in your case?

- a. Yes
 - b. No
 - c. Don't recall
5. Please describe the amount of time it took OSC to complete its consideration of your complaint:
 - a. Three months or less
 - b. Six months
 - c. Nine months
 - d. More than nine months
 - e. Don't recall
 6. The time it took OSC to complete its consideration of your complaint was:
 - a. Longer than you expected
 - b. Shorter than you expected
 - c. About the length of time you expected
 7. Enclosed with this survey is a letter from OSC explaining why we closed your case. Do you believe this letter clearly explains why we were unable to take further action in your case?
 - a. Yes
 - b. No

If not, how could we make it clearer? (Please explain).

Please indicate your response to the statements in Questions 8-11 by *circling* the number from 1 to 5 that best describes your response.

- 1=Strongly Disagree
 - 2=Disagree
 - 3=No Opinion
 - 4=Agree
 - 5=Strongly Agree
8. The OSC complaint examination staff was courteous and professional.
 - 1
 - 2
 - 3
 - 4
 - 5
 9. The OSC complaint examination staff clearly explained the role of OSC and the OSC complaint process.
 - 1
 - 2
 - 3
 - 4
 - 5
 10. The OSC complaint examination staff kept me informed of the status of my case.
 - 1
 - 2
 - 3
 - 4
 - 5
 11. The OSC complaint examination staff was available to answer additional questions and accept further information from me while my complaint was pending.

1
2
3
4
5
12. If you were *satisfied* with the service you received from OSC, please tell us why.

13. If you were *dissatisfied* with the service you received from OSC, please tell us why.

14. We invite your comments or suggestions on specific ways in which we could improve our service.

15. *OPTIONAL*. You may provide your name and case number so that OSC can look into any concerns that you raised in this survey.

Your name: _____

OSC case number: _____

Thank you for contacting OSC and for taking the time to complete this questionnaire. If you have any questions or need additional information about our services, please call us at (800) 872-9855. Any of our representatives will be pleased to help you.

Enclosure

Survey Comments/Suggestions (Optional)

We would be pleased to receive any comments you may have about this survey, including any suggestions on changes needed to make specific questions clearer, or to otherwise improve the overall survey for future recipients. If your comment or suggestion pertains to a particular survey question or item, please specify the question/item number under the column provided. Thank you.

Question Item No.	Comment suggestion
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Attachment B

OSC Form 48a (9/94)

OMB Control No. _____

Expiration _____

Office of Special Counsel Customer Survey

The Office of Special Counsel (OSC) recently completed action on your complaint alleging a violation of the Hatch Act or that your agency committed a prohibited personnel

practice. In order to better serve you and other federal employees, we hope that you will take a few minutes to answer this questionnaire and return it in the enclosed paid envelope.

For each question below, please *circle* the most appropriate response.

1. How did you hear about OSC?
 - a. Friend/co-worker
 - b. Employee relations/personnel office
 - c. Inspector General's office
 - d. Congressional office
 - e. Newspaper, television or radio
 - f. Other (please explain) _____

2. Please indicate the subject matter of your case.
 - a. A prohibited personnel practice involving whistleblowing
 - b. A prohibited personnel practice not involving whistleblowing
 - c. A combination of whistleblowing and other prohibited personnel practices
 - d. Freedom of Information Act
 - e. Hatch Act

3. What was the final action taken by OSC in your case?
 - a. My case was investigated and closed
 - b. My case was investigated and settled
 - c. My case was investigated and brought before the U.S. Merit Systems Protection Board

4. How long after you were notified that your case had been referred for a full field investigation did OSC investigative staff contact you?
 - a. One month or less
 - b. More than a month
 - c. I was never contacted by OSC investigative staff
 - d. I was never notified that my case had been referred for investigation

5. Did an OSC investigative staff member explain the role of OSC and how the investigation would be conducted?
 - a. Yes
 - b. No
 - c. Don't recall

If the explanation was unclear, how could he/she have made the explanation clearer? (Please explain).

6. Did an OSC investigative staff member explain OSC's investigation process and what OSC's procedures would be after the investigation was completed?
 - a. Yes
 - b. No
 - c. Don't recall

If the explanation was unclear, how could he/she have made the

explanation clearer? (Please explain).

7. Did an OSC investigative staff member ask you what your expectations were for corrective action?
 - a. Yes
 - b. No
 - c. Don't recall

Please indicate your response to the statements in Questions 8-10 by *circling* the number from 1 to 5 that best describes your response.

- 1=Strongly Disagree
- 2=Disagree
- 3=No Opinion
- 4=Agree
- 5=Strongly Agree

8. The OSC investigative staff was courteous and professional.
 - 1
 - 2
 - 3
 - 4
 - 5

9. The OSC investigative staff kept me informed of the status of the investigation.
 - 1
 - 2
 - 3
 - 4
 - 5

10. The OSC investigative staff was available to answer additional questions and accept information from me while my case was being investigated.
 - 1
 - 2
 - 3
 - 4
 - 5

11. Were you ever contacted by an OSC legal staff member by letter or by telephone about your case?
 - a. Yes
 - b. No (Skip to Question 13)
 - c. Don't recall (Skip to Question 13)

12. When you were contacted by the OSC legal staff, were you given an explanation of the action OSC would take in your case, the reasons for OSC's decision to take that action, or the options available to you in pursuing a resolution of your case?
 - a. Yes
 - b. No
 - c. Don't recall
 - d. Not applicable

If the explanation was unclear, how could it have been made clearer? (Please explain).

13. Did you receive periodic notification from the OSC legal staff on the status of your case?
- a. Yes
 - b. No
 - c. Don't recall

If yes, did these notifications provide adequate information about the status of your case? (Please explain).

14. If you received a letter from OSC informing you of the closure of your case, do you believe that the letter (copy enclosed) clearly explains why OSC was unable to take further action in your case?
- a. Yes
 - b. No
 - c. I did not receive a closure letter from OSC.

If the explanation was unclear, how could we make it clearer?

Please indicate your response to the statements in Questions 15-18 by circling the number from 1 to 5 that best describes your response.

- 1=Strongly Disagree
- 2=Disagree
- 3=No Opinion
- 4=Agree
- 5=Strongly Agree

15. The OSC legal staff treated me in a courteous and professional manner.

- 1
- 2
- 3
- 4
- 5

16. The OSC legal staff clearly explained OSC's litigation process and procedures.

- 1
- 2
- 3
- 4
- 5

17. The OSC legal staff was available to answer additional questions and accept further information from me while he/she was handling my case.

- 1
- 2
- 3
- 4
- 5

18. If your case was brought before the U.S. Merit Systems Protection Board by OSC, please indicate your response to the following statements by circling the number from 1 to 5 that best describes your response. (Please skip any question that is inapplicable to your case.)

(a) The OSC legal staff adequately

prepared me for my deposition.

- 1
- 2
- 3
- 4
- 5

(b) The OSC legal staff adequately prepared me for my direct examination at the hearing.

- 1
- 2
- 3
- 4
- 5

(c) The OSC legal staff adequately prepared me for my cross-examination at the hearing.

- 1
- 2
- 3
- 4
- 5

If you were *satisfied* with the preparation you received from the OSC legal staff, please tell us why.

If you were *dissatisfied* with the preparation you received from the OSC legal staff, please tell us why.

19. If your case was settled before a hearing at the U.S. Merit Systems Protection Board, were you satisfied with the settlement OSC negotiated?

- a. Yes
- b. No
- c. My case was not settled

If you were *satisfied* with the settlement, please tell us why.

If you were *dissatisfied* with the settlement, please tell us why.

20. If you were *satisfied* overall with the service you received from OSC, please tell us why.

21. If you were *dissatisfied* overall with the service you received from OSC, please tell us why.

22. We invite any comments or suggestions on specific ways in which we could improve our service.

23. *OPTIONAL*: You may provide your name and case number so that OSC can look into any concerns that you raised in this survey.

Your name: _____
 OSC case number: _____

Thank you for contacting OSC and for taking the time to complete this questionnaire. If you have any questions or need additional information about our services, please call us at (800) 872-9855. Any of our representatives will be pleased to help you.

Enclosure

Survey Comments/Suggestions (Optional)

We would be pleased to receive any comments you may have about this survey, including any suggestions on changes needed to make specific questions clearer, or to otherwise improve the overall survey for future recipients. If your comment or suggestion pertains to a particular survey question or item, please specify the question/item number under the column provided. Thank you.

Question/Item No.	Comment/Suggestion

Attachment C

OSC Form 48b
 OMB Control No. _____
 Expiration _____

Office of Special Counsel Customer Survey

The Office of Special Counsel (OSC) recently completed its review of your Hatch Act complaint, or sent you a written Hatch Act advisory opinion. In order to better serve you and others, we hope that you will take a few minutes to answer this questionnaire and return it in the enclosed envelope.

For each question below, please *circle* the most appropriate response.

1. How did you hear about OSC?
 - a. Friend/co-worker
 - b. Employee relations/personnel office
 - c. Inspector General's office
 - d. Congressional office
 - e. Newspaper, television or radio
 - f. Other (please explain) _____
2. How long after you filed your written inquiry or complaint did you receive a letter acknowledging receipt of your inquiry or complaint by OSC?
 - a. Less than one month
 - b. More than one month
 - c. I never received an

- acknowledgement letter from OSC
3. How long after you sent your written inquiry or complaint did an OSC Hatch Act staff member contact you?
- Less than one month
 - More than one month
 - I was never contacted by OSC Hatch Act staff
4. Before you contacted OSC, did you have any knowledge of the Hatch Act?
- Yes
 - No
 - Don't recall
- If yes, where did you get your knowledge of the Hatch Act (circle all that apply)?
- Agency training
 - Hatch Act booklet
 - Newspapers, television or radio
 - Other (please explain) _____
5. Please describe the amount of time it took OSC to complete its consideration of your written inquiry or complaint:
- Three months or less
 - Six months
 - Nine months
 - More than nine months
 - Don't recall
6. The time it took OSC to complete its consideration of your written inquiry or complaint was:
- Longer than you expected
 - Shorter than you expected
 - About the length of time you expected.
7. Enclosed with this survey is a letter from OSC explaining how the Hatch Act applies to your particular inquiry or complaint. Do you believe this letter clearly explains the law and answers your questions?
- Yes
 - No

If not, how could we make it clearer? (Please explain). _____

Please indicate your response to the statements in Questions 8-11 by circling the number from 1 to 5 that best describes your response.

- Strongly Disagree
- Disagree
- No Opinion
- Agree
- Strongly Agree

8. The OSC Hatch Act staff was courteous and professional.

1
2
3
4
5

9. The OSC Hatch Act staff clearly explained the role of OSC and its

process for reviewing written inquiries or complaints.

1
2
3
4
5

10. The OSC Hatch Act staff responded promptly to questions about the status of my written inquiry or complaint.

1
2
3
4
5

11. The OSC Hatch Act staff was available to answer additional questions and accept information from me while my written inquiry or complaint was pending

1
2
3
4
5

12. If you were *satisfied* with the service you received from OSC, please tell us why.
- _____
- _____

13. If you were *dissatisfied* with the service you received from OSC, please tell us why.
- _____
- _____

14. We invite any comments or suggestions on specific ways in which we could improve our service.
- _____
- _____

15. *OPTIONAL*: You may provide your name and case number so that OSC can look into any concerns that you raised in this survey.

Your name: _____

OSC case number: _____

Thank you for contacting OSC and for taking the time to complete this questionnaire. If you have any questions or if you need additional information about our services, please call us at (800) 85-HATCH. Any of our representatives will be pleased to help you

Enclosure

Survey Comments/Suggestions (Optional)

We would be pleased to receive any comments you may have about this survey, including any suggestions on changes needed to make specific questions clearer, or to otherwise improve the overall survey for future recipients. If your comment or

suggestion pertains to a particular survey question or item, please specify the question/item number under the column provided. Thank you.

Question/Item No.	Comment/Suggestion
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Attachment D

OSC Form 48c

OMB Control No. _____

Expiration _____

Office of Special Counsel Customer Survey

The Office of Special Counsel (OSC) recently completed its review of your disclosure alleging a violation of law, rule, or regulation, or that your agency committed fraud, waste, or abuse. We closed our file in this matter for the reasons expressed in the enclosed letter. In order to better serve you and other federal employees, we hope that you will take a few minutes to answer this questionnaire and return it to us in the enclosed postage paid envelope.

For each question below, please *circle* the most appropriate response.

1. How did you hear about OSC?

- Friend/co-worker
- Employee relations/personnel office
- Inspector General's office
- Congressional office
- Newspaper, television or radio
- Other (Please explain) _____

2. How long after you made your disclosure did you receive a letter acknowledging receipt of the information you provided to OSC?

- Less than one month
- More than one month
- I never received an acknowledgement letter from OSC

3. How long after you made your disclosure did a member of the OSC disclosure review staff contact you?

- Less than one month
- More than one month
- I was never contacted by OSC disclosure review staff

4. Did an OSC disclosure review staff member inform you that OSC's authority to act on your disclosure was limited by law to facilitating between you and the agency, requiring the agency to investigate your concerns, and making any agency improprieties public?

- Yes
- No
- Don't recall

5. Enclosed with this survey is a letter from OSC explaining the disposition of your case. Do you

believe this letter clearly explains the actions that were taken in your case?

a. Yes

b. No

If not, how could we make it clearer? (Please explain).

Please indicate your response to statements in Questions 6-9 by circling the number from 1 to 5 that best describes your response.

1=Strongly Disagree

2=Disagree

3=No Opinion

4=Agree

5=Strongly Agree

6. The OSC disclosure review staff was courteous and professional.

1

2

3

4

5

7. The OSC disclosure review staff clearly explained the role of OSC and the OSC disclosure process.

1

2

3

4

5

8. The OSC disclosure review staff kept me informed of the status of my case.

1

2

3

4

5

9. The OSC disclosure review staff was available to answer additional questions and accept further information from me while my case was pending.

1

2

3

4

5

10. If you were *satisfied* with the service you received from OSC, please tell us why.

11. If you were *dissatisfied* with the service you received from OSC, please tell us why.

12. We invite any comments or suggestions on specific ways in which we could improve our service.

13. *OPTIONAL*: You may provide your name and case number so that OSC can look into any concerns that you raised in this survey.

Your name: _____

OSC case number: _____

Thank you for contacting OSC and for taking the time to complete this questionnaire. If you have any questions or if you need additional information about our services, please call us at (800) 572-2249. Any of our representatives will be pleased to help you.

Enclosure

Survey Comments/Suggestions (Optional)

We would be pleased to receive any comments you may have about this survey, including any suggestions on changes needed to make specific questions clearer, or to otherwise improve the overall survey for future recipients. If your comment or suggestion pertains to a particular survey question or item, please specify the question/item number under the column provided. Thank you.

Question/Item No.	Comment/Suggestion

Attachment E

Estimated Burden Hours for OSC Collections of Information: FY 1995-1997

A. Trial Distribution of Written Customer Satisfaction Surveys (Qualitative Data)

FY 1995:

- The survey at Attachment A will be sent on a trial basis to approximately 40 individuals¹ whose cases containing allegations of prohibited personnel practices were completed by the Complaints Examining Unit in FY 1994. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection will be 10 hours.

- The survey at Attachment B will be sent on a trial basis to approximately 50 individuals² whose cases containing

¹ Ten federal employees at each of the following four grade levels, randomly selected from OSC computer listings of matters completed in FY 1994: (1) technical/support/clerical (1-8); (2) professional/administrative/clerical (9-11); (3) mid-level (12-14); and (4) managerial (15-SES).

² Same as Fn. 3, with 10 additional individuals selected from matters involving provisions of the Hatch Act applicable to state and local governments.

allegations of prohibited personnel practices or Hatch Act violations were completed in FY 1994 after full field investigations and review by the Prosecution Division. The survey package will take an estimated 20 minutes to complete. The total annual burden for this collection will be 17 hours.

- The survey at Attachment C will be sent on a trial basis to approximately 50 individuals³ who received written Hatch Act advisory opinions, or whose Hatch Act complaints were resolved without a full field investigation, in FY 1994. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection will be 13 hours.

- The survey at Attachment D will be sent to approximately 40 individuals⁴ whose disclosures of possible wrongdoing by federal agencies were acted upon by the Disclosure Unit in FY 1994. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection will be 10 hours.

B. Written Customer Satisfaction Surveys (Qualitative Data)

Following analysis of the results of the trial distribution of surveys described above, OSC will decide on the scope and frequency of surveys to be sent to the four categories of customers listed above in cases completed by the agency during FY 1995-1997. The scope and frequency of OSC's customer service activity will be decided after consideration of workload, cost, and other relevant factors.

Note: The following projections represent maximum annual burdens for OSC customer survey efforts (rounded to the next higher whole number). They have been projected using the assumption that OSC surveys all customers in each of the four categories.

FY 1994:

- The survey at Attachment A will be sent to individuals whose cases containing allegations of prohibited personnel practices have been completed by the Complaints Examining Unit in FY 1995. Approximately 1,365 such matters are expected to be completed in FY 1995. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 342 hours.

- The survey at Attachment B will be sent to individuals whose cases containing allegations of prohibited personnel practices or Hatch Act violations have been completed in FY

³ See Fn. 4.

⁴ See Fn. 3.

1995 after full field investigations and review by the Prosecution Division. Approximately 252 such matters are expected to be completed in FY 1995. The survey package will take an estimated 20 minutes to complete. The total annual burden for this collection is expected to be 84 hours.

- The survey at Attachment C will be sent to individuals who have received written Hatch Act advisory opinions, or whose Hatch Act complaints have been resolved without a full field investigation, in FY 1995.

Approximately 417 such matters are expected to be completed in FY 1995. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 105 hours.

- The survey at Attachment D will be sent to individuals whose disclosures of possible wrongdoing by federal agencies have been acted upon by the Disclosure Unit in FY 1995. Approximately 154 such matters are expected to be completed in FY 1995. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 39 hours.

FY 1996:

- The survey at Attachment A will be sent to individuals whose cases containing allegations of prohibited personnel practices have been completed by the Complaints Examining Unit in FY 1996.

Approximately 1,435 such matters are expected to be completed in FY 1996. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 359 hours.

- The survey at Attachment B will be sent to individuals whose cases containing allegations of prohibited personnel practices or Hatch Act violations have been completed in FY 1996 after full field investigations and review by the Prosecution Division. Approximately 265 such matters are expected to be completed in FY 1996. The survey package will take an estimated 20 minutes to complete. The total annual burden for this collection is expected to be 89 hours.

- The survey at Attachment C will be sent to individuals who have received written Hatch Act advisory opinions, or whose Hatch Act complaints have been resolved without a full field investigation, in FY 1996.

Approximately 438 such matters are expected to be completed in FY 1996. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 110 hours.

- The survey at Attachment D will be sent to individuals whose disclosures of possible wrongdoing by federal agencies have been acted upon by the Disclosure Unit in FY 1996. Approximately 162 such matters are expected to be completed in FY 1996. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 41 hours.

FY 1997:

- The survey at Attachment A will be sent to individuals whose cases containing allegations of prohibited personnel practices have been completed by the Complaints Examining Unit in FY 1997.

Approximately 1,510 such matters are expected to be completed in FY 1997. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 378 hours.

- The survey at Attachment B will be sent to individuals whose cases containing allegations of prohibited personnel practices or Hatch Act violations have been completed in FY 1997 after full field investigations and review by the Prosecution Division. Approximately 280 such matters are expected to be completed in FY 1997. The survey package will take an estimated 20 minutes to complete. The total annual burden for this collection is expected to be 94 hours.

- The survey at Attachment C will be sent to individuals who have received written Hatch Act advisory opinions, or whose Hatch Act complaints have been resolved without a full field investigation, in FY 1997.

Approximately 460 such matters are expected to be completed in FY 1997. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 115 hours.

- The survey at Attachment D will be sent to individuals whose disclosures of possible wrongdoing by federal agencies have been acted upon by the Disclosure Unit in FY 1997. Approximately 171 such matters are expected to be completed in FY 1997. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 43 hours.

C. Yearly Total Burden Estimates For OSC Information Collections

FY 1995: 620 hours
 FY 1996: 599 hours
 FY 1997: 630 hours
 Total: 1,849 hours

[FR Doc. 94-24099 Filed 9-28-94; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Incorporated

September 23, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

- Grupo Embotellador de Mexico S.A. de C.V.
Dep. Shares, No Par Value (File No. 7-12888)
 - Grupo Industrial Durango S.A. de C.V.
(American Depositary Shares, No Par Value (File No. 7-12889)
 - Grupo Sidek S.A. de C.V.
American Depositary shares, No Par Value (File No. 7-12890)
 - Hyperion 2002 Term Trust, Inc.
Common Stock, \$.01 Par Value (File No. 7-12891)
 - Income Opportunities Fund 1999, Inc.
Common Stock, \$.01 Par Value (File No. 7-12892)
 - Pakistan Investment Fund, Inc.
Common Stock, \$.01 Par Value (File No. 7-12893)
 - Clark Automotive Products Corp.
Common Stock, \$.01 Par Value (File No. 7-12894)
 - Duke Realty Investment, Inc.
Income Shares, \$.01 Par Value (File No. 7-12895)
 - Exide Corp.
Common Stock, \$.01 Par Value (File No. 7-12896)
 - Factory Stores of America, Inc.
Common Stock, \$.01 Par Value (File No. 7-12897)
 - IRT Property Co.
Common Stock, \$1.00 Par Value (File No. 7-12898)
 - Premier Industrial Corp.
Common Stock, No Par Value (File No. 7-12899)
 - WCI Steel, Inc.
Common Stock, No Par Value (File No. 7-12900)
 - Western Gas Resources, Inc.
Common Stock, \$.10 Par Value (File No. 7-12901)
 - Arbor Property Trust
Shares of Beneficial Interest, No Par Value (File No. 7-12902)
 - Oneita Industries, Inc.
Common Stock, \$.25 Par Value (File No. 7-12903)
 - Robert Half International, Inc.
Common Stock, \$1.00 Par Value (File No. 7-12904)
- These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 7, 1994,¹ written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 94-24042 Filed 9-28-94; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Privileges in an Over-the-Counter Issue

September 22, 1994.

On September 19, 1994, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under Section 12(b) of the Act.

File No.	Symbol	Issuer
7-12921 ...	MEOHF	Methanex Corporation, Common Stock, no par value.

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to Section 12(f)(4) of the Act for the following issue:

¹ Because this notice never appeared in the Federal Register it is being republished to permit an opportunity for comment.

File No.	Symbol	Issuer
7-12922 ...	MCWA	McCaw Cellular Communication, Inc., Common Stock, \$.01 par value.

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before October 13, 1994, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress and has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-24044 Filed 9-28-94; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-34702; File No. SR-PSE-94-18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Expansion of the Exchange's Auto-Ex System Capacity to 20 Contracts

September 22, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 20, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend PSE Rule 6.87, "Automatic Execution System," to allow the Options Floor Trading Committee ("OFTC") to be authorized to increase, on an issue-by-issue basis, the size of the equity option orders that may be eligible to be executed through the Exchange's Automatic Execution System ("Auto-Ex") up to a maximum of 20 contracts.

The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to enhance the Exchange's ability to compete for options order flow. Accordingly, the Exchange is proposing to increase the maximum size of equity option orders eligible for Auto-Ex and to provide the OFTC with the authority to designate such changes on an issue-by-issue basis. Under the proposal, the OFTC would be authorized to increase the size of orders eligible for an execution on Auto-Ex to a size of up to 20 contracts without prior approval from the Commission.¹

¹ The Commission recently approved an Exchange proposal to allow the OFTC to increase the size of Auto-Ex-eligible orders in one or more classes of multiply traded equity options to the extent that other options exchanges permit such larger-size orders to be entered into their own automated execution systems. The rule provides that if the OFTC intends to increase the Auto-Ex size eligibility pursuant to the rule, the Exchange will notify the Commission pursuant to Section 19(b)(3)(A) under the Act. See Securities Exchange

The Commission approved the Pacific Options Exchange Trading System ("POETS") and its Auto-Ex feature as a pilot program in January 1990.² On July 30, 1993, the Commission approved the POETS pilot program on a permanent basis.³ The Auto-Ex system permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating market makers are designated as the contra side to each Auto-Ex order.⁴ Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Auto-Ex preserves public Limit Order Book ("Book") priority in all options. If Auto-Ex determines that the Book price is at or better than the market quote, the Auto-Ex order is executed against the Book. Automatic executions through Auto-Ex are currently available for public customer orders of 10 contracts or less in all series of options traded on the PSE's options floor.

The proposal would permit the OFTC to change the order size parameter for Auto-Ex to a maximum size of 20 contracts pursuant to an OFTC determination made on an issue-by-issue basis.⁵ The PSE believes that any implementation of the proposal by the OFTC will not impose any significant additional burdens on the operation and capacity of the POETS system in general or on the Auto-Ex system in particular. In that regard, the Exchange has submitted a separate capacity statement to the Commission setting forth the

Act Release No. 34131 (May 27, 1994), 59 FR 29316 (June 6, 1994).

² See Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (order approving File No. SR-PSE-89-26).

³ See Securities Exchange Act Release No. 32703 (July 30, 1993), 58 FR 42117 (August 6, 1993) ("POETS Approval Order"). Pursuant to the POETS Approval Order, the PSE was approved to designate equity option orders of 10 contracts or less as eligible for automatic execution through the Auto-Ex feature of POETS. With regard to index options, the Commission previously approved a request by the Exchange to permit customer orders of up to 20 contracts on the Wilshire Small Cap Index to be executed through Auto-Ex. See Securities Exchange Act Release No. 31397 (November 3, 1992), 57 FR 53368, 53372 (November 9, 1992).

⁴ The Commission recently approved an Exchange proposal setting forth certain standards for market makers participating on Auto-Ex. The standards include restrictions on the number of Auto-Ex trading posts at which market makers may participate and mandatory log-on requirements to assure that market makers do not withdraw from the system during volatile market conditions. See Securities Exchange Act Release No. 32908 (September 15, 1993), 58 FR 49076 (September 21, 1993), ("Market Maker Participation Order").

⁵ The Commission approved a similar provision in the POETS Approval Order, *supra* note 3.

basis for this contention.⁶ The Exchange also represents that the OFTC will determine that adequate market making capacity exists prior to increasing Auto-Ex order size eligibility. The OFTC will make such a determination notwithstanding the fact that floor officials may require market makers who are members of a trading crowd to which a particular option class is assigned to log onto Auto-Ex in the event that there is inadequate participation in that options class.

(b) Statutory Basis

The PSE believes that the proposal is consistent with Section 6(b) of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities and to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

⁶ See Letter from Michael D. Pierson, Senior Attorney, PSE, to Richard L. Zack, Branch Chief, Options Regulation, Commission, dated December 20, 1993 (File No. SR-PSE-93-26).

Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal offices of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 20, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

[FR Doc. 94-24040 Filed 9-28-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34701; File No. SR-PTC-94-03]

Self-Regulatory Organizations; Participants Trust Company; Order Approving Proposed Rule Change Eliminating Deliverer's Security Interest and Adding Participant's Intraday Collateral Lien

September 22, 1994.

On June 23, 1994, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-PTC-94-03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ The proposed rule change amends PTC's rules and procedures to eliminate the Deliverer's Security Interest ("DSI") and to add the Participant's Intraday Collateral Lien ("PICL"). The Commission published notice of the proposed rule change in the *Federal Register* on August 1, 1994.² The Commission received one comment letter which supported the proposal.³ For the reasons discussed below, the

¹ 17 CFR 200.30-3(a)(12) (1993).

² 15 U.S.C. § 78s(b)(1) (1988).

³ Securities Exchange Act Release No. 34439 (July 25, 1994), 59 FR 39004.

⁴ Letter from Allen B. Clark, Senior Vice President, Chemical Bank, to Jonathan G. Katz, Secretary, Commission (August 23, 1994). The comment letter is discussed in Section II of this order.

Commission is approving the proposed rule change.

I. Description

The proposed rule change amends PTC's rules and procedures by deleting provisions providing for DSI and adding a new Section 2A to Rule 3 of Article II of PTC's rules providing for PICL. Under PTC's processing system, each participant holds its securities on deposit at PTC in one or more master accounts. Each master account is comprised of one or more processing subaccounts. The processing subaccounts can include a proprietary account, a proprietary seg account, an agency account, an agency seg account, a pledgee account, and a limited purpose account. Each proprietary, agency, and pledgee processing subaccount has a PTC transfer account associated with it for the intraday receipt of securities delivered or pledged versus payment. Securities are held in the transfer accounts pending transfer to the intended receiving account at settlement. Securities in the transfer accounts are owned by PTC intraday pending settlement and may be liquidated or pledged by PTC if at settlement the intended recipient defaults on the payment of its end-of-day debit balance.

DSI was in essence a lien on securities which were transferred versus payment granted in favor of the delivering participant.⁴ The delivering participant which delivered or pledged securities versus payment from one of its processing accounts was granted a DSI in the securities.⁵ The DSI was extinguished upon settlement at which time the securities were transferred from the transfer account to the appropriate account of the receiving participant.

The DSI also was extinguished with respect to securities that subsequently were redelivered free or were withdrawn but was not extinguished in prefundings associated with free redeliveries or withdrawals. With respect to securities that were redelivered versus payment from a transfer account, the DSI continued in favor of the initial delivering participant. The redelivering participant was not granted a DSI and did not

acquire any rights in the securities other than the right to redirect their delivery subject to PTC's rules. The securities continued to be owned by PTC, subject to the delivering participant's DSI, so long as they remained in a transfer account.

Under the proposed rule change, DSI has been eliminated. In order to provide appropriate protection to participants with intraday credit balances with respect to their intraday credit exposure, such participants now will be granted a security interest in securities in transfer accounts (*i.e.*, "PICL"). PICL secures a participant's PICL credit balance which is the amount by which the participant's credit balances exceed its debit balances adjusted to eliminate the amount of any credits made with respect to principal and interest payments and certain funds transfers.

PICL is restricted in application to an "event of default" which is defined in PTC's rules as the concurrence of (1) PTC's failure to achieve the cash settlement of all transactions processed through PTC and (2) either (a) any government agency which regulates PTC determining that PTC is insolvent or (b) a court with competent jurisdiction entering an order or decree adjudging PTC to be insolvent, ordering the liquidation of PTC, or approving a petition filed by a party other than PTC for the reorganization of PTC. PTC's rules governing PICL do not permit PTC itself to trigger an insolvency proceeding.

The PICL terminates upon PTC's achieving settlement which occurs upon the payment by a participant of all of its debit balance. PICL also terminates with respect to securities that are pledged pursuant to the procedures set forth in PTC's rules by PTC to finance the settlement of a defaulting participant. In addition, PICL terminates with respect to securities that are transferred free, are withdrawn intraday, or are delivered to participants after an event of default. In such situations, PICL continues in prefunding amounts or in other amounts paid in connection therewith as proceeds.⁶

⁶ PICL is structured as a perfected security interest under Sections 8-313(1)(i) and 8-321 of the New York Uniform Commercial Code. For purposes of such perfected security interests, PTC's Rules and Participants Agreements are the required security agreements, PTC's records are the description of the collateral, and participants' transfers of securities versus payment to the receivers' transfer accounts or retransfers of securities out of transfer accounts against a PTC credit constitute the value given by the secured party. PICL will have comparable results under the revisions to UCC Articles Eight and Nine as promulgated by the National Conference of Commissioners on Uniform State Laws and the American Law Institute.

Upon an event of default by PTC, participants whose credit balances equal or exceed their debit balances ("credit Ps") will have an intraday security interest in all securities in PTC transfer accounts in the amount of their PICL credit balances as such balances exist from time to time during the day. Participants whose debit balances exceed their credit balances ("debit Ps") are credited with their security deliveries if they pay the amount of such excess. If they do not so pay, such securities will remain in the transfer accounts for the benefit of credit Ps. Credit Ps will receive: (1) their securities deliveries; and (2) their *pro rata* share of (a) cash proceeds from debit Ps which pay their debits and prefunding payments with respect to securities which were in a transfer account and were transferred free or withdrawn intraday and (b) proceeds from the sale of securities in the transfer accounts (*i.e.*, the proceeds of securities delivered to debit Ps which do not pay their net debit to PTC). P&I will be distributed to participants net of any debit balances owing to PTC.

II. Discussion

The Commission believes that PTC's proposed rule change is consistent with Section 17A of the Act⁷ and in particular with Sections 17A(b) (A) and (F) of the Act.⁸ Sections 17A(b) (3) (A) and (F) require, among other things, that a clearing agency and its rules be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that PTC's proposal to eliminate DSI and to add PICL is consistent with this obligation.

The Board of Governors of the Federal Reserve System ("Fed"), the Federal Reserve Bank of New York ("FRBNY"), and the Commission have expressed reservations about DSI since PTC's inception. In its letter dated March 27, 1989, approving PTC's application for membership in the Federal Reserve System, the Fed required as a condition of approval that PTC undertake to "(i) evaluate the impact of its DSI on its loss allocation and netting policies and (ii) propose modifications to the FRBNY to insure that the DSI does not impede the operation of these policies or of the policies of the Board of Governors of the Federal Reserve System concerning loss allocation and netting." In addition, in its order temporarily approving PTC as a clearing agency under Section 17A of the Act, the Commission stated, "Furthermore, PTC will make a number

⁷ 15 U.S.C. § 78q-1 (1988).

⁸ 15 U.S.C. §§ 78q-1(b) (3) (A) and (F) (1988).

⁴ DSI was a basic element of PTC's clearing and settlement mechanism as formulated by the Mortgage Backed Securities Clearing Corporation ("MBSCC"), which was the predecessor of PTC. PTC purchased the Depository Division of MBSCC from the Midwest Stock Exchange in March 1989. Refer to Securities Exchange Act Release No. 26671 (March 31, 1989), 54 FR 13266 (order granting PTC temporary registration as a clearing agency).

⁵ A participant which redelivered securities from transfer accounts associated with processing accounts was not granted a DSI.

of operational and procedural changes—[T]hose changes include—[e]liminating the deliverer's security interest and replacing it with a substitute—"⁹

PTC has been engaged in discussions with the staff of the FRBNY and the Commission on the DSI issue since March 1989, and various proposals for the modification or replacement of DSI have been made. PICL is the result of the continued discussions between PTC and its regulators, and the Commission believes that PICL addresses the past concerns of the FRBNY and the Commission.

As previously stated, under PICL, participants with credit balances will have a security interest in the securities in the PTC transfer accounts and upon an event of default by PTC will be able to receive their securities deliveries and certain proceeds from those deliveries. PICL will have no effect on PTC's settlement process. PICL will be extinguished upon a participant's settlement or upon application of the default provisions of PTC's rules in the event of a participant's default.¹⁰

PICL will allow PTC to protect the interest of participants receiving securities. In the event that PTC is unable to effect settlement, PICL will enable net credit participants to receive their securities deliveries and be secured for their net credit balances. This should allow PTC to minimize intraday credit risk which in turn facilitates PTC's safe operation.

One comment letter was received with regard to the proposed rule change from Chemical Bank.¹¹ In its letter supporting the proposed rule change, Chemical Bank stated that they consider PICL to be a suitable replacement for DSI and that PICL will provide appropriate protection to participants with intraday credit balances and to clearing banks providing intraday liquidity for the PTC system and its participants.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with Section 17A of the Act, and with the rules and regulations thereunder.

⁹ Securities Exchange Act Release No. 26671 (March 31, 1989), 54 FR 13266.

¹⁰ Article II, Rule 6 ("Failure of Participants to Meet Cash Settlement Obligations") and Procedure IV of PTC's Rules and Procedures ("Procedure for Financing Settlement Defaults").

¹¹ Letter from Allen B. Clark, Senior Vice President, Chemical Bank, to Jonathan G. Katz, Secretary, Commission (August 23, 1994).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (File No. SR-PTC-94-03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

[FR Doc. 94-24043 Filed 9-28-94; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

September 23, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

IBS Industries, Inc.

Common Shares, \$.01 Par Value (File No. 7-12943)

ECC International Corporation

Common Stock, \$.01 Par Value (File No. 7-12945)

Newbridge Networks Corporation

Common Stock, \$.01 Par Value (File No. 7-12946)

Washington Natural Gas Co.

8.50 Pct Pfd Stock, \$25 Par Value (File No. 7-12947)

Sports & Recreation, Inc.

Common Stock, \$0.01 Par Value (File No. 7-12948)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 17, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

¹² 15 U.S.C. 78s(b)(2) (1988).

¹³ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz.

Secretary.

[FR Doc. 94-24041 Filed 9-28-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20571; 812-8930]

The Brinson Funds, et al.; Notice of Application

September 23, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Brinson Funds (the "Trust"), Brinson Partners, Inc. (the "Adviser"), Fund/Plan Broker Services, Inc. (the "Underwriter"), and any other future open-end investment company advised by the Adviser, or any person directly or indirectly controlling, controlled by, or under common control with the Adviser (such other investment companies and any series thereof individually, a "future Fund" and collectively, "future Funds").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit certain open-end management investment companies to issue multiple classes of securities representing interests in the same investment portfolio and to assess and, under certain circumstances, waive or reduce a contingent deferred sales charge ("CDSC") on certain redemptions of shares.

FILING DATE: The application was filed on April 8, 1994 and amended on July 12, 1994. By letters dated September 14, 1994 and September 20, 1994, applicants' counsel stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on October 18, 1994 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 209 South LaSalle Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942-0563, or Barry D. Miller, Senior Special Counsel, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Delaware Business Trust registered as an open-end management investment company. The Trust currently consists of eight series of shares (each, together with all series subsequently established, a "Series").

2. The Adviser is an investment management firm controlled indirectly by Brinson Associates, L.P., a limited partnership whose sole general partner is Gary P. Brinson, the Chairman of the Board of Trustees of the Trust. The Adviser manages each Series' investments.

3. The Underwriter is a registered broker-dealer. The Underwriter was engaged for the limited purpose of acting as principal underwriter to facilitate the registration of shares of each Series under state securities laws and to assist in the sale of shares.

4. Fund/Plan Services, Inc. (the "Administrator") provides the Trust with administrative, fund accounting, dividend disbursing, and transfer agency services.

5. Existing shares of each Series ("Class A Shares") are sold and redeemed daily at net asset value without a sales or redemption charge, do not charge a rule 12b-1 fee, and are designed primarily for institutional and high net worth individual investors.

6. Applicants propose that the Trust issue additional, separate classes of shares with characteristics designed for a particular market ("New Shares"). The Trust or a future Fund may establish additional classes of New Shares either in connection with a Shareholder Services Plan as discussed below and/or a distribution plan adopted pursuant to rule 12b-1 (a "12b-1 Plan") or without any of such Plans. In addition,

such additional classes may have differing load structures which incorporate classes with no load, classes with front-end loads and classes with CDSCs.

7. In addition to the current Class A Shares, the Trust currently proposes to offer Class B Shares in connection with a 12b-1 Plan. It is contemplated that the Class B Shares will be designed to capture a portion of the retail market, and there will be a lower minimum initial investment associated with such shares.

8. Under the 12b-1 Plan relating to the Class B Shares, the rule 12b-1 fee may be used to reimburse the Adviser or the Underwriter for, or will be used for the Trust to pay directly, expenses incurred in the promotion and distribution of the shares of the class, including but not limited to, the printing of prospectuses and reports used for sales purposes, expenses of preparing and distributing sales literature, advertisements, and other distribution-related expenses, as well as any distribution or service fees paid to banks, credit unions, securities dealers or others ("Service Organizations") who have executed a servicing agreement ("Service Agreement") with the Trust on behalf of a Series' class or with the Underwriter. It is contemplated that, in accordance with such Service Agreements, the Service Organizations will provide certain account administration services to the customers of the Service Organizations that beneficially own shares of a Series. In addition, Service Agreements under the 12b-1 Plan may provide for an asset-based sales charge to be paid to such Service Organizations.

9. Because the Trust or a future Fund may sell its shares to a broad range of institutions, including banks, it is possible, as a result of legal constraints imposed on certain banks, which constraints preclude receipt of rule 12b-1 payments in connection with the distribution of shares, that the Trust may, at some point in the future, adopt a shareholder services plan ("Shareholder Services Plan") with respect to a separate class of New Shares of the Series. The Shareholder Services Plan (and any Service Agreements related thereto) would be used with respect to Service Organizations authorized to provide only personal and account maintenance services under a Shareholder Services Plan.

10. Under the proposal, each New Share or existing share in a particular Series, regardless of class, would represent an interest in the same Series and would have identical voting, dividend, liquidation and other rights,

preferences, powers, restrictions, limitations, qualifications, designations, and terms and conditions, except that:

(1) Each class of New Shares would have a different class designation; (2) each class of New Shares offered in connection with a 12b-1 Plan or Shareholder Services Plan would bear the expenses associated with such Plans and, where relevant, any incremental transfer agency fees associated with that class ("Class Expenses"); (3) only the holders of the shares of the class or classes involved would be entitled to vote on matters pertaining to a 12b-1 Plan or Shareholder Services Plan and any related agreements relating to such class or classes except as provided in condition 16 below¹; (4) the fact that only certain classes will have a conversion feature; and (5) each class would have different exchange privileges.

11. Expenses of the Trust that cannot be attributed directly to any one Series ("Trust Expenses") will be allocated to each Series based on the relative net assets of such Series.² Trust Expenses could include, for example, Trustees' fees and expenses, unallocated audit and legal fees, insurance premiums, expenses relating to shareholder reports, and printing expenses.

12. Certain expenses may be attributable to a particular Series, but not a particular class ("Series Expenses"). All such Series Expenses will be allocated to each class of shares in a Series on the basis of the relative net asset values of the classes of that Series. Series expenses may include, for example, advisory fees, custodian fees, and fees related to preparation of separate documents of a particular Series, such as an annual report for such Series.

13. Except as noted below, each class of shares may be exchanged only for shares of the same class in another Series and in all events will be limited to within the same "group of investment companies" as that term is defined in rule 11a-3 of the Act. Exchanges will comply with all applicable provisions of rule 11a-3 under the Act.

14. It is contemplated that at some point in the future an additional class of shares ("Class C Shares") may be

¹ Shares offered in connection with a Shareholder Services Plan would not necessarily be accorded the voting rights specified in rule 12b-1, although the Trustees may approve a Shareholder Services Plan with such rights in order to give holders of such Shareholder Services Plan shares rights identical to holders of shares subject to a 12b-1 Plan.

² From time to time, the Trust may allocate expenses among Series using alternative methods, including allocations based on the number of shares of each Series.

offered, which shares will be subject to deferred charges consisting of a distribution fee and a CDSC.

15. Any CDSC will not be imposed on redemptions of shares which were purchased more than a fixed number of years prior to the redemptions (the "CDSC Period") or on shares derived from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount which represents an increase in the value of a shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions and then of other shares held by the shareholder for the longest period of time. However, any portion of the value of such shares representing capital appreciation will not bear a charge.

16. Applicants request relief to permit each Fund to waive or reduce the CDSC in certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d-1 of the Act.

17. Applicants state that it is likely that to the extent that Class C Shares are offered in connection with a rule 12b-1 fee, upon termination of the CDSC Period, the Class C Shares will convert to a class of shares with a lower rule 12b-1 fee or without such a fee.

18. If shares of a class are offered with a conversion feature, shares of one class (the "Purchase Class") will automatically convert at their net asset value to shares of another class with different features (the "Target Class") after the expiration of a specified period. For purposes of the conversion, all Purchase Class shares in a shareholder's Fund account that were acquired through reinvestment of dividends and other distributions paid in respect of such shares (and which had not yet converted) will be considered to be held in a separate sub-account. Each time any Purchase Class shares in the shareholder's Fund account are converted, an equal portion of shares then in the sub-account also will convert, and will no longer be considered held in the sub-account.

19. Any conversion of shares will be subject to the continuing availability of

an opinion of counsel or a private letter ruling from the Internal Revenue to the effect that the conversion of shares will not constitute a taxable event under federal income tax law. Conversion of shares will be suspended if such an opinion or ruling were no longer available.

20. Any front-end load, asset-based sales charge, service fee, or contingent deferred sales load will comply with Section 26(d), Article III of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD").

Applicants' Legal Analysis

1. The proposed issuance and sale of New Shares, including the allocation of voting rights thereto, might be deemed to result in a "senior security" within the meaning of Section 18(g) and be prohibited by section 18(f)(1) and also to violate the requirement in section 18(i) that every share of stock issued by a registered management investment company shall have equal voting rights with every other share of outstanding voting stock.

2. Applicants believe that the proposed allocation of expenses and voting rights relating to a 12b-1 Plan or a Shareholder Services Plan (each a "Plan") in the manner described is equitable and would not discriminate against any group of shareholders. Although investors purchasing shares offered in connection with a Plan would bear the costs associated with the related services, they would also enjoy the benefits of those services and exclusive shareholder voting rights with respect to matters affecting the Plan. Conversely, investors purchasing shares that are not covered by a Plan would not be burdened with such expenses or enjoy such voting rights. Moreover, because with respect to any Series the rights and privileges of shares would be substantially identical, the possibility that the interests of the various classes of shareholders would ever conflict would be remote. In any event, the interests of each class of shareholders would be adequately protected since the Plans and any related agreements or payments would conform to the requirements of rule 12b-1 or the protections described in the application, including the requirement that they be approved by the Board of Trustees of the Trust or a future Fund.

3. The abuses that section 18 of the Act are intended to redress are set forth in section 1(b) of the Act which declares that the interests of investors are adversely affected when investment companies, by excessive borrowing and the issuance of excessive amounts of senior securities, increase the

speculative character of the other securities, or when investment companies operate without adequate reserves. The proposed arrangement does not involve borrowings and does not affect the Trust's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares in a Series, since each class of shares in a Series will participate in all of such Series's appreciation (if any), income and expenses (with the exception of the proposed Class Expenses) on the basis of the applicable net assets of such class.

4. Applicants are also requesting an exemption from the provisions of Section 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c-1 thereunder, to the extent necessary to permit the Series to assess a CDSC on certain redemptions of classes of shares of the Trust to be created in the future, and to permit the Series to waive or reduce the CDSC with respect to certain types of redemptions. The proposal would permit shareholders to have the advantage of greater investment dollars working for them from the time of their purchase of shares than if a sales load were imposed at the time of purchase.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares of a Series will represent interests in the same portfolio of investments and be identical in all respects, except as set forth below. The only differences among the classes of shares of a Series will relate solely to one or more of the following: (a) Class Expenses; (b) the fact that the classes will vote separately with respect to the Trust's 12b-1 Plan, except as proved in condition 16 below; (c) the different exchange privileges of the classes of shares; (d) the fact that certain classes will have a conversion feature; and (e) the designation of each class of shares of the Series. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated unless and until approved by the Commission by amended order.

2. The Trustees of the Trust, including a majority of the independent Trustees, will approve the offering of additional classes of New Shares (the "Multi-Class System"). The minutes of the meeting of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to implement the

Multi-Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the best interest of both the Trust and its shareholders.

3. On an ongoing basis, the Trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Trust for the existence of any material conflicts among the interests of the classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Underwriter and the Adviser will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Underwriter and the Adviser, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by the Trust to meet Class Expenses shall provide to the Board of Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

5. The Trustees will receive quarterly and annual statements concerning the amounts expended under any Shareholder Services Plans and the 12b-1 Plans complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties.

6. If any class will be subject to a Shareholder Services Plan, such Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b-1 (b) through (f) as if the expenditure made thereunder were subject to rule 12b-1, except that

shareholders need not enjoy the voting rights specified in rule 12b-1.

7. Dividends paid by the Trust on behalf of a Series with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount per outstanding share, except that payments made by a class under a 12b-1 Plan or any Shareholder Servicing Plan and any incremental transfer agency costs relating to a specific class will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of expenses among the classes have been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to section 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Trust (which the Trust agrees to provide), will be available for inspection by the Commission staff upon written request to the Trust for such work papers by a senior member of the Division of Investment Management or a regional office of the Commission. Authorized staff members would be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate or Assistant Administrators. The initial report of the Expert is a "Report on Policies and Procedures Placed in Operation," and the ongoing reports will be "Reports on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness," as defined and described in SAS No. 70 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (8) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. Applicants will take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute Expert.

10. The prospectuses of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares of the Trust may receive different compensation with respect to one particular class of shares over another in the Trust.

11. The Underwriter will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Trust to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the Trustees.

13. The Trust will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus relating to a Series, regardless of whether all classes of shares of the Series are offered through each prospectus. The Trust will disclose the respective expenses and performance data applicable to each class of shares of a Series in every shareholder report relating to such Series. The shareholder reports relating to each Series will contain in the statement of assets and liabilities and statement of operations, information related to the Series as a whole and not on a per class basis. Each Series' per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Series. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Series, it will also disclose the respective expenses and/or performance data applicable to all classes of shares

of such Series. The information provided by applicants for publication in any newspaper or similar listing of the Trust's net asset value or public offering price will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by the Application will not imply Commission approval, authorization of or acquiescence in any particular level of payments that the Series may make pursuant to its 12b-1 Plan or any Shareholder Services Plan in reliance on the exemptive order.

15. Any Purchase Class shares will convert into Target Class shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If the Trust implements any amendment to its 12b-1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b-1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the Plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (the "New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. The New Target Class and New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition (3), any additional cost associated with the

creation, exchange, or conversion of the New Target Class or New Purchase Class shall be borne solely by the Administrator, the Underwriter, and the Adviser. The Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be repropounded, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-24089 Filed 9-28-94; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2742]

Florida; Declaration of Disaster Loan Area

Leon and Wakulla Counties and the contiguous counties of Franklin, Gadsden, Jefferson, and Liberty in the State of Florida and Grady and Thomas Counties in the State of Georgia constitute a disaster area because of damages caused by heavy rains and subsequent flooding on August 15, 1994 resulting from Tropical Storm Beryl. Applications for loans for physical damage may be filed until the close of business on November 21, 1994 and for economic injury until the close of business on June 20, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125

	Percent
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 274206 for Florida and 274306 for Georgia. For economic injury the numbers are 834600 for Florida and 834700 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 20, 1994.

Erskine B. Bowles,
Administrator.

[FR Doc. 94-24149 Filed 9-28-94; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2741]

Pennsylvania; Declaration of Disaster Loan Area

Lycoming and Tioga Counties and the contiguous counties of Bradford, Clinton, Columbia, Montour, Northumberland, Potter, Sullivan, and Union in the State of Pennsylvania constitute a disaster area because of damages caused by heavy rains and flooding on August 18, 1994 resulting from the remnants of Tropical Storm Beryl. Applications for loans for physical damage may be filed until the close of business on November 18, 1994 and for economic injury until the close of business on June 19, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses with non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125

	Percent
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 274106 and for economic injury the number is 834500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 19, 1994.

Erskine B. Bowles

Administrator.

[FR Doc. 94-24150 Filed 9-28-94; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #8348]

Washington; Declaration of Disaster Loan Area

Chelan County and the contiguous counties of Douglas, King, Kittitas, Okanogan, Skagit, and Snohomish in the State of Washington constitute an economic injury disaster loan area as a result of wildfires which began on July 25, 1994 and continued through September 1, 1994. Eligible small business without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on June 21, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento CA 95853-4795, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: September 21, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94-24152 Filed 9-28-94; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #8320; Amendment #1]

Washington; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended to include San Juan County in the State of Washington as an economic injury disaster loan area due to the effects of the warm water currents known as El Nino on the 1994 salmon harvest. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without

credit available elsewhere may file applications for economic injury assistance until May 26, 1995 at the previously designated location.

All other information remains the same, i.e., the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: September 22, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94-24151 Filed 9-28-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 2084]

United States International Telecommunications Advisory Committee (ITAC); Study Group C Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC) Telecommunications Standardization Sector Study Group C will meet on Thursday, October 20, 1994, in room 1406 from 9:30 am to 4:30 pm at the U.S. Department of State, 2201 "C" Street, NW, Washington, DC 20520.

The agenda for Study Group C will include a consideration of contributions on optical fiber issues for Study Group 15. Please submit proposed contributions to the Chairman of Study Group C on or before September 23, 1994 to allow time for mailing and review prior to the meeting. Contributions should be mailed to: Dennis K. Thovson, AT&T-5A256, 900 Rt. 202/206, P.O. Box 752, Bedminster, NJ 07921-0752.

Alternately, contributions endorsed by a U.S. standards body can be brought in for consideration and approval. Persons presenting contributions should bring 40 copies to the meeting. For agenda planning purposes, please notify Madeleine Mendex on 908-234-8624 if you plan to attend this meeting. PLEASE NOTE: Persons intending to attend the above U.S. Study Group Meeting must announce this not later than 5 days before the meeting to the Department of State, 202-647-0201 (fax: 202-647-7407). The announcement must include name, social security number, and date of birth. The above includes government and non-government attendees. All attendees must use the "C" Street entrance. A picture ID will be required for admittance.

Dated: September 19, 1994.

Earl S. Barbely,

Chairman, U.S. ITAC for ITU-T Telecommunications, Standardization Sector.

[FR Doc. 94-24037 Filed 9-28-94; 8:45 am]

BILLING CODE 4710-45-M

[Public Notice 2085]

Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on October 26, 1994, 9:30 AM in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the thirty-sixth session of the Marine Environment Protection Committee (MEPC 36) of the International Maritime Organization (IMO) to be held from October 31-November 4, 1994. Proposed U.S. positions on the agenda items for MEPC 36 will be discussed. The major items for discussion will be the following:

a. Prevention of oil pollution. Work will continue on guidelines for implementation of Regulations 13F and 13G to Annex I of The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78). This will include guidelines for structural and operational requirements for existing ships, equivalences for double-hulls for new ships, and guidelines for enhanced inspections.

b. Implementation of the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC). An IMO working group will address topics such as guidelines for the use and application of dispersants, the redraft of the contingency planning portion of the IMO Oil Pollution Manual.

c. Follow-up action to the United Nations Conference on Environment and Development (UNCED). An MEPC working group will examine IMO's role in implementation of UNCED and discuss the results of a correspondence group on use of the precautionary principle.

d. Unwanted aquatic organisms in ballast water. A working group will discuss a possible technical annex to MARPOL 73/78 to prevent the introduction of exotic species through discharge of ballast water.

e. Enforcement of Pollution Conventions. A working group will

consider refuse recordkeeping amendments to Annex V of MARPOL 73/78 proposed by the United States.

f. The future work program of the MEPC.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information or documentation pertaining to the SPMP meeting, contact Lieutenant Commander Ray Perry, U.S. Coast Guard Headquarters (G-MEP-3), 2100 Second Street, S.W., Washington, D.C. 20593-0001, Telephone: (202) 267-0423.

Dated: September 16, 1994.

Marie Murray,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 94-24036 Filed 9-28-94; 8:45 am]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Patton Island Bridge and Approaches Crossing the Tennessee River and Connecting the Cities of Florence and Muscle Shoals, Colbert and Lauderdale Counties, AL

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of Record of Decision.

SUMMARY: Notice is hereby given in accordance with the National Environmental Policy Act and Section 5.4.9 of TVA's implementing procedures, 45 FR 54, 111-115 (1980), that TVA has decided to adopt the "build" alternative identified in the "Final Environmental Impact Statement and Section 4(f) Determination" prepared by the U.S. Department of Transportation, Federal Highway Administration and Alabama Highway Department in cooperation with the U.S. Army Corps of Engineers, the U.S. Coast Guard, and TVA, dated August 6, 1991. TVA has decided to: (1) Provide a permanent easement over 63.7 acres of TVA land for construction, operation, and maintenance of a new highway and bridge approaches on the Muscle Shoals Reservation, Patton Island (Tract XPR-82PT), and Pickwick Reservoir (Tract XPR-81PT), and (2) provide Section 26a approval of the bridge over the Tennessee River at Tennessee River Mile 258.0.

FOR FURTHER INFORMATION CONTACT:

Dale V. Wilhelm, Manager, National Environmental Policy Act Department, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902-1499; telephone (615) 632-6693.

SUPPLEMENTARY INFORMATION: From 1987 to 1991, TVA cooperated with the

Alabama Highway Department in evaluating bridge routings, navigational impacts, impacts on TVA's Rockpile National Recreation Trail, and other environmental impact analyses necessary to support the EIS. TVA has now received a request for a permanent easement which would allow the Department to build the project. The proposed bridge and multi-lane highway project would connect Muscle Shoals with Florence and eventually with the proposed Memphis to Atlanta Interstate Highway. Upon receipt of the permanent easement and 26a permit, construction work would likely begin on the project.

Alternatives Considered

The following alternative corridors were considered by the Alabama Highway Department and cooperating agencies and were evaluated in the final EIS.

1. Corridor East of Wilson Dam
2. Corridor from Wilson Dam Road Near TVA to Wilson Dam Road near the Corps of Engineers Lock System
3. Seven Mile Island Corridor
4. O'Neal Corridor
5. Patton Island Corridor

Based upon comparison of the corridors, the Patton Island and O'Neal Corridors were chosen for detailed review, and the Patton Island Corridor was chosen as the preferred routing.

The following Alternatives for the Patton Island Corridor were evaluated in the EIS:

1A. Build along a corridor designated "Alternative A." South of the Tennessee River on the Muscle Shoals Reservation, this route is to the east of Pond Creek.

1B. Build along a corridor designated "Alternative B." South of the Tennessee River on the Muscle Shoals Reservation, this route is along Pond Creek.

2. The No Action Alternative, in which the bridge, approaches, and highway project would not be built.

The EIS discussed but did not consider in detail two other alternatives for the Patton Island Corridor: alternate modes of transportation and postponing the action. Alternate transportation systems such as mass transit do not currently exist in the area, and postponing the action would increase the impacts associated with building the project when action is taken.

TVA concurs with the determination that the Patton Island corridor offers the most benefits, and that the Alternative A route is the appropriate build alternative across TVA lands south of the Tennessee River. The Alternative B route north of the river in the city of Florence is the appropriate build alternative.

BASIS FOR DECISION: Alternative A across TVA lands is chosen because it would minimize the need to relocate several miles of Pond Creek, allow improved transportation and economic growth, and enhance safety. The major recreational impact would be the relocation of 800 feet of the Rockpile National Recreation Trail. Alternative A would require 29 acres of upland habitat out of the 1,200 acres on Muscle Shoals Reservation.

The O'Neal corridor across TVA land would result in greater upland habitat loss, more impacts on potential archaeological sites, greater impacts on TVA recreational facilities, and would require 75 acres of upland habitat.

Alternative B would require the relocation of several miles of Pond Creek on the Muscle Shoals Reservation and has not been chosen as the preferred alternative across TVA land. However, north of TVA land in Florence, Alternative B was found to be more practical given the topography of the Florence area, and the fact that it would create less traffic congestion on Florence Boulevard. Also, Alternative A north of the river would require a retaining wall at the Cherry Hills Housing Project playground, which representatives of the project have said is not desirable. The No Action alternative is not desirable because it would result in increasing traffic congestion as the area grows.

Environmental Consequences and Commitments

Implementation of the proposed project is not expected to have substantial land use impacts and would not result in substantial loss of prime farmland. It would not disrupt neighborhoods or communities, but would change travel patterns in the area and relocate part of a low income housing project. Many of the displaced residences are low income; however, there would be financial assistance available to those who would be required to relocate.

The proposed project would generate 350-375 full-time construction jobs, resulting in some need for temporary housing for workers brought in from outside the area, and increased job opportunities for area residents. By improving the transportation network in the area, local businesses would be able to serve regional markets rather than just local ones.

Environmental analysis on the proposed project suggests that there would not be substantial air emissions, noise, or water quality impacts on the proposed project. Two endangered mussels inhabiting the Tennessee River

in the vicinity of the bridge would be relocated to a suitable area prior to placement of bridge piers. As part of its approval, TVA would require best management practices to control erosion and sedimentation to prevent adverse aquatic impacts. These conditions include:

1. Removal of vegetation will be minimized.
2. All disturbed areas will be stabilized as soon as possible. In slow germination conditions and on steep slopes, erosion control netting will be utilized to facilitate revegetation.
3. Both temporary (fast germinating) and permanent ground cover will be established.
4. Native woody vegetation, to include trees, will be used (versus riprap) wherever practicable as permanent stabilization.
5. Silt fences will be used around material stockpile areas.
6. Any riprap needed (e.g., at immediate streambank/water interface) will be applied in such a manner as to avoid stream sedimentation or disturbance.
7. Cement and other pollutants will not be spilled into streams.
8. Equipment will be kept off of streambanks to the degree practicable.

Soils within the corridor could contain some toxic materials; however, no environmental impacts are expected to result from the minute amounts of existing toxics.

Although construction of the bridge would occur within the floodplain of the Tennessee River, it would not constrict or impede the flow of the Tennessee River and no unacceptable increases in flood elevations are expected. One archaeological site could possibly be impacted by bridge piers. Data recovery will take place at this site if it is necessary to disturb it.

Dated: September 20, 1994.

Ralph H. Brooks,

Acting Senior Vice President, Resource Group, Tennessee Valley Authority.

[FR Doc. 94-24096 Filed 9-28-94; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below,

including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Herzog Contracting Corporation (Herzog)

Docket Number RSGM-94-15

Herzog seeks a permanent waiver of compliance with certain provisions of the Railroad Safety Glazing Standards (49 CFR Part 223) for its Rail King Model SS 4400 railcar movers leased to various railroads. Herzog Railroad Division offers numerous types of equipment for lease to railroads either with or without operators and maintenance. Herzog has leased mobile railcar movers to railroads for use in track maintenance projects for 17 years without safety related incident.

The Rail King Model SS 4400 is defined as a locomotive and must comply with § 223.11(a), which requires Type 1 test certified glazing in the frontward and rearward facing windows, and Type II test certified glazing in the side facing windows. The Rail King SS 4400 glazing material is made to specification AS1 Safety Laminated. Herzog was granted a waiver, RSGM-88-29, to operate Tracmobile car movers without certified glazing. The glazing material in Tracmobile car movers is either laminated and/or tempered.

Herzog is requesting this waiver for the following reasons:

1. Machines are used only for Maintenance of Way projects.
2. They do not handle revenue freight or passenger.
3. Speed is less than 20 mph.
4. They handle approximately 10 cars.
5. FRA glazing is very expensive and delivery time is approximately 4 months.
6. The cabs are not constructed to accommodate the extra weight.
7. The existing waiver, RSGM-88-29, has been in use for approximately 5 years without any glass related incidents.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver

Petition Docket Number RSGM-94-15) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before November 2, 1994 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.-5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on September 23, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94-24057 Filed 9-28-94; 8:45 am]

BILLING CODE 4910-06-P

Research and Special Programs Administration

[Docket No. P-93-2W; Notice 1]

Interstate Natural Gas Association of America; Filing of Gas Pipeline Facility Waiver Petition

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Interstate Natural Gas Association of America (INGAA), on behalf of 28 INGAA member pipeline companies and their subsidiaries, has petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with the requirements of 49 CFR 192.713(a) and 192.485 to allow the installation of a proprietary composite reinforced (CR) sleeve material (Clock Spring™ manufactured by Clock Spring Company of North America, Long Beach, CA) as a full encirclement wrapped sleeve for the repair of imperfections and damages that impair the serviceability of steel transmission pipelines operating at or above 40 percent of specified minimum yield strength (SMYS). RSPA intends to grant a waiver to each of the parties represented in the petition because the use of this technology provides at least the same level of integrity as replacement pipe or installation of a full encirclement welded split sleeve.

FOR FURTHER INFORMATION CONTACT: G. Joseph Wolf, Office of Pipeline Safety (DPS-13), Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590, 202-366-4560.

SUPPLEMENTARY INFORMATION: Federal pipeline safety regulations (49 CFR 192.713(a)) require that a full encirclement welded split sleeve be applied over an imperfection or damage that impairs the serviceability of a segment of a steel gas transmission line operating at or above 40 percent of SMYS if it is not feasible to take the segment out of service for repair. Previously, RSPA granted a waiver (58 FR 13823; March 15, 1993) to the Panhandle Eastern Corporation (Panhandle) for the installation of CR sleeves as an alternative to this requirement. The Panhandle waiver applied to six locations on its line #2 in Fayette County, Ohio.

The INGAA petition additionally requests a waiver from § 192.485, requiring each segment of a transmission line with general corrosion and a remaining wall thickness less than that required for the pipeline's maximum allowable operating pressure be replaced, or the operating pressure be reduced commensurate with the strength of the pipe based on the actual remaining wall thickness. The petition for waiver requests that pipeline operators be permitted to use CR sleeve material for the repair of imperfections and damages that impair the serviceability of steel transmission pipelines operating at and above 40 percent of SMYS. Currently, § 192.485 does not permit the repair of an area of general corrosion, unless the area is small.

Proposal and Rationale Submitted by INGAA

The INGAA waiver request cites the Panhandle waiver and supporting documents, and proposes to conform to the Panhandle waiver except for deviations cited below. The proprietary repair method proposed by INGAA and Panhandle consists of installing CR sleeve material in coil form held in place by an adhesive. The adhesive adheres both to the pipe surface and to the adjacent layers of the coiled composite reinforcement. The composite reinforcement is an isophthalic polyester resin reinforced with fiberglass. The adhesive is a methacrylate. Both the composite reinforcement and the adhesive have histories of suitable performance in other applications described in documents in the docket.

In the Panhandle petition, the suitability of a standard CR sleeve for repair of a measured defect is determined using a computer program developed by the Gas Research Institute (GRI). Panhandle reported that destructive tests of pipe with standard

CR sleeves installed over manufactured defects repeatedly burst in the adjacent steel pipe, demonstrating the adequacy of the CR sleeves. The CR sleeve does not require pretesting, as there is no replacement pipe, nor are there any welds to be tested as required for welded split sleeves.

Panhandle described the following advantages of using CR sleeves:

(1) CR sleeve material is relatively easy to install.

(2) CR sleeve material is furnished in standard widths and thicknesses. The length of the repair to be made determines the number of sleeve units to be used. Multiple units can be brought to the job site at the time of excavation. Therefore, there is no delay between determining the extent of the repair and procuring materials for repair.

(3) The crew performing the investigation can make the repair without calling for pipe handling equipment or welders.

(4) In most circumstances, there will be no need to take the line out of service, eliminating interruptions to, or curtailments of, customer service; CR sleeve repairs can be made while the line is operated at full or reduced pressure.

(5) The use of CR sleeve material would substantially reduce cost as compared to the repair methods currently required under § 192.713(a).

Panhandle estimated that the average cost of a repair would be reduced from \$26,000 for a pipe cutout or \$16,000 for a welded split sleeve to \$9,000 for a CR sleeve. The result would be a maximum savings of \$17,000 per replacement repair or a minimum of \$7,000 per welded split sleeve repair.

In commenting on the notice of the Panhandle waiver (Docket No. P-90-1W), the American Gas Association estimated that the industry could save \$6,500,000 annually by using CR sleeves in the manner proposed by Panhandle. By requesting a waiver of § 192.485 to use CR sleeves under broader conditions than those proposed by Panhandle, INGAA's proposal has the potential for even greater savings.

RSPA granted Panhandle the waiver on the conditions that Panhandle install the CR sleeves using the procedure described in the documents supporting its petition, perform the inspections described in the petition, report promptly to RSPA the results of the inspections and any unfavorable performance of the CR sleeves, and determine and report to RSPA the cause of any unfavorable performance.

INGAA's waiver petition proposes that operators participating in the

petition agree to certain additional and alternative conditions from those instituted in the Panhandle waiver. INGAA's waiver requires parties to the waiver petition to comply with all of the conditions of the Panhandle waiver for which deviations have not been requested. Details of INGAA's requested deviations from the conditions of the Panhandle waiver are presented and discussed in the following paragraphs.

Deviations From Panhandle Waiver

The Panhandle waiver provided that an analysis for serviceability of corroded areas would be determined using ANSI/ASME B31G "Manual for Determining the Remaining Strength of Corroded Pipelines." INGAA proposes that the analysis for serviceability may alternatively be based on the RSTRENG User's Manual, March 1993. RSPA incorporated by reference both B31G and RSTRENG into Part 195 (59 FR 33389; June 28, 1994). RSPA proposed the incorporation of B31G in Part 192 (57 FR 39577; August 31, 1992). Comments on the proposal suggested incorporation by reference of RSTRENG into Part 192 in addition to B31G. RSPA considers that either B31G or RSTRENG is suitable for determining the serviceability of steel pipe.

INGAA reports that, since the Panhandle waiver was granted, GRI has developed an enhanced model called GRI WRAP for calculating the efficacy of a composite repair. INGAA proposes using GRI WRAP in lieu of the model used by Panhandle. RSPA proposes to accept INGAA's decision to use the GRI WRAP model.

INGAA proposes that only those pipeline operators included in its petition be allowed to use the CR sleeve repair method. INGAA's understanding that RSPA will not accept individual pipeline operator waiver petitions for using this repair method is misguided. RSPA must consider all waiver applications.

INGAA proposes that installation of CR sleeves by the participating pipeline operators be coordinated with GRI to ensure sufficient operational and geographic diversity is achieved to obtain a representative data set to support any further change to the pipeline safety regulations. GRI will assist companies to evaluate the installations, record the results, and provide the data to RSPA upon request. A statistical sampling of sites will be excavated and evaluated within two years of installation.

INGAA proposes that installations of CR sleeves will be reported by the operator to RSPA or a designated state agent office within thirty days of

installation. RSPA considers that it is more appropriate that the notification be made to both RSPA and its designated state agent, and that the notification be made prior to installation to afford RSPA and the state agent the opportunity to witness the installation.

INGAA proposes that operator personnel using the CR sleeve (Clockspring™) repair method be trained and certified in standard installation procedures by the Clock Spring Company LP. RSPA considers that such training and certification is appropriate and should be supplemented by a commitment to periodic refresher training and recertification of installers of CR sleeves.

INGAA proposes that records of CR sleeve installations will be maintained in accordance with § 192.709. RSPA considers that the proposal regarding records is appropriate.

Proposed Action on Waiver Request

In addition to the advantages cited by INGAA and Panhandle, RSPA considers that the ability to make a repair without welding eliminates the possibility of cracking and pipeline failure attributable to residual stresses from, and to hydrogen induced cracking associated with, welding. Also eliminated is the possibility of burning through the pipe wall while welding. Overall, RSPA considers the CR sleeve repair procedure to be a safe alternative to either the welded split sleeve repair procedure or the pipe replacement procedure, both currently permitted by § 192.713(a). While RSPA considers that the use of the CR sleeve repair procedure in an area of general corrosion is an acceptable alternative to replacing the corroded pipe or reducing the operating pressure commensurate with the strength of the steel pipe based on the actual remaining wall thickness under § 192.485(a), comments are requested on this aspect of the waiver request.

RSPA believes that 49 CFR 192.713(a) and .485(a) should be waived to permit the parties represented by the petitioner to install CR sleeves as a permanent repair of imperfections and damages that impair the serviceability of steel transmission pipelines operating at or above 40 percent of SMYS. RSPA believes that the use of this technology provides at least the same level of integrity as replacement of pipe or installation of a full encirclement welded split sleeve. Although RSPA believes that there is no practical limit to the extent of a corroded area repairable using CR sleeves, RSPA proposes that repairs using CR sleeves

in accordance with the proposed waiver be limited to 10 feet of sleeve length.

A waiver would be granted to each of the parties represented in the petition for the purpose of evaluating the performance of CR sleeves. RSPA intends to review the performance evaluations of CR sleeves applied under the proposed waiver and consider a termination of the waiver three years after it is granted.

Information submitted by INGAA is available in the docket. The information cited by INGAA in the grant of waiver to Panhandle is available in docket P-90-1W.

Interested persons are invited to comment on the proposed waiver by submitting in duplicate such data, views, or judgments as they may desire. Communications should identify the Docket and Notice numbers in the heading of this document, and be submitted to: Dockets Unit, Room 8421, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001, (202) 366-5046.

All comments received before [30 days after publication of this notice] will be considered before final action is taken. Late filed comments will be considered so far as practicable. All comments will be available for viewing between the hours of 8:30 a.m. to 5 p.m., before and after the closing date for comments.

No public hearing is contemplated, but one may be held at a time and place set in a Notice in the *Federal Register* if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Dated: September 19, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety, Research and Special Programs Administration.

[FR Doc. 94-24081 Filed 9-28-94; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "Exploration in the North

Pacific 1741-1805." (see list¹) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at the Anchorage Museum of History and Art in Anchorage, Alaska from on or about October 13, 1994, to on or about November 20, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the *Federal Register*.

Dated: September 23, 1994.

Les Jin,

General Counsel.

[FR Doc. 94-24143 Filed 9-28-94; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92-463) of October 6, 1972, that the Department of Veterans Affairs' Advisory Committee on Prosthetics and Special-Disabilities Programs has been renewed for a 2-year period beginning August 15, 1994, through August 15, 1996.

Dated: September 16, 1994.

By direction of the Secretary.

Keyward Bannister,

Committee Management Officer.

[FR Doc. 94-24084 Filed 9-28-94; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Rehabilitation, Notice of Charter Renewal

* This gives notice under the Federal Advisory Committee Act (Public Law 92-463) of October 6, 1972, that the Department of Veterans Affairs' Veterans' Advisory Committee on Rehabilitation has been renewed for a 2-year period beginning September 15, 1994, through September 15, 1996.

Dated: September 16, 1994.

¹ A copy of this list may be obtained by contacting Ms. Neila Sheahan of the Office of the General Counsel of USIA. The telephone number is 202/619-5030, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

By direction of the Secretary.
Heyward Bannister,
Committee Management Officer.
 [FR Doc. 94-24085 Filed 9-28-94; 8:45 am]
 BILLING CODE 8320-01-M

Advisory Committee on Cemeteries and Memorials, Meeting

The Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 2401, will be held at the office of the U.S. Department of Veterans Affairs, Room 730, 810 Vermont Avenue, NW., DC, on November 14 and 15, 1994.

The meeting will convene at 1:00 p.m. (EST) on November 14 to conduct routine business and will adjourn at 5:00 p.m. (EST) November 15. The meeting will be open to the public up to the seating capacity which is about 20 persons. Those wishing to attend should contact Ms. Dina Wood, Special Assistant to the Director, National Cemetery System, [phone (202) 273-5235] not later than 12 noon, EST October 1, 1994.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Director, National Cemetery System (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization or association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Director, National Cemetery System.

Letters and written statements as discussed above must be mailed or delivered in time to reach the Director, National Cemetery System, by 12 noon EST October 1, 1994. Oral statements will be heard only between 1:30 p.m. and 2 p.m. EST, November 15, 1994.

Dated: September 14, 1994.

By Direction of the Secretary.

Heyward Bannister,
Committee Management Officer.
 [FR Doc. 94-24086 Filed 9-28-94; 8:45 am]
 BILLING CODE 8320-01-M

Persian Gulf Expert Scientific Committee, Notice of Meeting

The Department of Veterans Affairs, (VA), in accordance with Pub. L. 92-463, gives notice that meetings of the VA Persian Gulf Expert Scientific Committee will be held on:

Monday, November 14, 1994, at 9 a.m.-5 p.m.

Tuesday, November 15, 1994, at 8:30 a.m.-12:01 p.m.

The location of the meeting will be 801 I Street, NW; Washington, DC; room 1105.

The Committee's objectives are to advise the Under Secretary for Health, about medical findings affecting Persian Gulf era veterans.

At this meeting the Committee will review all aspects of patient care and medical diagnoses and will provide professional consultation as needed. The Committee may advise on other areas involving research and development, veterans benefits and/or training aspects for patients and staff.

All portions of the meeting will be open to the public except from 4 p.m. until 5 p.m. on November 14, 1994, and 11 a.m. until 12:01 p.m. on November 15, 1994. During these executive sessions discussions and recommendations will deal with medical records of specific patients and individually identifiable patient medical histories. The disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. Closure of these portions of the meetings is in accordance with subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, and as cited in 5 U.S.C. 552b(c)(6).

Additional information concerning these meetings may be obtained from the Chairperson, Office of Environmental Medicine and Public Health, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 16, 1994.

By Direction of the Secretary.

Heyward Bannister,
Committee Management Officer.
 [FR Doc. 94-24087 Filed 9-28-94; 8:45 am]
 BILLING CODE 8320-01-M

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, October 19, 1994, at 2:00 p.m.
 Wednesday, November 2, 1994, at 2:00 p.m.
 Wednesday, November 16, 1994, at 2:00 p.m.
 Wednesday, November 30, 1994, at 2:00 p.m.
 Wednesday, December 14, 1994, at 2:00 p.m.
 Wednesday, December 28, 1994, at 2:00 p.m.

The meetings will be held in Room 1225, Department of Veterans Affairs, Tech World Plaza, 801 I Street, NW., Washington, DC 20001.

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 Public Law 92-463, as amended by Public Law 94-409, and as cited in 5 U.S.C. b(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, Room 1225, 801 I Street, NW., Washington, DC 20001.

Dated: September 20, 1994.

By Direction of the Secretary.

Heyward Bannister,
Committee Management Officer.
 [FR Doc. 94-24088 Filed 9-28-94; 8:45 am]
 BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 188

Thursday, September 29, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board;
Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 29, 1994, from 2:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT:

Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444, or Floyd Fithian, at (703) 883-4000.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. New Business

1. Regulations

a. Financially Related Services [12 CFR Part 618] (Proposed).

2. Corporate Prior Approval

a. Coleman PCA in Receivership—Charter Cancellation.

Dated: September 23, 1994.

Floyd Fithian,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 94-24241 Filed 9-27-94; 1:15 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:11 a.m. on Tuesday, September 27, 1994, the Corporation's Board of Directors determined, on motion of Acting Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a personnel matter.

The Board also determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum and resolution regarding proposed amendments to Part 362 of the Corporation's rules and regulations, entitled "Activities and Investments of Insured State Banks," which would revise the Corporation's definition of equity investment to exclude treasury stock from the definition, thereby

allowing institutions, in accordance with applicable Federal and state law, to acquire such stock and hold it for no longer than one year.

By the same majority vote, the Board further determined that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: September 27, 1994.

Federal Deposit Insurance Corporation.

Leneta G. Gregorie,

Acting Assistant Executive Secretary.

[FR Doc. 94-24282 Filed 9-27-94; 3:26 pm]

BILLING CODE 6714-0-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94-23634.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, September 29, 1994 at 10:00 a.m., Meeting Open to the Public.

The following item was added to the agenda:

Advisory Opinion 1994-27: Karen A. McCarthy on behalf of Consumers Power Company Employees for Better Government (continued from meeting of September 22, 1994).

DATE AND TIME: Tuesday, October 4, 1994, at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C.

§ 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil

actions or proceedings or arbitration

Internal personnel rules and procedures or

matters affecting a particular employee

DATE AND TIME: Wednesday, October 5, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Open to the Public.

ITEM TO BE DISCUSSED: Wilder for President Committee—Oral Presentation.

DATE AND TIME: Thursday, October 6, 1994 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1994-30: Edward D. Feigenbaum on behalf of Conservative Concepts, Inc
Regulation:

MCFL Rulemaking: Summary of Comments and Draft Final Rules
Fiscal Year 1995 Management Plan
Administrative Matters

PERSON TO CONTACT FOR INFORMATION:
Ron Harris, Press Officer, Telephone: (202) 219-4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 94-24278 Filed 9-27-94; 3:12 pm]

BILLING CODE 6715-01-M

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Federal Register

Thursday
September 29, 1994

Part II

**Department of
Education**

Office of Educational Research and
Improvement—Library Programs; Inviting
Applications for New Awards for Fiscal
Year 1995; Notice

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement—Library Programs

Invitation To Apply for New Awards for Fiscal Year 1995

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1995.

SUMMARY: The Secretary invites applications for new awards for fiscal year 1995 and announces closing dates for the transmittal of applications under five discretionary grant programs for libraries: the Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants, Library Literacy Program, Library Education and Human Resource Development Program—Fellowships and Institutes, and Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants.

These programs support the National Education Goals by seeking to improve library services, to enhance the skills of library staff, to increase the quality and availability of library holdings, and other activities. The National Education Goals specifically call for:

- All children to start school ready to learn;
- The high school graduation rate to increase to at least 90 percent;
- Students to demonstrate competency in challenging subject matter and to learn to use their minds well;
- U.S. students to be first in the world in science and mathematics achievement;

- Adult Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship;

- Every school to be free of drugs and violence and to offer a disciplined environment conducive to learning;

- The Nation's teaching force to have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century; and

- Every school to promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

In developing this combined application notice the Department has sought to ensure that programs awarding grants during FY 1995 will further the National Education Goals. The Secretary encourages applicants under these programs to consider the National Education Goals in developing their applications.

DATES: The closing dates for transmitting applications under this notice are listed in Section I of this notice.

ADDRESSES: *For Applications or Further Information:* The addresses for obtaining applications for, or further information about, individual programs or competitions are in the respective announcements for those programs contained in Section II of this notice.

For Users of TDD or FIRS: Individuals who use a telecommunications device

for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Electronic Access to Information: Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

SUPPLEMENTARY INFORMATION: All programs announced in this notice, with the exception of the Library Services to Indian Tribes and Hawaiian Natives Program, including both Basic Grants and Special Projects Grants, are subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs. Information regarding applicable procedures under this order will be included in the application packages.

Organization of Notice

This notice contains two sections. Section I includes a chart listing closing dates in chronological order, and other pertinent information about programs covered by this notice. Section II consists of the individual application announcement for each program.

SECTION I.—PROGRAMS AND CLOSING DATES FOR LIBRARY PROGRAMS

Title of Program and CFDA Number	Applications available	Application deadline date	Deadline for intergovernmental review	Tentative award date	Estimated available funds ⁽¹⁾	Estimated range of awards ⁽¹⁾	Estimated avg. size of awards ⁽¹⁾	Estimated number of awards ⁽¹⁾
Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (84.163A)	10/14/94	12/02/94	NA	03/27/95	(2) \$906,000 (3) \$604,000	NA	\$4,500	240
Library Education and Human Resource Development Program—Institutes (84.036A)	10/27/94	12/02/94	02/02/95	04/24/95	1,500,000—35,000	125,000	66,000	23
Library Education and Human Resource Development Program—Fellowships (84.036B)	10/27/94	12/02/94	02/02/95	05/12/95	3,500,000	22,000—332,000	78,000	45
Library Literacy Program (84.167A)	10/14/94	12/02/94	(4) 02/02/95	06/01/95	8,026,000	5,000—35,000	32,000	250
Library Services to Indian Tribes and Hawaiian Natives Program—Special Grants (84.163B)	03/06/95	05/08/95	NA	09/08/95	(2) 906,000	38,000—106,000	74,600	12

(1) The Department is not bound by any estimates in this notice.

(2) Indian Tribes.

(3) Hawaiian Natives.

(4) This deadline also applies to comments from State Library Administrative agencies.

Section II—Application Notices

CFDA Nos. 84.036 A & B—Library Education and Human Resource Development Program—Fellowships and Institutes (Higher Education Act, Title II, Part B).

Purpose of Program

Promotes high quality library and information science education and provides fellowship, institute or traineeship grants to institutions of higher education and library organizations or agencies to recruit, educate, and train persons, and to establish, develop, or expand programs, through courses of study or staff development in library and information science.

Eligible Applicants

Eligible applicants are institutions of higher education, library organizations, and library agencies.

Project Periods

For fellowship grants: A new fellowship grant at the master's level must be at least one academic year; a new fellowship at the doctoral level must be at least one academic year and may be planned for up to two additional annual budget periods to be awarded on a noncompetitive continuation basis.

For institute grants: A long-term institute project must provide at least one academic year but no more than 12 months of training; a short-term institute project must provide at least one week but no more than six weeks of training.

Applicable Regulations

(a) The regulations for this program as published in the **Federal Register** on August 26, 1993 (58 FR 45210) and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86.

Priorities

CFDA No. 84.036A—Institute Projects

Absolute Priorities 1

Under 34 CFR 75.105(c)(3) and 34 CFR 776.5 the Secretary gives an absolute preference to applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities:

Absolute Priority 1

To recruit, educate, train, retrain and retain minorities in library and information sciences.

Absolute Priority 2

To educate, train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

Absolute Priority 3

To educate, train or retrain library personnel to serve the information needs of the elderly, the illiterate, the disadvantaged, or residents of rural America.

Absolute Priority 4

To educate, train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology.

Invitational Priority

Within absolute priorities 2 and 3 specified in this notice under institute projects, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Applications for institutes that place particular emphasis on libraries and their contributions to achieving one or more of the National Education Goals as listed in the Summary section of this notice.

Note: Applicants interested in the invitational priority addressing libraries and their contributions to achieving the National Education Goals may request from the program office the complete text of the eight goals, including the objectives supporting each individual goal.

For Applications or Information Contact

Louise V. Sutherland, Acting Director, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 55 New Jersey Avenue, N.W., Room 404, Washington, DC 20208-5571. Telephone (202) 219-1315.

CFDA No 84.036B—Fellowship Projects

For FY 1995, only Master's and new Doctoral degree level applications will be accepted. Grantees that were awarded doctoral grants in FY 1994 that continue in FY 1995 will be contacted separately.

Absolute Priorities

Under 34 CFR 75.105(c)(3) and 34 CFR 776.5 the Secretary gives an absolute preference to applications for

fellowships that meet one or more of the following priorities. The Secretary funds under this competition only applications for fellowships that meet one or more of the following priorities:

Absolute Priority 1

To recruit, educate, train, retrain and retain minorities in library and information science.

Absolute Priority 2

To educate, train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

Absolute Priority 3

To increase excellence in library education by encouraging study in library and information science and related fields at the doctoral level.

Absolute Priority 4

To educate, train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology.

For Applications or Information Contact

Louise V. Sutherland, Acting Director, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 404, Washington, DC 20208-5571. Telephone (202) 219-1315.

Program Authority

20 U.S.C. 1021, 1032

CFDA No. 84.163A—Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (Library Services and Construction Act, Title IV).

Purpose of Program

Provides noncompetitive basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

Eligible Applicants

(a) Indian tribes recognized by the Secretary of the Interior to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians; (b) Alaska Native villages or regional or village corporations as defined in or established under the Alaska Native Claims Settlement Act (however, two or more Alaska Native villages, regional corporations, or village corporations

may not receive basic grant allocations to serve the same population); and (c) Organizations primarily serving and representing Hawaiian natives and recognized by the Governor of Hawaii.

Applicable Regulations

(a) The Basic Grants to Indian Tribes and Hawaiian Native Program Regulations in 34 CFR Part 771; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74 and 82 (for grants to Hawaiian native organizations); 80 (for grants to Indian tribes); and 75, 77, 81, and 85 (for grants to both Hawaiian natives and Indian tribes).

For Applications or Information Contact

Beth Fine, Program Officer, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 404, Washington, D.C. 20208-5571. Telephone (202) 219-1315.

Program Authority

20 U.S.C. 351c(c)(1), 351c(d), 361(c), 363.

CFDA No. 81.167A—Library Literacy Program (Library Services and Construction Act, Title VI).

Purpose of Program

Provides grants to State and local public libraries to support adult literacy projects. Grants may not exceed \$35,000 in any fiscal year.

Eligible Applicants

State and local public libraries.

Length of Application

The applicant must limit the application narrative to no more than 25 pages, including any charts, graphs, or other documentation that are inserted in the body of the narrative. The narrative must be double-spaced, using 8½×11" paper (on one side only) with one-inch margins. If using a proportional computer font, use no smaller than a 12-point font. If using a nonproportional computer font or a typewriter, do not

use more than 10 characters to the inch. Pursuant to this Department's regulatory authority to establish instructions governing the form of application (34 CFR 75.101(a)(1)), proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed the equivalent of this limit, will not be considered for funding.

Applicable Regulations

(a) The Library Literacy Program Regulations in 34 CFR Part 769; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, and 85.

For Applications or Information Contact

Barbara Humes, Program Officer, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 404, Washington, D.C. 20208-5571. Telephone: (202) 219-1315.

Program Authority

20 U.S.C. 375.

CFDA No. 84.163B—Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (Library Services and Construction Act, Title IV).

Purpose of Program

Makes competitive awards to eligible Indian tribes to establish or improve public library services. All available funds for library services to Hawaiian natives are awarded through the Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (CFDA No. 84.163A).

Eligible Applicants

Indian Tribes and Alaska Native villages or regional or village corporations that have met eligibility requirements for the Library Services to Indian Tribes Program—Basic Grants (CFDA No. 84.163A) and received such Basic Grants in the same fiscal year as the year of application.

Priorities

The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications.

Invitational Priority 1

To assess and plan for tribal library needs.

Invitational Priority 2

To train or retrain Indians as library personnel.

Invitational Priority 3

To purchase library materials.

Invitational Priority 4

To conduct special library programs for Indians such as summer reading programs for children, outreach programs for elders, literacy tutoring, and training in computer use.

Applicable Regulations

(a) The Special Projects Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR Part 772; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 80, 81, and 85.

For Applications or Information Contact

Beth Fine, Program Officer, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208-5571. Telephone (202) 219-1315.

Program Authority

20 U.S.C. 351c(c)(2), 361(d), 364.

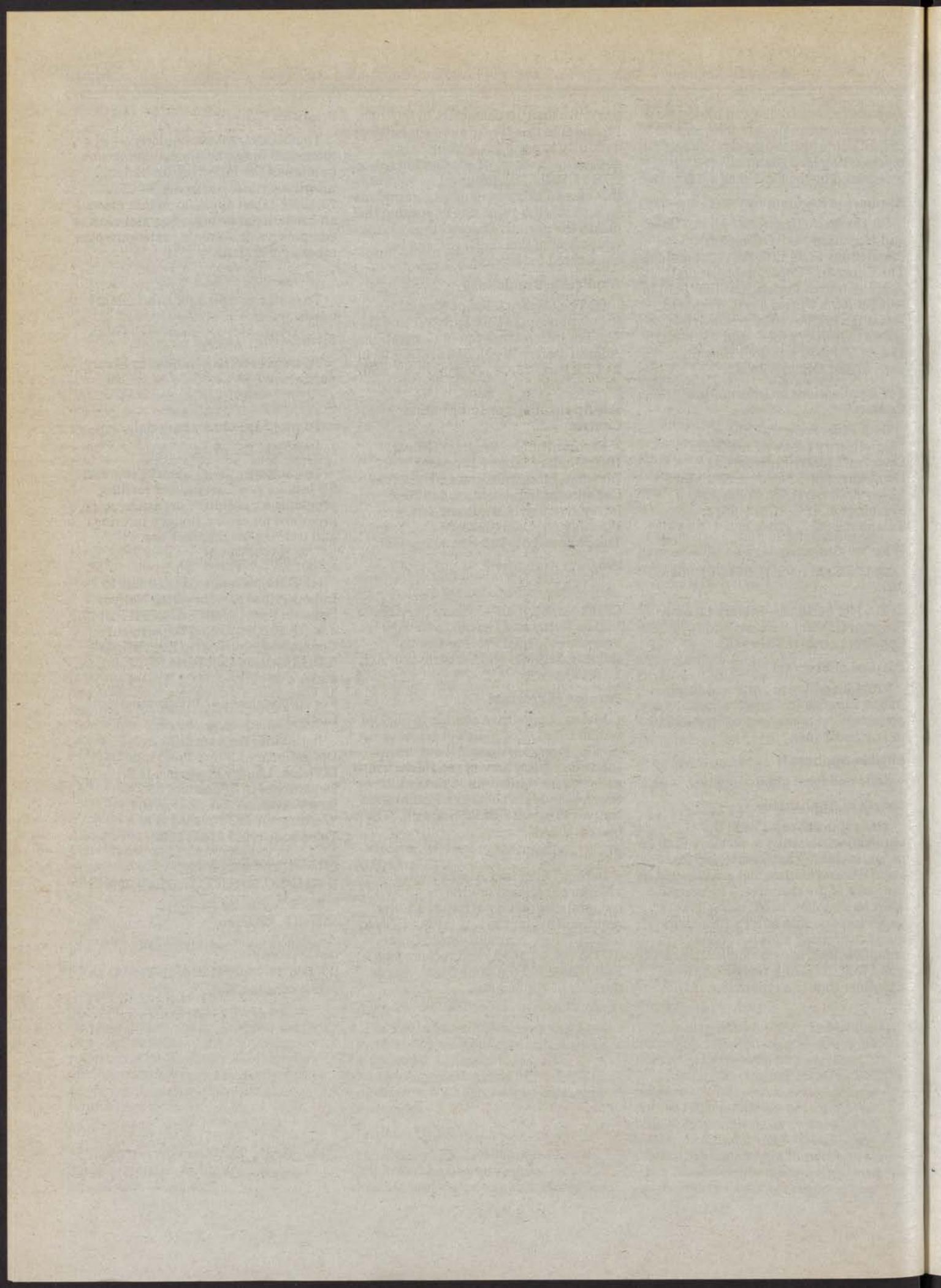
Dated: September 23, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94-24020 Filed 9-28-94; 8:45 am]

BILLING CODE 4000-01-P



50 CFR Part 17

Thursday
September 29, 1994

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and
Plants; Determination of Endangered
Status for the Pacific Pocket Mouse;
Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC39

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Pacific Pocket Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the Pacific pocket mouse (*Perognathus longimembris pacificus*) to be an endangered species throughout its range in coastal southern California, pursuant to the Endangered Species Act of 1973, as amended (Act). Critical habitat is not being designated. This small rodent is an obligate resident of river and marine alluvium and coastal sage scrub plant communities in the immediate vicinity of the coast. Although the Pacific pocket mouse formerly occurred at a minimum of 8 general locales encompassing some 29 sites from Los Angeles County south to San Diego County, the only known, confirmed population extant occurs on the Dana Point Headlands in Orange County, California. A maximum of 36 confirmed, individual Pacific pocket mice has been detected on 3.75 acres of identified occupied habitat during the last 20 years. The Pacific pocket mouse is threatened with extinction due to documented depredation by domestic cats and habitat loss and fragmentation as a result of past and continuing land development projects. This rule implements and guarantees continued Federal protection provided by the Act for the Pacific pocket mouse, which was emergency listed as endangered on January 31, 1994 for a period of 240 days.

EFFECTIVE DATE: September 26, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Mr. Gail C. Kobetich, Field Supervisor, at the address listed above (telephone 619/431-9440).

SUPPLEMENTARY INFORMATION:

Background

The Pacific pocket mouse (*Perognathus longimembris pacificus*) is

one of 19 recognized subspecies of the little pocket mouse (*Perognathus longimembris*) (Hall 1981). This species is one of the smallest members of the family Heteromyidae, which consists of spiny pocket mice (*Heteromys* and *Liomys*), pocket mice (*Perognathus* and *Chaetodipus*), kangaroo rats (*Dipodomys*), and kangaroo mice (*Microdipodops*). Virtually all (if not all members of this family are nocturnal, granivorous and have external, deep, fur-lined cheek pouches (Ingles 1965; Dr. P. Brylski, consulting mammalogist, pers. comm., 1993).

Perognathus longimembris ranges in size from about 110 to 151 millimeters (mm) (4.3 to 5.9 inches) from nose to tip of tail (Hall 1981) and weighs 7 to 9 grams (¼ to ⅓ oz.) (Burt and Grossenheider 1976). The body pelage is spineless, bristle-free, and predominately brown, pinkish buff or ochraceous buff above and light brown, pale tawny, buff, or whitish below. There are typically two small patches of lighter hairs at the base of the ear. The tail can be either distinctly or indistinctly bicolored. The little pocket mouse exhibits a high degree of geographic variation in pelage color (Hall 1981; see also Ingles 1965). Vocalizations of this species include a high-pitched squeal.

The Pacific pocket mouse is the smallest subspecies of the little pocket mouse, ranging up to 131 mm (5.2 inches) in length from nose to tip of the long tail. The tail, hind foot, and skull structures of Pacific pocket mice are also the smallest of all little pocket mouse subspecies (Huey 1939). Stephens (1906) labeled the species an " * * * exceedingly small [p]ocket [m]ouse * * * ". The Pacific pocket mouse is one of the smallest rodents in the world.

The Los Angeles pocket mouse (*Perognathus longimembris brevinasus*), which occurs mostly northeast of, and well inland from, the Pacific pocket mouse, is the only other subspecies of little pocket mouse that occurs in southern California west of the deserts. Individual Los Angeles pocket mice range in size from 125 to 145 mm (4.9 to 5.7 inches) long. Overall, Los Angeles pocket mice have longer tails, hind feet, skulls, and nasal bones than Pacific pocket mice (Huey 1939).

The Pacific pocket mouse was originally described by Mearns (1898) as a distinct species, *Perognathus pacificus*, based on the type specimen that was collected on the shore of the Pacific Ocean at Mexican Boundary Monument 258 in San Diego County, California. Although von Bloeker (1931a,b) initially recognized the Pacific

pocket mouse as a distinct species, he subsequently concluded that *P. pacificus* represented two subspecies of the little pocket mouse, *P. longimembris pacificus* and *P. l. cantwelli*, after examining additional specimens (von Bloeker 1932). Subsequent to a biometric analysis of 331 specimens of the little pocket mouse, Huey (1939) recognized *P. l. pacificus* to be inclusive of the two subspecies described by von Bloeker (1932). Subsequent taxonomic treatments (e.g., Hall 1981; Williams et al. 1993) have retained the Pacific pocket mouse as a distinct subspecies. Although a taxonomic review of *P. longimembris* may be appropriate, the Pacific pocket mouse has been described as distinct from related forms (Dr. D. Williams, mammalogist, *in litt*, 1993).

Under section 3(15) of the Act (16 U.S.C. 1531 *et seq.*), the term "species" is defined to include recognized subspecies. Therefore, throughout the remainder of this rule, *Perognathus longimembris pacificus* (hereafter referred to as the Pacific pocket mouse), is treated as a "species".

The Pacific pocket mouse is endemic to the immediate coast of southern California from Marina del Rey and El Segundo in Los Angeles County, south to the vicinity of the Mexican border in San Diego County (Hall 1981, Williams 1986, Erickson 1993). The species has not been recorded outside of California (Williams et al. 1993; Erickson 1993). Erickson (1993) noted further that the Pacific pocket mouse has not been reliably recorded more than approximately 2 miles (3 kilometers) inland from the coast or above 600 feet (180 meters) in elevation.

The habitat requirements of the Pacific pocket mouse are not well understood, but they are known to occur on fine-grain, sandy substrates in the immediate vicinity of the Pacific Ocean (Mearns 1898, von Bloeker 1931; Grinnell 1933; Bailey 1939). The Pacific pocket mouse is or was known to inhabit coastal strand, coastal dunes, river alluvium, and coastal sage scrub growing on marine terraces (Grinnell 1933; Meserve 1972; Erickson 1993). Stephens (1906) trapped a female " * * * on a dry mesa a short distance back from the seashore." von Bloeker (1931a) reported that Pacific pocket mice detected near San Diego were found only in open patches of ground that were otherwise surrounded by weedy growth. M'Closkey (1972) and Meserve (1972, 1976b) detected the Pacific pocket mouse on sandy substrates in coastal sage scrub habitats in the San Joaquin Hills in Orange County, California. Brylski (1993)

detected the only known, confirmed population extant on the Dana Point Headlands on loose sand substrates in a coastal sage scrub community dominated by California buckwheat (*Eriogonum fasciculatum*) and California sage (*Artemisia californica*). Brylski (1993) commented that the Pacific pocket mouse's preferred habitat " * * * appears to be open coastal sage scrub on fine, sandy soil."

Little quantitative information is available on the ecology and life history of the Pacific pocket mouse. However, the attributes of the little pocket mouse and the available data that pertain to the Pacific pocket mouse subspecies suggest that this small rodent is facultatively or partially fossorial, relatively sedentary, primarily granivorous, and able to become torpid, estivate, or hibernate in response to adverse environmental conditions (e.g., Ingles 1965; Kenagy 1973; Dr. P. Meserve, academic mammalogist, pers. comm., 1994; Dr. R. MacMillan, academic mammalogist, pers. comm., 1994).

During those periods that they are not active on the surface of preferred substrates or in preferred habitats, Pacific pocket mice apparently dwell in underground burrows. Erickson (1993) noted that "[n]umerous small burrows revealed the presence of some colonies to early collectors." Kenagy (1973) observed that little pocket mice may stay in their burrows continuously for up to five months in winter, alternating between periods of dormancy and feeding on stored seeds. Periods of dormancy apparently may be induced by, or correlated with, food shortage (Kenagy 1973). Ingles (1965) noted that "[t]he ability of the little pocket mouse to become dormant for only a few bad nights is an important factor in its survival."

While active and above ground, little pocket mice have ranged up to 1,000 feet (320 meters) from their burrows in a 24-hour period (Burt and Grossenheider 1976). However, based on his study from 1969-1973 in the Owens Valley, California, Kenagy (1973) concluded that " * * * the maximum distance moved during the night by this little mouse was undoubtedly much less than 50 m." Reported little pocket mouse home ranges ranged in size from 0.12 to 0.56 hectares (0.30 to 1.4 acres) and populations ranged in density from 1 to 5.5 individuals/hectare (0.4 to 2.2 individuals/acre) in Joshua Tree National Monument, California (Chew and Butterworth 1964). Adult density at Dana Point Headlands was estimated to be 5.9/hectare (2.4/acre) by Brylski (1993).

Pacific pocket mice primarily eat the seeds of grasses and forbs (von Bloeker 1931; Meserve 1972, 1976a). Meserve (1976a) observed further that other plant materials were consumed, albeit in comparatively smaller quantities. P. Brylski (pers. comm., 1993) observed that "Pacific pocket mice foraged mainly on the seeds of grasses and, to a lesser degree, on leafy vegetation." Jameson and Peeters (1988) reported that little pocket mice, like other pocket mouse species, also eat soil-dwelling insects.

Relatively little is known of the breeding biology of Pacific pocket mice. Erickson (1993), relying largely on data provided by Meserve (1972), noted that "[p]regnant and lactating females have been found from April through June with immatures noted from June through September." P. Brylski (pers. comm., 1993) observed lactating females in July and noted that two litters were produced that year. Limited reproduction was attributed to juveniles in the Dana Point Headlands population (P. Brylski, pers. comm., 1993). Jameson and Peeters (1988) described the little pocket mouse as "rather prolific" and indicated that "[p]regnancies occur in spring and fall with a summer lull."

Historical records indicate that the Pacific pocket mouse occurred in 8 general areas encompassing some 29 separate trapping sites. Approximately 80 percent of all Pacific pocket mouse records are from 1931 or 1932 (Erickson 1993). The following summary of records is organized by county:

Los Angeles County. The Pacific pocket mouse historically was detected in three areas—Marina del Rey/El Segundo, Wilmington, and Clifton. One hundred and eighteen specimens or live captures were recorded for the Marina del Rey/El Segundo area from 1918 to 1938, with most (86) of these records coming from "Hyperion"; see Erickson (1993). Three specimens were collected in Wilmington in 1865 (voucher specimens on deposit at the Museum of Vertebrate Zoology, University of California, Berkeley) and four were collected in "Clifton" [sic] in 1931. Four specimens from San Fernando in 1932 that were originally labeled as *P. pacificus*/*P. cantwelli* were referred to as *P. l. brevinasus* by von Bloeker (1932); see Erickson (1993). There have been no records of Pacific pocket mice from Los Angeles County since 1938 (Erickson 1993; P. Brylski, *in litt*, 1993).

Orange County. The Pacific pocket mouse has been confirmed at two locales in Orange County: the San Joaquin Hills and Dana Point. The species was found in Buck Gully (P. Meserve, pers. comm., 1994) and nearby

"Spyglass Hill" in the San Joaquin Hills from 1968 to 1971 (M'Closkey 1972; Meserve 1972; R. MacMillan, pers. comm., 1994). Forty-four specimens or live captures from "Spyglass Hill" were recorded from 1968-1971 (see Erickson 1993). The only known, confirmed population extant of the Pacific pocket mouse was rediscovered in July of 1993 on the Dana Point Headlands in Orange County, California (Brylski 1993). G. Cantwell had previously collected 10 specimens of this species at this locale in May of 1932 (voucher specimens on deposit at the Natural History Museum of Los Angeles County).

Possible, recent records from Crystal Cove State Park (approx. 16 km (10 mi) NW Dana Point) resulting from pitfall trapping (see R. MacMillan, pers. comm., 1994) await confirmation given the uncertainty expressed by the observer and the negative results of recent walk-over and trapping surveys there (see P. Brylski, *in litt*, 1994 and J. Webb, *in litt*, 1994).

San Diego County. The Pacific pocket mouse historically was confirmed at three general locales in San Diego County—the San Onofre Area, Santa Margarita River Estuary, and the lower Tijuana River Valley. One specimen was obtained at San Onofre in 1903 and two others were secured at that locale in 1931. Seventy-one specimens or live captures were recorded for the Santa Margarita River mouth area between 1931 and 1936, with the majority (50) of these reported for "Oceanside". One hundred and thirty-four specimens or live captures have been recorded from the lower Tijuana River Valley, including the type specimen. There has not been a confirmed Pacific pocket mouse record at these locales or elsewhere in San Diego County since 1932 (see Erickson 1993).

However, there have been three recent, unconfirmed reports of the Pacific pocket mouse from San Diego County. A document released by the California Department of Fish and Game (Mudie et al. 1986) pertaining to the wildlife resources at the San Dieguito Lagoon, Del Mar, and at least one subsequent environmental "baseline study" pertaining to that locale (see S. Montgomery, consulting biologist, *in litt*, 1994 and R. Erickson, consulting biologist, pers. comm., 1994) provide species lists that contain the little pocket mouse (*Perognathus longimembris*). Given the location of the survey effort, it seems almost certain that any and all little pocket mice recorded at this locale would be Pacific pocket mice. However, it was subsequently ascertained that none of the surveyors or report authors could

recall capturing a little pocket mouse on the site or reporting same (e.g., Montgomery *in litt*, 1994; R. Erickson, consulting biologist, pers. comm., 1994). Subsequent walk-over surveys of the area in 1992 did not reveal the presence of the Pacific pocket mouse (Dr. P. Behrends, consulting mammalogist, pers. comm., 1994).

A single Pacific pocket mouse was reported from Lux Canyon, Encinitas, in June 1989. The record is now considered only probable by the observer (Erickson 1993).

Most recently and since the publishing of the proposed and emergency rules, Mr. S. Tremor (*in litt*, 1994) reported what he believes to be a single Pacific pocket mouse from a locale in Del Mar, California. However, the animal escaped before photographs or a pelage description could be obtained. Given these considerations, the Service concludes, in the present absence of definitive or additional information, that the Del Mar observation, although certainly deserving of further attention and investigation, remains unconfirmed until such time that a positive species identification can be made. P. Brylski (pers. comm., 1994) independently has arrived at the same conclusion.

Accordingly, the only known, recently confirmed population of the Pacific pocket mouse extant remains on the Dana Point Headlands. Between 25 to 36 individual Pacific pocket mice were detected there by Brylski (1993) during trapping surveys that extended into August. Prior to this recent rediscovery of the Pacific pocket mouse at the Dana Point Headlands, the Pacific pocket mouse had not been positively observed since 1971 (see Erickson 1993). Numerous, relatively recent small-mammal survey and trapping efforts within the potential range of the Pacific pocket mouse (e.g., Salata 1981; Jones and Stokes 1990; Taylor and Tiszler 1991; D. Erickson, pers. comm. 1993; P. Brylski, *in litt*, 1993; P. Behrends, pers. comm., 1994; Dr. P. Kelly, mammalogist, pers. comm., 1994; R. MacMillan, pers. comm., 1994; Dr. R. Dingman, mammalogist, pers. comm., 1994; Dr. J. Webb, biologist, *in litt*, 1994; S. Montgomery, consulting biologist, *in litt*, 1994; P. Brylski, *in litt*, 1994; United States Fish and Wildlife Service 1994a; United States Fish and Wildlife Service 1994b) have failed to locate additional extant populations.

From a species perspective, the persistence of the Pacific pocket mouse is important, perhaps essential, in preserving an important and unique portion of the historic habitat of the little pocket mouse and in preserving

potentially unique genetic stock. The Pacific pocket mouse's adaptation to, and dependence on, coastal dune and coastal alluvium substrates and coastal sage scrub habitats have probably contributed to a genetic divergence from other subspecies of the little pocket mouse. Maintaining a broad genetic stock may be critically important to the species ability to adapt to changing environmental conditions. The apparent sedentary nature of the Pacific pocket mouse (Meserve 1972; Meserve, pers. comm., 1994) and the fragmentation of this species' potential habitat increase the probability that localized extirpations caused by the destruction of habitat or movement corridors will be permanent. This could significantly reduce the extent of any possible introgression between subpopulations and reduce genetic heterozygosity and the overall fitness of the species. Such perturbations could result in a permanent loss of genetic stock or, at the extreme, result in the extinction of the Pacific pocket mouse.

Previous Federal Action

The Pacific pocket mouse was designated by the Service as a category 2 candidate species for Federal listing as an endangered or threatened species in 1985 (50 FR 37966). It was retained in this category in subsequent notices of review published by the Service in the *Federal Register* in 1989 and 1991 (54 FR 554 and 56 FR 58804, respectively). Category 2 comprises taxa for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules.

Largely because of documented, imminent threats to the only known population of the Pacific pocket mouse, the Service published an emergency rule to list the species as endangered on February 3, 1994 (59 FR 5306). Interim protection afforded the Pacific pocket mouse as the result of the promulgation of the emergency rule expires on September 28, 1994. A proposed rule to list the Pacific pocket mouse was concurrently published with the emergency rule (59 FR 5311).

Summary of Comments and Recommendations

In the proposed rule and associated news release announcing the promulgation of the proposed rule and emergency rule, all interested parties were requested to submit factual reports or information that might contribute to

the development of a final rule. The news release was provided to media throughout southern California and to the national media. In addition, 3 Federal agencies, 3 state agencies, 15 county and city governments, and 6 other potentially affected or interested parties were individually notified of the promulgation of the emergency and proposed rules. Representatives of Marine Corps Base, Camp Pendleton; the County of Orange; the City of Dana Point; and the Dana Point Headlands landowner, among others, were personally contacted by Service personnel. Newspaper articles in the *Los Angeles Times* and *Orange County Register* announcing the emergency listing of the Pacific pocket mouse and scheduled public hearing appeared in February and March 1994.

The Service held a public hearing on the proposed rule on March 24, 1994, in San Clemente, Orange County, California. Notification of the hearing was published in the *Federal Register* on March 1, 1994 (59 FR 9720). Newspaper notices specifically announcing the hearing and inviting general public comment on the proposal additionally were published in the *Orange County Register* and *San Diego Union Tribune*. Approximately 25 people attended the hearing and seven of these provided oral comments.

A total of 71 comments was received. Although the comment period technically closed on April 4, 1994, the Service considered all comments received through June 20, 1994. (Five comments were received by the Carlsbad Field Office after the deadline, including one from an interested and potentially affected municipal jurisdiction.) Multiple comments whether written or oral from the same party are regarded as one comment.

Of the comments received, 48 persons or organizations (68 percent) supported listing; 10 (14 percent) urged the protection of the only confirmed, occupied habitat of the Pacific pocket mouse on the Dana Point Headlands; 3 (4 percent) were against the listing; 3 (4 percent) were in favor of the development of the Dana Point Headlands; 4 (6 percent) urged the application of sound science to the listing process; and 3 (4 percent) were noncommittal.

Two Federal agencies and the sole city government responding were neutral on the issue of listing. The California Department of Fish and Game previously had gone on record as supporting a proposal to list the Pacific pocket mouse (K. Berg, *in litt*, 1992). No citizens groups or organizations opposed the proposed listing. Attorneys

for one landowner voiced opposition to both the emergency listing and proposed listing.

The Service has reviewed all of the written and oral comments described above including those that were received outside of the formal comment periods. Based on this review, 11 relevant issues have been identified and are discussed below. The Service considers these issues to be representative of the comments questioning or opposing the proposed listing action.

Issue 1: One commenter noted that the listing action should not occur because the Pacific pocket mouse subspecies is not a valid taxon and the subject of taxonomic controversy. The commenter quotes a letter from Mr. P. Collins, Associate Curator of the Santa Barbara Museum of Natural History, to D. Erickson, in which it is stated that " * * * I think that it is imperative that the taxonomic status of the various subspecies of *Perognathus longimembris* in central and southern California be reevaluated using modern systematic techniques such as electrophoresis and multivariate morphometrics. The systematic questions will need to be answered before any population of this species can be proposed for possible listing status." The commenter further noted that " * * * Service officials appeared to have significant concerns regarding the appropriateness of listing the PPM [Pacific pocket mouse] in the absence of sufficient data on the taxonomy issue—even as recently as November 1993. (Exhibit J)" The Service is obliged to consider available data pertaining to the genetic relationship between the Pacific pocket mouse and other groups of little pocket mice as provided by Patton et al. (1981). The commenter added that the subspecies designation is controversial and that " * * * alleged morphological characteristics could be the product of seasonal or ecological variation among pocket mice. A proper resolution of the resolution of the PPM's true status is required before the Service can act to list the PPM as a subspecies. * * *"

Service Response: Although the Service initially and independently reviewed all available information relating to the taxonomy, ecology, biology, status and distribution of the Pacific pocket mouse, the Service also solicited comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, and any other interested party on these and all other aspects of the proposed rule. In particular, the Service has made a concerted effort to obtain the best

available scientific information regarding the taxonomy of the Pacific pocket mouse.

Despite a recent taxonomic treatment of the rodent family Heteromyidae published by the American Society of Mammalogists (Society), the Service nonetheless solicited the expert opinions and input of, among others, the President of the Society and the principal author of the published taxonomy (Williams et al. 1993) regarding the taxonomic validity of *Perognathus longimembris pacificus*. The Service considers the Society to be a recognized authority on the taxonomy and biology of North American mammals.

As is suggested by the commenter, the Service does have significant concerns regarding the appropriateness of listing any species and carefully considers its mandate in that regard as set forth by section 4 of the Act. In the present case, however, the Service cannot agree that there is, as suggested by the commenter, an absence of sufficient data pertaining to the taxonomy of the Pacific pocket mouse.

The Pacific pocket mouse was originally described by Mearns (1898) as a distinct species, *Perognathus pacificus*. Subsequent to several intervening taxonomic treatments or investigations (e.g., Stephens 1906; von Bloeker 1932; Grinnell 1933; Huey 1939), Hall (1981) and others have recognized the Pacific pocket mouse as a distinct subspecies of the little pocket mouse. Although the taxonomical history of this species spans some 90 years and there is a current, peer-reviewed, published classification of the heteromyid rodents inclusive of the pocket mice taxa (Williams et al. 1993), the Service nevertheless contacted Dr. Williams to insure that there was no doubt as to the current, correct taxonomic treatment of the subject subspecies (see D. Williams, *in litt*, 1993, which is identical to the commenter's Exhibit J). Dr. Williams (*in litt*, 1993) confirmed the taxonomic validity and distinctness of the Pacific pocket mouse.

Although it is recognized that a " * * * modern revision of the *longimembris* complex might cause a re-evaluation of the various subspecies of this taxon", the Service presently has no information or scientific basis to refute a recognized authority's assertion that " * * * there is certainly every reason to consider *pacificus* valid with current information" (Dr. J. L. Patton, President of the American Society of Mammalogists, *in litt*, 1994). Patton et al. (1981) did not address the biochemical systematics of perognathine

pocket mice (which include the little pocket mouse and Pacific pocket mouse).

Mr. Collins has informed the Service (pers. comm., 1994) that he has no alternative taxonomy to propose and is not now, and will not be in the foreseeable future, investigating the taxonomy of *Perognathus longimembris*. By contrast, P. Brylski has indicated (*in litt*, 1993) that he and others are currently investigating the systematics of *Perognathus longimembris* utilizing sequencing regions of mitochondrial DNA and morphology. To date, no results from these studies have been published or are otherwise forthcoming. In the interim, P. Brylski (*in litt*, 1994) has most recently indicated that "[a]t this time, there is no evidence that contradicts the taxonomic distinctiveness of *P. longimembris pacificus*."

The traditional scientific approach to defining vertebrate subspecies has been based almost exclusively on the identification of morphological differences in body measurements and other morphometric characters between geographically distinct populations of a species. Given its apparent, current rarity, limited mobility, and distance from other subspecies of the little pocket mouse (see, for instance, Meserve 1972; Hall 1981; P. Brylski, *in litt*, 1993; Erickson 1993) and the definition and expected course of speciation, it seems reasonable to assume that the Pacific pocket mouse is now, or will be, a de facto "full" species or genetically-isolated taxonomic entity unto itself.

In the absence of current, definitive information to the contrary from an expert (or any other) source, the Service presently concludes that the Pacific pocket mouse subspecies constitutes a valid taxon.

Issue 2: The same commenter concluded that the proposed rule must be withdrawn because the Service improperly and secretly elevated the species to a category 1 candidate status on the basis of new information that was obtained in 1993.

Service Response: The three candidate levels (1-3) used by the Service are administratively defined to periodically advise the public on the status of various taxa that might come under the protection of the Act. The terms "candidate" or "category 1" do not appear in the Act or implementing regulations in 50 CFR. The Service had previously notified the public in its candidate notices of review (e.g., 56 FR 58805) that when sufficient information was available, a proposed rule might result. Section 4(b)(7) of the Act

specifically authorizes the Service to promulgate emergency rules when the well-being of a species is at significant risk. A species need not be a previously declared category 1 candidate species to meet the criteria for threatened or endangered status and to be proposed accordingly or to have an emergency rule promulgated. For reasons that are fully explored in the "Summary of Factors" portions of the February 3, 1994, emergency rule (59 FR 5306) and this rule, the Service concludes that the Pacific pocket mouse fully met and still meets the criteria necessary to promulgate a rule listing the species as endangered.

The new information obtained in 1993 consists of all materials and data that became available to the Service pertaining to, in part, the status, distribution, ecology, and biology of the Pacific pocket mouse. Included in these submittals was an updated manuscript by R. Erickson (1993). Accompanying this manuscript were records of Pacific pocket mouse museum or collection specimens and related documentation, raw data and notes reflecting searches for additional Pacific pocket mice records, peer-review correspondence, communications with experts in the field, an updated bibliography, and other, relevant materials. Also received in 1993 were Brylski's (1993) report and additional correspondence (P. Brylski, *in litt*, 1993) that confirmed the rediscovery of the Pacific pocket mouse on the Dana Point Headlands. During the prescribed public comment period, the commenter viewed and photographed or otherwise received all such materials.

Subsequent to an examination of all pre-existing information and important, additional data received in 1993, the Service concluded that sufficient data and information existed to list the Pacific pocket mouse on an emergency basis pursuant to section 4 of the Act and implementing regulations pertaining thereto. Given the information and data that has been forthcoming since that time, the Service concludes that the emergency listing was appropriate and that the species continues to meet the criteria as an endangered species.

Issue 3: The same commenter observed that the "[p]roposed rule should be withdrawn because the Service lacks scientific data to support a listing of the PPM as threatened or endangered." The Service currently has insufficient information to assess the status and distribution of the Pacific pocket mouse. Specifically, the commenter argued "that a substantial number of trap nights—

perhaps a minimum of roughly 500—must be employed in any survey effort deemed to have any relevance for reaching conclusions on presence/absence. Consistent with this need for reliable data, the M.H. Sherman Company conducted 643 trap nights during its survey efforts at the Dana Headlands site." The commenter further argued that the majority of other recent surveys either were conducted "when the PPM can be expected to be dormant" (e.g., Taylor and Tizler 1991) or at "[s]ites for which no survey dates are provided (and thus cannot be considered to provide reliable presence or absence data)" (e.g., the Santa Margarita River Mouth). "An examination of the data for just the eight (8) locations historically known to have occupied habitat" reveals a similar lack of information upon which to draw a conclusion about the appropriateness of listing. The Service's own document indicates that a live trapping program is needed before the appropriateness of any listing can be made." Another commenter encouraged the Service "to fully investigate all remaining historic habitats as well as potential habitat areas for the Pacific pocket mouse before making a final determination on its status." One commenter concluded that "[t]he Service's failure to establish and publish the accepted survey protocol for the PPM prior to the close of the public comment period renders this rule-making process invalid."

Service Response: In response to similar comments regarding the proposed listing of three Gulf Coast beach mice species (*Peromyscus*), the Service (June 6, 1985, 50 FR 23874) argued that "[i]t is not necessary to have precise population numbers to determine that the beach mice are endangered; indeed, it would probably be impossible to obtain such numbers." In that instance, the Service concluded that the three beach mice were endangered after a thorough review of adequate, relevant population data and documentation of habitat loss or perturbation, documented depredation, and other factors affecting the species.

In consistent fashion, the Service has made every attempt to obtain the best scientific information and data relating to the status of the Pacific pocket mouse and the factors affecting that species. Subsequent to a thorough consideration of these data and information, the Service concludes that said data and information are adequate and collectively support a listing as endangered. In particular, a composite of the relevant data summarized and reported by Hall (1981), Williams

(1986), Williams et al. (1993), and Erickson (1993), the specimen records at institutions throughout California, and the additional data, references, and records summarized herein demonstrates that there is not a paucity of relevant information on the Pacific pocket mouse or the small rodent species of southern California in general.

An analysis of this very same information reveals that credible determinations of presence/absence of the Pacific pocket mouse (and many other small rodent species) depend on a number of factors that are not a function of the number of survey trap nights. Legitimate small mammal trappers in California are all licensed by the California Department of Fish and Game and many possess endangered species permits from the Service. These scientific surveyors are professionally obligated and charged with knowing the conditions and circumstances that will maximize the chances of detecting the Pacific pocket mouse during focused surveys or otherwise result in an adequate characterization of the rodent community at any given locale. An adequate assessment of the appropriate number of trap nights and number of trapping bouts during a given survey should reflect the experience of the surveyor and will certainly incorporate, at a minimum, the results of walk-over surveys for small rodent sign and burrows, analyses of the size and physical characteristics of the area being surveyed, the adjudged, current trappability of the target species, apparent suitability or "quality" of site habitat(s), time of year, phase of the moon, and the climatic conditions. Thus, a given focused survey for the Pacific pocket mouse may appropriately require far less than, or far greater than, five hundred trap nights.

All of the above considerations are factored into the Service's guidelines for surveying the Pacific pocket mouse (U.S. Fish and Wildlife Service 1994c) and it is likely that the protocol will evolve pursuant to the recommendations of permitted surveyors and expert sources. Although the Service has stipulated a minimum of five trapping bouts at each site to reflect the rarity and possible difficulty in locating or trapping the Pacific pocket mouse (e.g., Erickson 1993; Behrends, *in litt*, 1994), it is further stated that "[a] lesser effort may be approved by the Carlsbad Field Office on a case by case basis." (U.S. Fish and Wildlife Service 1994c). If, for instance, the objective is to merely establish presence/absence at a given locale, then a lesser effort may well be justified if Pacific pocket mice

are detected in the first four trapping bouts. The recent, successful trapping survey at the Dana Point Headlands is a case in point. Although the Service concedes that the 643 trap-night effort at that locale in 1993 was justified, in that particular instance, to establish the approximate range and extent of the local Pacific pocket mouse population, it is nonetheless true that 9 Pacific pocket mice were discovered during the first night of trapping subsequent to the placement of 60 "effective" live traps at the site (Brylski 1993).

Even though it is apparent that Pacific pocket mice have not been recorded in December, January, or February of any given year (see Erickson 1993) and that the species apparently is most detectable from April to August (e.g., Meserve 1972), it cannot be assumed that the species is entirely undetectable during winter months. Subsequent to his long-term (1969-1973) study of the little pocket mouse at an elevation of approximately 1,220 meters (4,000 feet) in the Owens Valley, California, Kenagy (1973) observed that "[t]he extent of winter activity in the population of *P. longimembris* was different in each of the three winters, ranging from zero to 5 months of activity." * * * Thus, the Service cannot automatically assume that trapping surveys during winter months are of no value in determining the presence/absence of the Pacific pocket mouse. If Pacific pocket mice are active during a given period in winter, however, surface sign should be visible. In any case, a review of the methodology employed by Taylor and Tiszler (1991) reveals that "[t]rapping began in November of 1988 and was completed May 1989." Thus, these authors did conduct trapping in at least portions of 4 calendar months during which Pacific pocket mice have been recorded (Taylor and Tiszler 1991; see also Erickson 1993).

In the emergency rule, R. Zembal, U.S. Fish and Wildlife Service (pers. comm., 1993), is cited as a source to corroborate the statement that recent small trapping efforts at the Santa Margarita River Mouth have failed to detect the presence of the Pacific pocket mouse (59 FR 5307). As is reflected in the Pacific pocket mouse species file at the Carlsbad Field Office, the referenced communication was "[t]he Service has looked repeatedly and intensively for the Pacific pocket mouse at the Santa Margarita River Mouth in recent years with no success."

This statement is borne out by records of recent survey and trapping efforts at that locale. Salata (1981) failed to detect the Pacific pocket mouse at the Santa Margarita River Mouth on Marine Corps

Base, Camp Pendleton, in dune, pickleweed/saltgrass, pickleweed, and glasswort/upland grassland habitats during a survey effort in March 1981 that included 188 trap nights. Similarly, the Service (1994a) reported no captures of the Pacific pocket mouse from June 1986 intermittently to August 1990, during a study of the Santa Margarita River Mouth that involved a total of 11,380 trap nights and included surveys of coastal strand, maritime scrub, salt pan, *Salicornia* upland, *Salicornia/Distichlis* habitats, and *Salicornia* plots. Repeated trapping bouts at optimum times and in documented Pacific pocket mice habitats maximized the possibility of detecting the species. From 1986 to 1987, for instance, coastal strand habitats were surveyed in June, May, and then again in August for a total of 240 trap nights. In addition, potential habitat in maritime scrub, *Salicornia* upland, *Salicornia/Distichlis* dominated areas, and *Salicornia* plots were surveyed during the same calendar months for a total of 2,040 trap nights. Trapping bouts in all of the above-mentioned habitats during October of 1986 and February of 1987 resulted in additional 1,320 trap nights of survey data.

The Service document referenced by the commenter, a draft proposal calling for a live trapping program, is not on letterhead, not dated, and not signed by a Service Field Supervisor or person acting on his or her behalf. Although the date of the document is unknown, Service staff recall that this document has been in the files since at least November 1991. Thus, this draft document predates the receipt or filing of all of the substantive data and scientific papers that were received in 1993 and 1994.

Given all of the information that was received in 1993 and the additional information and materials that have been received since, the Service concludes that sufficient, adequate data are available to assess the likely status and distribution of Pacific pocket mice at the remaining historic locales and elsewhere throughout its historic range. The known present and past status and distribution of the Pacific pocket mouse at these historic locales are again individually reviewed below in the "Summary of Factors Affecting the Species" section of this rule.

Issue 4: The data used by the Service to estimate the remaining potential habitat of the Pacific pocket is inadequate. In particular, * * * the Service's data for San Diego County, Oberbauer and Vanderwier (1991), turns out, upon inspection, to consist of nothing more than unsubstantiated

speculation on the part of two individuals."

Service Response: The Service considers Oberbauer and Vanderwier's (1991) published evaluation of the present, depleted status of vegetation communities in San Diego County to be amongst the best available scientific information on the subject. Given the data base and expertise at the disposal of The Department of Planning and Land Use for the County of San Diego, the Service has no reason to doubt the validity of the presented data. No data or analysis have been submitted to refute their findings. By contrast, the data, analyses, and conclusions presented by Soule et al. (1992), summarized by the Service (March 30, 1993; 58 FR 16742), and the relevant references cited therein are corroborative.

The Service further concludes that the reported, extreme reduction in the potential range and extirpation of the Pacific pocket mouse in Los Angeles County is corroborated by a recent assessment of the land use status of low-elevation lands therein. In the final rule listing the coastal California gnatcatcher (*Poliophtila californica californica*) as threatened (March 30, 1993; 58 FR 16742), it was reported that over 96 percent of the habitat below 250 meters (800 feet) that might have supported the gnatcatcher have been largely or entirely developed. Although the coastal California gnatcatcher is sympatric with the only known, confirmed population of Pacific pocket mouse on the Dana Point Headlands (EDAW 1993), the latter species has not been documented above approximately 180 meters (600 feet) (Erickson 1993) and apparently does not extend nearly as far inland as the former species (summarized March 30, 1993; 58 FR 16742). Thus, given the intense, almost complete development of the immediate coast in Los Angeles County, the Service believes that it is reasonable to predict that the past reduction in the range of the Pacific pocket mouse there exceeds the corresponding reduction in the Los Angeles County range of the coastal California gnatcatcher.

Issue 5: "The Service should explain that with only 8 known historic locations of the PPM and considering the available data on the animal, the PPM may never have been abundant in either the number of populations in the United States or the number of individuals in those populations, at least for the last hundred years." In support of this position, the commenter also notes that Stephens (1906) described the Pacific pocket mouse as "one of the rarest animals." The

commenter additionally indicates that "[t]he Service should also explain that the PPM may be much more abundant and widespread than suggested in the [p]roposed [r]ule."

Service Response: Because the Pacific pocket mouse range-wide has been variously described as "exceedingly difficult to catch" with snap traps (von Bloeker 1931a) or "quite trappable" once located (R. M'Closkey, pers. comm., 1994; P. Meserve, pers. comm., 1994; R. MacMillan, pers. comm., 1994), the Service concludes that this anomaly is generated as a result of the patchy distribution of the species and its ecological requirements (e.g., M'Closkey 1972; Meserve 1976b; P. Meserve, pers. comm., 1994; R. M'Closkey, pers. comm., 1994; R. MacMillan, pers. comm., 1994; P. Brylski, *in litt*, 1994). Apparently, the " * * * rareness of the Pacific pocket mouse is not an artifact of low trappability * * *" (P. Brylski, *in litt*, 1994). Even in an area (the San Joaquin Hills) where the Pacific pocket mouse was repeatedly located and studied during two research investigations of the ecology of the local rodent community, the species was described there as rare (M'Closkey 1972) or present in relatively low numbers (P. Meserve, pers. comm., 1994).

Accordingly, given a composite of the available information and data, the Service concludes that there are no data, substantive or otherwise, that support the hypothesis that the Pacific pocket mouse is much more abundant and widespread than suggested in the proposed rule. Although the persistence of the Pacific pocket mouse on 45 acres of occupied or potentially-occupied habitat (Brylski 1993) suggests the real possibility that populations of the species exist elsewhere, confirmed extant populations away from the Dana Point Headlands have not been found or rediscovered in over 20 years. Thus, given the range-wide survey data and all other relevant information now available, the Service concludes that the Pacific pocket mouse is a patchily distributed species that has been described as locally abundant (Bailey 1939) to rare on carefully studied plots. Further, this mouse has become increasingly rare as a result of human-induced, direct impacts that are presented and discussed in the "Summary of Factors Affecting the Species" section of this rule.

Issue 6: The same commenter observed that "[t]he Service mischaracterizes the threat to the Dana Headlands PPM population because the development of the site is not imminent and any threat posed by feral or domestic cats cannot be effectively

ameliorated by a listing; accordingly, the [e]mergency [r]ule is improper."

Service Response: The Service acknowledges that the development of the Dana Point Headlands currently is not as imminent now as it appeared in February of 1994. Since the publishing of the emergency and proposed rules, the citizens of Dana Point have forced a referendum on the proposed project that apparently will be decided in November of 1994. The referendum and subsequent possible City of Dana Point actions could result in the delayed implementation of, or modifications to, the proposed project. The commenter has agreed, however, that " * * * the Dana Headlands site is the only location recently shown to contain PPM" and that the landowners are requesting approval of a specific plan that includes " * * * development on and near the area where the PPM was trapped in 1993."

The Service disagrees that the documented predation by domestic and feral cats cannot be effectively ameliorated by a listing. The mission and mandate of the Service is to recover listed species utilizing the funds and authority that Congress provides. A recovery plan for the Pacific pocket mouse will almost certainly provide for means and measures to prevent or reduce the depredation of the species. The Service hopes and trusts that it will be able to enlist the cooperation of all landowners and cat owners in or near occupied or suspected Pacific pocket mouse habitat to prevent the continuing endangerment or extinction of the species.

Issue 7: The same commenter concluded that listing of the Pacific pocket mouse is not warranted because a comprehensive survey for the species has not been done in Baja California, Mexico.

Service Response: The Service finds no scientific basis for concluding or speculating that a possible population or populations of Pacific pocket mice in Mexico preclude the need to list the species. Although the range map in Hall (1981) suggests that the range of the Pacific pocket mouse may extend into northwestern Baja California, Mexico, there are no known records of the species outside of California and, thus, the United States as a whole (Hall 1981; Erickson 1993; Williams et al. 1993). By contrast, an analysis of species limits maps (Hall 1981) and composite of documented records (Hall 1981; Williams et al. 1993) reveals that at least 12 small rodent species have been historically recorded on the coast of northwestern Baja California in San Quintin, Ensenada, or their environs, to

wit: *Perognathus baileyi*, *Perognathus arenarius*, *Perognathus fallax*, *Dipodomys agilis*, *Dipodomys merriami*, *Dipodomys gravipes*, *Reithrodontomys megalotis*, *Onychomys torridus*, *Peromyscus californicus*, *Peromyscus maniculatus*, *Microtus californicus*, and *Neotoma fuscipes*. Consequently, the best available data does not support the conclusion that the Pacific pocket mouse may occur in Mexico. Delaying listing until surveys outside of the known range had been completed would not be in keeping with the purposes of the Act.

Even if the Pacific pocket mouse occurs in coastal Baja California, it is likely that the species does not occur south of 30° north latitude, which represents an important transition zone for various birds, plants, land mammals, and other animal taxa. If, in an extreme case, it is true that the species is patchily distributed southward to 30° north latitude, the Service, pursuant to analyses and subsequent conclusions reached prior to the listing of the coastal California gnatcatcher, presently concludes that the United States historic distribution of the Pacific pocket mouse would represent a significant portion of the species' overall (hypothetical) range (see 58 FR 16742).

Issue 8: "Although the Pacific pocket mouse is not one of the identified species in the State's [Natural Communities Conservation Planning] program, it may be included in the subregional NCCP for this area." The County of Orange has been provided with updated habitat information and the subregional plan is currently being prepared. Therefore, " * * * the characterization of the NCCP program as 'inadequate' may be premature."

Service Response: The only use of the word "inadequate" in the proposed or emergency rules (59 FR 5306) refers to the previously proposed program to control domestic cat predation on the Dana Point Headlands and not to the State's NCCP program. As currently proposed, the NCCP program may, in fact, eventually result in the conservation of the Pacific pocket mouse or the species' potential habitat. At the present time, however, it remains true that Pacific pocket mouse is not an NCCP target species and no subregional plans or individual plans have been completed or implemented that would provide for the protection of the only known, confirmed population or the conservation of the species as a whole.

Issue 9: The proposed relocation of the only confirmed population extant is not a viable conservation alternative for the species.

Service Response: Given the apparent rarity of the Pacific pocket mouse and the experimental nature of relocation programs, the Service would carefully review any proposal to relocate—in whole or in part—any population of the Pacific pocket mouse. It remains true that one of the central purposes of the Act is to protect the natural habitat of the listed species. However, if and when Pacific pocket mouse population levels allow, the Service likely will investigate the possibility and feasibility of translocating animals to historically-occupied locales or other areas with suitable habitat and attributes to affect the recovery of the species or, in an extreme case, prevent extinction. Pursuant to the requirements of the purpose and section 7 of the Act, the Service likely would solicit the cooperation and participation of all Federal agencies and landowners in this regard.

Issue 10: The listing of the Pacific pocket mouse may be in conflict with Federal statutory authority (22 U.S.C. 277d-32) and important Federal, international wastewater treatment and flood control projects along the Tijuana River that will diminish threats to public health and safety.

Service Response: Several recent surveys conducted in the Tijuana River Valley (e.g., U.S. Fish and Wildlife Service 1994b) have not resulted in detections of the Pacific pocket mouse. Therefore, given the best scientific information available, the listing of the Pacific pocket mouse apparently will not conflict with the proposed projects. Even if the Pacific pocket mouse is rediscovered in the Tijuana River Valley or found elsewhere in Federal project "action areas," as defined at 50 CFR 402.02, the Act provides, under prescribed circumstances involving public health and safety, for expedited emergency consultations.

Issue 11: The Service must comply with Executive Order No. 12630 and conduct a takings analysis before reaching any final decision on listing the Pacific pocket mouse. The commenter noted that the executive order " * * * requires the preparation and consideration of a Takings Implication Assessment ('TIA') by a United States executive agency before that agency takes actions which may result in a taking of private property for which compensation may be due under the Fifth Amendment of the Constitution."

Service Response: In accordance with 16 U.S.C. 1533(b)(1)(A) and 50 CFR 424.11(b), listing decisions are made solely on the basis of the best scientific and commercial data available.

In adding the word "solely" to the statutory criteria for listing a species, Congress specifically addressed this issue in the 1982 amendments to the Act. The addition of the word "solely" was intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. It was determined by a congressional committee that economic considerations have no relevance to determinations regarding the status of species. The application of economic criteria to the analysis of these alternatives and to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and was specifically rejected by the inclusion of the word "solely" in the legislation (see H.R. Report No. 567, part I, 97th Congress, 2d Session 20 [1982]).

Therefore, the Service concludes that it cannot consider a "TIA" until a final decision has been made whether or not to list a proposed species. However, with the signing and publication of this rule in the *Federal Register*, the Service will complete and consider a TIA.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that the Pacific pocket mouse should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act 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 the Pacific pocket mouse (*Perognathus longimembris pacificus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Pacific pocket mouse historically was recorded and confirmed at eight locales encompassing some 29 specific trapping stations or sites (see Erickson 1993). Currently, however, the Pacific pocket mouse is known to exist at only one site on the Dana Point Headlands, City of Dana Point, Orange County, California. Although the Dana Point Headlands have not been developed or significantly altered since the Pacific pocket mouse was detected at this locale, the " * * * landowners are requesting approval on a specific plan from the City of Dana Point, which plan envisions development on and near the area where PPM were trapped in 1993" (A. Hartzell, Attorney-at-Law *in litt*, 1994;

see also EDAP 1993 and City of Dana Point, *in litt*, 1994).

The recent status of the Pacific pocket mouse and its habitat has been summarized by Erickson (1993) based on a comprehensive search for museum specimens and capture records and conversations with pocket mice researchers and recognized expert sources. Other records and information have been obtained by the Service and made part of the public record pertaining to this action. A composite of this information is arranged by county and summarized below:

Los Angeles County. The Pacific pocket mouse historically was detected in three areas—Marina del Rey/El Segundo, Wilmington, and Clifton. Two of the three historic locales for the Pacific pocket mouse (Clifton and Wilmington) in Los Angeles County have been developed (Erickson 1993). The Service is unaware of potential Pacific pocket mice habitat at these two locales; none was disclosed or revealed as a result of the Service's request for information. The third historic locale (Marina del Rey/El Segundo) apparently has been substantially altered since the species was last detected there (Erickson 1993; P. Brylski, *in litt*, 1993). The Hyperion area, which formerly contained relatively large expanses of coastal strand and wetland habitats, has been extensively developed. Although potential habitat remains at the El Segundo Dunes, walk-over and trapping surveys by J. Maldonado and P. Brylski, including a 366-trap-night effort in July of 1993, have caused the latter surveyor to conclude that is "unlikely" that the Pacific pocket mouse occurs there (P. Brylski, *in litt*, 1993).

Elsewhere in Los Angeles County, a focused survey for the Pacific pocket mouse in Culver City consisting of 600 trap nights over three nights in June of 1991 in remnants of appropriate habitat resulted in no detections of Pacific pocket mice (P. Kelly, pers. comm., 1994). Although patches of suitable habitat apparently remain on the Palos Verdes Peninsula and trapping surveys of at least two sites are recommended, walk-over surveys of two other areas with suitable habitat by P. Brylski and S. Dodd revealed no pocket mouse burrows or diggings (P. Brylski, *in litt*, 1993).

It remains true that there have been no records of the Pacific pocket mouse in Los Angeles County since 1938 (Erickson 1993; see also Brylski, *in litt*, 1993). Given the available information at that time, Williams (1986) concluded that it was probable that all populations north of the San Joaquin Hills in Orange County were extirpated.

Orange County. The Pacific pocket mouse has been confirmed at two locales in Orange County: the San Joaquin Hills and Dana Point. Development of the "Spyglass Hill" area in the San Joaquin Hills began in 1972 and has resulted in the destruction of the site where the Pacific pocket mouse and a number of other small rodent species were studied for a three-year period (P. Meserve, pers. comm., 1994; R. M'Closkey, pers. comm., 1994; R. MacMillan, pers. comm., 1994; see also M'Closkey 1972 and Meserve 1972). Prior to the rediscovery of the Pacific pocket mouse in 1993 on the Dana Point Headlands (Brylski 1993), the last record of the species was from "Spyglass Hill" in the San Joaquin Hills in 1971 (see Erickson 1993). Recent June to October trapping efforts totaling 1197 trap nights in the San Joaquin Hills and adjacent Laguna Canyon were unsuccessful in detecting the Pacific pocket mouse (Erickson, pers. comm., 1993).

Elsewhere, extensive, recent small mammal surveys of the coast of Orange County away from the Dana Point Headlands have not resulted in the detection of the Pacific pocket mouse. For instance, no Pacific pocket mice were detected during 54 trapping bouts conducted from 1979 to 1994 during calendar months from March to October at a total of 24 different locales in coastal Orange County, including areas in or near Corona del Mar, Crystal Cove State Park, Laguna Beach, and San Clemente (J. Webb, *in litt*, 1994). Additional trapping efforts during late fall or winter months at some of these same locales resulted in the capture of a variety of other native small rodent species but no Pacific pocket mice.

A focused trapping survey of appropriate habitats involving a total effort of 558 trap nights during April of 1990 did not result in the detection of the Pacific pocket mouse along Aliso Creek (Jones and Stokes 1990). R. MacMillan (pers. comm., 1994) also did not detect the Pacific pocket mouse during a June, 60-trap night, survey of suitable habitat in South Laguna Beach and mentioned that an additional survey in Alta Laguna conducted for the City of Laguna Beach was unsuccessful. Surveys contributing to a total effort of 1067 trap nights conducted elsewhere within the potential Orange County range of the Pacific pocket mouse during calendar months from April through November resulted in no detections of the species (Erickson, pers. comm., 1993).

The only known population of the Pacific pocket mouse has persisted on the Dana Point Headlands in southern,

coastal Orange County. Given the data and analysis presented by Brylski (1993), it is apparent that 25 to 36 Pacific pocket mice occupied approximately 3.75 acres of habitat within a coastal sage scrub community at that locale in 1993. As is discussed above, this population is located on land that is under consideration for development (City of Dana Point, *in litt*, 1994; EDAW 1994).

San Diego County. The Pacific pocket mouse historically has been detected at three general locales in San Diego County: the San Onofre area, Santa Margarita River Estuary, and the lower Tijuana River Valley. Although portions of the San Onofre area are relatively undisturbed and deserving of further attention (e.g., P. Brylski, *in litt*, 1994), recent small mammal trapping efforts at the locale failed to detect the presence of the Pacific pocket mouse (Erickson 1993; R. Erickson, pers. comm., 1993).

As is reflected in the Service's response to "Issue 3" in the "Summary of Comments and Recommendations" section of this rule, recent, intense survey efforts at the Santa Margarita River Mouth similarly have not resulted in any Pacific pocket mouse detections (Salata 1981; U.S. Fish and Wildlife Service 1994a; see also Zembal 1984). Although the relatively undisturbed coastline of Marine Corps Base Camp Pendleton " * * probably provides the best chance for the survival of the subspecies" (Erickson 1993), the Base Environmental and Natural Resources Management Office has indicated that "[o]ther than the recorded documentation of this species in the vicinity of San Onofre and the Santa Margarita Estuary in the 1930's * * * we have no information regarding the occurrence of this species aboard Marine Corps Base Camp Pendleton. To date, none of the environmental studies which have occurred aboard the Base since that time have identified this species." (L. Armas, *in litt*, 1994).

During the 1930's, Camp Pendleton Marine Corps Base did not exist and the city of Oceanside was immediately adjacent to the Santa Margarita River Estuary. Much of the southern half of the Santa Margarita River Estuary was destroyed in the early 1940's during the establishment of Marine Corps Base Camp Pendleton and the related construction of a boat basin and harbor facilities. In addition, the Oceanside area has been extensively developed since the Pacific pocket mouse was last recorded there in 1931 and the Service is aware of little, if any, remaining suitable habitat in that jurisdiction.

The lower Tijuana River Valley, which accounts for approximately 35

percent of all specimen records (Erickson 1993), evidently supported a relatively large population of the Pacific pocket mouse in historic times (e.g., von Bloeker 1931b). Citing two recent, unsuccessful trapping efforts (Taylor and Tiszler 1991; R.T. Miller, pers. comm., 1993), Erickson (1993) commented that the remaining habitat there is possibly insufficient to support the species. Most recently, the U.S. Fish and Wildlife Service (1994b) conducted a focused survey for the Pacific pocket mouse in the Tijuana River Valley from April 18, 1994 to May 13, 1994. Despite walk-over surveys of the area, four or five trapping bouts in each of eight separate locales, and a total of 4,242 trap nights of survey effort, no Pacific pocket mice were detected.

Elsewhere in San Diego County, a small mammal trapping program that began in 1987 is continuing at Torrey Pines State Park in habitats that have ranged from maritime chaparral to open (barren) areas as a result of two prescribed burns in the project area. Since 1988, 88 traps have been set every other week from mid-March to October during the study period. Despite an effort that now exceeds 7,500 trap nights, no Pacific pocket mice have been detected (R. Dingman, pers. comm., 1994).

Analysis of the relevant data reveals that the habitat and potential range of the Pacific pocket mouse apparently have been significantly reduced in the recent past. Opportunities to find additional populations of the Pacific pocket mouse apparently are limited as a result of the extent of land development in coastal southern California (Service files).

Based on the best available scientific information, the Service considers the historic, known range of the Pacific pocket mouse to encompass a 3.2-km (2-mile) wide band along the immediate coast of Los Angeles, Orange, and San Diego Counties from Marina Del Rey/El Segundo south to the international border. Most native habitats within 3 km (2 miles) of the coast in Los Angeles, Orange and San Diego counties have been converted to urban and agricultural uses (Service files).

Specifically, less than 400 hectares (1,000 acres) or 1 percent of approximately 28,000 hectares (69,000 acres) that encompass the projected range of the Pacific pocket mouse in Los Angeles County are undeveloped (Service files). In Orange County, about 17,600 hectares (43,500 acres) or 81 percent of approximately 21,600 hectares (53,500 acres) encompassing the projected range of the species have been developed (Service files).

Oberbauer and Vanderwier (1991) reported that 72 percent of the original coastal sage scrub, 94 percent of native grasslands, 88 percent of coastal mixed chaparral, 88 percent of coastal salt marsh, 100 percent of coastal strand, and 92 percent of maritime sage scrub habitats in San Diego County had been converted to urban and agricultural uses by 1988.

Although the historic distribution of the coastal sage scrub element of Pacific pocket mouse habitat was undoubtedly patchy to some degree, this condition evidently has been greatly exacerbated by urban and agricultural development. All of the published literature on the status of coastal sage scrub vegetation in California supports the conclusion that this plant community is one of the most depleted habitat types in the United States (Service files). In a broader context, the California floristic province, which is recognized as a separate evolutionary center by botanists, is identified by Wilson (1992) as one of the recognized world "hot spots," which are defined to be " * * * habitats with many species found nowhere else and in greatest danger of extinction from human activity." The California floristic province is the only designated "hot spot" in North America and Mexico (Wilson 1992).

The available information further suggests that the quantity of potential Pacific pocket mouse river alluvium substrates have significantly declined since the species was last recorded in numbers in the 1930's. With few exceptions (such as the Santa Margarita River), essentially all of the rivers and creeks within its historic range are now partially or completely channelized. In many cases (e.g., Los Angeles River, San Gabriel River, Santa Ana River) stream and sediment flows are regulated or inhibited by dams, reservoirs or other water conservation or impoundment facilities (see also Erickson 1993).

Although some suitable Pacific pocket mouse habitat apparently remains in San Onofre and contiguous coast of Marine Corps Base Camp Pendleton, the San Joaquin Hills, the Palos Verdes Peninsula, the El Segundo Dunes and at scattered locales elsewhere in the historic range of the species, this habitat is becoming increasingly scarce and likely will continue to be destroyed, disturbed or otherwise impacted as a manifest result of human activities. Williams (1986) concluded that habitat losses resulting from off-road vehicle activities, highways, and urbanization likely were extensive. Erickson (1993) observed that industrial and agricultural development likely were additional factors contributing to the decline of the

species. More recently, the Service (1994b) reported that habitats or lands in a historically-occupied Pacific pocket mouse locale apparently have been impacted by artificial lighting, disking or blading, the presence of non-native rodent species (see also Soule et al. 1992), and pedestrian and horse traffic. The Pacific pocket mouse, as a representative heteromyid rodent, may be more susceptible to the adverse effects of the human presence than cricetid rodents (R. MacMillan, pers. comm., 1994).

Although it is possible that fire may intermittently create or sustain Pacific pocket mouse habitat mosaics, it has been reported that increased fire frequency may contribute to the type conversion of coastal sage scrub to grassland habitats (Service files). In addition, the Service acknowledges that the protection of lives and property may require fire prevention strategies that do not necessarily result in the maintenance or creation of potential Pacific pocket mouse habitat. Accordingly, the Service concludes that fire prevention measures and unnaturally high fire frequencies resulting from anthropogenic ignitions may directly or indirectly impact the Pacific pocket mouse.

Equally, if not more, problematical than habitat disturbance or destruction, however, has been an increasing degree of habitat fragmentation in coastal southern California (e.g., Soule et al. 1992; Service files), which is known generally to reduce habitat quality and promote increased levels of local extinction (e.g., Terborgh and Winter 1980; Wilcox 1980; Ehrlich and Ehrlich 1981; Wilson 1992; Bolger et al. 1994 *in press*). Given the location of the research areas and thrust and direction of the investigations, the research and findings of Soule et al. (1992) are particularly relevant to a discussion of fragmentation effects on the Pacific pocket mouse.

Based on studies of native bird, rodent and flowering plant species persistence in chaparral and coastal sage scrub habitat remnants in coastal San Diego County, California, Soule et al. (1992) concluded that "[t]he effects of fragmentation in a scrub habitat in California on three taxa (plants, birds, and rodents) are concordant. Extinctions within the habitat remnants occur quickly and the sequence of species disappearances of birds and rodents is predictable based on population density in undisturbed habitat." Terborgh and Winter (1980) observed previously that "[r]arity proves to be the best index of vulnerability."

Bolger et al. (1994, *in press*) concluded that "[f]ragments support fewer species [of native rodents] than equivalently sized plots in large plots of unfragmented chaparral indicating that local extinctions have occurred following insularization." Given a composite of the available data on the local status and distribution of select species within the study area in coastal San Diego County, Soule et al. (1992) remarked that it was possible to assess with reasonable accuracy the date that a particular habitat remnant became isolated.

Soule et al. (1992) further noted that " * * * urban barriers including highways, streets, and structures, impose a very high degree of isolation." Similarly, Ehrlich and Ehrlich (1981) observed that "smaller animals may also suffer fragmentation of their populations by highways, railways, canals, etc., changing population structures and making the remaining populations smaller and more subject to random extinction. One study has indicated that a four-lane divided highway may be a barrier to the movement of small forest mammals equivalent to a river twice as wide." (Ehrlich and Ehrlich 1981). Although not a forest animal, the Pacific pocket mouse must be now considered rare by any standard and, therefore, particularly vulnerable to the effects of continuing habitat destruction and fragmentation (see Terborgh and Winter 1980).

Largely on the bases of significant habitat loss and fragmentation in coastal California, the Service has listed several other species of plants and animals as endangered or threatened, including the California least tern (*Sterna antillarum browni*), light-footed clapper rail (*Rallus longirostris levipes*), the Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*), El Segundo blue butterfly (*Euphilotes battoides allyni*), and, most recently, the coastal California gnatcatcher (58 FR 16742; Service files). The Service listed the coastal California gnatcatcher, because of, in part, the significant and ongoing destruction, perturbation, or fragmentation of that species' coastal sage scrub habitat (58 FR 16742).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the existing information and data are not conclusive, P. Brylski (pers. comm., 1994) has commented that scientific collecting in the 1930's may have substantially impacted the Pacific pocket mouse population in the El Segundo area. Erickson (1993) reported the existence of 78 specimens collected in "Hyperion" (now Marina del Rey/El

Segundo) during the fall of 1931 and spring of 1932. Otherwise, there is no substantive information that this factor is applicable.

C. *Disease or predation.* The expressed, perhaps synergistic effects of habitat fragmentation and the proximity of urban environments to Pacific pocket mouse habitats are likely to increase the rate of depredation on that species. Most recently, Soule et al. (1992) has confirmed earlier conclusions by noting that "[t]here is evidence that large predators retard the biotic collapse of these [habitat] remnants by controlling populations of smaller, semi-commensal predators, including domestic cats * * *."

Several species have been reported as potential or documented predators of the Pacific pocket mouse, including the red fox (*Vulpes vulpes*). The explosive proliferation of non-native populations of red foxes in coastal southern California is well documented (e.g., Lewis et al., 1993). Given the relative abundance of the red fox in coastal southern California (Lewis et al. 1993) and the fact that descriptions of the diet of red foxes invariably include mice (Ingles 1965; Jameson and Peeters 1988; Burkett and Lewis 1992; Lewis et al. 1993), it seems reasonable to assume that "feral" foxes similarly could substantially impact populations of Pacific pocket mice if and when the species overlap. Erickson (1993) has commented that the red fox " * * * may have hastened the demise of *pacificus*" in the El Segundo area, a locale that previously and historically accommodated the Pacific pocket mouse in numbers.

In addition, feral and domestic cats (*Felis catus*) are known to be formidable predators of native rodents (e.g., Hubbs 1951; George 1974; Frank 1992). Pearson (1964) concluded that the removal of 4,200 mice from a 14-hectare (35-acre) test plot was accomplished largely by 6 cats over 8 months.

Feral or domestic cats are threatening the only known, confirmed population of Pacific pocket mouse. Specifically, a resident living immediately adjacent to the Dana Point Headlands population reported that domestic cats had recently and repeatedly brought in a number of "tiny gray mice." One such specimen was retrieved and confirmed to be a Pacific pocket mouse (P. Brylski, *in litt*, 1993).

D. *The inadequacy of existing regulatory mechanisms.* Should protection afforded the Pacific pocket mouse pursuant to the emergency rule under the Act (59 FR 5306) lapse or otherwise be removed, other select existing regulatory or conservation

mechanisms could possibly provide some protection for the species. These include—(1) the Act if the species were to occur sympatrically with a listed species, (2) the California Natural Community Conservation Planning effort, (3) the California Environmental Quality Act, (4) land acquisition and management by Federal, State, or local agencies or by private groups and organizations, and (5) local laws and regulations.

The Pacific pocket mouse is currently recognized as a Species of Special Concern "Of Highest Priority" by the California Department of Fish and Game. If emergency protection afforded the Pacific pocket mouse pursuant to the Act were to be removed prior to the promulgation of a final rule listing the species as endangered, the species would retain its status as a proposed species under the Act.

The only known, confirmed population of the Pacific pocket mouse does occur sympatrically with a population of the threatened coastal California gnatcatcher (Brylski 1993; EDAW 1993). Under provisions of section 10(a) of the Act, the Service may permit the incidental take of the coastal California gnatcatcher during the course of an otherwise legal activity, provided that the species' survival and recovery in the wild is not precluded. The issuance of section 10(a) permit to take the coastal California gnatcatcher on the Dana Point Headlands could result in the extinction of the Pacific pocket mouse.

In 1991, the State of California commenced the Natural Communities Conservation Planning (NCCP) program to address the conservation needs of natural ecosystems throughout the State. The initial focus of that program is the coastal sage scrub community, which is occupied, in part, by the Pacific pocket mouse. At the present time, however, no program plans have been completed or implemented, and no protection is currently in place or proposed to reduce or eliminate possible, future impacts to habitat occupied in 1994 by the Pacific pocket mouse on the Dana Point Headlands, which is the only known, confirmed refugium for the species.

In many instances, land-use planning decisions in southern California have been made and continue to be made on the basis of environmental review documents prepared in accordance with California Environmental Quality Act and the National Environmental Policy Act. Although impacts to sensitive species and habitats must be disclosed pursuant to these statutes, the protection or conservation of the species or their habitats are at the discretion of

the decision makers. Given a composite of the best available scientific information, it is clear that these statutes have not adequately protected the Pacific pocket mouse or its habitat.

Prior to the emergency-listing of the Pacific pocket mouse as endangered, a relocation program and predator management program were proposed to mitigate impacts to the Pacific pocket mouse on the Dana Point Headlands (EDAW 1993). More recently, the City of Dana Point (City) (*in litt*, 1994) has indicated that the project applicant must, if the Pacific pocket mouse is listed, obtain a take permit for the Pacific pocket mouse prior to the issuance of any city permits " * * * that would allow activity that would harm or harass the Pacific pocket mouse * * *"

Because the Service has not received a formal, detailed mitigation proposal from the City or project proponent, the Service cannot presently assess the merits of said proposal or render a judgment as to whether or not the proposed impact avoidance and mitigation measures will prevent jeopardy to the Pacific pocket mouse. Although the Service notes and appreciates the fact that it would be given the opportunity to review the relocation program if the Pocket mouse is not listed (City of Dana Point, *in litt*, 1994), the Service has concluded that the potential effects of translocation are not relevant to a decision on whether to list a species. Under section 4 of the Act, if data warrant listing, the Service must proceed to list the species. The Service (59 FR 5308) and the California Department of Fish and Game (*in litt*, 1993) both have independently concluded that the relocation program previously outlined (EDAW 1993) is inadequate.

E. *Other natural or man-made factors affecting its continued existence.* Considering the extremely small population size and current range of the Pacific pocket mouse (no more than 36 individuals have been detected in the last 22 years), the current extent of the coastal strand, coastal dune, river alluvium, and coastal sage scrub habitats upon which it depends, further losses of habitat will have significant adverse effects on any extant populations of this species. Given all relevant data and considerations, it is apparent that the species is highly susceptible to extinction as a result of environmental or demographic factors alone (e.g., Mace and Lande 1991).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule

final. Based on this evaluation, the Service finds that the Pacific pocket mouse warrants protection under the Act on the basis of continuing threats to the species, which include substantial habitat loss and fragmentation and depredation. Therefore, the preferred and only possible action is to list the Pacific pocket mouse as endangered, which is defined in section 3(6) of the Act as a species "which is in danger of extinction throughout all or a significant portion of its range * * *."

As provided by 5 U.S.C. 553(d), the Service has determined that good cause exists to make the effective date of this rule immediate. Delay in implementation of the effective date would place the remaining Pacific pocket mice and habitat of the species at risk (see relevant discussion below under the heading of "Critical Habitat").

Critical habitat is not being designated at this time for the reasons discussed below.

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, requires critical habitat to be designated to the maximum extent prudent and determinable at the time a species is listed as endangered or threatened. The Service has concluded that designation of critical habitat is not prudent for the Pacific pocket mouse at this time. The Service's 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 such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In the case of the Pacific pocket mouse, both criteria are met. A communication has been received by the Service that effectively threatens the

only known, confirmed population of the species. This threat was received from an individual who was apparently incensed at the emergency and proposed listings of the species. On the basis of this kind of activity, the Service finds that publication of critical habitat descriptions and maps would likely make the species more vulnerable to activities prohibited under section 9 of the Act.

Secondly, the only known, confirmed population of the Pacific pocket mouse is found on private property where Federal involvement in land-use activities is not expected to occur. Protection resulting from critical habitat designation is largely achieved through the Federal consultation process pursuant to section 7 of the Act and the implementing regulations pertaining thereto (50 CFR 402). Because section 7 would not apply to many, if any, of the majority of land-use activities occurring within the species' known habitat, its designation would not appreciably benefit the species.

Available Conservation Measures

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

Section 7(a) of the Act, 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) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its

critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal agencies that may be involved through activities they authorize, fund, or carry out that may affect the Pacific pocket mouse or its historical habitat include the Army Corps of Engineers, Federal Highway Administration, the Department of the Navy (including Marine Corps Base Camp Pendleton).

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any such conduct), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. The term "harm" as it applies to the take prohibition is defined in 50 CFR 17.3 to include an act that actually kills or injures listed wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. 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 codified 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.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (telephone 503/231-6241, facsimile 503/231-6243).

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).

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, Carlsbad Field Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Loren R. Hays, U.S. Fish and Wildlife Service, Carlsbad Field Office (see **ADDRESSES** section).

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, is amended as set forth below:

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 revising and making permanent the entry for the "Mouse, Pacific pocket" under **MAMMALS** to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
Mouse, Pacific pocket.	<i>Perognathus longimembris pacificus</i> .	U.S.A. (CA)	Entire	E	526, 554	NA	NA

Dated: September 23, 1994.
Mollie H. Beattie,
 Director, U.S. Fish and Wildlife Service.
 [FR Doc. 94-24065 Filed 9-26-94; 11:01 am]
 BILLING CODE 4310-55-P

Federal Register

Thursday
September 29, 1994

Part IV

Department of Education

34 CFR Part 668
Student Assistance General Provisions;
Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840-AC13

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations by revising subpart B and adding a new subpart K. The proposed regulations would govern the management of funds an institution receives under the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study (FWS), Federal Perkins Loan, Federal Family Education Loan (FFEL), Federal Direct Student Loan (Direct Loan), and Presidential Access Scholarship (PAS) programs authorized by title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). The purpose of the proposed regulations is to promote sound cash management practices by institutions that participate in the title IV, HEA programs by strengthening and making uniform the cash management rules for those programs. In so doing, the Secretary expects to reduce the cost to the Federal government of making title IV, HEA program funds available to students and institutions under these programs.

DATES: Comments must be received on or before October 31, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to John Kolotos, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4318, ROB-3, Washington, D.C. 20202-5244. (Internet address: cash_management@ed.gov).

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: John Kolotos or Kim Goto. Telephone: (202) 708-7888. (Internet address: cash_management@ed.gov).

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The rules and procedures under which an institution requests, maintains, disburses, and otherwise manages funds

that the institution receives under each title IV, HEA program in which it participates are currently codified in those program regulations, or described in Department of Education publications. In this notice of proposed rulemaking, the Secretary proposes to consolidate, in a new subpart K of the Student Assistance General Provisions regulations, most of the current cash management requirements in the title IV, HEA program regulations. Also, the Secretary proposes to codify in subpart K existing cash management policies and procedures currently specified in subregulatory guidance. Lastly, the Secretary proposes new requirements and proposes to amend some existing requirements to promote sound cash management practices by institutions.

The Secretary wishes to make clear that while proposed subpart K would establish a common set of cash management rules and procedures, subpart K would not contain all of the rules and procedures that an institution would follow with regard to managing title IV, HEA program funds. An institution would continue to follow other cash management rules and procedures particular to a title IV, HEA program.

The Secretary intends to amend the appropriate sections of each of the title IV, HEA program regulations on or before December 1, 1994 to eliminate conflicting requirements between the program regulations and proposed subpart K of the General Provisions regulations and to otherwise harmonize the proposed subpart K requirements with other Federal cash management requirements. In this regard, the Secretary has identified throughout the following discussion the major sections of the title IV, HEA program regulations and sections of other relevant Federal regulations that would be amended and consolidated in subpart K.

Provisions Proposed by the Regulations

The following discussion reflects the proposed provisions under which an institution would request, maintain, disburse, and otherwise manage title IV, HEA program funds. The provisions are discussed in the order in which they appear in the proposed regulations. If a provision applies to more than one section, it is discussed the first time it appears and with an appropriate cross-reference to its other appearances.

Proposed § 668.161 Scope and Purpose

The purpose of these regulations is to promote sound cash management practices by institutions and to minimize the financing costs to the

Federal Government of making available title IV, HEA program funds to students and institutions. To achieve these objectives, the Secretary proposes new requirements, proposes to amend existing regulations, and proposes to establish in this subpart uniform rules and procedures under which an institution requests, maintains, disburses, and otherwise manages funds that it receives under each title IV, HEA program in which it participates. To establish uniformity in title IV, HEA program requirements, the Secretary proposes to consolidate in this subpart the cash management rules that are now in each of title IV, HEA program regulations and to codify existing departmental cash management policies and practices.

In proposed § 668.161(b), the Secretary would adopt the provision in § 668.18 that specifies that funds received by an institution under the title IV, HEA programs are held in trust for the intended student beneficiaries and the Secretary and that as a trustee of Federal funds, the institution may not use or hypothecate those funds for any other purpose.

In addition, the Secretary wishes to make clear the rules and procedures that apply to an institution under this subpart would also apply to a third-party servicer.

Proposed § 668.162 Definitions

Disburse: The Secretary proposes to define the term *disburse* to encompass all the methods by which an institution pays title IV, HEA program funds to a student or parent. Accordingly, under this proposal, these methods would be (1) Crediting the student's account at the institution, (2) issuing a check or cash to the student or a parent borrower under the Direct Loan or FFEL programs, and (3) initiating an electronic funds transfer (EFT) to a bank account designated by the student or by a parent borrower under the Direct Loan or FFEL programs.

The Secretary acknowledges that the term *disburse* has a different meaning under the FFEL programs (34 CFR 682.200). Under those programs, a disbursement is defined as "The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer." Because the Secretary does not intend to change the definition of the term *disbursement* under the FFEL programs, the Secretary wishes to make clear that solely for the purposes of these proposed regulations that the term *disburse* would correspond to the concept of the *delivery* of proceeds under the FFEL programs.

Issue checks. The Secretary proposes to define very broadly the term *issue checks* to include any means by which an institution pays a student or parent by check. Under the proposed definition, an institution would be considered to have issued a check to a student or parent when the institution has released, distributed, or otherwise made that check available to the student or parent. Although the Secretary does not wish to regulate the mechanisms that an institution may use to issue checks, the Secretary intends to enforce rigorously the liability provisions described in proposed § 668.166 on any institution that does not issue checks to students shortly after the institution writes those checks.

Proposed 668.163 Requesting Funds

In proposed § 668.163, the Secretary would codify existing policy and practice under which the Secretary provides title IV, HEA program funds, other than FFEL program funds, to institutions. The Secretary provides title IV, HEA program funds to institutions under either the advance payment method or the reimbursement payment method.

Under the advance payment method, the Secretary accepts an institution's request for cash and transfers the amount requested to a bank account designated by the institution. The amount of the institution's request for cash may not exceed the institution's "immediate need." Since 1986 the Secretary has required an institution to limit the amounts of its cash requests to the amounts needed to make disbursements to students within 3 business days. The Department's current policy regarding the meaning of the term "immediate need" is articulated in the following publications:

(1) OMB Circular A-110, as contained in the Education Department General Administrative Regulations (EDGAR), July 6, 1994, 34 CFR 74.22(b);

(2) *The Recipient's Guide for the Department of Education Payment Management System (EDPMS)*, October 1993, Chapter 5;

(3) *The Audit Guide*, U.S. Department of Education, Office of the Inspector General, March 1990, Section II;

(4) *The Blue Book*, U.S. Department of Education, December 22, 1988, Chapter 5; and

(5) The Department of the Treasury regulations, September 24, 1992, 31 CFR part 205.

As noted in these publications, an institution on the advance payment method must limit the amount of its request for cash to the amount needed to make disbursements to students and

must time its request for cash to be in accordance with its actual and immediate cash requirements.

In proposed § 668.163(b), the Secretary would codify this longstanding 3-day immediate-need standard for the following reasons. First, the Department can deliver reliably by EFT title IV, HEA program funds to institutions. Second, the Secretary believes that 3 business days provides an institution sufficient time to make disbursements to students. Moreover, the Secretary believes that the 3-day immediate-need standard furthers the objective of minimizing the financing costs to the Treasury of making title IV, HEA program funds available to students and institutions.

In proposed § 668.163(c), the Secretary would merely codify existing procedures under which the Secretary provides title IV, HEA program funds to an institution on the reimbursement payment method. Under those procedures, an institution must first disburse funds to eligible students before the institution may submit a request for cash. The amount of the institution's request for cash may not exceed the amount of the actual disbursements the institution made to those students. The Secretary approves the institution's request for cash if the Secretary determines that the institution (1) Determined properly the eligibility for title IV, HEA program funds of each student identified in its request for cash, (2) made disbursements for the correct amounts of title IV, HEA program funds to those students, and (3) submitted any documentation required by the Secretary to substantiate the information provided by the institution on its request for cash.

Proposed § 668.164 Maintaining Funds

In proposed § 668.164, the Secretary would consolidate and amend, as noted below, several requirements that are currently in § 674.19 of the Federal Perkins Loan Program, § 675.19 of the FWS Program, § 676.19 of the FSEOG Program, § 690.81 of the Federal Pell Grant Program, and proposed § 685.308 of the Direct Loan Program regulations regarding the account into which an institution deposits and otherwise maintains Federal funds.

First, the Secretary proposes to consolidate in one place, with a minor modification, current provisions that require an institution to maintain a bank account into which the Secretary transfers or the institution deposits Federal funds (other than FFEL program funds) that the institution receives from the title IV, HEA programs. Under current regulations, an institution must

either (1) Ensure that the name of the account discloses clearly that Federal funds are deposited into that account, or (2) notify the bank of the accounts that contain Federal funds and retain a record of that notice in its recordkeeping system. Under proposed § 668.164(a), an institution would have to comply with both of these requirements. The Secretary notes that this proposal is consistent with the requirements under § 685.308(h) of the proposed Direct Loan Program regulations.

Second, the Secretary proposes to incorporate in § 668.164(b) the current provisions that require an institution to maintain an interest-bearing account for the deposit of Federal Perkins Loan Program funds. Specifically, the account must be (1) An interest-bearing account that is either federally insured or secured by collateral of value reasonably equivalent to the amount of funds in the account, or (2) an investment account consisting predominantly of low-risk, income-producing securities.

The Secretary believes, however, that where it is cost-effective an institution should be required to maintain all title IV, HEA program funds (except FFEL program funds) it receives in a federally insured, interest-bearing account. Therefore, in proposed § 668.164(b), the Secretary would require an institution to maintain in any award year an interest-bearing account if the institution drew down in the prior award year a total amount greater than \$1 million from the title IV, HEA programs. The Secretary notes that this requirement does not preclude an institution that is below the proposed \$1 million threshold from choosing to maintain title IV, HEA program funds in an interest-bearing account.

Under section 487 of the HEA and 34 CFR 668.14(b)(1), an institution must use interest earned on funds it receives under the title IV, HEA programs solely for purposes of those programs. In proposed § 668.164(b)(4), the institution would have to remit at least annually to the Federal government interest earned on all title IV, HEA program funds except Federal Perkins Loan Program funds (see, 34 CFR 674.18, 34 CFR 674.19, and section 463 of the HEA). In proposing the \$1 million threshold, the Secretary weighed the benefits to the Federal government of recovering the interest earned on title IV, HEA program funds maintained in interest-bearing accounts against the cost to, and administrative burden on, institutions of maintaining those accounts. The Secretary wishes to make clear that, except for Federal Perkins Loan Program funds, the proposed interest-bearing

account would be merely a temporary holding account for title IV, HEA program funds, and that any interest earned on funds maintained in that account, including interest earned on funds pending the clearance of checks, would be remitted to the Federal government.

The Secretary notes, however, that under the referenced EDGAR and OMB provisions (see 34 CFR 74.22 and OMB Circular A-110, subpart C, respectively) an institution must maintain Federal funds in an interest-bearing account unless: (1) The institution receives less than \$120,000 in Federal funds per year (other than title IV, HEA program funds), (2) the best reasonably available interest-bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances, or (3) the bank would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources. In addition, the EDGAR and OMB provisions allow an institution to retain interest earnings in an amount up to \$250 per year for the administrative expense of maintaining an interest-bearing account. (The Secretary proposes to adopt this allowance.)

The Secretary especially invites comment on the appropriateness of the requirement for a \$1 million threshold and on the extent to which the Secretary should adopt the EDGAR and OMB provisions described above regarding interest-bearing accounts.

In proposing a requirement for interest-bearing accounts, the Secretary does not wish to imply that the Secretary is in any way encouraging an institution to maintain Federal funds in excess of its immediate need solely to earn interest on those funds. To the contrary, the Secretary simply recognizes that an institution may not always be able to disburse title IV, HEA program funds to students immediately upon receiving those funds, and wishes only to recover for the Treasury the interest earned on those funds while the funds are in the institution's account.

Third, in § 668.164(c), the Secretary proposes to require an institution to maintain a separate bank account for title IV, HEA program funds if the Secretary finds that the institution is unable to account adequately for the receipt, disbursement, or use of those funds. These requirements are consistent with current title IV, HEA program regulations and with the standards described in OMB Circular A-110 and 34 CFR 74.22 that govern the use of banks as depositories of Federal funds.

Finally, because the Secretary has proposed that institutions maintain an interest-bearing account for all title IV, HEA program funds (except FFEL program funds), the Secretary clarifies that an institution must exercise the level of care and diligence required of a fiduciary with regard to depositing and investing Federal funds (see 34 CFR 668.82).

Proposed § 668.165 Disbursing Funds

The Secretary proposes to consolidate and amend, as noted below, several requirements that are currently in § 674.16 of the Federal Perkins Loan Program, § 675.16 of the FWS Program, § 676.16 of the FSEOG Program, § 690.78 of the Federal Pell Grant Program, and proposed § 685.303 of the Direct Loan Program regulations under which an institution disburses title IV, HEA program funds to eligible students.

In proposed § 668.165(a) the Secretary would consolidate the provisions common to all the program regulations, except the FWS Program, with respect to paying a student. An institution must continue to follow the disbursement procedures contained in 34 CFR 675.16 for paying a student his or her wages under the FWS Program. To encourage the use of more efficient methods of payment than issuing checks, the Secretary proposes to allow an institution to make a payment to a student by EFT. Under this proposal, the institution would have to obtain once each award year written authorization from a student or parent to make EFT payments to the student's or parent's bank account, as applicable.

In proposed § 668.165(b), the Secretary would clarify and make uniform the procedures under which an institution credits a student's account. For example, the campus-based program regulations (see, for example, 34 CFR 676.16(c)) require only that an institution may credit a student's account or pay the student directly. (The campus-based programs are the Federal Perkins Loan, FSEOG, and FWS programs.) Under the Federal Pell Grant Program regulations (see 34 CFR 690.78(a)(2)), an institution may credit a student's account only for specified institutional charges. Assuming that the institution drew down the entire amount of the student's award, the institution would pay the student directly any amount of his or her Federal Pell Grant award in excess of the specified institutional charges. However, under current policy the Secretary allows an institution, for accounting purposes and for administrative convenience, to apply to a student's account his or her entire

award, and if that amount exceeds allowable institutional charges, directly pay the student that balance. The proposed procedures would codify existing policy and specify the period of time within which an institution would pay a student any balance on his or her account.

Under the proposed procedures, an institution would credit a student's account by applying the student's title IV, HEA program funds to allowable institutional charges. (However, consistent with current policy, the institution would not be permitted to credit the student's account for charges the institution assessed the student in a prior award year.) If the amount of title IV, HEA program funds the institution applies to the student's account exceeds the amount of allowable institutional charges, the Secretary proposes to require the institution to pay the balance remaining on the account directly to the student as soon as possible but within the later of (1) 7 days after the date that balance occurs, (2) 14 days after the first day of classes of the payment period or period of enrollment, as applicable (the Secretary intends this provision to apply also to second disbursements of Direct Loan and FFEL program funds), or (3) 7 days after the date the student rescinds his or her permission regarding the charges for which the institution may credit the student's account. The Secretary believes that these procedures strike an appropriate balance between the institution's obligation to provide title IV, HEA program funds to students in a timely manner and the administrative needs of an institution.

However, the Secretary is concerned over findings by the Office of Inspector General and other offices within the Department that some institutions maintain for long periods, and use for their own purposes, title IV, HEA program funds in excess of allowable institutional charges. Those funds belong to students and to the Secretary. The Secretary believes it is imperative that institutions, as stewards of Federal funds, request funds only when needed and provide those funds to their students as expeditiously as possible. On the other hand, the Secretary recognizes that it does not make sense to require an institution immediately to pay a student the balance on his or her account if the student will incur within a short period of time additional institutional charges as a result of adding classes to his or her schedule. Consequently, in proposed § 668.165(b)(2)(ii), an institution would be permitted to maintain the balance on a student's account for up to 14 days

after the student's first day of classes. The Secretary particularly invites comments on this 14-day credit balance provision. In addition, the Secretary seeks comments on alternative approaches that would provide administrative relief to institutions for dealing with situations where students incur additional institutional charges by adding classes, while still requiring prompt payment for the majority of students who do not incur those charges.

In proposed § 668.165(b)(3), the Secretary would adopt for all title IV, HEA programs, the Federal Pell Grant Program and Direct Loan Program statutory provisions, sections 401(e) and 455(j) of the HEA, respectively, under which an institution may credit a student's account only for allowable institutional charges. Those charges are (1) Tuition and fees and (2) room and board, if the student contracts with the institution for room and board. In addition, the Secretary proposes to adopt the Federal Pell Grant Program requirement that an institution must obtain permission from a student to credit his or her account for other cost-of-attendance charges (but no other charges), as defined in section 472 of the HEA. Implicit in this requirement, and consistent with current policy, a student may at any time withdraw that permission and request the institution to pay him or her the remaining balance on his or her account.

In proposed § 668.165(b)(4), the Secretary would adopt for all title IV, HEA programs, the procedures in the Direct Loan and FFEL program regulations (see, proposed § 685.303(c)(3), and 34 CFR 682.604(d), respectively) under which an institution holds title IV, HEA program funds for the benefit of the student. Under those procedures, a student may request an institution to hold funds in excess of allowable institutional charges to assist him or her in managing those funds during an award year. If the institution chooses to hold those funds for the student, it must maintain those funds in a separate account established solely for that purpose. In addition, the institution may not commingle those funds with other funds or use those funds for any other purpose. The Secretary wishes to make clear that the account into which an institution deposits student funds under this provision may be an interest-bearing or a noninterest-bearing account. If the account is interest-bearing the interest would accrue to the institution and the institution may rebate that interest to students.

In addition, the Secretary proposes to amend and make uniform the early

payment requirements common to the title IV, HEA programs governed under this subpart (see, for example, 34 CFR 676.16(d) and 690.78(b)). Under those requirements, the earliest an institution may credit a student's account is 21 days before the first day of a payment period or period of enrollment. The 21-day requirement was established at a time when the Federal government provided to institutions title IV, HEA program funds by Treasury check. Under the standards of that time, an institution requested cash for an amount the institution anticipated it needed to meet its disbursement needs for 30 days. Because it usually took several weeks for the Treasury to deliver the check to the institution, the institution could not determine with certainty when it would receive that check. However, with the advent of EFT, the Federal government can reliably transmit within 3 business days title IV, HEA program funds to an institution. Therefore, in proposed § 668.165(c), the Secretary would provide that the earliest an institution may credit a student's account is 10 days before the first day of a payment period or period of enrollment. The Secretary believes that under this proposal an institution will not be financially burdened, as it may have been under the 30-day need standard with Treasury checks, because the institution may request funds as often as needed and the Federal government is able to provide those funds quickly and reliably. Moreover, sound financial management supports the conclusion that the Department of Treasury should not make available Federal funds to institutions for such extended periods.

Finally, the Secretary recognizes that a student may incur educational expenses before he or she starts classes, and therefore has decided to adopt for all title IV, HEA programs the current requirement in the Federal Pell Grant, campus-based, FFEL, and Direct Loan program regulations under which the earliest an institution may directly pay a student is 10 days before the first day of a payment period or period of enrollment.

The Secretary notes that under section 428G(b)(1) of the HEA and proposed § 685.303(b)(4) of the Direct Loan Program regulations, an institution must delay releasing for 30 days the first installment of a FFEL or Direct Loan program loan, as applicable, to a first-year, first-time borrower.

Proposed § 668.166 Excess Cash

In proposed § 668.166(a), the Secretary would define excess cash as any amount of title IV, HEA program funds, other than FFEL or Federal

Perkins Loan Program funds, that an institution does not disburse to students by the end of the 3rd business day following the date the institution received those funds. As discussed previously, the selection of 3 business days is consistent with departmental guidance in the Blue Book, a publication setting out the procedures for "Accounting, Recordkeeping, and Reporting By Postsecondary Educational Institutions for Federally-Funded Student Financial Aid Programs," with audit guidelines issued by the Department of Education Office of Inspector General, and with requirements from the Department of the Treasury. Except as discussed below, an institution must return promptly to the Secretary any excess funds in its account.

The Secretary realizes that an institution may be unable to disburse title IV, HEA program funds within 3 business days because of circumstances beyond the institution's control (for example, changes in student enrollment status, failure of a student to attend classes as scheduled, changes in a student's award as a result of verification). Although the Secretary does not intend to prescribe the methods by which an institution determines its 3-day immediate cash needs, the Secretary expects the institution to take into consideration the circumstances identified above, and any other circumstances the institution knows of, to determine more accurately its actual cash needs. Therefore, in proposed § 668.166(b), the Secretary would merely as practical matter allow an institution to maintain nominal excess cash balances under certain conditions and only on an exception basis. First, an institution would not have to return excess cash for amounts of \$5,000 or less. In making this proposal, the Secretary expects the institution to eliminate its excess cash balance by reducing the amount of its next request for cash by that amount. Second, an institution would not have to return immediately an excess cash balance if (1) The amount of that excess cash is less than one-half of 1 percent of its total prior-year drawdowns where such prior annual drawdowns exceeded \$1 million and (2) the institution makes within 7 calendar days a cash request greater than the amount of its excess cash. Although the Secretary believes that these excess-cash thresholds are reasonable, the Secretary seeks comment on the level and appropriateness of the proposed thresholds.

Finally, because the Secretary expects institutions to establish procedures that

minimize the potential for excess cash, in proposed § 668.166(b)(3) the Secretary would require an institution to return immediately any amount of excess cash that the institution would otherwise be able to maintain under the thresholds discussed above if the institution routinely maintained excess cash balances at or below the threshold levels.

The Department has also established a policy of reviewing institutions to determine where excess cash balances have been maintained and to seek recovery from those institutions of the losses to the government caused by having made those funds available to institutions in advance of their immediate needs. In proposed § 668.166(c), upon a finding of excess cash, including a finding that an institution maintained routinely excess cash balances at or below the threshold levels, the Secretary would require an institution to reimburse the Department for the costs, as those costs would be calculated under proposed § 668.166(c)(2), that the government incurred in making those excess funds available to the institution. In addition, where the excess cash balances are disproportionately large to the size of the institution or represent a continuing problem with the institution's responsibility to administer efficiently the title IV, HEA programs, the Secretary may initiate a proceeding to fine, limit, suspend, or terminate the institution's participation in one or more of those programs under subpart G of this part.

In proposed § 668.166(c)(2), in calculating whether an institution has excess cash, the Secretary would consider the institution to have issued a check on the date that check cleared the institution's bank account, unless the institution demonstrates to the satisfaction of the Secretary that it issued the check to the student shortly after the institution wrote that check. Finally, the Secretary proposes to assess against an institution that maintains excess cash balances a liability that is equal to the difference between the earnings those cash balances would have yielded under a Treasury-derived rate and the actual interest earned on those cash balances.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, 668.161 *Scope and purpose*.) (4) Is the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these

proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW., (Room 5121, FB10), Washington, DC 20202-2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small institutions of higher education. These regulations would safeguard Federal funds and reduce potential abuse in the title IV, HEA programs. These changes would not significantly increase institutions' workloads or costs associated with administering the title IV, HEA programs. In the case of institutions that are required to maintain interest-bearing accounts, those institution may retain interest earnings to offset the costs of maintaining those accounts. Therefore, these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Section 668.164 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

These proposed regulations contain information collection requirements regarding the bank account that all participating institutions must maintain for the deposit of title IV, HEA program funds. Specifically, institutions must notify their bank of the accounts into which they deposit Federal funds and must maintain a record of that notice in their recordkeeping system. In addition, institutions that draw down more than \$1 million in title IV, HEA program funds must deposit those funds in interest-bearing accounts and keep records for any interest earned on those funds. Institutions may retain annually interest earnings on title IV, HEA program funds for an amount up to \$250, must keep records for the amount retained, and must return to the Department any interest earnings greater than the amount retained. The Department needs and uses this information to determine whether institutions have complied with these requirements.

For approximately 8500 institutions, a one-time public reporting burden for

this collection of information is estimated at 5610 hours for institutions to notify banks of the accounts that contain title IV, HEA program funds and maintain a record of that notice in their recordkeeping system. In addition, the annual public reporting burden for this collection of information is estimated at 4250 hours for those institutions to account for the interest earned on title IV, HEA program funds and return to the Federal government any interest earnings in excess of \$250.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4318, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority in the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Number: 84.007 Federal Supplemental Education Opportunity Grant Program; 84.032 Federal Family Educational Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program. Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned.)

Dated: September 15, 1994.

Richard W. Riley,
Secretary of Education.

The Secretary proposes to amend Part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. The Table of Contents of Part 668 is amended by adding subpart K to read as follows:

Subpart K—Cash Management

668.161 Scope and purpose.
668.162 Definitions.
668.163 Requesting funds.
668.164 Maintaining funds.
668.165 Disbursing funds.
668.166 Excess cash.

§ 668.18 [Removed]

3. Section 668.18 is removed and reserved.

4. Subpart K is added to Part 668 to read as follows:

Subpart K—Cash Management

§ 668.161 Scope and purpose.

(a) *General.* (1) This subpart establishes uniform rules and procedures under which a participating institution requests, maintains, disburses, and otherwise manages funds that the institution receives under any title IV, HEA program. An institution must also follow rules and procedures for managing title IV, HEA program funds under each program in which it participates.

(2) For purposes of this subpart, the title IV, HEA programs include only the Federal Pell Grant, PAS, FSEOG, Federal Perkins Loan, FWS, Direct Loan, and FFEL programs.

(3) The rules and procedures that apply to an institution under this subpart also apply to a third-party servicer.

(b) *Federal interest in title IV, HEA program funds.* Funds received by an institution under the title IV, HEA programs are held in trust for the intended student beneficiaries and the Secretary. Except for funds received by an institution for administering those programs, the institution, as a trustee of Federal funds, may not use or hypothecate (i.e., use as collateral) title IV, HEA program funds for any other purpose.

(Authority: 20 U.S.C. 1094)

§ 668.162 Definitions.

The following definitions apply to terms used in this subpart:

Check: A negotiable demand draft or warrant.

Credit an account: To post a payment of funds to an account maintained for a student by an institution.

Day: A calendar day unless otherwise specified.

Disburse: To make a payment of title IV, HEA program funds, or deliver the proceeds of a loan under the FFEL programs, to or on behalf of a student by—

- (1) Crediting the student's account at the institution;
- (2) Issuing a check or cash to—
 - (i) The student; or
 - (ii) In the case of a parent borrower under the Direct Loan or FFEL programs, the student's parent; or
- (3) Initiating an electronic funds transfer to a bank account designated by the student, or in the case of a parent borrower under the Direct Loan or FFEL programs, to a bank account designated by the parent.

Drawdown: A process whereby an institution requests and receives Federal funds. The phrase "draw down" is used as a verb form of this word.

Issue checks: To release, distribute, or make available checks to students or parents.

Period of enrollment: (1) With respect to the Direct Loan Program, a period of enrollment as defined in 34 CFR 685.102;

(2) With respect to the FFEL Program, a period of enrollment as defined in 34 CFR 682.200.

Request for cash: A solicitation for cash that is completed and submitted in accordance with procedures contained in the *Recipient's Guide for the Department of Education Payment Management System*. This guide is published by the Department of Education, 600 Independence Avenue, SW., Room 3321, FB10, Washington, DC 20202-4331, and contains the procedures institutions use to request, report, and account for Federal funds.

(Authority: 20 U.S.C. 1094)

§ 668.163 Requesting funds.

(a) *General.* The Secretary pays an institution in advance, or by reimbursement, for the institution to disburse title IV, HEA program funds, other than FFEL program funds, to students who qualify to receive those funds.

(b) *Advance payment method.* (1) Under the advance payment method, the Secretary accepts an institution's request for cash and transfers

electronically the amount requested into a bank account designated by the institution.

(2) An institution's request for cash must not exceed the amount of funds the institution needs immediately to make disbursements to students. The institution must make the disbursements as soon as administratively feasible, but no later than 3 business days following the date the institution received those funds.

(c) *Reimbursement payment method.*

(1) To receive payment of title IV, HEA program funds under the reimbursement method, an institution must first make disbursements to eligible students before it submits a request for cash.

(2) The amount of the institution's request for cash may not exceed the amount of the actual disbursements the institution made to students included in that request.

(3) The Secretary may require the institution to submit documentation that each student included in the request was eligible to receive, and received, payment for the title IV, HEA program funds for which the institution is seeking reimbursement.

(4) The Secretary approves the amount of the institution's request and transfers electronically that amount into a bank account designated by the institution if the Secretary determines that the institution—

(i) Determined properly the eligibility of each student for title IV, HEA program funds;

(ii) Made disbursements for the correct amounts of title IV, HEA program funds to the students included in its request; and

(iii) Submitted any documentation required under paragraph (c)(3) of this section.

(Authority: 20 U.S.C. 1094)

§ 668.164 Maintaining funds.

(a) *General.* (1) Other than for funds an institution receives under the FFEL programs, an institution must maintain an account at a bank into which the Secretary transfers or the institution deposits Federal funds that the institution receives from the title IV, HEA programs. Except as provided in paragraph (c) of this section, an institution is not required to open or maintain a separate account for depositing Federal funds.

(2) An institution must notify the bank in which it deposits Federal funds of the account into which those funds are deposited by—

(i) Ensuring that the name of the account discloses clearly that Federal funds are deposited into that account; and

(ii) Notifying the bank of the account into which the institution deposits Federal funds.

(3) The institution must retain in its recordkeeping system a record of the notice required under paragraph (a)(2) of this section.

(b) *Interest-bearing account.* (1) Except as provided in paragraph (b)(2) of this section, for any award year, an institution must ensure that the account into which it deposits Federal funds is an interest-bearing account that is federally insured, if the institution, during the prior award year, drew down a total amount greater than \$1 million from the title IV, HEA programs.

(2) For any award year, an institution that participates in the Federal Perkins Loan Program must deposit Federal Perkins Loan Program funds in—

(i) An interest-bearing account that is—

(A) Federally insured; or
(B) Secured by collateral of value reasonably equivalent to the amount of funds in the account; or

(ii) An investment account consisting predominantly of low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(3) Except as provided in paragraphs (b)(3) (i) and (ii) of this section, an institution must remit at least annually to the Secretary the interest earned on title IV, HEA program funds maintained in an interest-bearing account.

(i) Pursuant to 34 CFR part 674, an institution must retain for the purposes of the Federal Perkins Loan Program all interest or investment revenue earned on Federal Perkins Loan Program funds maintained in an interest-bearing or investment account.

(ii) Other than interest or investment revenue earned on Federal Perkins Loan Program funds, an institution may retain for administrative expense up to \$250 per year of the interest earned on title IV, HEA program funds maintained in an interest-bearing account.

(c) *Separate account.* The Secretary may require an institution to maintain title IV, HEA program funds in a separate bank account that contains no other funds if the Secretary determines that—

(1) The institution's accounting and internal control systems do not—

(i) Identify the cash balances of title IV, HEA program funds maintained in the institution's bank account as readily as if those funds were maintained for each program in a separate account; or

(ii) Identify adequately the interest or investment revenue earned on title IV, HEA program funds maintained in its bank account;

(2) The institution's financial records—

(i) Are not maintained on a current basis;

(ii) Do not reflect accurately all title IV, HEA program transactions; or

(iii) Are not reconciled at least monthly; or

(3) The institution has otherwise failed to comply with the recordkeeping and reporting requirements in subpart B of this part or in the regulations that govern each title IV, HEA program in which the institution participates.

(d) *Standard of conduct.* An institution must exercise the level of care and diligence required of a fiduciary with regard to depositing and investing Federal funds.

(Authority: 20 U.S.C. 1094)

§ 668.165 Disbursing funds.

(a) *Method of payment.* (1) An institution must notify a student of the amount of title IV, HEA program funds the student can expect to receive and how that amount will be paid.

(2) If the institution chooses to disburse to the student or the student's parent by initiating an electronic funds transfer to the bank account designated by the student or parent, as applicable, the institution must obtain each award year written authorization from the student or parent, as applicable, to disburse by that method.

(3) An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program.

(b) *Crediting a student's account.*—(1) *General.* An institution may disburse to a student by crediting the student's account. In crediting the student's account with title IV, HEA program funds, the institution may apply those funds only to allowable charges described under paragraph (b)(3) of this section, except that the institution may not apply the student's title IV, HEA program funds to any charges the institution assessed the student in a prior award year.

(2) *Student account balances.* Except as provided in paragraph (b)(4) of this section, if the amount of title IV, HEA program funds the institution applies to a student's account exceeds the amount of allowable charges, the institution must pay the balance remaining on the student's account directly to the student as soon as possible but within the later of—

(i) 7 days after the date that balance occurs;

(ii) 14 days after the first day of classes of the payment period or period of enrollment, as applicable; or

(iii) 7 days after the date the student rescinds his or her permission under paragraph (b)(3)(ii) of this section.

(3) *Allowable charges.* For the purpose of determining a student's account balance under paragraph (b)(2) of this section, allowable charges include—

(i) Only—(A) Tuition and fees; (B) Board, if the student contracts with the institution for board; and (C) Room, if the student contracts with the institution for room; and (ii) Other cost-of-attendance charges, as provided under section 472 of the HEA, for which the institution obtains the student's permission. The institution must obtain from the student each award year permission to use his or her title IV, HEA program funds to pay for these cost-of-attendance charges. The institution—

(A) May not require the student to grant that permission; and (B) Must allow the student to rescind that permission at any time.

(4) *Holding student funds.* An institution, as a fiduciary for the benefit of a student, may hold student funds from the title IV, HEA programs in excess of institutional charges included in paragraph (b)(3) of this section, if the student requests in writing that the institution retain those excess funds to assist the student in managing his or her funds for an award year. The institution must maintain these funds in a separate account established solely for the purpose of holding excess student funds and may not commingle these funds with other funds or use these funds for any other purpose.

(c) *Early payments.* (1) An institution may not make a payment to a student for a payment period or period of enrollment, as applicable, until the student is enrolled for classes for that period.

(2) Except as provided in paragraph (c)(3) of this section, the earliest an institution may pay directly, or credit the account of, an enrolled student is 10 days before the first day of a payment period or period of enrollment, as applicable.

(3) Pursuant to 34 CFR 682.604(c) and 34 CFR 685.303(b)(4), if a student is enrolled in the first year of an undergraduate program of study and the student has not previously received an FFEL or Direct Loan Program loan, the institution may not release to the student for endorsement the first installment of his or her FFEL or Direct Loan Program loan, as applicable, until 30 days after the first day of the student's classes.

(Authority: 20 U.S.C. 1094)

§ 668.166 Excess cash.

(a) *General.* The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than FFEL or Federal Perkins Loan Program funds, that an institution does not disburse to students by the end of the 3d business day following the date the institution received those funds. Except as provided in paragraph (b) of this section, an institution must return promptly to the Secretary any amount of excess cash in its account.

(b) *Excess cash tolerances.* If an institution draws down title IV, HEA program funds in excess of its immediate cash needs, the institution may maintain the excess cash in its account only if—

(1) The amount of that excess cash is less than \$5,000; or

(2)(i) In the award year preceding that drawdown, the institution drew down more than \$1 million of title IV, HEA program funds, and the amount of that excess cash is less than one-half of 1 percent of its total prior-year drawdowns; and

(ii) The institution makes within 7 days a cash request greater than the amount of its excess cash; and

(3) The institution does not maintain routinely in its account the excess cash balances described in paragraph (b)(1) or (b)(2) of this section.

(c) *Consequences for maintaining excess cash balances.* (1) If the Secretary finds that an institution maintains in its account excess cash balances greater than those allowed under paragraph (b) of this section or maintains routinely

excess cash balances allowed under paragraph (b) of this section, the Secretary—

(i) As provided in paragraph (c)(2) of this section, requires the institution to reimburse the Secretary for the costs the Secretary deems to have incurred in making those excess funds available to the institution; and

(ii) May initiate a proceeding to fine, limit, suspend, or terminate the institution's participation in one or more title IV, HEA programs under subpart G of this part.

(2) For the purposes of this section, upon a finding that an institution has maintained excess cash, the Secretary—

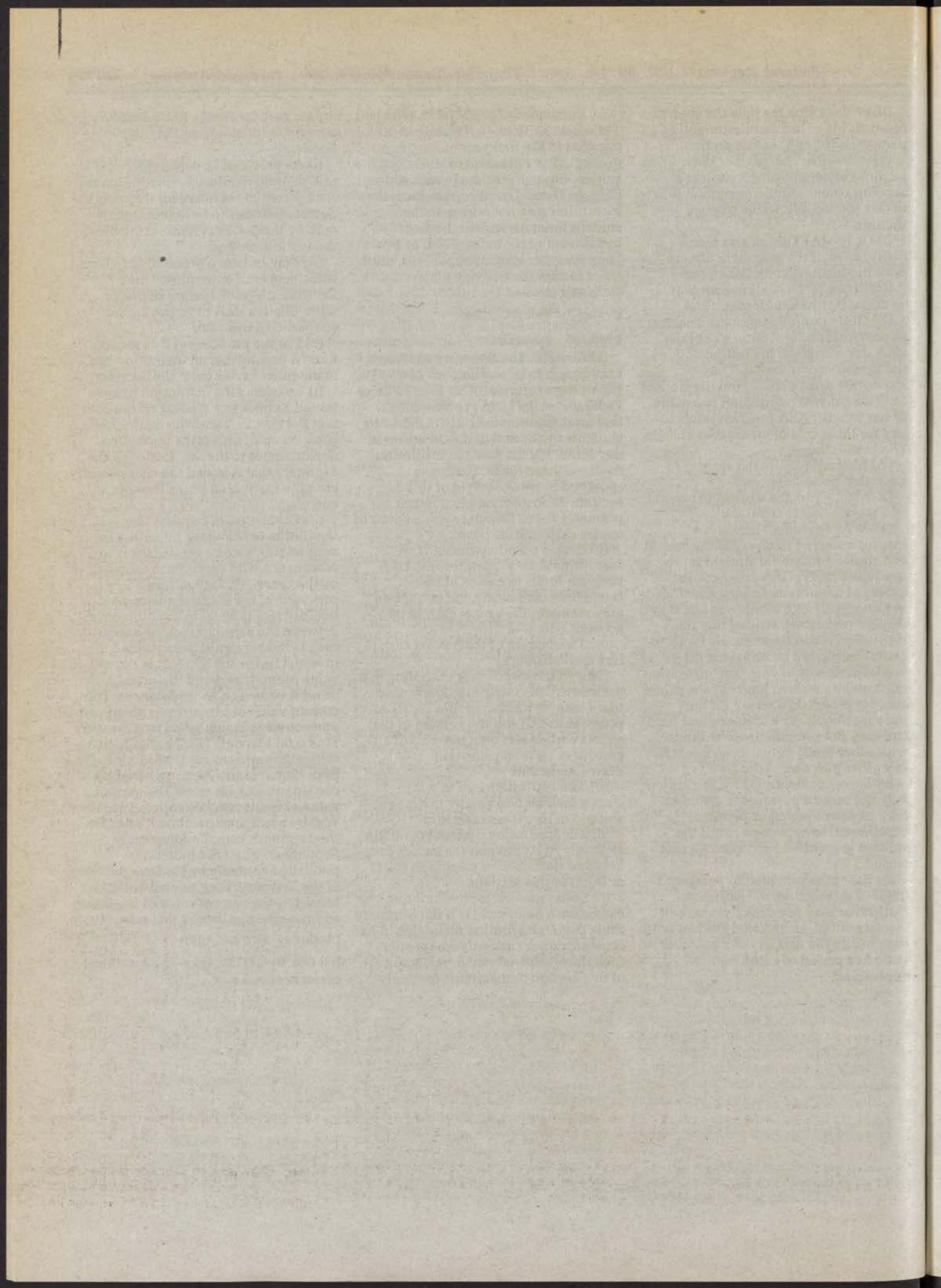
(i) Considers the institution to have issued a check to a student on the date that the check cleared the institution's bank account, unless the institution demonstrates to the satisfaction of the Secretary that it issued the check shortly after the institution wrote the check; and

(ii) Calculates, or requires the institution to calculate, a liability for maintaining excess cash balances in accordance with procedures established by the Secretary. Under those procedures, the Secretary assesses a liability that is equal to the difference between the earnings that the excess cash balances would have yielded if invested under the applicable current value of funds rate and the actual interest earned on those balances. The current value of funds rate is an annual percentage rate, published in a Treasury Financial Manual (TFM) bulletin, that reflects the current value of funds to the Department of the Treasury based on certain investment rates. The current value of funds rate is computed each year by averaging investment rates for the 12-month period ending every September. The TFM bulletin is published annually by the Department of the Treasury. Each annual bulletin identifies the current value of funds rate and the effective date of that rate.

(Authority: 20 U.S.C. 1094)

[FR Doc. 94-24115 Filed 9-28-94; 8:45 am]

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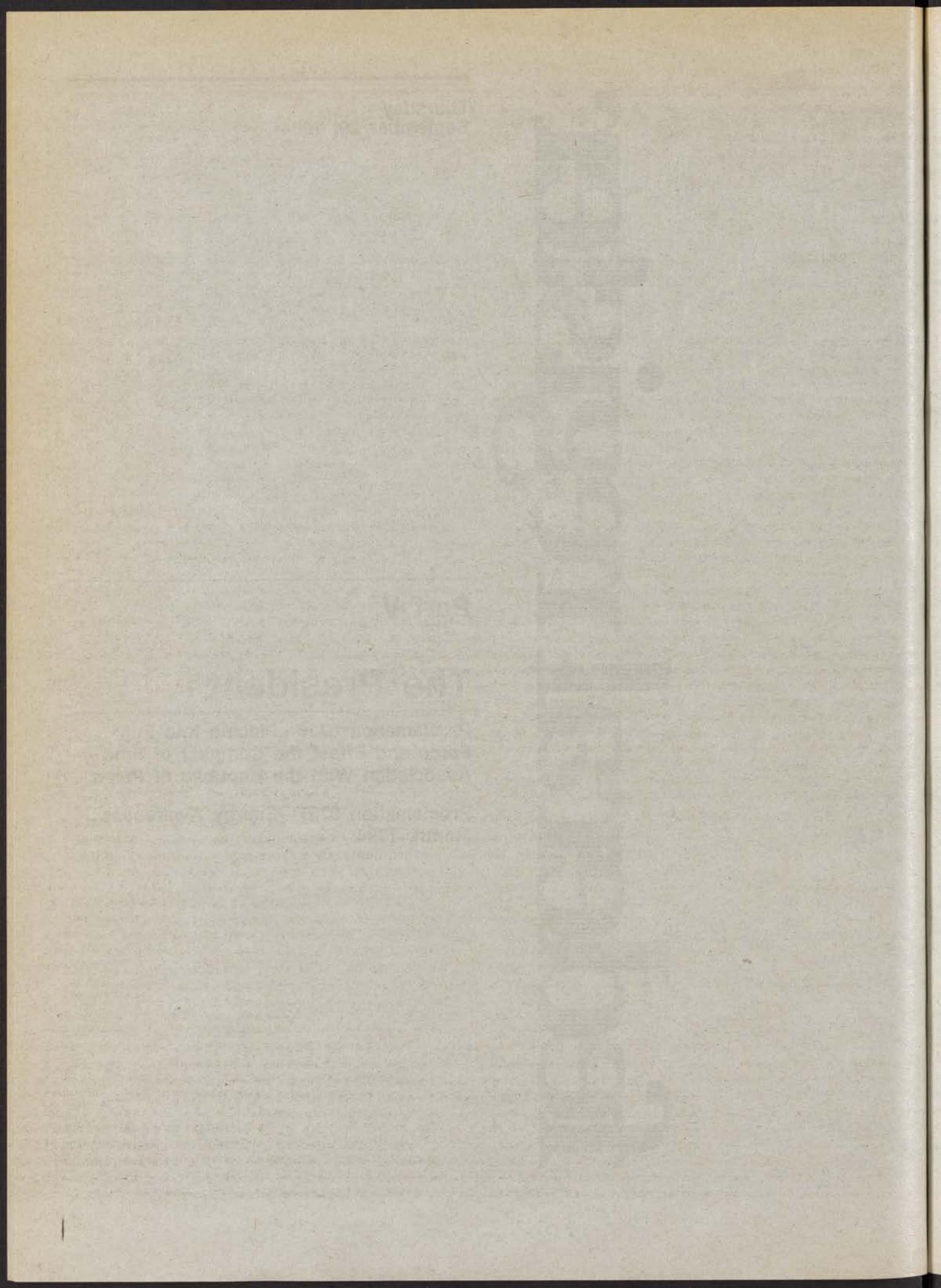
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Part V

The President

Proclamation 6726—Placing Into Full Force and Effect the Compact of Free Association With the Republic of Palau

Proclamation 6727—Energy Awareness Month, 1994



Presidential Documents

Title 3—

Proclamation 6726 of September 27, 1994

The President

Placing into Full Force and Effect the Compact of Free Association With the Republic of Palau

By the President of the United States of America

A Proclamation

Since July 18, 1947, the United States has administered the United Nations Trust Territory of the Pacific Islands ("Trust Territory"), which has included the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.

On November 3, 1986, a Covenant between the United States and the Northern Mariana Islands came into force. This Covenant established the Commonwealth of the Northern Mariana Islands as a self-governing Commonwealth in political union with and under the sovereignty of the United States.

On October 21, 1986, in the case of the Republic of the Marshall Islands, and on November 3, 1986, in the case of the Federated States of Micronesia, Compacts of Free Association with the United States became effective. Under the Compacts, the Federated States of Micronesia and the Republic of the Marshall Islands became self-governing sovereign states, in free association with the United States. Following the changes in political status of the Northern Mariana Islands, the Marshall Islands, and the Federated States of Micronesia, the Trusteeship Agreement ceased to be applicable to those entities and only Palau remained as the Trust Territory of the Pacific Islands.

On January 10, 1986, the Government of the United States and the Government of Palau concluded a Compact of Free Association similar to those that the United States entered into with the Republic of the Marshall Islands and with the Federated States of Micronesia. As in those instances, it was specified that the Compact with Palau would come into effect upon (1) mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the Government of Palau; (2) the approval of the Compact by the two Governments, in accordance with their constitutional processes; and (3) the approval of the Compact by plebiscite in Palau.

In Palau the Compact has been approved by the Government in accordance with its constitutional processes and by a United Nations-observed plebiscite on November 9, 1993, a sovereign act of self-determination. In the United States the Compact was approved by Public Law 99-658 of November 14, 1986, and Public Law 101-219 of December 12, 1989.

On May 25, 1994, the Trusteeship Council of the United Nations concluded that the Government of the United States had satisfactorily discharged its obligations as the Administering Authority under the terms of the Trusteeship Agreement and that the people of Palau had freely exercised their right to self-determination and considered that it was appropriate for the Trusteeship Agreement to be terminated. The Council asked the United States to consult with the Government of Palau and to agree on a date, on or about October 1, 1994, for entry into force of their new status agreement.

On July 15, 1994, the Government of the United States and the Government of the Republic of Palau agreed, pursuant to section 411 of the Compact of Free Association, that as between the United States and the Republic of Palau, the effective date of the Compact shall be October 1, 1994.

As of this day, September 27, 1994, the United States has fulfilled its obligations under the Trusteeship Agreement with respect to the Republic of Palau. On October 1, 1994, the Compact will enter into force between the United States and the Republic of Palau, and Palau will thereafter be self-governing and no longer subject to the Trusteeship. In taking these actions, the United States is implementing the freely expressed wishes of the people of Palau.

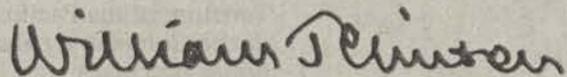
NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, including sections 101 and 102 of the Joint Resolution to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes, approved on November 14, 1986 (Public Law 99-658), and section 101 of the Joint Resolution to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes, approved on December 12, 1989 (Public Law 101-219), and pursuant to section 1002 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and consistent with sections 101 and 102 of the Joint Resolution to approve the "Compact of Free Association" and for other purposes, approved on January 14, 1986 (Public Law 99-239), do hereby find, declare, and proclaim as follows:

Section 1. I determine that the Trusteeship Agreement for the Pacific Islands will be no longer in effect with respect to the Republic of Palau as of October 1, 1994, at one minute past one o'clock p.m. local time in Palau. This constitutes the determination referred to in section 1002 of the Covenant with the Northern Mariana Islands (Public Law 94-241).

Sec. 2. The Compact of Free Association with the Republic of Palau will be in full force and effect as of October 1, 1994, at one minute past one o'clock p.m. local time in Palau.

Sec. 3. I am gratified that the people of the Republic of Palau, after 47 years of Trusteeship, have freely chosen to establish a relationship of Free Association with the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.



[FR Doc. 94-24346

Filed 9-28-94; 11:12 am]

Billing code 3195-01-P

Presidential Documents

Proclamation 6727 of September 27, 1994

Energy Awareness Month, 1994

By the President of the United States of America

A Proclamation

We have become increasingly aware in recent decades that our sources of energy are finite. America's economy continues to expand, generating new jobs, increased production, and an even higher demand for energy. At the same time, the changing needs of our people and the fragile nature of our environment teach us that we must use our resources wisely. The long-term health of our Nation and of our world require that we continually reexamine the ways we produce and consume energy.

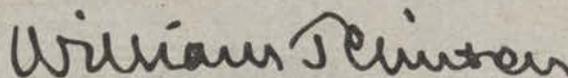
As we celebrate Energy Awareness Month this year, the United States is leading the world in that effort, improving energy efficiency and exploring the possibilities of renewable resources. Through programs developed by both business and government, Americans are using energy in wiser and less costly ways. High technology applied to vehicles, appliances, and buildings has enabled us to save money, become less reliant on foreign imports, and protect our planet's precious natural resources. Yet much remains to be done.

The "Greening of the White House" initiative sets an important example. A cooperative project combining the best efforts of the public and private sectors, it utilizes the latest technologies in lighting, heating, air conditioning, cooking, and refrigeration and serves as a model of progress for buildings across the country. This project will be a challenge to countries around the globe to protect the Earth's environment and to achieve sustainable economic growth.

The theme of Energy Awareness Month, 1994, "Energy—Our Future Is Today!" recognizes that we must view our energy consumption from the perspective of the generations to come. I encourage all Americans to join in this crucial mission to conserve Earth's resources for our children and grandchildren by participating in activities that further our understanding and appreciation of the energy issues we face. Our work today will help to safeguard the strength of our economy, the well-being of our citizens, and the unique beauty of our world.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 1994 as "Energy Awareness Month."

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.



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