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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: January 30, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202-523-5240.

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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.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[AMS-FV-89-090FR]

Almonds Grown in California; Administrative Rules and Regulations Concerning Crediting for Marketing Promotion and Paid Advertising Expenditures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes administrative rules and regulations established under the Federal marketing order for California almonds to allow handlers to receive credit against their assessments for payments for color advertisements enclosed in frames mounted on fixtures outside and in front of retail food stores. This action is based on a recommendation of the Almond Board of California (Board), which is responsible for local administration of the order, and other available information. The change will give handlers additional flexibility in obtaining credit against their advertising assessments under the marketing order for California almonds.

EFFECTIVE DATE: February 2, 1990.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3923.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. 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."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

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 action 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 the RFA and the Act have small entity orientation and compatibility.

There are approximately 95 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) 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 $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action allows handlers of California almonds to receive credit against their assessments under the order for payments for processed color advertisements enclosed in frames mounted on fixtures outside and in front of retail food stores when payments are made through an advertising firm. The action will give handlers an additional opportunity to receive credit against the creditable portion of their annual assessments. It is the view of AMS that the change will allow almond handlers greater flexibility in the advertising methods for which they may receive credit, while not imposing any additional costs on handlers.

This action revises § 981.441 of subpart—Administrative Rules and Regulations and is based on a recommendation of the Board and other available information.

Section 981.41(c) of the order provides that the Board, with the approval of the Secretary, may allow handlers to receive credit for their direct marketing promotion expenditures, including paid advertising, against that portion of such handlers' assessment obligations which is designated for marketing promotion, including paid advertising. That paragraph also provides that handlers shall not receive credit for allowable expenditures that would exceed the amount of such creditable assessments. Section 981.41(e) further provides that before crediting is undertaken, and after recommendations are received from the Board, the Secretary shall prescribe appropriate rules and regulations as are necessary to effectively administer the order provisions for crediting handler marketing promotion and paid advertising expenditures.

Section 981.441 currently prescribes rules and regulations to regulate crediting for marketing promotion, including paid advertising. Section 981.441(c) prescribes requirements which specifically apply to crediting for paid advertising. This final rule revises § 981.441(c)(3)(i) to allow handlers credit against their creditable assessments for 100 percent of such handlers' payments for processed color advertisements of almonds enclosed in frames mounted on fixtures outside and in front of retail food stores. This action also revises § 981.441(c)(6)(v) to require handlers desiring to receive credit for this type of advertising to submit documentation to the Board to verify that such advertising was conducted and payments were made. Handlers will be required to submit a copy of the food store invoice to the advertising agency, a copy of the actual advertisement, a published rate card from a nationally recognized firm, and a copy of the agency invoice to the handler.

Handlers will have to conduct this type of advertising through an advertising firm. The advertising firm will pay the retail food store for displaying the advertisement. Therefore, the payment to the retail food store will not come directly from the handler. The required documentation will allow the Board to readily differentiate payments for this type of creditable advertising from other types of payments often made by handlers to retail food stores,

such as payments for shelf space, which are not creditable expenditures. This is necessay as both payments for advertising and for shelf space are customarily consolidated under the general heading "advertising" on invoices from retailers to handlers.

Since the inception of the creditable advertising and promotion program in 1972, new activities for which credit may be received have been added to the order's rules and regulations. The Board has attempted to add new activities which benefit a wide range of handlers who market their almonds in different types of outlets. This action could give handlers using a brand name an increased opportunity to receive credit against their creditable assessments and increase almond sales through additional promotion for the benefit of all handlers.

The information collection requirements contained in the provisions of the administrative rules and regulations revised by this action have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581-0071.

Based on the above, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the **Federal Register** on October 13, 1989 (54 FR 41980). Written comments were invited from interested persons until November 13, 1989. No comments were received.

After consideration of all relevant matter presented, including the Board's recommendation and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, California, and Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

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

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-74.

Subpart—Administrative Rules and Regulations

2. Section 981.441 is amended by revising paragraphs (c)(3)(i) and (c)(6)(v) to read as follows:

Note: The following section will be published in the annual Code of Federal Regulations.

981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(c) * * *

(3) * * *

(i) For 100 percent of a handler's payment to an advertising medium:

(A) For a generic advertisement of California almonds;

(B) For an advertisement of the handler's brand of almonds;

(C) When either of these advertisements includes reference to a complementary commodity or product;

(D) For a trade media advertisement that displays branded food products containing almonds, or announces a handler's future promotion activities, including joint promotions, and the entire expenditure is borne by the handler;

(E) For in-store supermarket advertisements using fixed position or video media, when such payments are made through an advertising firm:

(1) Fixed position advertisements must include at least two of the following:

(i) Processed color displays enclosed in plastic frames and mounted on supermarket shopping carts;

(ii) Overhead directories enclosed in frames placed at the end or middle of supermarket aisles; or

(iii) Processed color advertisements enclosed in frames and mounted on a supermarket shelf;

(2) Video advertisements must be shown on a fixed video monitor running television commercials or infomercials for specific products on a rotating basis; or

(F) For processed color displays enclosed in frames mounted on fixtures outside and in front of retail food stores when payments are made through an advertising firm.

* * * * *

(6) * * *

(v) For in-store supermarket advertising and for mounted advertising enclosed in frames outside and in front of retail food stores, submit a copy of the company invoice, a copy of the actual advertisement or video tape, a published rate card from a nationally recognized company, and a copy of the agency invoice, if any.

* * * * *

Dated: December 27, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 9042 Filed 1-2-90; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1762

RIN 0572-AA21

REA Contract Form 515, Telephone System Construction Contract, Labor and Materials

AGENCY: Rural Electrification Administration, U.S. Department of Agriculture.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR part 1762, Standard Forms of Telecommunications Contracts, by issuing a revised REA Contract Form 515, Telephone System Construction Contract, Labor and Materials. The Contract Form 515 associated specifications are: REA Forms 515a, REA Specifications and Drawings for Construction of Direct Buried Plant (REA Bulletin 345-150); 515c, REA Specifications and Drawings for Conduit and Manhole Construction (REA Bulletin 345-151); 515d, REA Specifications and Drawings for Underground Cable Installation (REA Bulletin 345-152); 515f, REA Specifications and Drawings for Construction of Pole Lines and Aerial Cables (REA Bulletin 345-153); and 515g, REA Specifications and Drawings for Service Entrance and Station Protector Installation (REA Bulletin 345-154). These associated specifications are listed in 7 CFR part 1772.

REA Contract Form 515 was last revised in September 1979. Since that date, the telephone industry, construction materials, engineering designs and procedures, testing requirements, and construction methods have all changed significantly. The revised Contract Form 515 incorporates these changes into the outside plant contract and specifications. The main changes to the contract are the addition of new construction units for (1) buried filled fiber optic cable, (2) aerial filled fiber optic cable, (3) aerial filled cable, (4) fiber optic splicing, (5) network interface devices, (6) handholes, (7) underground fiber optic cable, and (8) insurance and bonding requirements. Form 515 revised associated specifications were issued by final rule 7 CFR part 1772 Telephone Standards and Specifications published in the **Federal Register**, 54 FR 20516, on May 12, 1989.

In addition, revised Contract Form 515 incorporates Executive Order 12549, Debarment and Suspension, and its implementing regulations (7 CFR part 3017), REA regulations concerning

contractor insurance and bond requirements (7 CFR part 1788) and amendments to the Anti-Kickback Acts (40 U.S.C. 276c; 41 U.S.C. 51 *et seq.*).

This action will make it possible for REA telephone borrowers to continue to provide their subscribers with the most modern and efficient telephone service.

DATES: This final rule is effective January 3, 1990. The previous issue of Form 515 may be used in the borrower's option for construction bid through March 31, 1990. The new issue of Form 515 shall be used for all construction bids after March 31, 1990.

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-8667.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR part 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This rule does not contain new or amended reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). Existing requirements were approved by the Office of Management and Budget under OMB approval number 0572-0062.

Background

REA has issued a series of 7 CFR chapter XVII parts which serve to implement the policies, procedures, and requirements for administering its loan and loan guarantee programs and the security instruments which provide for and secure REA financing. This amendment to 7 CFR part 1762 is to issue a revised Telephone System Construction Contract, Labor and Materials, REA Form 515. An amendment to 7 CFR part 1772 was published (54 FR 20516) to revise the contract's associated specifications: REA Form 515a, covering the construction of direct buried plant; REA Form 515c, setting forth requirements for conduit and manhole construction; REA Form 515d, the specifications and drawings for underground cable installations; REA Form 515f, the specifications and drawings for construction of pole lines and aerial cable; and REA Form 515g, the specifications and drawings for service entrance and station protector installation. The 7 CFR part 1762 also provides information as to where copies of the contract may be obtained and the price per copy, where applicable. REA Form 515 is a labor and materials contract wherein the contractor furnishes all labor and materials required for the construction of telephone outside plant facilities. REA telephone borrowers are required to use the Form 515 contract where major outside plant facilities are being constructed by the contract method. Since the current contract was issued in 1979, new construction materials, such as fiber optic cable, filled aerial cable, and network interface devices, have been introduced. These new materials require new construction and installation specifications. There are also changes that have been made in testing and grounding requirements and construction techniques. All these proposed additions and changes have been incorporated in the revised contract form so that REA telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

On July 3, 1989, REA published in the **Federal Register** at 54 FR 27883 proposed rule 7 CFR 1762, Standard Forms of Telecommunications Contracts, to issue a revised REA Contract Form 515, Telephone System Construction Contract, Labor and materials, to be used by telephone borrowers for construction of outside plant facilities using REA loan funds. In the proposed rule REA invited interested parties to file comments on or before September 1, 1989.

Comments

Comments and recommendations were received from only one respondent. The comments are summarized as follows:

General. The respondent urges REA to adopt revisions which will allow great flexibility for REA borrowers and contractors to negotiate important contract provisions. REA would maintain the security of the Government's loans by publishing basic requirements for protecting the Government's loans.

Response. If a standard form of contract is abandoned, competitive bidding would be come impossible. For over fifty years in the electric program and forty years in the telephone program REA has found the highest quality of plant facilities for the least cost results when the construction of the facilities is by contract using the competitive bidding procedure. Negotiating provisions of a construction contract would be an enormous burden for most REA borrowers, who have neither the resources nor the leverage to negotiate such matters.

Article II, Section 1(d), Time and Manner of Construction. The respondent stated the requirement for all cost increases to be covered by formal amendments is an unreasonable burden on the contractor. The requirement for all extensions of time to be requested by the contractor within 10 days of the delaying event is also considered burdensome.

Response. Because compensation under this contract is based on actual construction units provided by the contractor, changes in design cause changes in units required, so contractor's compensation is automatically adjusted fairly. When new units are needed or contract provisions need to be changed during a project, the owner describes these to the contractor, the contractor responds with a price, and a contract amendment formalizes the agreement. To proceed with work without knowing its cost would not be responsible contract administration on the part of the owner.

The ten-day limit on requests for extensions of time is necessary for contract management. If an extension is requested long after the delaying event, it is difficult to evaluate the request fairly.

Article II, Sections 3(a) and 3(b), Defective Workmanship and Materials. The respondent proposes that the

warranty state that it is the exclusive warranty, that the contractor is allowed to make refund if it chooses rather than repair or replace defects, that the owner be required to transport defective materials to the contractor for repair or replacement, and that several disclaimers be inserted.

Response. Section 3(a) provides that any workmanship, materials, or equipment found defective before final acceptance of the construction shall be remedied or replaced at the expense of the contractor. Section 3(b) provides that the contractor shall remedy defective workmanship or replace defective materials and equipment discovered within one year after completion of the construction or pay the owner the cost and expense to do so. REA believes these requirements are just and fair to ensure that the construction meets the contract specifications and provide a reasonable time to discover any defects.

The concept of the labor and material contract is complete contractor control and responsibility for the procurement and installation of materials and equipment until the construction is complete, tested and accepted by the owner. The respondent's proposals to allow the contractor to choose to make refund rather than to repair or replace defects, require the owner to transport defective materials to the contractor for repair or replacement and inclusion of other disclaimers would negate this concept and transfer significant risk and costs to the owner for activities not under its control. These proposals are unacceptable.

Article IV, Particular Undertakings of the Contractor, Section 1(e), Protection to Persons and Property. The respondent stated that this section is awkwardly written with respect to the contractor's liability for loss or damage to crops, orchards, other property, and livestock, and that the contractor should not be liable unless the damage results from the contractor's negligent acts or omissions.

Response. REA disagrees with the respondent's contention. As written, section 1(e) states the contractor is not liable for loss of or damage to crops, orchards, or property (other than livestock) on the construction corridor necessarily incident to the construction of the project and not caused by negligence or inefficient operation of the contractor and that the contractor shall be responsible for all other such losses whether on or off the construction corridor and for all loss of or damage to livestock caused by construction of the project. REA believes this language is straightforward and provides the contractor with adequate access to perform its contract obligations.

Article IV, Section 1(f), Protection to Persons and Property. The respondent contends that this section provides that the contractor shall be in charge and control of the construction work from commencement to completion and shall bear all risks associated with the project; that this is not merely a risk of loss provision, but rather it unreasonably places total liability on the contractor for all damage which occurs during construction, even for acts of God or the negligence of others; and, to add confusion, this section also contains an indemnity provision which is limited to injuries or property damage caused by the contractor's negligence. The section should be revised to make the risk and indemnity provisions consistent and complimentary.

Response. The essence of the contract is that the contractor is in charge and control of the construction and bears all risks, including acts of God, in connection with the construction of the project and the materials to be used until the owner takes possession and control of completed construction, at which time the owner is responsible for and assumes the risks for those facilities. This is a "turnkey" contract where the contractor turns over to the owner a completed, tested outside plant. Until such turnover, REA believes it is necessary for the contractor to be in charge of and responsible for the construction; therefore, the contractor is in the best position to prevent losses from occurring. REA also believes it is reasonable for the contractor to be responsible for all claims for injuries to persons or for damage to property happening by reason of negligence on the part of the contractor. The contractor can obtain insurance to provide for such losses. REA realizes there are losses caused by acts of God but that is why we require the contractor to have insurance.

The respondent proposed language to amend paragraph (f) to require certain actions by the owner pertaining to damage claims caused by or results of negligent acts of the contractor and to set a maximum limit for any one occurrence.

Response. Such a limitation simply places liability above the set limit upon the owner. This reduces the incentive for the contractor to protect property, and transfers an unacceptable risk to the owner. The language in paragraph (f) is not changed in the Final Rule.

Article IV, Section 3(a), Pre-cutover Testing of the Project. The respondent contends that the owner's right to perform operational tests on any portion of the project before completion of construction should be allowed only at reasonable times when it will not interfere with the contractor's work.

Response. Normally, operational tests on outside plant facilities are not conducted until the construction is completed. The tests are coordinated among the owner, engineer, and contractor. However, when there is reason to believe materials do not meet the appropriate specifications or that they are being damaged during the construction operations, tests are conducted. Many times these tests save the contractor considerable expenses. Article V Section B states that all inspections and acceptance test shall be performed jointly by the contractor and the Engineer, thus the tests cannot be performed without the contractor's agreement. The contractor may request an extension of time to complete the construction, if it is warranted.

Article IV, Section 4, Insurance. The respondent contends the contractor should be allowed to self-insure or self-retain responsibility for the losses covered by the types and amounts of insurance required.

Response. Minimum insurance requirement for contractors, engineers, and architects performing work under contracts with borrowers are set forth in 7 CFR part 1788 subpart C—Insurance for Contractors, Engineers, and Architects. These requirements were adopted for reasons considered by REA at the time of adoption of 7 CFR part 1788. All contractors must meet these requirements. The insurance provisions in Form 515 cannot be changed from these requirements. 7 CFR part 1788 contains no provisions for contractors to self-insure or self-retain responsibility for losses.

Article IV, Section 5, Purchase of Materials. The respondent contends this section confusingly combines the concept of warranty of title and transfer of title.

Response. REA requires that borrowers have clear title to improve the lien of the mortgage securing the REA's loans. This requirement complies with a standard provision in the mortgage between the borrower and REA.

The respondent suggested language that title to materials and equipment would pass to the owner at the time contractor or its supplier delivers possession of materials and equipment to a carrier.

Response. Such a provision would be in direct conflict with the essence of the contract, that the project be completely

controlled by the contractor until the owner takes possession.

Article IV, Section 7, Patent Infringement. The respondent contends this section is too broad in that it is not limited to United States patents and not broad enough in that it does not provide indemnification for copyright, trademark, or trade secret infringement suits.

Response. The purpose of section 7 is to assure that the borrower will not be responsible for any claims, suits, or other proceedings for infringement of any patents regardless of where they are filed covering any materials or equipment provided by the contractor in construction of the project. REA believes this is appropriate since the contractor selects the materials and equipment used in the project.

No changes have been made in this section.

Article VI—Remedies, Section 1—Completion of Contractor's Default. The respondent contends this section should be revised to (1) making the right to cancel bilateral; (2) limiting the right to "material" breaches; and (3) extending the default "cure" period from twenty (20) days to forty-five (45) days, the extension to forty-five days being appropriate because of the complexities of outside plant construction.

Response. This section sets forth the actions the owner may take if the contractor is in default. (1) The contractor should have no right to cancel the contract as long as it is in default, (2) the owner should have the right to take action to correct any type of default, and (3) twenty days should be ample time for the contractor to correct or make arrangements for corrections of defaults.

Article VI, Section 2, Liquidated Damages. The respondent contends liquidated damages should not be required as a standard term in any REA contract because (1) many times the schedules for completion of the construction are not critical to the owner and (2) by making liquidated damages a mandatory provision, the contractor will be required to assume more risks and thus be forced to adjust its prices upward, meaning the owner always pays more whether or not scheduling of the construction is important.

Response. The owner determines its construction needs and prepares the plans and specifications to meet those needs. REA reviews and approves the plans and specifications. When the construction is critical, the construction period is specified accordingly, even though a short construction time frame may result in a greater cost. On the other hand, a longer construction time frame is specified for noncritical construction, giving full consideration to normal construction progress most contractors achieve and to the other related costs being incurred by the owner, such as daily costs for engineering, right-of-way, and other costs related to the project. These costs can be several hundreds of dollars a day. A liquidated damages provision in the contract assures that at least a part of those costs are covered if the contractor does not complete the construction in accordance with the contract.

Article VI, Section 3, Cumulative Remedies. The respondent contends that bidders increase their bids to cover the potential for large losses, particularly losses related to consequential damages, such as damages for lost profits and lost revenues. Respondent requested that a limitation upon the contractor's liability for consequential damages be included.

Response. Only very rarely, if at all, have consequential damages been imposed under REA outside plant contracts. REA believes this provision has had little or no effect on prices. REA firmly believes the cost causer should pay the costs, without regard to the magnitude of those costs. The contractor must be responsible for its negligence or nonperformances.

Additional Terms. The respondent contends the Form 515 lacks may other provisions including (1) protection of proprietary information, (2) independent contractor, (3) releases void, (4) survival of obligations, (5) non-waiver, (6) changes in materials and equipment, (7) software license (if applicable), (8) compliance with laws, (9) continuing material and equipment support, (10) force majeure, (11) general terms of installation, and (12) entire agreement.

Response. The provisions proposed would protect the contractor in various ways, usually by limiting the borrowers rights or by placing new burdens upon the borrower. REA believes these terms are addressed in the Form 515 Contract and 7 CFR Part 1765—Telephone Materials, Equipment, and Construction, or are not germane to outside plant construction.

REA does not believe that adding these particular provisions would reduce the cost of construction to REA borrowers. The construction industry that serves REA borrowers through the form 515 contract is very active and competitive, and REA borrowers currently enjoy favorable costs for outside plant construction.

REA believes that the form 515 contract, and the fully competitive bidding that would be impossible without a standard form of contract such as the form 515, are responsible in large measure for REA borrowers' ability to serve vast areas of the nation for reasonable cost.

The respondent concluded that REA should endeavor to build flexibility into the contracting process rather than continue the past practice of requiring its borrowers to use mandatory forms which are unalterable by either the borrower or its contractor and go beyond protecting the Government's interest as a lender. Such flexibility would eliminate the need for constant revision of REA forms in order to keep pace with technology and the current state of commercial law and contracting.

Response. REA strongly favors awarding construction contracts using the competitive bid procedure. Competitive bidding over the years has produced sizable cost savings to the borrowers. True competitive bidding cannot be had without identical P&S, including construction contracts, for all bidders.

This procedure ensures standard high quality telephone systems, equitable treatment of all suppliers and contractors, lowest cost to the owner, and appropriate uniform security of the Government's loans. The respondent's recommendations for freedom of negotiation between the owner and the contractor would weaken or destroy these advantages.

REA, except for the incorporation of Executive Order 12549, Debarment and Suspension, and its implementing regulations (7 CFR part 3017), REA regulations concerning contractor insurance and bond requirements (7 CFR part 1788) and amendments to the Anti-Kickback Acts (40 U.S.C. 276c; 41 U.S.C. 51 *et seq.*), is issuing the revised Form 515 Contract without changes from the proposed rule.

List of Subjects in 7 CFR Part 1762

Loan programs—communications, Telecommunications, telephone.

In view of the above, REA hereby amends 7 CFR Part 1762 by issuing revised Form 515.

PART 1762—[AMENDED]

1. The authority cited for part 1762 continues to read:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1762.01 is amended by revising the entry for REA Form 515 to read as follows:

§ 1762.01 List of Standard Forms of Telecommunications Contracts:

REA form No.	Issue date	Title	Purpose	Source of copies
*	*	*	*	*
515	Date of final rule	Telephone system construction contract (Labor and Materials.)	Telephone outside plant construction, including direct buried plant, conduit and manholes, underground cable, pole lines, aerial cable, service entrances and station protector.	Supt. of Doc., GPO, Wash., DC 20402.[2]
*	*	*	*	*

[1] A limited number of copies of the publication will be furnished by REA upon request. As this document is produced by the Federal Government and is, therefore, in the public domain, additional copies may be duplicated locally by any user as desired. Requests for copies should be sent to the Director, Administrative Services Division, U.S. Department of Agriculture, Rural Electrification Administration, Washington, DC 20250. The telephone number of the REA Publications Office is (202) 382-8674.

[2] This contract form is for sale by the Superintendent of Documents, Government Printing Office, Washington, DC 20402. REA Form 33, Order Blank for REA Contract Forms from the Government Printing Office should be used to order the publication. Follow the procedure under ([1]) to obtain copies of Form 33 from REA.

Dated: December 1, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 90-71 Filed 1-2-90; 8:45 am]

BILLING CODE 3410-15-M

Farmers Home Administration

7 CFR Part 1942

Industrial Development Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends the Agency's policies and procedures governing the administration of Industrial Development Grants. This action clarifies the requirements for the financing of small and emerging private business enterprises through the Industrial Development Grant Program. The net effect of this action will result in increased enterprise development and job creation in distressed rural communities.

EFFECTIVE DATE: January 3, 1990.

FOR FURTHER INFORMATION CONTACT: Bonnie S. Justice, Senior Loan Specialist, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6320, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250; Telephone: (202) 382-1490.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, has determined this action will not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Program Affected

This program, Industrial Development Grants, is listed in the Catalog of Federal Domestic Assistance under Number 10.424. The FmHA program and projects which are affected by this instruction are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1940-J.

Background

This action, which amends subpart G of part 1942, was published as a proposed rule for public comment on June 16, 1989 (54 FR 25588) and a correction was published on June 29, 1989 (54 FR 27389), giving interested parties until July 31, 1989, to submit comments. One comment was received. The comment was that grantees should be allowed to use grant funds to take equity positions in businesses. FmHA has determined that the purpose of the program is the financing of small and emerging private business enterprises and not to help grantees obtain ownership of businesses. Therefore, FmHA does not consider this an eligible use of grant funds under this subpart. The Agency adopts the proposed rule as final without changes.

List of Subjects in 7 CFR Part 1942

Business and industry, Grant programs—Housing and community development, Industrial park, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Industrial Development Grants

2. Section 1942.305 is amended by revising paragraph (b)(2) and adding paragraph (b)(3)iv)(C) to read as follows:

§ 1942.305 Eligibility and priority.

* * * * *

(b) * * *

(2) *State Office review.* All applications will be reviewed and scored for funding priority. Eligible applicants that cannot be funded should be advised by the State Director that funds are not available, and requested to advise whether they wish to have their application maintained in an active file for future consideration.

(3) * * *

(iv) * * *

(C) For grants to establish a revolving fund, points will be distributed if the grant request contains proposed third party loan/grant recipients—25 points.

* * * * *

3. Section 1942.306 is amended by adding new paragraph (a)(7) to read as follows:

§ 1942.306 Purposes of grants.

(a) * * *

(7) Providing financial assistance to third parties through a loan or a pass through grant.

* * * * *

4. Section 1942.307 is amended by revising paragraph (a)(1) to read as follows:

§ 1942.307 Limitations on use of grant funds.

(a) Funds will not be used:

(1) To produce agriculture products through growing, cultivation and harvesting either directly or through horizontally integrated livestock operations except for commercial nurseries, timber operations or limited agricultural production related to technical assistance projects.

* * * * *

5. Section 1942.310 is amended by revising paragraph (d) to read as follows:

§ 1942.310 Other considerations.

* * * * *

(d) *Management assistance.* Grant recipients will be supervised as necessary to assure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this subpart will be administered under and are subject to 7 CFR part 3015, 7 CFR part 3016, and 7 CFR part 3017, as appropriate, and established FmHA guidelines.

* * * * *

6. Section 1942.311 is amended by removing paragraph (a)(2), and redesignating paragraph (a)(3) as paragraph (a)(2) and by revising paragraph (a)(1) to read as follows:

§ 1942.311 Application processing.

(a) *Preapplications and applications.* (1) The application review and approval procedures outlined in § 1942.2 of subpart A of part 1942 of this chapter will be followed as appropriate. The State Director should assist the applicant in application assembly and processing. The applicant shall use SF 424, "Application for Federal Assistance," (for construction or nonconstruction programs as applicable) when requesting financial assistance under this program.

* * * * *

7. Section 1942.313 is added to read as follows:

§ 1942.313 Plan to provide financial assistance to third parties.

(a) For applications involving establishment of a revolving fund to provide financial assistance to third parties the applicant shall develop a plan which outlines the purpose and administration of the fund. The plan will include:

(1) Planned projects to be financed.

(2) Sources of all non ID funds.

(3) Amount of technical assistance (if any).

(4) Purpose of the loans/grants.

(5) Number of jobs to be created/saved with each project.

(6) Project priority and length of time involved in completion of each project.

(7) Other information required by the State Office.

(b) Each third party project receiving funds will be reviewed for eligibility. When the applicant does not have a list of projects to be completed, the applicant should advise the FmHA at the time a preapplication is submitted.

8. Section 1942.314 is revised to read as follows:

§ 1942.314 Grants to provide financial assistance to third parties and Technical Assistance programs.

For applications involving a purpose other than a construction project to be owned by the applicant, the applicant shall develop a Scope of Work. The Scope of Work will be used to measure the performance of the grantee. As a minimum, the Scope of Work should contain the following:

(a) The specific purposes for which grant funds will be utilized, i.e., Technical Assistance, Revolving Fund, etc.

(b) Timeframes or dates by which action surrounding the use of funds will be accomplished.

(c) Who will be carrying out the purpose for which the grant is made (key personnel should be identified).

(d) How the grant purposes will be accomplished.

(e) Documentation regarding the availability and amount of other funds to be used in conjunction with the funds from the ID program.

(f) For grants involving a revolving fund the scope of work should include those items listed in paragraphs (a) through (e) of this section as well as the following:

(1) Information which will establish/identify the need for the revolving loan fund.

(2) Financial statements which will demonstrate the financial ability of the applicant to administer the revolving loan fund. As a minimum the financial statements will include:

(i) Balance sheet

(ii) Income statement

(3) Detail on the applicants experience in operating a revolving loan fund.

9. Section 1942.348 is added to read as follows:

§ 1942.348 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute, an applicable law or decision of the Comptroller General, if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest and show how the adverse impact will be eliminated or minimized if the exception is made.

10. Section 1942.350 is revised to read as follows:

§ 1942.350 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0132. Public reporting burden for this collection of information is estimated to vary from one-half to 40 hours per response, with an average of 1.8 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture Clearance Officer, Office of Information Resources Management, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Dated: November 16, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 90-62 Filed 1-2-90; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1980

Disaster Assistance for Rural Business Enterprises

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending an interim rule for the Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loan program published in the **Federal Register** dated October 17, 1989 (54 FR 42480). The intended effect of this action is to establish the limits for the percentages of guarantee for DARBE guaranteed loans in excess of $2,000,000, to clarify operation of the guarantee necessary because of the ceiling placed by Congress on the guarantee, and to remove references irrelevant to the loan program.

DATES: *Effective Date:* January 3, 1990. Written comments must be received on or before February 2, 1990.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, room 6348 South Agriculture Building, Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been approved by OMB under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly I. Craver, Loan Specialist, Business and Industry Division, Farmers Home Administration, USDA, Washington, DC 20250, Telephone (202) 475-3805.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be non-major. This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940 subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.422, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3105, subpart V; 48 FR 29112, June 24, 1983; 49 FR 2267, May 31, 1984; 50 FR 14088, April 10, 1985).

Discussion of Interim Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, FmHA is making this action effective immediately upon publication in the **Federal Register** without securing prior public comment. The purpose of this rule is to provide clarification in the regulation and revision of the forms used for issuing the guarantees subject to the $2,500,000 ceiling set by Congress. In order to get this new program in place as quickly as possible, FmHA modelled it on its existing Business and Industry Guaranteed loan program (B&I program). However the B&I program has no limit such as the $2,500,000 ceiling imposed by Congress in the Disaster Assistance Act of 1989 (sec. 401, Pub. L. 101-82). The imposition of this ceiling greatly complicates any payment under a guarantee of principal and interest. Interest costs can quickly accumulate and exceed the ceiling, affecting both the Lender's and any Holder's rights under the guarantee by reducing the amount FmHA will pay. Accordingly, FmHA has found it necessary to amend its interim rule and the forms which are a part of the interim rule so that all interested parties are aware of exactly how the guarantee will function under the ceiling imposed by the Disaster Assistance Act of 1989. Additionally FmHA has limited the percentage of guarantee on loans in excess of $2,000,000 thereby helping to limit the payment of accrued interest and approved protective advances, which must meet the requirement of the maximum loss payment of $2,500,000 established by the Disaster Assistance Act of 1989 which provided for guaranteeing of both principal and interest. Applications are now being received and processed in the States. The forms are needed immediately in order to close loans and provide assistance to financially distressed rural businesses.

Public comments will be accepted for 30 days. Later revisions will be made to this interim rule if justified on the basis of comments received. This procedure will make assistance available now. The usual course of a proposed rule, comment period, comment analysis, and a final rule incorporating changes would inevitably mean a 60 to 90 day delay in getting assistance where it is most needed. Those seeking to comment and make suggestions for improvement are advised that final action will occur as promptly as possible after the 30 day comment period.

Discussion of the Rule

FmHA implemented Section 401 of the Disaster Assistance Act of 1989 by adding an appendix K for this new program at the end of its Business and Industry loan program regulations. The loan guarantees authorized and implemented by this action will be called Disaster Assistance for Rural Business Enterprises (DARBE).

List of Subjects in 7 CFR Part 1980

Loan Programs—Business and industry—Rural development assistance, Rural areas.

Accordingly, title 7, chapter XVIII, of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 is amended to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1490; 5 U.S.C. 301; Pub. L. 1000-387; Pub. L. 101-82.

Subpart A—General

2. Section 1980.20 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1980.20 Loan guarantee limits.

(a) Lenders and applicants will propose the percentage of guarantee. Lenders and applicants will be advised in writing on Form FmHA 449-14 by FmHA of any percentage of guarantee less than proposed by the lender and applicant, and the reasons therefore. (See § 1980.80 of this subpart regarding appeals.) The maximum percentage of guarantee (as opposed to the maximum loss covered by the guarantee) on a Business and Industrial loan is defined in § 1980.420 of subpart E of this part. The maximum percentage of guarantee for DARBE guaranteed loans in excess of $2,000,000 will be calculated so that the guaranteed portion of the principal amount of the loan cannot exceed $2,000,000. The maximum percentage of guarantee for all other loans covered by this section will be 90 percent. Also, excepting D&D and DARBE guaranteed loans (see Subpart E of this part), the maximum loss covered by the Loan Note Guarantee, Form FmHA 1980-72 or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," can never exceed the lesser of:

* * * * *

Subpart E—Business and Industry Loan Program

3. In appendix K of subpart E of part 1980, paragraphs G and H are revised to read as follows:

Appendix K—Regulations for Loan Guarantees for Disaster Assistance

* * * * *

G. *Loan guarantee limit.* The total principal amount of DARBE guaranteed loans to any one borrower cannot exceed $10,000,000. The maximum loss covered by Form FmHA 1980-72, "Loan Note Guarantee DARBE," issued on any one borrower can never exceed the percentage of guarantee multiplied by the unpaid principal and accrued interest on the loan as evidenced by the note(s) or by assumption agreement(s), and protective advances, or $2,500,000, whichever is the lesser amount.

H. *Percentage of guarantee.* The provisions of FmHA instruction 1980-E, § 1980.420 will not apply to DARBE. For loans in excess of $2,000,000, the percentage of guarantee will be calculated so that the guaranteed portion of the principal amount of the loan cannot exceed $2,000,000. For loans of $2,000,000 or less the maximum percentage of guarantee will be 90 percent. For example, a loan of $10,000,000 would not exceed a 20 percent guarantee; a $5,000,000 loan would not exceed a 40 percent guarantee.

4. Appendix K of subpart E of part 1980 is amended by revising exhibits A, B and C to read as follows:

Exhibit A to Appendix K

USDA-FmHA
Form FmHA 1980-71
(Rev. 11-89)
FORM APPROVED
OMB NO. 0575-0029

Lender's Agreement

Disaster Assistance for Rural Business Enterprise (DARBE)

Guaranteed Loans

Maximum Loss Payable by FmHA to a Holder or Lender Is $2,500,000.

Type of Loan.

_____

Applicable 7 CFR part 1980 subpart

_____

FmHA Loan Ident. No.

_____

(Lender) of

_____

has made a loan(s) to

_____

(Borrower)

_____

in the principal amount of $_____ as evidenced by

_____

note(s) (include Bond as appropriate) described as follows:

_____

_____

_____

_____

_____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee—DARBE" (Form FmHA 1980-72) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

The Parties Agree:

I. The maximum loss covered under the Loan Guarantee—DARBE will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

The Maximum Loss Payment Under a Loan Guarantee Under the Disaster Assistance For Rural Business Enterprise Guaranteed Loan Program is Limited to $2,500,000, or the Percentage of Guarantee Times the Principal, Accrued Interest, and Approved Protective Advances, Whichever is Less.

II. Full Faith and Credit.

The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee—DARBE or Assignment Guarantee Agreement—DARBE attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee—DARBE will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

Public reporting burden for this collection of information is estimated to average 1½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0029), Washington, D.C. 20503.

III. Lender's Sale or Assignment of Guarantee Loan—DARBE.

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of

the notes. The Lender may proceed under the following options:

1. Assignment. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 1980-73, "Assignment Guarantee Agreement—DARBE." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this option is selected, the Lender may not at a later date cause to be issued any additional notes.

2. Multi-Note System. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 1980-72, "Loan Note Guarantee—DARBE," attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. At Loan Closing: Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 1980-72, for each of the notes.

b. After Loan Closing:

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees—DARBE to be attached to each of the notes then extant in exchange for the original loan Note Guarantee—DARBE which will be cancelled by FmHA.

3. Participations.

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 5% for Disaster Assistance for Rural Business Enterprises loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a (Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee—DARBE to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee—DARBE, and this agreement, and the FmHA program regulations found in the applicable subpart of title 7 CFR part 1980, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable subpart of title 7 CFR part 1980 and in accordance with the terms of Form FmHA 449-14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners (except stockholders in a Farm Credit Bank or other Farm Credit System Institution with direct lending authority that have normal stockshare requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors or an officer of a Farm Credit Bank or other Farm Credit System Institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee—DARBE.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII. Lender certifies that it has paid the required guarantee fee.

IX. Servicing.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the convenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, rescheduled or (for Farm Ownership, Soil and Water, and Operating loans only) written down only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence. For loans covered by 7 CFR part 1980, subpart H, the Holder may designate the payee when an Individual Certificate is issued.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and

frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report."

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR part 1940, subpart G, exhibit M.

X. Default.

A. The Lender will notify FmHA when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable subpart of title 7 CFR part 1980.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with FmHA's Lender's, and the Holder'(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

9. Principal and interest write down in accordance with 7 CFR part 1980, subpart B, § 1980.125.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision. As per the terms of the Loan Note Guarantee—DARBE the maximum loss payment will not exceed $2,500,000 for principal, interest and approved protective advances.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand upon the Lender. Under the Disaster Assistance for Rural Business Enterprise Guaranteed Loan program, the maximum cumulative payment to the holder(s) of the guaranteed portion of the loan is limited to $2,500,000 or the percentage of guarantee multiplied by the principal and accrued interest together with protective advances, whichever is less.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee—DARBE and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA office serving the Borrower will promptly notify the Lender of the Holder(s) demand for payment. The Lender will promptly provide the FmHA office servicing the Borrower with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of the FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights insuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee—DARBE. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to the Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder, FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee—DARBE.

XI. Liquidation.

If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee—DARBE or the Assignment Guarantee Agreement—DARBE.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee—DARBE or the Assignment Guarantee Agreement—DARBE.

If the Lender does not purchase the guaranteed portion of the loan FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal DARBE loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On DARBE loan balances in excess of $200,000, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation plan. FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interest necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation. Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payments will be made in accordance with applicable FmHA regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral. For Farm Ownership, Soil and Water, and Operating loans only, if it appears the liquidation period will exceed 90 days, the Lender will file an estimated loss claim. Once this claim is approved by FmHA, the Lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with the applicable FmHA regulations.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original to the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee—DARBE.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee—DARBE. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the Loan Note Guarantee—DARBE to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of allowable accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower

from liability. In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel and overhead.

J. Foreclosure. The parties owning the guaranteed portion and unguaranteed portions of the loan will join the institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. Payment. Such loss will be paid by FmHA within 60 days after the review of the accounting of the collateral.

XII. Protective Advances.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. Additional Loans or Advances.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases.

Refer to the applicable subpart of title 7 of CFR part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transfer, will be entered on Form FmHA 449–30, line 13 and 14.

XVI. Bankruptcy.

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under chapters 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a chapter 7 bankruptcy or liquidation plan in a chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. Loss Payments.

1. Estimated Loss Payments.

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to review estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the Lender will complete Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," and forward this form to the Finance Office.

2. Interest Loss Payments.

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA 449–30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee—DARBE or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. Final Loss Payments.

a. Final Loss Payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. Payment Application. The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the FmHA servicing office.

5. Overpayments. Upon completion of the reorganization plan, the Lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. Protective Advances. If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449–30.

XVII. Other Requirements.

This agreement is subject to all the requirements of the applicable subpart of title 7 CFR part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XVIII. Execution of Agreements.

If this agreement is executed prior to the execution of the Loan Note Guarantee—DARBE, this agreement does not impose any obligation upon FmHA with respect to the execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XIX. Notices.

All notices and actions will be initiated through FmHA for

(State) with mailing address at the date of this instrument

Dated this _____ day of _____, 19____.

Lender:
Attest:

(Seal)
By

Title

United States of America
Farmers Home Administration
By

Title

Exhibit B to Appendix K

USDA-FmHA
Form FmHA 1980-72
(Rev. 11-89)
Type of Loan: _____
Applicable 7 CFR part 1980
Subpart_____

Loan Note Guarantee

Disaster Assistance for Rural Business Enterprise (DARBE)

Guaranteed Loans

Maximum Loss Payable by FmHA To a Holder or Lender is $2,500,000

USDA-FmHA
From FmHA 1980-72
(Rev. 11-89)
Type of Loan:_____
Applicable 7 CFR Part 1980
Subpart_____

Loan Note Guarantee

Disaster Assistance for Rural Business Enterprise (DARBE)

Guaranteed Loans

Maximum Loss Payable by FmHA To a Holder or Lender is $2,500,000

Borrower—

Lender—

Lender's Address

State

County

Date of Note

FmHA Loan Identification No.

Principal Amount of Loan $
—Borrower

Lender

—Lender's Address

—State

—County

—Date of Note

—FmHA Loan Identification No.

—Lender's IRS ID Tax No.

—Principal Amount of Loan $

The guaranteed portion of the loan is _____ which is _____ (_____%) percent of loan principal. The principal amount of loan is evidenced by _____ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note _____ in the face amount of $_____ and is number _____ of. _____

Lender's identifying Number	Face amount	Percent of total face amount	Amount guaranteed
	$	%	$
Total	$_____	100	$_____

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Disaster Assistance Act of 1989 does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Holders:

1. Any loss sustained by the Holder on the guaranteed portion and interest due on such portion up to a maximum aggregate amount of $2,500,000. On loans with multiple Holders and/or a Lender who owns part of the guaranteed portion, if the aggregate losses exceed $2,500,000, each Holder's loss will be prorated by the percentage of the guaranteed portion of the loan the holder owns.

B. The Lender the lesser of 1, or 2 below:

1. Any loss sustained by the Lender on the guaranteed portion including:

a. Principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and

b. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, but only to the extent that inclusion of such protective advances would not cause the total aggregate loss to exceed $2,500,000, or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due thereon.

But only up to a maximum aggregate amount of $2,500,000. On loans with single or multiple holders and a Lender who owns part of the guaranteed portion, if the aggregate losses exceed $2,500,000, the Lender's loss will be prorated by the percentage of the guaranteed portion of the loan the Lender owns.

If FmHA conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date FmHA accepts responsibility for liquidation will not be covered by this Loan Note Guarantee—DARBE. If Lender conducts the liquidation of the loan, accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee—DARBE to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

Definition of Holder.

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA 1980-73, "Assignment Guarantee Agreement—DARBE," is used. Loan evidenced by a single note may be assigned only by using Form FmHA 1980-73.

Definition of Lender.

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable subpart 7 CFR part 1980. The Lender is also the party requesting a loan guarantee.

1. Loan Servicing.

Lender will be responsible for servicing the entire loan, and the Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement.

2. Priorities.

The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. Full Faith and Credit.

The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee—DARBE is void. In addition, the

Loan Note Guarantee—DARBE will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Rights and Liabilities.

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee—DARBE by Lender. Nothing contained herein will constitute any waiver by FmHA of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA any payment made by FmHA to Holder which if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make.

5. Payments.

Lender will receive all payments of principal, or interest, and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. Protective Advances.

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the extent provided in this Loan Note Guarantee—DARBE notwithstanding the guaranteed portion of the loan that is held by another.

7. Repurchase by Lender.

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the Lender's servicing fee. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision. As per the terms of this guarantee the maximum loss payment will not exceed $2,500,000 for principal, interest, and approved protective advances.

8. FmHA Purchase.

If Lender does not repurchase as provided by paragraph 7 hereof, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase less Lender's servicing fee, within thirty (30) days after written demand to FmHA from Holder. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee—DARBE properly endorsed to FmHA or the original of the Assignment Guarantee Agreement—DARBE properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date or $2,500,000, whichever is less. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand. On loans with multiple Holders and/or a Lender who owns part of the guaranteed portion, if the aggregate unpaid principal and unpaid interest on the guaranteed portion exceeds $2,500,000, the Holder will be paid on a prorated basis—prorated by the percentage of the guaranteed portion of the loan the Holder owns.

The FmHA will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. Lender's obligations.

Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's rights against Lender, and that FmHA will have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee—DARBE.

10. Repurchase by Lender for Servicing.

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion. The Lender's servicing fee will be subtracted from these amounts. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. Custody of Unguaranteed Portion.

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. When Guarantee Terminates.

This Loan Note Guarantee—DARBE will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA.

13. Settlement.

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1960 of Title 7 CFR in effect on the date of this instrument.

14. Notices.

All notice and actions will be initiated through the FmHA _____ for

_____ (State) with mailing address at the date of this instrument:

_____

_____

United States of America
Farmers Home Administration
By:

_____

Title:

_____

(Date)

_____

Assumption Agreement by

_____

dated_____,19____,
Assumption Agreement by

_____

dated_____,19____.

Exhibit C to Appendix K

USDA-FmHA
Form FmHA 1980-73
(Rev. 11-89)
FORM APPROVED
OMB NO. 0575-0029

ASSIGNMENT GUARANTEE AGREEMENT

DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISE (DARBE)

GUARANTEED LOAN

MAXIMUM LOSS PAYABLE BY FmHA TO A HOLDER OR LENDER IS $2,500,000

Type of Loan:

_____

Applicable 7 CFR Part 1980 Subpart

_____

FmHA Loan Identification Number

_____

_____ of _____
(Lender) has made a loan to

_____

in the principal amount of $ _____ as evidenced by a note(s) dated _____. The United States of America, acting through Farmers Home Administration (FmHA) entered into a Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise Guaranteed Loans (Form FmHA 1980-72) with the Lender applicable to such loan to guarantee the loan not to exceed _____ % of the amount of the principal advanced and any interest (including any loan subsidy) due thereon as provided therein. Under the Disaster Assistance and Rural Business Enterprise Guaranteed Loan program, the maximum cumulative payment to the holder(s) of the guaranteed portion of the loan is limited to $2,500,000 or the percentage of guarantee multiplied by the principal and interest, whichever is less.

_____ of _____
(Holder) desires to purchase from Lender _____ % of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises are attached hereto as a part hereof.

Now, Therefore, the Parties Agree:

1. The principal amount of the loan now outstanding is $ _____. Lender hereby assigns to Holder _____ % of the guaranteed portion of the loan representing $_____ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA certify to the Holder that the Lender has paid and FmHA has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises.

2. Loan Servicing. The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The Lender will receive all payments on account of principal of, or interest on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee.

3. Servicing Fee. Holder agrees that Lender will retain a servicing fee of _____ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. Purchase by Holder. The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises and the program regulations found in the applicable subpart of 7 CFR part 1980 now in effect and future FmHA program regulations not inconsistent with the provisions hereof.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0029), Washington, DC 20503.

5. Full Faith and Credit. The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender or any Holder has actual knowledge at the time of this assignment, or which the Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee—DARBE is void. In addition, the Loan Note Guarantee—DARBE will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss in paid.

6. Rights and Liabilities. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee—DARBE by Lender. Nothing contained herein shall consitute any waiver by FmHA of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA for any payment made by FmHA to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA 1980-73 to effectuate the transfer.

7. Repurchase by the Lender (Defaults). The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy), less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision. As per the terms of the Loan Note Guarantee—DARBE the maximum loss payment will not exceed $2,500,000 for principal, interest and approved protective advances.

8. Purchase by FmHA. If Lender does not repurchase as provided by paragraph 7, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of

repurchase, less Lender's servicing fee, within 30 days after written demand to FmHA from the Holder. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee—DARBE properly endorsed to FmHA or the original of the Assignment Guarantee Agreement—DARBE properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date or $2,500,000, whichever is less. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

On loans with multiple Holders and/or a Lender who owns part of the guaranteed portion, if the aggregate unpaid principal and unpaid interest on the guaranteed portion exceeds $2,500,000, the Holder will be paid on a prorated basis—prorated by the percentage of the guaranteed portion of the loan the Holders owns.

The FmHA will promptly notify the Lender of its receipt of the Holder's demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and the State Director and remit the check(s) to the Holder(s).

9. Lender's Obligations. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's rights against Lender, and that FmHA shall have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee—DARBE.

10. Repurchase by Lender for Servicing. If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion. The Lender's servicing fee will be subtracted from these amounts. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purpose or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. Foreclosure. The parties owning the guaranteed portions and unguaranteed portion of the loan will join to institute foreclosure action, or in lieu of foreclosure, take a deed of conveyance to such parties.

12. Reassignment. Holder upon written notice to Lender and FmHA may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

13. Notices. All notices and actions will be initiated through the FmHA _____ for _____ (state) with mailing address at the date of this assignment:

_____

Dated this _____ day of _____, 19____.

Lender:

_____

Address:

_____

Attest: _____(Seal)

By

_____

Title

_____

Holder:

_____

Address:

_____

Attest: _____(Seal)

By

_____

Title

_____

United States of America
Farmers Home Administration
Address:

_____

_____

By

_____

Title

_____

Dated: December 4, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 90-39 Filed 1-2-90; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 88-001C]

RIN 0583-AA91

Definition of Terms—"Import (Imported)" and "Offer(ed) for Entry" and "Entry (Entered)"; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Food Safety and Inspection Service is correcting certain amendatory language in the final rule (54 FR 41045) published on October 5, 1989. The final rule amended the Federal meat and poultry products inspection regulations to define the terms "import (imported)" and "offer(ed) for entry" and "entry (entered)" to clarify what these terms are intended to mean and to clarify at what point meat and poultry products offered for entry into the United States are no longer considered to be imported products and are deemed and treated as domestic articles under the law. Subsequent to publication of the final rule, the Office of the Federal Register notified FSIS that amendatory language for § 381.205 of the poultry products inspection regulations must be revised or the complete section would not be reprinted in the 1990 edition of the Code of Federal Regulations. Therefore, FSIS is providing the correct amendatory language as shown below.

FOR FURTHER INFORMATION CONTACT: Ralph Stafko, Director, Policy Office, Policy Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-8318.

SUPPLEMENTARY INFORMATION: On October 5, 1989, the Food Safety and Inspection Service published a final rule (54 FR 41045) which amended the Federal meat and poultry products inspection regulations to define the terms "imports (imported)" and "offer(ed) for entry" and "entry (entered)." The amendatory language was incorrect for § 381.205 of the poultry products inspection regulations as published; the correct amendatory language is shown below.

Done at Washington, DC on: December 28, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

The following correction is made in FR Doc. 89-23633, Definition of Terms—"Import (Imported)" and "Offer(ed) for Entry" and "Entry (Entered)" published in the **Federal Register** on October 5, 1989 (54 FR 41045).

§ 381.205 [Corrected]

1. The amendatory language for § 381.205 at page 41050, column 2 is corrected to read as follows:

24. The heading, paragraph (a), and the first sentence of paragraph (c) of § 381.205 are revised to read as follows:

[FR Doc. 90-43 Filed 1-2-90; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Order No. 517; Docket No. RM89-15-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

Issued December 26, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing its sixth annual final rule determining the growth rate and flotation cost adjustment factors to be used in the quarterly indexing procedure during the year beginning February 1, 1990. A discounted cash flow (DCF) formula has been established to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities. For this sixth annual proceeding, the Commission concludes that during the 12 months beginning February 1, 1990, the growth rate will be 4.3 percent and the appropriate flotation cost adjustment factor is 0.02 percent.

EFFECTIVE DATE: This rule will be effective January 12, 1990.

FOR FURTHER INFORMATION CONTACT:

For further technical information contact: Marvin Rosenburg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 357-8283.

For further legal information contact: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 357-8530.

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 1000 at the Commission's Headquarters, 825 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) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule 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 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing its annual final rule determining the growth rate and flotation cost adjustment to be used in the quarterly indexing procedure during the year beginning February 1, 1990. The Commission has established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities.[1] This is the sixth annual proceeding.[2] The Commission concludes that the growth rate to be used in the quarterly indexing procedure during the 12 months beginning February 1, 1990 will be 4.3 percent. The Commission also concludes that 0.02 percent is an appropriate flotation cost adjustment factor for that period. Benchmark rates of return determined through these procedures will remain advisory, as were those resulting from the previous five annual proceedings.

II. Background

Section 205(a) of the Federal Power Act (FPA) requires that all electric rates subject to the jurisdiction of the Commission be "just and reasonable".[3] In the exercise of this statutory responsibility, the Commission seeks to set rates of return on common equity that are fair to both ratepayers and utility stockholders. The allowed rate of return on common equity is now determined individually for each electric utility on a case-by-case basis.

In July 1984, the Commission adopted procedures for the generic determination of benchmark rates of return on common equity and for their application in individual rate cases.[4] The Commission has conducted five prior proceedings to determine the benchmark rates of return and has made these rates advisory only. In that advisory status, benchmark rates are intended to provide guidance to parties in rate proceedings and to serve as reference points for the Commission in setting allowed rates of return. As in its prior proceedings, the Commission again requests that all rate case participants, including staff, evaluate the reasonableness of the applicable benchmark rate of return in light of the special circumstances of the specific utility. The Commission requests that litigants submit substantive analysis of the risks of individual utilities vis-a-vis the average utility represented through the benchmark rates of return, to enable the Commission to use those benchmarks as points of departure in setting allowable rates of return.

The Commission issued a Notice of Proposed Rulemaking (NOPR) on August 1, 1989 initiating the sixth annual proceeding to establish the growth rate and flotation cost adjustment factors to be used in the quarterly indexing formula for the year beginning February

[1] The terms "public utilities" and "electric utilities" are used interchangeably.

[2] The annual proceedings were first established by Order No. 389, Generic Determination of Rate of Return on Common Equity for Electric Utilities, 49 FR 29,946 (July 25, 1984), *reh'g denied*, Order No. 389-A, 49 FR 46,351 (Nov. 26, 1984). The first annual proceeding resulted in Order No. 420, 50 FR 21,802 (May 29, 1985), *reh'g denied*, Order No. 420-A, 50 FR 34,086 (Aug. 23, 1985). The second annual proceeding resulted in Order No. 442, 51 FR 343 (June 6, 1986), *reh'g*, Order No. 442-A, 51 FR 22,505 (June 20, 1986). The third annual proceeding resulted in Order No. 461, 52 FR 11 (Jan. 2, 1987), *reh'g denied*, Order No. 461-A, 52 FR 5757 (Feb. 26, 1987). The fourth annual proceeding resulted in Order No. 489, 52 FR 3342 (Feb. 5, 1988), *reh'g denied*, Order No. 489-A, 53 FR 11,991 (Apr. 12, 1988). The fifth annual proceeding resulted in Order No. 510, 53 FR 51,252 (Dec. 23, 1988).

[3] 16 U.S.C. 824(d) (1988).

[4] See note 2, *supra*.

1, 1990.[5] The Commission received seven comments.[6]

III. Discussion

In prior proceedings, the Commission established a DCF methodology for estimating the rate of return on common equity. Specifically, that formula is:

$k = (1 + .5g)\, y + g$

where:

k = market required rate of return

y = current dividend yield (current annual dividend rate divided by current market price)

g = expected annual dividend growth rate

(1 + .5g) = dividend adjustment factor for quarterly dividend payments

A. Dividend Yield

The dividend yield used in this DCF formula is the median of the dividend yields of those companies that remain in a sample of utilities after application of certain screening criteria. The Commission begins with a group of approximately 100 publicly-traded electric utilities or combination companies that meet the following standards:

(1) The utility is predominantly electric;

(2) The stock of the utility is traded on either the New York or the American Stock Exchange;

(3) The utility is included in the Utility Compustat II data base; and

(4) The utility is not excluded by the Commission based on a case-by-case determination that its data is unavailable or inappropriate.[7]

A list of the 98 remaining public utilities to be used in the quarterly updates is included as appendix A to this rule.[8]

When computing the quarterly dividend yield the Commission then excludes companies from the sample if:

(1) The company's common stock is no longer publicly traded due to merger or other action;

(2) The company has decreased or omitted a common dividend payment in the current or prior three quarters; or

(3) The Commission determines on a case-by-case basis that some other occurrence has caused the dividend yield for that company to be substantially misleading and to bias the resulting quarterly average.

The quarterly dividend yield for each company is computed by dividing the dividend rate by the price. The dividend rate is the "indicated dividend rate," which is the last declared quarterly dividend multiplied by four. The price used in calculating the quarterly dividend yield is the simple average of the three monthly high and low prices for the quarter. The dividend yield used in the quarterly indexing procedure is the average of the two most recent quarterly median yields.[9]

B. Growth Rate

In the NOPR, the Commission proposed to rely on both a fundamental analysis approach and a two-stage growth model to estimate the expected constant growth rate, as it did in previous proceedings.[10] The fundamental analysis approach involves evaluation of the two underlying components of expected annual dividend growth, which are growth from retention of earnings and growth from sales of new common stock. Growth from retention of earnings, or internal growth, is a function of the expected retention ratio "b" and the expected earned rate of return on common equity "r". Growth from sales of new common stock, or external growth, is a function of the amount of stock expected to be sold "s" and the expected price at which those sales are made relative to book value "v". The formula for estimating the growth rate based on this fundamental analysis is $g = br + sv$. The two-stage growth analysis involves separate evaluation of near-term and long-term dividend growth expectations.

The Commission also proposed to consider other data and methods for estimating the expected growth rate, but primarily as a check on the reasonableness of its growth rate determination based on the fundamental and two-stage growth analyses.

Three commenters make growth rate recommendations, ranging from 4.00 percent by the Financial Analyses Branch, Office of Electric Power Regulation, Federal Energy Regulatory Commission (FAB–OEPR), to 4.30 percent by Boston Edison Company (BEC). *See* Table 1. These recommendations are in a substantially narrower range than in previous proceedings. Table 2 presents the raw growth rate data on which the commenters relied. Based on its review and evaluation of the growth rate analyses submitted by the commenters in this proceeding, the Commission finds the expected growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1990 to be 4.3 percent.

TABLE 1. SUMMARY OF GROWTH RATE RECOMMENDATIONS

Commenter	Growth rate	Basis for recommendation
1. BEC	4.30	1. Hist. EPS and DPS growth rates. 2. Base-year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts.
2. SWEP	4.25	1. Base-year fundamental analysis. 2. Analyst forecasts.
3. FAB–OEPR.	4.00	1. Projected fundamental analysis.

TABLE 2.—RAW GROWTH RATE DATA

Rate(s)	Type of rate	Commenter
Historical DPS growth rates:		
4.10	5-year median	BEC
4.60	10-year median	BEC
Historical EPS growth rates:		
3.70	5-year median	BEC
4.90	10-year median	BEC
Base-year fundamental growth rates:		
	(b)(r)+(s)(v)	
4.42	4.2+0.22	BEC
4.00	3.9+0.1	FAB-OEPR
4.615	(Not reported)	SWEP
Analyst Near-Term Forecasts:		
4.0	I/B/E/S median	BEC
3.1	Value line DPS median	BEC
3.3	Value line EPS median	BEC
2.9	Merrill Lynch DPS median	BEC
4.0	Merrill Lynch EPS mean	BEC
4.0	Salomon Brothers' normalized growth.	BEC

[5] 54 FR 31,706 (Aug. 1, 1989), IV FERC Stats. & Regs. ¶ 32,468 (July 25, 1989).

[6] Comments were filed by American Electric Power Service Corporation (AEP); AUS Consultants (AUS); Boston Edison Company (BEC); El Paso Electric Company and Montaup Electric (filed joint comments); Edison Electric Institute (EEI); Southern Electric Systems (SES); Southwestern Electric Power Company (SWEP); and the Financial Analysis Branch of the Office of Electric Power Regulation for the Federal Energy Regulatory Commission (FAB–OEPR).

[7] Southwestern Public Service Company, which meets the first three standards, is excluded from the sample because its fiscal year does not end at the conclusion of a calendar quarter. This non-standard fiscal year causes its dividend yield to be out of step with the rest of the sample companies.

[8] The sample of 99 utilities used in the fifth annual proceeding has been reduced by one through the deletion of Utah Power and Light which was acquired by PacifiCorp.

[9] 18 CFR 37.4 (1989).

[10] 54 FR 31706 (Aug. 1, 1989).

TABLE 2.—RAW GROWTH RATE DATA—Continued

Rate(s)	Type of rate	Commenter
4.008	Salomon Brothers	SWEP

1. Growth Rate Recommendations

a. *BEC's recommendation.* BEC recommends a growth rate of 4.30 percent, based on a combination of historical growth, fundamental analysis, and analysts' projections.[11] For its fundamental growth rate analyses, BEC calculates the individual components of internal growth, "b" and "r", and external growth, "s" and "v". It begins by calculating the retention ratio, for a sample of 89 electric utilities for the 12 months ending in each of the four quarters from June 1988 through March 1989. BEC finds that the average of the median retention ratios for this period is somewhat less than 26 percent. BEC also computes the retention ratio of the Value Line Electric Utility Composite for the period 1978–1988. For 1988 the ratio is slightly less than 26 percent, and the average retention ratio over the entire period is 29.8 percent. In six of those years the retention ratio was less than 30 percent and in the other five years it was greater than 30 percent.

BEC believes that the retention rate for electric utilities will be higher in the future than the current low level. First, it notes a tendency for retention rates to be low when utility earned returns are low and high when earned returns are high. This tendency coupled with a Value Line projection that earned returns in 1992–1994 will be about two percentage points higher than in the current year, leads BEC to conclude that investors would expect a higher retention rate in the future. Second, BEC contends that most growth projections indicate that over the next several years growth in earnings will be greater than growth in dividends and therefore retention rates are expected to increase.

Based on its review of the historic retention ratios and its analysis of the projected future direction of the retention ratios, BEC concludes that a retention ratio of 30 percent for the electric utility industry is warranted.[12]

BEC uses three methods to estimate the return on equity "r". First, BEC examines the historic earned rates of return for the Value Line Electric Utility Composite from 1978 through 1988. It finds that the industry average earned rates of return between 1982 and 1987 have fluctuated between 13.5 and 14.5 percent, and have averaged 14.0 percent. BEC notes that in 1988 the return dipped to 12.4 percent. Next, BEC examines Value Line's projected return on equity for 89 electric utilities for 1992. It finds that the average of the projected median returns is about 13.75 percent. Finally, BEC finds that Value Line's projected return on equity for its Electric Utility Composite for the period 1992–1994 is 14.1 percent. Based on its analysis of historical earned returns and industry and company projections, BEC concludes that investors are expecting close to a 14.0 percent earned rate of return on common equity.[13]

Using an expected retention ratio "b" of 30 percent and an expected earned rate of return on average common equity "r" of 14.0 percent, BEC calculates an internal growth rate for the industry of 4.2 percent.

BEC then estimates external growth "sv".[14] It adopts an "s" component (proportion of future new common stock financing) of 0.75 percent, based on its analysis of common stock financing projections made by Salomon Brothers. BEC estimates the "v" component to be 0.291, on the basis of a Value Line 1992–1994 projection of 1.41 for the price-book ratio (calculated by multiplying the projected return on average equity of 14.1 percent by the projected price-earnings ratio of 10.0).[15] Thus, "sv" is equal to 0.22 percent (0.0075×0.291). Total projected growth, the sum of internal growth and external growth, is 4.42 percent.

Having completed its fundamental growth analysis, BEC reviews historical growth rates and near-term growth rate forecasts of earnings and dividends. Using an 89-company sample, BEC calculates the median 5-year and 10-year historical growth rates in earnings and dividends for 1988 and each of the past five years. For the ten years ending in 1988, the median dividend and earnings growth rates ranged from 4.6 percent to 4.9 percent. For the most recent five years the range is 3.7–4.1 percent. Based on this historical perspective, BEC concludes that it would be conservative to expect a growth rate in the 4.0–4.5 percent range.[16]

For its analysis of near-term growth rate forecasts of earnings and dividends, BEC examines forecasts made by several analysts and investment advisory services: Value Line (earnings –3.3 percent, dividends –3.1 percent), Merrill Lynch (earnings –4.0 percent, dividends –2.9 percent), I/B/E/S (earnings –4.0 percent), and Salomon Brothers (earnings and dividends –4.0 percent). BEC believes that investors would not put much weight on growth projections below 4.0 percent and concludes that 4.0 percent is the expected near term growth rate.[17]

Based on its analysis of historical, fundamental and projected growth rates, BEC concludes that an appropriate growth rate for the constant growth rate DCF analysis is 4.3 percent. BEC notes that this recommendation is the same as the 4.3 percent growth rate adopted by the Commission in Order No. 510. It believes that there is independent evidence that investors' growth expectations have not changed since then. BEC's independent evidence is that:

(1) The average dividend yield for the four quarters ending June 1988 and June 1989 are virtually identical (7.87 percent vs 7.91 percent);

(2) The average yield on A-rated public utility bonds for the years ending June 1988 and June 1989 were also virtually identical (10.16 percent and 10.24 percent); and

(3) The average yield on 10-year Treasury bonds for the years ending June 1988 and June 1989 were quite close (8.83 percent and 9.01 percent).[18]

BEC performs a pair of two-stage DCF analyses showing an estimate of the cost of equity for the electric utility industry. However, BEC does not provide growth rates derived from these analyses suitable for use in the quarterly indexing procedure.[19]

b. *FAB–OEPR's recommendation.* FAB–OEPR recommends a growth rate of 4.0 percent on the basis of a fundamental analysis of 85 companies.[20] FAB–OEPR estimates a near-term retention ratio "b" of 28 percent, based on 1989 data from Salomon Brothers and on projected data from Value Line.

FAB–OEPR uses three methods to estimate a near-term expected earned rate of return on equity "r" of 13.8 percent.[21] First, it reviews the Value

[11] BEC at i.

[12] BEC at 13–15.

[13] BEC at 15–16.

[14] BEC at 16–20.

[15] The "v" component is typically computed from the following formula:

$v=1-[1/(P/B)]$,

where:

P/B=Price-Book ratio.

[16] BEC at 11.

[17] BEC at 21–23.

[18] BEC at 23–24.

[19] BEC at 26–32.

[20] FAB–OEPR at iv.

[21] FAB–OEPR at 2–5.

Line rate of return projections for 1991–1994, concluding that "the Value Line data support a 13.8 percent estimate for the expected earned rate of return on average common equity during the next several years." [22]

Second, FAB–OEPR uses a technique called attrition analysis to examine the difference between allowed and earned rates of return for the period 1984–1988. On the basis of its judgment about those differences, FAB–OEPR concludes that electric utilities will earn about 12.8 percent (about 0.1 percentage point below the 1988 average allowed rate of return) in the near term.

Third, FAB–OEPR uses a method described as "sustainable rate of return," based on the mathematical equality: [23]

$$r = \frac{\text{Dividend Yield} \times \text{Price/book value ration}}{\text{payout ratio}}$$

In this manner, FAB–OEPR determines that a sustainable rate of return on common equity is 14.27 percent. FAB–OEPR concludes on the basis of this analysis that "investors would reasonably expect the average electric utility to earn a 13.8 percent rate of return on common equity in the near-term." [24]

Using an expected retention ratio "b" of 28 percent and an expected earned rate of return on average common equity "r" of 13.8 percent, FAB–OEPR calculates an internal growth rate for the industry of 3.9 percent.

FAB–OEPR next extimates external growth "sv".[25] It determines the "s" component to be 0.50 percent by subtracting its own estimate of internal growth (3.9 percent) from its analysis of Value Line's projections of total growth in common stock equity (4.4 percent). FAB–OEPR's estimate of the "v" component is 0.213, based on a 1.27 price-book value ratio for the year ending June 30, 1989, Thus, external growth "sv" is 0.1 percent (0.005×0.213) and total projected growth, the sum of internal growth and external, is 4.0 percent.

c. *SWEP's recommendation.* SWEP recommends a growth rate 4.25 percent based on a 40–60 weighing of historical data and projections of future growth rates.[26] Their historical data include a 4.6 percent fundamental growth rate derived from Standard and Poor's Compustat data. SWEP's projected growth rates average 4.0 percent and consist of 5-year projections of earnings per share and dividends made by Salomon Brothers.

2. Fundamental Analysis

a. *Earnings retention rate ("b") analysis.* BEC and FAB–OEPR estimate the fundamental internal growth rate "br", either directly or through its individual components, the retention rate "b" and expected earned rate of return on common equity "r". Both BEC and FAB–OEPR present estimates of the earnings retention rate "b" (1 minus the payout ratio). BEC analyzes recent retention rates and finds them somewhat below the 30 percent level. It analyzes historical data and finds that the retention rate has fluctuated around the 30 percent level.[27] BEC also looks to the future and reasons that the retention rate for electric utilities will be higher in the future than the current low level. BEC concludes that a 30 percent retention rate is appropriate.[28]

FAB–OEPR also examines base-year and projected retention rates and concludes that a retention rate of 28 percent is appropriate.[29]

In the past three proceedings the Commission used a 30 percent projected retention rate in its calculations. The projected retention rates introduced as evidence in this proceeding are within the narrow range of 28–30 percent and support a continuation of a long-term expected earnings retention rate of 30 percent.

b. *Expected earned rate of return on common equity ("r") analysis.* BEC and FAB–OEPR analyses of investors' expected earned rate of return on equity "r" are in the relatively narrow range of 13.8 percent to 14.0 percent.

BEC examines historical and projected earned returns on equity. Its historical analysis covers the seven-year period 1982–1988. BEC analyzes two projections, one based on Value Line's industry composite (1992–1994) and one for BEC's sample of 89 electric companies (1992). The projected return on average equity for the composite is 14.1 percent and for the sample is 13.75 percent.

On the basis of its analyses, BEC concludes that investors expect an earned return on equity of approximately 14.0 percent.

FAB–OEPR also examines Value Line composite projections as well as projections for individual utilities. On the basis of that data, FAB–OEPR concludes that the projections support an estimate for "r" of 13.8 percent. FAB–OEPR also performs an "attrition analysis" which yields an estimated earned rate of return of 12.7 percent and a "sustainable rate of return analysis" which yields an estimated return of 14.27 percent. FAB–OEPR concludes that a 13.8 percent rate of return is appropriate.[30]

The projections of earned returns made by the two commenters are in the very narrow range of 13.8 to 14.0 percent. It is the judgment of the Commission that 13.9 represents a reasonable expected earned rate of return on common equity for public utilities at this time.

Based on the determination of "b" and "r" made above the Commission's estimate of "br", derived from these separate estimates is 4.17 (0.30×0.139).

c. *Proportion of new stock expected to be issued ("s") analysis.* The Commission adopts an "s" value (proportion of new stock expected to be issued) of 0.75 percent. BEC and FAB–OEPR present specific estimates of "s", ranging from 0.5 percent near-term (FAB–OEPR) to a 0.75 percent long-term forecast (BEC). The use of the constant growth model requires evaluation of estimates of long-term industry trends. BEC presents a convincing argument that, while investors expect relatively low construction and external common stock financing in the near term, they expect somewhat higher levels in the longer term. The Commission therefore gives more weight to the long-term forecast of BEC, which is more in keeping with the findings of long-term expectations in previous proceedings.

d. *Expected price of new common stock financing relative to book value ("v") analysis.* The Commission adopts a "v" value (the expected price of new common stock financing relative to its book value) of 0.264. The estimates of "v" presented by commenters are also in a narrow range. FAB–OEPR uses data for the year ending June 30, 1989 to arrive at a price-book value ratio of 1.27. BEC uses the methodology favored in Order No. 489, the fourth annual generic benchmark rate of return proceeding, and arrives at a projected price-book value ratio of 1.41. The Commission gives slightly more weight to the BEC analysis and will use 1.36 in its calculations (equivalent to a "v" of 0.264). The resulting value of "sv" is 0.20 percent (0.75×0.264).

[22] FAB–OEPR at 3.

[23] The payout ratio is defined as one minus the retention ratio.

[24] FAB–OEPR at 5.

[25] FAB–OEPR at 5–8.

[26] SWEP at 2.

[27] BEC at 13–15.

[28] BEC at 15.

[29] FAB–OEPR at 2.

[30] FAB–OEPR at 2–5.

e. *Total fundamental growth ("br+sv") analysis.* One commenter, SWEP, reports the result of its historically based fundamental analysis as one line of a table.[31] The Commission places little weight on SWEP's fundamental analysis because it does not provide sufficient information for the Commission to evaluate its study. In particular, the comments state neither which data SWEP uses to estimate "br" and "sv" nor how many years of data are included in the study.

Based on the above analysis the Commission estimates total fundamental growth "br+sv" is 4.37 percent (0.30×0.139+0.0075×0.264).

3. Other Growth Rate Estimates

BEC and SWEP submit historical growth rates of dividends and of earnings per share. These historical growth rates vary from 3.7 percent (5-year growth of earnings per share) to 4.9 percent (10-year growth of earnings per share), with most estimates above 4.0 percent (See Table 2). BEC suggests that the low 5-year growth rates are due to one-time write-offs to earnings and dividend reductions.[32]

Analysts' near-term forecasts vary from 2.9 to 4.0 percent, with most estimates at 4.0 percent. BEC would not place much weight on growth projections below 4.0 percent because they are substantially below experienced levels.

The Commission's fundamental analysis growth rate of 4.37 percent falls between historic growth rates and near-term forecasts.

4. Conclusion

It is the Commission's judgment after review of the commenters' analyses and its own analysis developed above, that investor expectations concerning growth have not measurably changed since the last annual generic benchmark rate of return proceeding.[33] The Commission is in agreement with BEC on this point. Thus, the expected annual dividend growth rate factor of 4.3 percent remains appropriate for use in the quarterly indexing procedure for the 12 months beginning February 1, 1990. The Commission reaches this conclusion primarily on the basis of the fundamental analysis approach. The two-stage growth rate analysis proved unusable for determining a growth rate in this proceeding due to deficient analyses offered by commenters.

C. Flotation Costs

Flotation costs are incurred by utilities when they sell new shares of their common stock, and include issuance costs, such as underwriters' compensation and legal and printing fees. Although relatively small, flotation costs are not accounted for elsewhere in a utility's cost of service and are therefore included in the calculation of the allowance on common equity.

The Commission continues its policy of calculating an industry average adjustment to the required rate of return in order to compensate utilities for issuance costs only. The Commission also continues its policy of estimating the adjustment to the required rate of return for flotation costs using the following formula:[34]

$$k^* = \frac{fs}{(1+s)}$$

where:

k^* = flotation cost adjustment to required rate of return

f = industry average flotation cost as a percentage of offering price

s = proportion of new common equity expected to be issued annually to total common equity

Commenters' estimates for "f", average flotation cost as a percentage of offering price, range from 3.18 to 3.29 percent.[35, 36] The Commission finds the analysis of BEC and FAB–OEPR to include the most comprehensive set of new issues. Both commenters use the same sample; BEC proposes the sample median flotation cost value be utilized, and OEPR–FAB recommends the mean. In keeping with its preference for the sample median, the Commission adopts BEC's estimated 3.18 percent value of "f" in deriving the value of flotation cost "k*".

The Commission determined in the growth rate section above that the expected proportion of new common equity issued annually, "s", should be 0.75 percent. Applying the 3.18 percent estimate of issuance costs, "f", and the 0.75 percent estimate of new equity financing, "s", to the above formula, the Commission finds the flotation cost adjustment for use in the quarterly indexing procedure to be 0.02 percent, or 2 basis points

$$\left(\text{Flotation cost adjustment} = \frac{0.0318(0.0075)}{1.0075} = 0.0002 \right)$$

D. Utility of Benchmark Rate of Return

Commenters continue to express their concern with what they consider to be the mechanical nature of the Commission's generic benchmark rate of return procedures. Specifically, EEI and AEP repeat recommendations made in previous annual rate of return proceedings that the Commission consider abandoning the generic benchmark procedures. They argue that despite the stated goals for the use and applicability of advisory generic rates of return, almost no one relies on them. They claim that the benchmark rate of return determination remains a largely meaningless exercise. They argue further that the current generic benchmark rate of return proceedings do not provide for any in-depth examination of the financial outlook for the industry, despite the widely recognized rapid and dramatic changes in the industry over the past several years. They contend that as a result, the Commission's generic benchmark rate of return will continue to differ from the actual range of reasonableness for the average cost of capital to electric utilities.

EEI argues further that the single generic benchmark rate of return produced by the generic return proceedings systematically and substantially understates the appropriate average cost of common equity. EEI bases its conclusion on:

(1) The exclusive dependence on the constant growth DCF model, which fails to adequately capture investor expectations;

(2) Use of the median dividend yield rather than the arithmetic mean;

(3) Failure to distinguish properly between nominal and effective interest rates; and

(4) Inadequate allowance for flotation costs.

[31] SWEP at 2 and exhibit B.

[32] BEC at 10–12.

[33] Order No. 510, 53 FR 51,752 (Dec. 23, 1988).

[34] See Order Nos. 420, 442, 461, 489 and 510.

[35, 36] BEC at 34, FAB–OEPR at 10, and SWEP at exhibit C.

The Commission responded to these same arguments in prior annual rate of return proceedings. Commenters do not present any new evidence or arguments to justify the Commission changing its position. The Commission reiterates its belief that the generic rate of return on common equity for public utilities provides several desirable benefits, including more accurate and consistent Commission decisions among companies and for the same company over time. The Commission continues to expect use of the generic rate of return to result ultimately in significant cost savings. As the Commission explained in Order No. 510, those benefits have not yet been realized to a major degree because adoption of the benchmark rate of return has been incremental. The Commission will continue to use the generic benchmark rate of return in arriving in its rate of return conclusion and will continue to encourage wider use of the generic benchmark rate of return by staff and other parties. The Commission is still confident that as use of the generic rate broadens, its utility will become more evident.

E. Advisory Status of Generic Rate of Return

EEI repeats the recommendation it made in prior benchmark rate of return proceedings that if the Commission will not abandon the generic benchmark rate of return procedures, it will keep the benchmark rate of return advisory.

In prior annual benchmark rate of return proceedings, the Commission considered whether it should continue to use the generic rate of return on an advisory basis or as a rebuttable presumption and decided that the generic rates will remain advisory. At this time, the generic benchmark rate of return will continue to remain advisory.

F. Other Comments

AUS repeats its request that the Commission conduct evidentiary hearings. AUS believes that such hearings will result in a valuable enhancement to the Commission in establishing an advisory generic benchmark rate of return. AUS argues that only in this manner can an appropriate cost rate of common equity be established that will be adequate to enable electric utilities to attract capital on reasonable terms, maintain credit and balance the interest of consumers and investors.

The Commission rejected this argument in prior annual proceedings.[37] This is a generic rulemaking proceeding under the Administrative Procedure Act (APA). The APA does not require a formal evidentiary hearing in such circumstances and AUS provides no justification for holding such a hearing in this case.

AUS continues to urge the Commission to employ a variety of methods to estimate investor required common equity returns, rather than relying on the exclusive use of the DCF model. The Commission's use of the DCF formula is not an issue in this proceeding. The Commission has thoroughly considered numerous and wide-ranging comments on that DCF formula in earlier generic proceedings and has adopted the same formula in each final rule. The NOPR in this sixth annual proceeding limited the inquiry to the growth rate and flotation cost factors. The Commission's DCF formula is an established methodology and comments promoting alternative methods are beyond the scope of the NOPR. The Commission therefore will not adopt AUS's recommendation.

IV. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act [38] requires the Commission to describe the impact that a rule will have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. Nearly all of the jurisdictional utilities that would be affected by this final rule are too large to be considered "small entities" within the meaning of the act.[39] Accordingly, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. National Environmental Policy Act

Commission regulations require that an environmental assessment or an environmental impact statement be proposed for a Commission action that may have a significant effect on the human environment.[40] The Commission categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[41] The Commission has found that matters affecting rates for the purchase or sale of electricity are not major federal actions that have a significant environmental impact.[42] The generic rate of return is a factor considered in the determination of electric rates. Thus, no environmental assessment or environmental impact statement is necessary for the requirements of this final rule.

VI. Paperwork Reduction Act

The Paperwork Reduction Act [43] and Office of Management and Budget (OMB) require that OMB approve certain information collection requirements imposed by agency rule. The final rule in this proceeding does not impose any information collection requirement. Therefore, the Commission will not submit this rule to OMB for review or approval.

VII. Timing of Quarterly Updates and Effective Date of Rule

The benchmark rates of return established through the Commission's quarterly indexing procedure will generally be published on or before the fifteenth of the month following the close of calendar quarters.

The first quarter will run from February 1 to April 30, the second quarter from May 1 to July 31, the third quarter from August 1 to October 31, and the fourth quarter from November 1 to January 31.

This rule will be effective January 12, 1990.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix A—Public Utilities Used in Quarterly Updates

Utility	Ticker symbol	Industry code
Allegheny Power System	AYP	4911
American Electric Power	AEP	4911
Atlantic Energy Inc.	ATE	4911
Baltimore Gas & Electric	BGE	4931
Black Hills Corp.	BKH	4911
Boston Edison Co.	BSE	4911
Carolina Power & Light	CPL	4911
Centerior Energy Corp.	CX	4911
Central & South West Corp	CSR	4911
Central Hudson Gas & Elec	CNH	4931
Central Ill Public Service	CIP	4931
Central Louisiana Electric	CNL	4911
Central Maine Power Co.	CTP	4911
Central Vermont Pub. Serv.	CV	4911

[37] See, *e.g.*, Order No. 510, 53 FR 51752 (Dec. 23, 1988).

[38] 5 U.S.C. 601–612 (1988).

[39] The Regulatory Flexibility Act defines a "small entity" as a small business, a small not-for-profit enterprise or a small governmental jurisdiction 25 U.S.C. 601(b) (1988). A "small business" is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated" and which is not dominant in its field of operation. 15 U.S.C. 6.32(a) (1988).

[40] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987), codified at 18 CFR part 380.

[41] 18 CFR 380.4 (1989).

[42] 18 CFR 380.4(a)(15) (1989).

[43] 44 U.S.C. 3301–3520 (1982).

APPENDIX A—PUBLIC UTILITIES USED IN QUARTERLY UPDATES—Continued

Utility	Ticker symbol	Industry code
Cilcorp Inc.	CER	4931
Cincinnati Gas & Electric	CIN	4931
CMS Energy Corp.	CMS	4931
Commonwealth Edison	CWE	4911
Commonwealth Energy System.	CES	4931
Consolidated Edison of NY	ED	4931
Delmarva Power & Light	DEW	4931
Detroit Edison Co.	DTE	4911
Dominion Resources Inc.	D	4931
DPL Inc.	DPL	4931
DQE Inc.	DQE	4911
Duke Power Co.	DUK	4911
Eastern Utilities Assoc.	EUA	4911
Empire District Electric	EDE	4911
Energy Corp.	ETR	4911
Fitchburg Gas & Elec Light	FGE	4931
Florida Progress Corp.	FPC	4911
FPL Group Inc.	FPL	4911
General Public Utilities	GPU	4911
Green Mountain Power Corp.	GMP	4911
Gulf States Utilities Co.	GSU	4911
Hawaiian Electric Inds.	HE	4911
Houston Industries Inc.	HOU	4911
I E Industries Inc.	IEL	4931
Idaho Power Co.	IDA	4911
Illinois Power Co.	IPC	4931
Interstate Power Co.	IPW	4931
Iowa Resources Inc.	IOR	4911
Iowa-Illinois Gas & Elec.	IWG	4931
Ipalco Enterprises Inc.	IPL	4911
Kansas City Power & Light	KLT	4911
Kansas Gas & Electric	KGE	4911
Kansas Power & Light	KAN	4931
Kentucky Utilities Co.	KU	4911
Long Island Lighting	LIL	4931
Louisville Gas & Electric	LOU	4931
Maine Public Service	MAP	4911
Midwest Energy Co.	MWE	4931
Minnesota Power & Light	MPL	4911
Montana Power Co.	MTP	4931
Neco Enterprises Inc.	NPT	4911
Nevada Power Co.	NVP	4911
New England Electric System	NES	4911
New York State Elec & Gas	NGE	4931
Niagara Mohawk Power	NMK	4931
Nipsco Industries Inc.	NI	4931
Northeast Utilities	NU	4911
Northern States Power-MN	NSP	4931
Ohio Edison Co.	OEC	4911
Oklahoma Gas & Electric	OGE	4911
Orange & Rockland Utilities	ORU	4931
Pacific Gas & Electric	PCG	4931
Pacificorp	PPW	4931
Pennsylvania Power & Light	PPL	4911
Philadelphia Electric Co.	PE	4931
Pinnacle West Capital Corp.	PNW	4911
Portland General Corp.	PGN	4911
Potomac Electric Power	POM	4911
PSI Holdings Inc.	PIN	4911
Public Service Co of Colo	PSR	4931
Public Service Co of N H	PNH	4911
Public Service Co of N Me	PNM	4931
Public Service Entrp.	PEG	4931
Puget Sound Power & Light	PSD	4911
Rochester Gas & Electric	RGS	4931
San Diego Gas & Electric	SDO	4931
Scana Corp.	SCG	4931
Scecorp	SCE	4911
Sierra Pacific Resources	SRP	4931
Southern Co.	SO	4911
Southern Indiana Gas & Electric.	SIG	4931

APPENDIX A—PUBLIC UTILITIES USED IN QUARTERLY UPDATES—Continued

Utility	Ticker symbol	Industry code
St Joseph Light & Power	SAJ	4931
Teco Energy Inc.	TE	4911
Texas Utilities Co.	TXU	4911
TNP Enterprises Inc.	TNP	4911
Tucson Electric Power Co.	TEP	4911
Union Electric Co.	UEP	4911
United Illuminating Co.	UIL	4911
Unitil Corp.	UTL	4911
Utilicorp United Inc.	UCU	4931
Washington Water Power	WWP	4931
Wisconsin Energy Corp.	WEC	4931
Wisconsin Public Service	WPS	4931
WPL Holdings Inc.	WPH	4931

N=98.

[FR Doc. 90-36 Filed 1-2-90; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that Large Harbor Tug YTB-806 is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval vessel. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION:

Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that Large Harbor Tug YTB-806 is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the location of the sternlight; Rule 24(c), pertaining to the towing lights displayed by power driven vessels when pushing ahead or towing alongside; Rule 27(b)(i), pertaining to the lights displayed by vessels restricted in their ability to maneuver; Annex I, section 2(a)(i), pertaining to the height above the hull of the masthead light; and Annex I, section 3(b), pertaining to the placement of the sidelights, without interfering with its special function as a naval vessel. YTB-806 is a tug of special construction and functions. It performs towing services for naval vessels. The mast of this tug is hinged and is lowered only when actually engaged in towing alongside or pushing ships having radically flared bows or sponsoned sides and sterns. When the mast is in the lowered position, the masthead lights, and task lights mounted on this mast, cannot be displayed. During such operations only the pilot house top-mounted auxiliary masthead light, sidelights, and sternlight will be exhibited. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(k), Annex I
YTB-806	YTB-806				2.79	10.97		

3. Paragraph 14, Table Four of § 706.2 is amended by adding the following vessel:

Vessel No.	Distance in meters of aux. masthead light below minimum required height. Annex I, § 2(a)(i)
YTB-806	3.58

Dated: December 14, 1989.

Approved: December 27, 1989.

E.D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 90-2 Filed 1-2-90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-5108]

Special Local Regulations for Marine Events; New Years Eve Fireworks Display; Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the New Years Eve Fireworks Display to be held at the Inner Harbor, Baltimore, Maryland. The fireworks will be launched from a barge anchored in the Inner Harbor approximately 200 yards south of Pier 6, Baltimore, Maryland. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 11:00 p.m. December 31, 1989 to 1:30 a.m. January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received in the district office until December 18, 1989, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Steven M. Fitten, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Baltimore Office of Promotion submitted an application dated November 20, 1989 to hold a New Years Eve fireworks display at the Inner Harbor, Baltimore, Maryland. The fireworks will be launched from a barge anchored in the Inner Harbor approximately 200 yards south of Pier 6, Baltimore, Maryland. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. Since the main shipping channel will not be closed for an extended period, commercial traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of this minimal impact, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action 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 raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in permanent regulations 33 CFR 100.515 rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-5108 is added to read as follows:

§ 100.35-5108 Inner Harbor, Baltimore, Maryland.

(a) *Definitions*—(1) *Regulated area.* The waters of the Inner Harbor bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 39°16'51.8" North, longitude 76°36'14.2" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in

paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective Dates:* These regualtions are effective from 11:00 p.m. December 31, 1989 to 1:30 a.m. January 1, 1990.

Dated: December 21, 1989.

H. B. Gehring,

Captain, US Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 90-18 Filed 1-2-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CCGD11-89-14]

Anchorage Ground; Long Beach Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is redefining Commercial Anchorage D in Long Beach Harbor. In 1988, the Port of Long Beach began construction on the Pier J Expansion Project which will ultimately lead to the creation of 147 acres of new landfill. This new land will be situated in the present northwest end of Commercial Anchorage D. This regulation redefines Commercial Anchorage D to reflect the changes imposed by the Pier J Expansion Project.

EFFECTIVE DATE: February 20, 1990.

FOR FURTHER INFORMATION CONTACT: LTJG Mike Lodge, Aids to Navigation and Waterways Management Branch, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822, telephone (213) 499-5419.

SUPPLEMENTARY INFORMATION: On 26 July 1989, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (54 FR 31059). Interested persons were requested to submit comments and no comments were received. The coordinate datum has been changed from NAD 27 to NAD 83 to reflect the most recent chart edition published (Chart 18751, 32nd edition Aug 19, 1989). Two additional sets of coordinates were also added to better define the anchorage area.

Drafting Information

The drafters of this rule are LTJG Mike Lodge, Project Officer, and LCDR J. J. Jaskot, Project Attorney, Eleventh Coast Guard District Legal Office.

Economic Assessment and Certification:

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The re-configuration of Commercial Anchorage D will only reduce the total number of available commercial anchorages in Long Beach from 11 to 10. This number is suitable for present port needs.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities. The Coast Guard has also determined that this regulation does not involve sufficient Federalism implications to warrant the preparation of a Federalism assessment.

List of Subjects in 33 CFR Part 110

Anchorage Grounds.

Regulations

In consideration of the foregoing, part 110 of title 33, Code of Federal Regulations, is amended as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.214, paragraph (a)(4) is revised to read as follows:

§ 110.214 Los Angeles and Long Beach Harbors, California

(a) The Anchorage Grounds.

(1) * * *

(4) Commercial Anchorage D (Long Beach Harbor). The waters bounded by a line connecting the following points:

Latitude	Longitude
33°43'23.5"N	118°10'51.2"W
33°43'23.5"N	118°09'50.4"W
33°44'25.8"N	118°09'50.2"W
33°44'18.9"N	118°11'10.5"W
33°44'10.9"N	118°11'07.7"W
33°43'58.3"N	118°11'07.7"W
33°43'58.6"N	118°11'44.7"W

and thence to the point of beginning.

Datum: NAD 83

(i) In this anchorage the requirements of commercial ships over 244m (approximately 800 ft.) shall predominate.

(ii) Bunkering and lightering operations are permitted in this anchorage.

Note: A portion of this anchorage is within the Explosives Anchorage Area, when the explosive anchorage is activated by the Captain of the Port. See 110.214(a)(17).

* * * * *

Dated: 27 December 1989.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 90-17 Filed 1-2-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

Schedule for Rating Disabilities; Diseases of the Peripheral Nerves

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: The Department of Veterans Affairs (VA) is correcting information concerning the Schedule for Rating Disabilities table for Diseases of the Peripheral Nerves that was published on page 49754 of the **Federal Register** dated December 1, 1989.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORAMTION: In item 8525 of 38 CFR 4.124a, the table of Diseases of the Peripheral Nerves the word "frequency" should read "frequently" and is hereby corrected.

List of Subjects in 38 CFR Part 3

Disability benefits, Pensions, Veterans.

Dated: December 27, 1989.

Doneld R. Howell,

Acting Chief, Directives Management Division.

PART 4—SCHEDULE FOR RATING DISABILITIES

In 38 CFR Part 4, Schedule for Rating Disabilities, the table in § 4.124a titled Diseases of the Peripheral Nerves is revised to read as follows:

§ 4.124a Schedule of ratings—neurological conditions and convulsive disorders.

* * * * *

DISEASES OF THE PERIPHERAL NERVES

* * *

	Rating
* * * * *	
8525 Paralysis of:	
Complete; paralysis of all muscles of sole of foot, frequently with painful paralysis of a causalgic nature; toes cannot be flexed; adduction is weakened; plantar flexion is impaired	30
* * * * *	

* * * * *

[FR Doc. 90-24 Filed 1-2-90; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6858]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub.L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains

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

PART 64—[AMENDED]

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Connecticut: Warren, town of, Litchfield County.	090175	Feb. 13, 1976, Emerg. Jan. 3, 1990, Reg. Jan. 3, 1990, Susp.	Jan. 3, 1990	Jan. 3, 1990.

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region III				
Pennsylvania: Huston, township of, Clearfield County.	421525	Feb. 24, 1981, Emerg. Jan. 3, 1990, Reg. Jan. 3, 1990, Susp.	Jan. 3, 1990	Do.
Region IV				
Mississippi:				
Bruce, city of, Calhoun County	280026	Feb. 5, 1975, Emerg. June 18, 1987, Reg. Jan. 3, 1990, Susp.	Jan. 3, 1990	Do.
Calhoun County, unincorporated areas.	280288	Mar. 28, 1975, Emerg. Jan. 3, 1990, Reg. Jan. 3, 1990, Susp.	Jan. 3, 1990	Do.
Region V				
Wisconsin:				
Endeavor, village of, Marquette County.	550265	Sept. 4, 1975, Emerg. Jan. 3, 1990, Reg. Jan. 3, 1990, Susp.	Jan. 3, 1990	Do.
Menomonie, city of, Dunn County	550123	Jan. 7, 1976, Emerg. Jan. 3, 1990, Reg. Jan. 3, 1990, Susp.	Jan. 3, 1990	Do.
Plum City, village of, Pierce County	550328	May 12, 1975, Emerg. Jan. 3, 1989, Reg. Jan. 3, 1989, Susp.	Jan. 3, 1990	Do.
Region VI				
Louisiana: Allen Parish, unincorporated areas.	220009	Sept. 4, 1978, Emerg. Jan. 3, 1990, Reg. Jan. 3, 1990, Susp.	Jan. 3, 1990	Do.
Texas:				
Colorado County, unincorporated areas.	480144	Feb. 29, 1980, Emerg. Jan. 3, 1990, Reg. Jan. 3, 1990, Susp.	Jan. 3, 1990	Do.
Gregg County, unincorporated areas.	480261	Mar. 3, 1981, Emerg. Jan. 3, 1990, Reg. Jan. 3, 1990, Susp.	Sept. 6, 1988	Do.
Region I				
Connecticut: Southington, town of, Hartford County.	090037	July 3, 1975, Emerg. July 16, 1981, Reg. Jan. 17, 1990, Susp.	Jan. 17, 1990	Jan. 17, 1990.
Region III				
Pennsylvania:				
Factorville, borough of, Wyoming County.	420912	Aug. 14, 1975, Emerg. Jan. 17, 1990, Reg. Jan. 17, 1990, Susp.	Jan. 17, 1990	Do.
Patton, borough of, Cambria County.	420235	July 11, 1975, Emerg. Jan. 17, 1990, Reg. Jan. 17, 1990, Susp.	Jan. 17, 1990	Do.
West Cameron, township of, Northumberland County.	421946	Oct. 15, 1975, Emerg. Jan 17, 1990, Reg. Jan. 17, 1990, Susp..	Jan. 17, 1990	Do.
Zerbe, township of, Northumberland County.	421946	Aug. 20, 1974, Emerg. Jan. 17, 1990, Reg. Jan. 17, 1990, Susp..	Jan. 17, 1990	Do.
Region IV				
Alabama: Marengo County, unincorporated areas.	010156	July 21, 1975, Emerg. Jan. 17, 1990, Reg. Jan. 17, 1990, Susp.	Jan. 17, 1990	Do.
Mississippi: Lowndes County, unincorporated areas.	280193	Jan. 4, 1974, Emerg. Nov. 15, 1979, Reg. Jan. 17, 1990, Susp.	May 4, 1989	May 4, 1989.
Region VI				
Texas:				
San Felipe, town of, Austin County	480705	Apr. 7, 1976, Emerg. Jan 3, 1986, Reg. Jan. 17, 1990, Susp.	Jan. 17, 1990	Do.
Sealy, city of, Austin County	480017	July 31, 1975, Emerg. Jan. 17, 1990, Reg. Jan. 17, 1990, Susp.	Jan. 17, 1990	Do.

Code for Reading Fourth Column Emerg.—Emergency, Reg.—Regular, Susp—Suspension, Rein.—Reinstatement.

Issued: December 20, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90–31 Filed 1–2–90; 8:45 am]

BILLING CODE 6718-21-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1313

[Ex Parte No. 387 (Sub-No. 962)]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: The Commission is adopting a change, under 49 U.S.C. 10713, to 49 CFR part 1313 by adding § 1313.7(d) as set forth below, to permit a simple procedure for railroads to seek relief from the requirements of § 1313.7(a), (b) or (c). The Commission considers the matter to be so free from controversy that it is adopting the change as final, unless adverse comment is received from interested parties.

DATES: These rules will become effective February 20, 1990, unless adverse comment is received from interested parties by February 2, 1990. In that case, a separate decision will be issued.

ADDRESSES: Send any adverse comments, referring to Ex Parte No. 387 (Sub-No. 962) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Charles E. Langyher (202) 275–7739 or Thomas A. Mongelli (202) 275–7461 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: The provisions of 49 CFR 1313.7(a), (b) and (c) detail the requirements for the construction and filing of rail contracts and contract summaries filed pursuant to 49 U.S.C. 10713. Included are such instructions as: The number of copies required to be filed; the need for accompanying transmittal letters; the *only* information permitted on the title

page of contracts and contract summaries; the need for a solid one inch black border down the right side of the title page; and the file identification and numbering system to be used.

As now published, the requirements of § 1313.7(a), (b) and (c) are absolute, with no opportunity for deviation except at the risk of rejection of the filed document(s). The Commission believes there could be occasions when relief from one or more of the specified requirements would be desirable and appropriate. Thus, the Commission is establishing a procedure whereby rail carriers could seek waiver, for good cause shown, from the requirements of 1313.7(a), (b) or (c). The procedure here adopted (at § 1313.7(d)) is modeled on that now available at 49 CFR 1314.2(b) to rail carriers seeking relief from *tariff* regulations. Applications for relief will initially be considered by the Commission's Suspension and Special Permission Board. Appeals to the Board's actions will be permitted under 49 CFR 1118.4.

List of Subjects in 49 CFR Part 1313

Railroads.

The Commission certifies that the final rules will not have a significant impact on a substantial number of small entities, and that this decision will not significantly affect either the quality of the human environment or energy conservation.

Decided: December 21, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1313 of the Code of Federal Regulations is amended as follows:

PART 1313—RAILROAD CONTRACTS ENTERED INTO PURSUANT TO 49 U.S.C. 10713

1. The authority citation for part 1313 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10713; 5 U.S.C. 553.

2. Section 1313.7 is amended by adding a new paragraph (d) to read as follows:

§ 1313.7 Contract filing, title pages, and numbering.

* * * * *

(d) *Application for Relief from Requirements of Paragraphs (a), (b) or (c) of this section.* (1) Application for relief from one or more of the requirements of paragraphs (a), (b) or (c) or this section shall be submitted to the Suspension/Special Permission Board.

(2) They shall be accompanied by appropriate filing fee (see 49 CFR 1002), and marked "Special Contract/Summary Authority Application."

(3) Applications must explain and justify the relief sought.

(4) An original and one copy of applications concerning contract summary filings must be filed. Only an original need be filed in the case of applications concerning confidential contract filings.

(5) The applications will be decided by the Suspension/Special Permission Board with appeals available under 49 CFR 1118.4.

[FR Doc. 90-51 Filed 1-2-90; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 55, No. 2
Wednesday, January 3, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 243

RIN 1010-AB37

Serving of Official Correspondence Issued by the Royalty Management Program

October 16, 1989.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its Royalty Management Program (RMP) regulations at 30 CFR part 243 to add a new provision delineating how official correspondence is to be served. Official correspondence includes orders and decisions served to lessees, lease operators, reporters and payors on Federal and Indian leases, and to refiners participating in the Government's Royalty-in-Kind (RIK) program. This rulemaking would: (1) Establish an "address of record" to which official correspondence will be sent, and (2) define the "date of service," whether the document was physically or constructively delivered. The date of service established in accordance with this rule also would be the beginning date of the 30-day period in 30 CFR part 290 for the filing of an appeal relative to an order or decision.

DATE: Written comments must be received on or before March 5, 1990.

ADDRESS: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal author of this rule is Marvin Shaver of the Rules and Procedures Branch, Royalty Management Program, Minerals Management Service, Lakewood, Colorado.

I. Background

Title 30 CFR part 290 allows any party to a case adversely affected by a final order or decision issued by an MMS official to file a notice of appeal to the Director, MMS, within 30 days from the date of service of that order or decision. The MMS does not currently have regulations which delineate how service of official correspondence issued by its RMP is effectuated. The MMS uses as the date of service the date that the document is received by any person at the address to which the document was delivered. Receipt generally is evidenced by a return receipt card from the U.S. Postal Service. Therefore, appeals of orders or decisions that MMS receives more than 30 days after the addressee receives the order or decision are routinely rejected as untimely.

The MMS also does not have any regulations for its RMP specifying to what addressee official correspondence should be delivered. To date, MMS has used the address maintained in its files, which is often a company address. On December 13, 1988, a decision was issued by the Interior Board of Land Appeals (IBLA) that reversed a December 18, 1986, decision by the Director, MMS, that an appeal had not been timely filed and therefore would not be considered. *Coastal Oil and Gas Corporation (Coastal)*, 106 IBLA 90 (1988). The IBLA decision was based on the fact that Coastal had previously provided written notification to MMS that notices should be sent to a specific individual in the company. The MMS sent the order to Coastal, but not to the attention of the specified individual as directed. The order took several days to reach the specified individual after it was received by Coastal. Although over 30 days had passed between the date that Coastal received the MMS order and the date that MMS received the appeal, the specified individual had filed the notice of appeal within 30 days from the date of his personal receipt of the order. Therefore, in the absence of MMS regulations governing the serving of orders or decisions, the IBLA ruled that the appeal had been filed timely and consequently reversed the Director's decision.

The IBLA decided:

> In the absence of regulations specifically delineating how service of an invoice by MMS is effectuated, a payor engaged in a business relationship with MMS may specify a particular office or official to whom bills for collection should be directed. Service of an MMS bill for collection is not perfected until receipt by the official previously designated by the payor as the official to whom such notices should be directed.

To implement the IBLA decision, MMS is proposing regulations to specify how service of official correspondence, issued by its RMP is to be effectuated.

II. Discussion

(a) Addressee of Record

Most companies that do business with MMS have designated different offices within their companies to contact depending on the subject matter involved, such as for reporting of royalties; reporting of production, matters dealing with audits and inspections; or the payment of royalties, rentals, bonuses, or other amounts owed to the Government. In addition to lessees, lease operators, reporters, and payors on Federal and Indian energy and mineral resource leases (i.e., oil, gas, geothermal resources or solid minerals), MMS has business relationships with refiners participating in the Government's RIK program. Each of these offices has a different name and address. Consequently, MMS must maintain many different data bases of names and addresses.

Under these proposed regulations, an "addressee of record" must be established to which the document is to be delivered. The MMS is proposing in a new § 243.4 that official correspondence can be served either by personally delivering the document to the established addressee of record, or by sending the document to that individual by certified or registered mail, return receipt requested, to the established addressee of record.

Because of the many different offices and addresses involved, as explained above, MMS is proposing that a distinct or separate addressee of record be established depending on the subject matter involved. It would be the responsibility of that addressee to ensure that, once received, the

document is routed to the proper official within the company, if different, and that any appeal is filed within 30 days of receipt of an order or decision. The MMS proposes the following addressees of record.

(1) For serving official correspondence on refiners participating in the RIK program, MMS proposes that the addressee of record be the name and address identified in the executed royalty oil sale contract for administrative correspondence, or the most recent addressee that was specified in writing by the refiner for billing purposes. The refiner must notify MMS in writing of all addressee changes.

(2) For operators of leases committed or to be committed to RIK contracts, MMS proposes that the addressee of record be the name and address reported by the operator on its most recent Form MMS–4071, Semiannual Report of RIK Oil Entitlements and Deliveries or the most recent address that was specified in writing by the operator. Operators are responsible for ensuring that their Form MMS–4071 addressees are current.

(3) For serving official correspondence on anyone required to report energy and mineral resources removed from Federal and Indian leases to the RMP Production Accounting and Auditing System (PAAS), MMS proposes that the addressee of record be the most recent name and address that MMS has in its records for the reporter. The MMS addressee for the reporter was initially obtained from the reporter during conversion to PAAS reporting or during subsequent contacts with the reporter. The reporter is responsible for notifying MMS of any addressee changes.

(4) For serving official correspondence concerning onshore Federal leases, MMS proposes that the addressee of record be the last addressee of record with the Bureau of Land Management. For Indian leases, MMS proposes that the addressee of record by the last address of record with the Bureau of Indian Affairs. For offshore lessees, MMS proposes that the addressee of record be the last addressee of record with MMS Offshore Minerals Management. The lessee is responsible for notifying the appropriate Government office of any addressee changes.

(5) For serving official correspondence in connection with audits of payor records, MMS proposes that the addressee of record be the name and address of the official(s) designated in writing by the company at the inception of the audit, or the most recent addressee that was specified in writing by the payor.

(6) For serving official correspondence relating to reporting on the MMS "Report of Sales and Royalty Remittance" (Form MMS–2014 for oil, gas, and geothermal resources or Form MMS–4014 for solid minerals), MMS proposes that the addressee of record be the most recent name and address that was specified in writing by the payor. The payor is responsible for notifying MMS of any addressee changes. (See 30 CFR 210.52 and 210.202.)

(7) For serving official correspondence on payors reporting to the RMP Auditing and Financial System not identified above, MMS proposes that the addressee of record be the name and address for the payor identified on the most recent Payor Confirmation Report (Report No. ARR 290R) of a Payor Information Form (PIF) returned by MMS to the payor for the Federal or Indian lease. A PIF (Form MMS–4025 for oil and gas or Form MMS–4030 for solid minerals) must be filed with MMS within 30 days after the issuance of a new Federal or Indian lease or after a change to an existing Federal or Indian lease. (See 30 CFR 210.51 and 210.201 (1988).) The Payor Information Section of the PIF identifies the party responsible for payment obligations on the individual lease for which the PIF was filed. A Payor Confirmation Report of the information provided on the PIF is sent to the designated payor with a request that the payor confirm the information, including its addressee.

(b) Date of Service

Under the proposed § 243.4(c), the lessee, lease operator, payor, reporter, RIK refiner, or other party will be deemed to have been served with the official correspondence on the date that the document was received at the addressee of record, as evidenced by a signed receipt of any person at that address. It would be the responsibility of the addressee to ensure that the document is routed to the proper official within the company and that any appeal is filed within 30 days of receipt of an order or decision at the established "addressee of record."

In some cases, addressee may attempt to avoid service of official correspondence. Therefore, MMS is proposing in § 243.4(d) that official correspondence will be deemed to have been constructively served 5 days after the date that the document is mailed if delivery cannot be consummated at the address of record. This provision covers such situations as nondelivery because the addressee has moved without filing a forwarding address, the forwarding order had expired, delivery was refused, or the document was unclaimed where attempt to deliver is substantiated by U.S. Postal Service authorities. A 5-day period from the date of mailing is proposed because it is MMS's opinion that the addressee should not have the ability to postpone service of official correspondence by not accepting delivery. Service under the proposed rule would be deemed to occur when received or 5 days after the date that the document is mailed if delivery cannot be consummated.

The purpose of the proposed § 243.4 is to establish regulatory procedures for establishing addressees of record and for service of official correspondence. Specific comments are solicited on the proposed basis for determining the addressee of record, including recommendations for an alternate source. Specifically, MMS would like comments on a proposal whereby each lessee would designate one address for service of all official correspondence from MMS. While this alternative would place more burden on addressees to ensure that the appropriate person in their organization is aware of the MMS action in order to take timely appeal action if desired, it woud significantly reduce MMS's burden.

Comments are also solicited with respect to the proposed date of service, including the provisions in paragraph (d) for constructive service.

III. Procedural Matters

Public Comment Procedures

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the ADDRESS section of this preamble. Comments must be received on or before the day specified in the DATE section of this preamble.

Executive Order 12291 and the Regulatory Flexibility Act

The Department has determined that this document is not a major rule under E.O. 12291 because there is no additional cost imposed on industry as a result of this action and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

The rule does not represent a governmental action capable of

interference with constitutionally protected property rights. Thus a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 243

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources.

Dated: November 28, 1989.

Scott Sewell,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 243 is proposed to be amended as set forth below:

PART 243—APPEALS—ROYALTY MANAGEMENT PROGRAM

1. The authority citation for part 243 continues to read as follows:

Authority: R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; sec. 32, 41 Stat. 450, 30 U.S.C. 189; sec. 5, 44 Stat. 1058, 30 U.S.C. 285; sec. 10, 61 Stat. 915, 20 U.S.C. 359; secs. 5, 6, 67 Stat. 464, 465, 43 U.S.C. 1334, 1335; sec. 24, 84 Stat. 1573, 30 U.S.C. 1023, 30 U.S.C. 1701 et seq.

2. A new § 243.3 is added and reserved to subpart A.

3. A new § 243.4 is added to subpart A of part 243 to read as follows:

§ 243.4 Service of official correspondence.

(a) Official correspondence including orders and decisions, issued by the Royalty Management Program (RMP), may be served by delivering the document personally to the addressee of record established in paragraph (b) of this section or by sending the document certified or registered mail, return receipt requested, to the addressee of record established in paragraph (b) of this section.

(b) *Addressee of record.* (1) The addressee of record for refiners participating in the Government's Royalty-in-Kind (RIK) program is the name and address identified in the executive royalty oil sale contract for administrative correspondence or the most recent name and address that was identified in writing by the refiner/purchaser for billing purposes. The refiner must notify MMS in writing of all addressee changes, or if a different individual is to be specified.

(2) The addressee of record for operators of leases committed or to be committed to RIK contracts is the name and address reported by the operator on its most recent Form MMS-4071, Semiannual Report of RIK Oil Entitlements and Deliveries or the most recent address specified in writing by the operator. The operator is responsible for notifying MMS, in writing, of any addressee changes.

(3) The addressee of record for reporters energy and mineral resource production to the RMP Production Accounting and Auditing System is the most recent name and address obtained from the reporter. The reporter is responsible for notifying MMS, in writing, of any addressee changes.

(4) The addressee of record for Federal onshore lessees is the last name and address of record with the Bureau of Land Management. For Indian leases, the addressee of record is the last name and address of record with the Bureau of Indian Affairs. For offshore leases, the addressee of record is the last name and address of record with MMS Offshore Minerals Management. The lessee is responsible for notifying the appropriate Government office, in writing, of any addressee changes.

(5) The addressee of record in connection with audits of payor records is the name and address of the official(s) designated in writing by the company at the inception of the audit, or the most recent address that was specified in writing by the payor.

(6) The addressee of record for payors reporting on the MMS "Report of Sales and Royalty Remittance" (Form MMS-2014 for oil, gas, and geothermal resources or Form MMS-4014 for solid minerals) is the most recent address known by MMS or the most recent name and address specified in writing by the payor. The payor is responsible for notifying MMS, in writing, of any addressee changes.

(7) The addressee of record for serving official correspondance to payors reporting to the RMP Auditing and Financial System not identified above is the name and address for the payor identified or the most recent Payor Confirmation Report (Report No. ARR 29OR) of a Payor Information Form returned by MMS to the payor for a Federal or Indian oil or gas lease (Form MMS-4025) or for a Federal or Indian solid mineral lease (Form MMS-4030). (See 30 CFR 210.51 and 210.201.)

(c) Except as provided in paragraph (d) of this section, official correspondence is considered served in the date that it is received at the addressee of record established in accordance with paragraph (b) of this section, as evidenced by a signed receipt of any person at that address.

(d) Official correspondence will also be deemed to have been constructively served 5 days after the date that the document is mailed if delivery cannot be consumated at the address of record established in accordance with paragraph (b) of this section.

[FR Doc. 90-60 Filed 1-2-90; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3702-3]

40 CFR Parts 141 and 143

National Primary and Secondary Drinking Water Regulations; Fluoride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for information.

SUMMARY: In this notice, EPA is soliciting copies of any information that has a bearing on the current standards for fluoride in drinking water. The Agency is particularly interested in peer-reviewed scientific publications, published since January 1, 1985, dealing with the following topics as they relate to fluoride: (1) Possible adverse health effects (e.g., crippling skeletal fluorosis); (2) the incidence of objectionable dental fluorosis; (3) total exposure and (4) any studies concerning water treatment technology and costs, especially in smaller public water supplies that serve from 25 to 3,300 persons. EPA will review these studies and other information as part of its assessment of the current primary and secondary drinking water standards.

DATES: All material should be submitted by April 3, 1990.

ADDRESSES: Please send all responses to Lina Dargan, Criteria and Standards Division, Office of Drinking Water (WH-550D), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. EPA would appreciate

receiving three complete copies of all responses, including attachments. Copies of all material received in response to this notice as well as other relevant material, discussed below, will be made available for review at EPA, Drinking Water Docket, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, please call 202-382-3027 between 9:00 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: Ken Bailey, Criteria and Standards Division, Office of Drinking Water (WH-550D), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, telephone (202) 382-5535. For general information on any other aspect of drinking water, please call the EPA Safe Drinking Water Hotline at (800) 426-4791 (202-382-5533 in Alaska and the DC. area), Monday thru Friday, between 8:30 a.m. and 4:30 p.m. e.s.t.

SUPPLEMENTARY INFORMATION:

Background: EPA regulates fluoride in drinking water under the Safe Drinking Water Act (SDWA). In 1985 and 1986, EPA promulgated three separate but related standards for fluoride in drinking water under the SDWA. These standards are listed below:

(1) On November 14, 1985, EPA promulgated a recommended maximum contaminant level for fluoride in drinking water at 4 mg/L (50 FR 47142). (Since the publication of the November 14, 1985 notice, the 1986 Amendments to the Safe Drinking Water Act changed the term "recommended maximum contaminant level" to "maximum contaminant level goal" or MCLG.) MCLGs are nonenforceable health goals which are set at a level at which no known or anicipated adverse health effects occur and which allows an adequate margin of safety. The 4 mg/L MCLG was designed to protect against crippling skeletal fluorosis.

(2) On April 2, 1986, EPA promulgated a maximum contaminant level (MCL) for fluoride in drinking water at 4 mg/L 51 FR 11396). MCLs are enforceable standards and are to be set as close to the MCLGs as is feasible. "Feasible" means with the use of the best technology, treatment techniques and other means which are available (taking cost into consideration).

(3) On April 2, 1986 EPA promulgated a secondary maximum contaminant level (SMCL) for fluoride in drinking water of 2 mg/L to protect against objectionable dental fluorosis (51 FR 11396). SMCLs set limits for contaminants in drinking water which may affect the aesthetic qualities of water and public acceptance. SMCLs are not federally enforceable.

Since EPA promulgated the 4 mg/L MCL in 1986, a number of studies concerning fluoride in drinking water have been published. In addition, the National Toxicology Program (NTP) is in the process of completing a two-year bioassay on fluoride which may provide additional insights. Further, section 1412 of the SDWA states that "National primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every three years."

EPD is currently in the process of collecting and identifying studies concerning fluoride in drinking water to assure that all pertinent data developed since the MCLG and MCL will be identified and considered in the review.

All relevant data, not previously considered, will be reviewed to determine if additional regulatory action concerning fluoride in drinking water is warranted.

To ensure that all relevant studies are identified, EPA requests that interested parties supply the Agency with copies of any information that has a bearing on the current standards for fluoride in drinking water.

In establishing the MCLG, MCL and SMCL, EPA reviewed a very large amount of data. These data are collectively referenced in the **Federal Register** (50 FR 20163; 50 FR 47142 and 51 FR 11396); copies of these documents are available for review at the EPA Drinking Water Docket (see ADDRESSES, above). EPA believes that it has considered all relevent information published prior to January 1, 1985. Thus EPA is particularly interested in receiving copies of peer-reviewed scientific publications, published since January 1, 1985, dealing with the following topics as they relate to fluoride: (1) Possible adverse health effects (e.g., crippling skeletal fluorosis); (2) the incidence of objectionable dental flourasis; (3) total exposure and (4) any studies concerning water treatment technology and costs, especially in smaller public water supplies that serve from 25 to 3,300 persons.

Dated: December 27, 1989.

Robert H. Wayland,

Acting Assistant Administrator for Water.

[FR Doc. 90-48 Filed 1-2-90; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 55, No. 2
Wednesday, January 3, 1990

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

Rural Electrification Administration

Volunteer Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact relating to the construction of a maintenance and warehouse facility in Meigs County, TN.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of a maintenance and warehouse facility in Meigs County, Tennessee. Volunteer Electric Cooperative has requested REA's approval to construct the project.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8436.

SUPPLEMENTARY INFORMATION: REA, in accordance with its environmental policies and procedures, required that Volunteer Electric Cooperative develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facility. The BER, which includes input from certain local and state agencies, has been adopted as REA's Environmental Assessment (EA) for the project in accordance with 7 CFR 1794.61. REA has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The project will allow Volunteer Electric Cooperative to expand its maintenance and warehouse facilities to meet the needs of its service area.

The facility will consist of a 22,000 square foot maintenance and warehouse structure, a 6,000 square foot paint storage building, a 1.5 acre pole storage yard and outside parking for approximately 20 vehicles. The entire facility will require 7.5 acres of a 30 acre site owned by Volunteer Electric Cooperative.

REA has concluded that the proposed project will have no impact on wetlands, prime farmlands, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, or water quality.

The no action alternative to construction approval was considered. REA determined that there is a demonstrated need for the project and constructing it as proposed will have no significant impact to the environment.

REA has concluded that its approval to allow Volunteer Electric Cooperative to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has reached a FONSI with respect to its action related to the project.

Copies of the EA and FONSI can be obtained from REA at the address provided herein or at the office of Volunteer Electric Cooperative, P.O. Box 277, Decatur, Tennessee 37322.

In accordance with REA Environmental Policies and Procedures, 7 CFR part 1794, Volunteer Electric Cooperative published a notice and advertisement in the *Chattanooga News—Free Press* which has a general circulation in Meigs County, Tennessee. The notice appeared in the November 3 and 5, 1989 issues. The notice described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The advertisement appeared in the same issues of the newspaper and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by Volunteer Electric Cooperative or REA.

Dated: December 26, 1989.

John H. Arnesen,
Assistant Administrator—Electric.

[FR Doc. 90–44 Filed 1–2–90; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 91170–9270]

Foreign Availability Assessments: Initiation of an Assessment of Certain Array Processors

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment.

SUMMARY: Pursuant to the receipt of a certification of foreign availability from the Computer Systems Technical Advisory Committee, the Office of Foreign Availability is initiating an assessment to investigate the foreign availability of array processors to the People's Republic of China and will accept public comments on the foreign availability of array processors worldwide.

DATES: The period for submission of information will close on February 2, 1990.

ADDRESSES: Submit information relating to the certification of foreign availability to: Dr. Irwin M. Pikus, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, room SB701, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Randy Pratt, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, telephone: (202) 377–5953.

SUPPLEMENTARY INFORMATION: Under sections 5(f) and (h) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability

(OFA) assesses claims of foreign availability. Part 791 of the Export Administration Regulations (EAR) establishes the procedures and criteria for initiating and reviewing claims of foreign availability on items controlled for national security purposes.

Pursuant to section 5(f)(9) of the EAA, as amended by the Omnibus Trade and Competitiveness Act of 1988, OFA is publishing this notice:

On September 29, 1989, OFA accepted for filing a certification by the Computer Systems Technical Advisory Committee (CSTAC) that certain array processors are available to the People's Republic of China. Specifically, the CSTAC certified the availability of array processors with an equivalent multiply rate of 6 million operations per second and a 1,024 point fast Fourier transform performance of less than 2.7 miliseconds. This item is controlled for national security reasons under paragraph (h)(1)(i)(A) and (B) of Export Control Commodity Number (ECCN) 1565A of the Commodity Control List (15 CFR 799.1, supp. 1): "digital computers" and "related equipment" designed or modified for "signal processing" or "image enhancement."

After determining that we had received a completed certification of foreign availability for array processors to the People's Republic of China and that it was supported by reasonable evidence addressing the established criteria, OFA initiated an assessment on September 29, 1989.

Consistent with the requirements of the EAA, the Department intends to submit to the Computer Systems Technical Advisory Committee and to Congress the results of the assessment by December 29, 1989.

To assist the Department in assessing the Computer Systems Technical Advisory Committee's certification, OFA will receive any information regarding the foreign availability of array processors. Although the certification was confined to availability to the People's Republic of China, OFA will accept information regarding the availability of array processors worldwide. A person wishing to submit relevant information relating to this assessment may submit it to the Office of Foreign Availability of the Department of Commerce.

Such relevant information may include, but is not limited to: foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts. Supplement No. 1 to part 791 provides additional examples of evidence that would be helpful to the investigation.

The Office of Foreign Availability will carefully and fully consider all information received. OFA will use information received to supplement other information to evaluate the claim of foreign availability.

The Department will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to the Bureau of Export Administration (BXA) separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information". The Bureau of Export Administration 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 the Bureau of Export Administration as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552(b) (3) and (4)) will be kept confidential and will not be available for public inspection, except as authorized by law.

Communications between agencies of the United States Government and 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, the Department 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 of information received on the allegation for foreign availability will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copies in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377-2593.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close 30 days from the date of publication. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this allegation of foreign availability to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: December 27, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 90-40 Filed 1-2-90; 8:45 am]
BILLING CODE 3510-DT-M

[Docket No. 91298-9298]

Positive Determination of Foreign Availability for Certain Low Capacity Hard Disk Drives

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of determination of foreign availability.

SUMMARY: Under the authority of the Export Administration Act of 1979, as amended (EAA), the Deputy Assistant Secretary for Export Administration determined on November 28, 1989, that foreign availability exists for certain low capacity hard disk drives with a formatted capacity no greater than 45 MB. The Deputy Assistant Secretary for Export Administration has initiated action to submit the determination to a multilateral review process in accordance with the agreement of the Coordinating Committee for a period of not more than four months beginning on the date of the publication of this Federal Register notice.

FOR FURTHER INFORMATION CONTACT: Michael C. Andrews, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-4547.

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by sections 5 (f) and (h) of the EAA to review claims of foreign availability of items controlled for national security purposes. Part 791 of the Export Administration Regulations (15 CFR parts 768–799) ("EAR") establishes the procedures and criteria for assessing foreign availability. The Secretary of Commerce or his designee is authorized by statute to determine foreign availability.

In any case in which the Deputy Assistant Secretary for Export Administration determines that an item of comparable quality to a U.S. item controlled for national security purposes is available-in-fact to a controlled country from a foreign source in quantities sufficient to render the control ineffective in meeting its purposes, under EAA section 5(f)(1)(A), a validated license may not be required for its export.

On July 28, 1989, OFA formally undertook a foreign availability assessment of certain low capacity hard disk drives based on a foreign availability submission. This equipment is controlled for national security reasons under ECCN 1565A of the Commodity Control List (EAR part 799.1, supp. 1).

OFA completed the assessment and on November 28, 1989, I made a positive determination of foreign availability for low capacity hard disk drives with a formatted capacity no greater than 45 MB. In accordance with section 5(f)(3)(B) of the EAA, the determination was provided for review to the Departments of State and Defense as well as other interested agencies of the U.S. government. The interagency review did not affect the determination.

I have initiated action to submit the determination to a multilateral review process in accordance with the agreement of the Coordinating Committee for a period of not more than four months beginning on the date of the publication of this **Federal Register** notice. Current export controls on these items will remain in effect pending completion of the review process, or until further notice.

If OFA receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to the Office of Foreign Availability at the above address.

Dated: December 27, 1989.

James M. LeMunyon,

Assistant Secretary for Export Administration.

[FR Doc. 90–41 Filed 1–2–90; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Five-Year Status Review of Certain Marine Species

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice and request for comment.

SUMMARY: The NMFS is conducting status reviews of certain marine species included on the List of Endangered and Threatened Wildlife (50 CFR part 17). The purpose of these reviews is to determine whether any species or populations should be removed from the list or changed in status. To ensure that the reviews are comprehensive, the NMFS is soliciting information and data. Depending upon the results of the reviews, the NMFS may propose changes to the list.

DATE: Comments, information and data must be received by March 5, 1990.

ADDRESS: Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Patricia Montanio, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, (301–427–2322).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (ESA) is administered jointly by the Departments of the Interior and Commerce. The Department of Commerce in general is responsible for listed marine species and the Department of the Interior for terrestrial and aquatic species. The two Departments share jurisdiction of sea turtles with Interior having responsibility for sea turtles in the terrestrial environment and Commerce having responsibility for sea turtles in the marine environment.

Under section (4)(a) of the ESA, a species is determined to be endangered or threatened for any of the following factors: (1) Present or threatened destruction. modification. or curtailment of its habitat or range; (2) Overutilization for commerical, recreational, scientific, or educational purposes; (3) Disease or predation; (4) Inadequacy of existing regulatory mechanisms; or (5) Other natural or manmade factors affecting its continued existence. Determinations concerning decisions on listings are made solely on the best scientific and commercial data available after conducting a status review of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or subdivision thereof, to protect such species (section 4(b) of the ESA).

Purpose of Review

Section 4(c)(2) of the ESA requires the NMFS Secretary to conduct, at least once every five years, a review of the species on the List of Endangered and Threatened Wildlife and to determine on the basis of such review whether any species should be (1) removed from the list; (2) changed in status from an endangered species to a threatened species; or (3) changed in status from a threatened species to an endangered species. Each determination must be made in accordance with sections 4(a) and 4(b) of the ESA.

The NMFS is conducting status reviews for certain listed species under its jurisdiction. The species that are subject to this review are listed in Table 1. If the reviews indicate that one of the above actions is warranted, the NMFS will propose rules to take the appropriate action(s).

Biological Information Solicited

To ensure that the reviews are complete and based on the best available scientific and commercial data concerning the species, the NMFS is soliciting such data, information and comments concerning the status of these species from any interested party. The NMFS requests such data, information and comments be accompanied by the following: (1) The scientific and common names of the species involved; (2) Supporting documentation, such as maps, bibliographic references, or reprints of pertinent publications; (3) The Party's name, address and any association, institution or business that the party represents.

Dated: November 22, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

TABLE 1—LIST OF ENDANGERED AND THREATENED SPECIES SUBJECT TO REVIEW

Common Name	Scientific Name	Historic Range	Population	Status	Date Listed
Totoaba (seatrout or weakfish).	Cynoscion macdonaldi	Mexico (Gulf of California)	Entire	E	April 10, 1979.
Caribbean monk seal	Monachus tropicalis	Caribbean Sea, Gulf of Mexico.	Entire	E	March 11, 1967.
Hawaiian monk seal	Monachus schauinslandi	Hawaiian Archipelago	Entire	E	November 23, 1976.
Blue whale	Balaenoptera	Oceanic	Entire	E	June 2, 1970.
Bowhead whale	Balaena mysticetus	Oceanic (north latitudes only)	Entire	E	June 2, 1970.
Fin whale (finback whale)	Balaenoptera physalus	Oceanic	Entire	E	June 2, 1970.
Gray whale	Eschrichtius robustus	North Pacific Ocean; Coastal and Bering Sea.	Entire	E	June 2, 1970.
Humpback whale	Megaptera novaeangliae	Oceanic	Entire	E	June 2, 1970.
Right whale	Balaena glacialis	Oceanic	Entire	E	June 2, 1970.
Sei whale	Balaenoptera borealis	Oceanic	Entire	E	June 2, 1970.
Sperm whale	Physeter catadon	Oceanic	Entire	E	June 2, 1970.
Cochito, Gulf of California harbor porpoise.	Phocoena sinus	Mexico (Gulf of California)	Entire	E	January 9, 1985.

[FR Doc. 90-56 Filed 1-2-90; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 90776-9176]

Marine Recreational Fisheries Action Plan

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a draft Marine Receational Fisheries Action Plan; extension of comment period.

SUMMARY: NOAA issues this notice to extend the period during which the public may comment on the draft Marine Recreational Fisheries (MRF) Action Plan which was published November 14, 1989 (54 FR 47379). Copies of the draft plan may be obtained from the address below.

DATE: Comments on the draft plan should be submitted on or before January 15, 1990.

ADDRESS: All comments should be sent to Alan Dean Parsons, Chief of the Recreational and Interjurisdictional Fisheries Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Alan Dean Parsons or Richard B. Stone, 301-427-2347.

SUPPLEMENTARY INFORMATION: The draft MRF Action Plan specified a comment period through December 29, 1989. In view of the level of interest demonstrated by the fishing community in reviewing the plan, and the need for achieving a wider distribution of the plan to ensure that comments represent the broadest possible distribution of interested parties, the comment period is extended by this notice through January 15, 1990

Dated: December 27, 1989.

Richard H. Schaefer,

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

[FR Doc. 90-63 Filed 1-2-90; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permit Modification; Steve W. Ross and Mary L. Moser

Modification No. 1 to Permit 652

Notice is hereby given that pursuant to the provisions of § 222.25 of the regulations governing Endangered Fish and Wildlife (50 CFR part 222), Scientific Research Permit No. 652 issued to Steve W. Ross and Mary L. Moser, Raleigh, North Carolina 27695-7617, on October 4, 1988, (53 FR 39634) is modified in the following manner:

Section B.5 is replaced by: "5. The activities authorized in this Permit are valid until December 31, 1991.

This modification becomes effective December 31, 1989.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act. This modification was issued in accordance with, and is subject to, 50 CFR parts 217-222 of the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street Federal Bldg., Gloucester, Massachusetts 01930.

Dated: December 22, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 90-7 Filed 1-2-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Negotiations During 1990

December 28, 1989.

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

ACTION: Announcement.

SUPPLEMENTARY INFORMATION: The U.S. Government anticipates holding negotiations during 1990 concerning expiring bilateral agreements covering certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and apparel from Burma (December 31, 1990), Colombia (March 31, 1990), Mauritius (September 30, 1990), Panama (March 31, 1990) and Singapore (December 31, 1990). (The dates noted in parenthesis are the expiration dates of the agreements.)

Anyone who wishes to comment or provide data or information regarding

these agreements, or to comment on domestic production or availability of textiles and apparel affected by these agreements, is invited to submit such comments or information in 10 copies to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 533(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-107 Filed 1-2-90; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange's Proposed Rules 577 and 578—Globex Limitation of Liability

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On November 29, 1989, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** the Chicago Mercantile Exchange's ("CME") proposed Rules 577 and 578. 54 FR 49107 (November 29, 1989). The proposed rules generally pertain to limitations of liability for the CME, its clearing members, the P-M-T Limited Partnership, the Globex Corporation, Reuters, and their respective directors, officers and employees for any loss, damage, cost or expense incurred by a customer as a result of the customer's use of the CME's automated trading system, Globex, or use of Exchange services or facilities in connection with Globex. The comment period on the notice of proposed rules expires on December 29, 1989.

The Commission received written requests from members of the public requesting that the comment period be extended for a period of thirty to sixty days so that they could address fully the issues raised in the notice of proposed rules.[1] In addition, the Commission received telephone calls from members of the public also requesting an extension of the comment period on the proposed rules. The commenters noted that the Commission's decision on the proposal would set an important precedent for customer remedies for losses resulting from the use of automated trading systems in the United States. The commenters, therefore, requested additional time to research the policy and legal issues raised by the proposed rules. In order to ensure that all interested parties have an opportunity to submit meaningful comments, the Commission has determined to grant the requests for an extension of the comment period.

DATE: Notice is hereby given that all comments on the CME's proposed limitation of liability rules must be submitted by February 2, 1990.

FOR FURTHER INFORMATION CONTACT: Lystra G. Blake, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

Issued in Washington, DC, on December 28, 1989.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 90-64 Filed 1-2-90; 8:45 am]

BILLING CODE 6351-01-M

[1] By letter dated December 14, 1989, Citicorp, on behalf of Citibank, N.A. and Citicorp Futures Corporation, a registered futures commission merchant ("FCM"), requested that the comment period be extended for thirty days. By letter dated December 20, 1989, Harris Futures Corporation, a registered FCM, requested that the comment period be extended for sixty days. By letter dated December 21, 1989, the Futures Industry Association, on behalf of its members, requested that the comment period be extended for thirty days.

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number:

Facilities Available for the Construction or Repair of Ships; Standard Form 17; and OMB Control Number 0703-0006.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 4 Hours.

Frequency of Response: When requested.

Number of Respondents: 200.

Annual Burden Hours: 1,600.

Annual Responses: 400.

Needs and Uses: Standard Form 17 is used to identify the facilities of ship construction and repair firms. In addition, it provides a data base for assessing the industrial capability of the individual shipyards.

Affected Public: Businesses or other for-profit.

Frequency: Continuing.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: December 27, 1989.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90-21 Filed 1-2-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Notice was published on November 7, 1989, at 54 FR 46758 that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Defense Subpanel Task Force will meet on December 11-12, 1989 at 4401 Ford Avenue, Alexandria, Virginia. Further notice was published on November 21, 1989, at 54 FR 48131 that this meeting was rescheduled for December 18, 1989 because of operational necessity. A

further notice was published on December 15, 1989, at 54 FR 51449 that this meeting was rescheduled for January 8, 1990 to avoid a conflict of schedule.

This meeting has been further rescheduled for January 4, 1990 to avoid a conflict in schedule.

In accordance with 5 U.S.C. section 552b(e)(2), the meeting rescheduling is publicly announced at the earliest practical time.

Dated: December 27, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90-3 Filed 1-3-90; 8:45 am]

BILLING CODE 3810-AE

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangements

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 Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/JA(EU)-50, for the transfer from the Federal Republic of Germany to Japan of 371 kilograms of uranium, enriched to approximately 19.6 percent in the isotope uranium-235, for use in fabrication of fuel for the JOYO reactor in Japan.

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.

For the Department of Energy.

Dated: December 27, 1989.

Thad Grundy, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-61 Filed 1-2-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RM87-5-000 and RM87-5-001]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines; Pipelines Affected by Order No. 497-A; Algonquin Gas Transmission Co. et al

December 26, 1989.

The Commission issued a final rule under Docket No. RM87-5-000, in Order No. 497 (53 FR 22,139 (June 14, 1988)), III FERC Stats. & Regs. ¶ 30,820 on June 1, 1988, adopting standards of conduct and reporting requirements to govern the relationship between interstate pipelines and their gas marketing affiliates. On December 15, 1989, under Docket No. RM87-5-001, the Commission issued Order No. 497-A. The order on rehearing denies in part and grants in part rehearing of Order No. 497. Order No. 497-A also extends the final rule's reporting requirements for an additional year, from December 31, 1989 to December 31, 1990.

Notice is hereby given to affected pipelines that they are required to revise their existing tariffs and their filed standards of conduct to comply with the changes required by Order No. 497-A. Such changes should be filed in each pipelines' respective "MT" or "MG" docket. (See, Notice of New Docket Prefixes Under Order No. 497, issued August 31, 1988, 53 FR 34,582 (Sept. 7, 1988)).

Attached are appendices of affected pipelines who are required to make supplemental filings. However, other affected pipelines who have not made their initial "MT" or "MG" filing are required to do so. All filings (supplemental and initial) shall be made within thirty days of the publication of this notice in the **Federal Register.**

Linwood A. Watson, Jr.,

Acting Secretary.

APPENDIX A—"MT" DOCKETS

Company	Docket Nos.
Algonquin Gas Transmission Company	MT88-1-000 and 001
Questar Pipeline Company	MT88-2-000, 001 and 002
Transcontinental Gas Pipe Line Corporation	MT88-3-000, 001 and 002
Mid-Louisiana Gas Company	MT88-4-000 and 001
Phillips Gas Pipeline Company	MT88-5-000 and 001
Texas Gas Transmission Corporation	MT88-6-000 and 001
Sabine Pipe Line Company	MT88-7-000 and 001
Equitrans, Inc.	MT88-8-000 and 001
Texas Eastern Transmission Corporation	MT88-9-000
Ringwood Gathering Company	MT88-10-000, 001, 002 and 003
Northwest Pipeline Corporation	MT88-11-000 and 001
El Paso Natural Gas Company	MT88-12-000
Kentucky West Virginia Gas Company	MT88-13-000 and 001
Williams Natural Gas Company	MT88-14-000 and 001
CNG Transmission Corporation	MT88-15-000, 001 and 002
Superior Offshore Pipeline Company	MT88-16-000
Texas Sea Rim Pipeline, Inc.	MT88-17-000
K N Energy, Inc.	MT88-18-000 and 001
ANR Pipeline Company	MT88-19-000 and 001
Southern Natural Gas Company	MT88-20-000 and 001
South Georgia Natural Gas Company	MT88-21-000
Trunkline Gas Company	MT88-22-000, 001 and 002
Colorado Interstate Gas Company	MT88-23-000

APPENDIX A—"MT" DOCKETS—Continued

Company	Docket Nos.
Northern Natural Gas Company	MT88-24-000, 001 and 002
Black Marlin Pipeline Company	MT88-25-000 and 001
Transwestern Pipeline Company	MT88-26-000 and 001
Northern Border Pipeline Company	MT88-27-000 and 001
Valero Interstate Transmission Company	MT88-28-000 and 001
Florida Gas Transmission Company	MT88-29-000 and 001
United Gas Pipe Line Company	MT88-30-000 and 001
Sea Robin Pipeline Company	MT88-32-000 and 001
Natural Gas Pipeline Company of America	MT88-33-000 and 001
Tennessee Gas Pipeline Company	MT88-34-000
Arkla Energy Resources	MT88-35-000 and 001
Panhandle Eastern Pipe Line Company	MT88-36-000 and 001
MIGC, Inc.	MT88-37-000 and 001
Valley Gas Transmission, Inc.	MT88-38-000 and 001
Western Transmission Corporation	MT88-39-000, 001 and 002
Blue Dolphin Pipe Line Company	MT88-40-000 and 001
Williston Basin Interstate Pipeline Company	MT89-1-000 and 001
Carnegie Natural Gas Company	MT89-2-000
Columbia Gas Transmission Corporation	MT89-3-000
Columbia Gulf Transmission Company	MT89-4-000
West Texas Gathering Company	MT89-5-000
Caprock Pipeline Company	MT89-6-000
Nora Transmission Company	MT89-7-000
Seagull Interstate Corporation	MT89-8-000

APPENDIX B—"MG" DOCKETS

Company	Docket Nos.
Algonquin Gas Transmission Company	MG88-2-000 and 001
Florida Gas Transmission Company	MG88-3-000, 001 and 002
Mid Louisiana Gas Company	MG88-4-000, 001 and 002
United Gas Pipe Line Company	MG88-5-000 and 001
Sea Robin Pipeline Company	MG88-6-000 and 001
Northern Natural Gas Company	MG88-7-000, 001 and 002
MIGC, Inc.	MG88-8-000 and 001
Transwestern Pipeline Company	MG88-9-000 and 001
Questar Pipe Line Company	MG88-11-000
Mississippi River Transmission Corp.	MG88-12-000 and 001
Black Marlin Pipeline Company	MG88-14-000 and 001
Southern Natural Gas Company	MG88-15-000 and 001
South Georgia Natural Gas Company	MG88-16-000 and 001
El Paso Natural Gas Company	MG88-17-000
Blue Dolphin Pipeline Company	MG88-18-000 and 001
Tennessee Gas Pipeline Company	MG88-19-000 and 001
Arkla Energy Resources	MG88-20-000 and 001
Western Transmission Corporation	MG88-22-000 and 001
Superior Offshore Pipeline Company	MG88-23-000 and 001
Texas Sea Rim Pipeline	MG88-24-000 and 001
Texas Eastern Transmission Corporation	MG88-26-000 and 001
Natural Gas Pipeline Company of America	MG88-31-000 and 001
Valley Gas Transmission Company	MG88-33-000 and 001
Northern Border Pipeline Company	MG88-35-000, 001 and 002
Valero Interstate Transmission Company	MG88-37-000 and 001
ANR Pipeline Company	MG88-44-000 and 001
Colorado Interstate Gas Company	MG88-45-000 and 001
Texas Gas Transmission Corporation	MG88-47-000 and 001
KN Energy, Inc.	MG88-48-000
Kentucky West Virginia Gas Company	MG88-49-000
William Natural Gas Company	MG88-50-000 and 001
Transcontinental Gas Pipeline Corporation	MG88-51-000 and 001
Northwest Pipe Line Corporation	MG88-52-000, 001 and 002
CNG Transmission Corporation	MG88-53-000 and 001
Trunkline Gas Company	MG88-54-000
Panhandle Eastern Pipeline Company	MG88-55-000 and 001
Ringwood Gathering Company	MG88-56-000
Williston Basin Interstate Pipeline	MG89-1-000 and 001
Sabine Pipeline Company	MG89-3-000 and 001
Carnegie Natural Gas Company	MG89-4-000, 001 and 002
Equitrans, Inc.	MG89-5-000
Phillips Gas Pipeline Company	MG89-6-000 and 001
Columbia Gulf Transmission Company	MG89-10-000 and 001
Columbia Gas Transmission Corporation	MG89-11-000 and 001
Green Canyon Pipe Line Company	MG89-13-000
West Texas Gathering Company	MG89-15-000 and 001

—Continued

Company	Docket Nos.
Caprock Pipeline Company	MG89-16-000 and 001
Nora Transmission Company	MG89-17-000 and 001
Seagull Interstate Corporation	MG89-18-000 and 001

[FR Doc. 90-15 Filed 1-2-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ90-2-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 26, 1989

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 21, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective January 1, 1990.

One hundred and forty-fifth Revised Sheet No. 16
Thirty-third Revised Sheet No. 16A2
Forty-fourth Revised Sheet No. 64A

Columbia states that the sales rates set forth on One hundred and forty-fifth Revised Sheet No. 16 reflect an overall increase of 15.17¢ per Dth in the Commodity rate, and a decrease of $.485 per Dth in the Demand rate. In addition, the transportation rates set forth on Thirty-third Revised Sheet No. 16A2 reflect an increase in the Fuel Charge component of .0041¢ per Dth.

Columbia states that the purpose of the revised tariff sheets is to (i) implement an out of cycle Purchased Gas Cost Adjustment filing to be effective as of January 1, 1990, (11) eliminate on January 1, 1990 all demand costs associated with Columbia LNG Corporation; and (iii) request interim PGA recovery of certain firm transportation commodity charges incurred by Columbia in connection with its conversion from firm sales entitlements to firm transportation services with Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation, and Transcontinental Gas Pipe Line Corporation.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

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 §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 2, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 90-16 Filed 1-2-90; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OMS-FRL-3702-1]

Final Agency Actions Regarding the Motor Vehicle Provisions of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of mobile source final agency actions.

SUMMARY: This notice announces final EPA actions taken in conjunction with its mobile source program. With the exceptions of Emissions Testing Laboratories/Norcal, Environmental Testing Atlanta, Scott Environmental Technology, Compliance Laboratories, Inc., Import Certification Laboratories and Northern American Compliance, persons seeking judicial review of these final actions must petition the United States Court of Appeals for the District of Columbia Circuit for review of these actions. Persons seeking judicial review of final action taken with regard to certain import test laboratories and their test results must petition as follows: For review of the decisions concerning Emissions Testing Laboratories/Norcal, North American Compliance and Import Certification Lab, persons seeking review must petition the United States Court of Appeals for the Ninth Circuit. For review of the decision concerning Environmental Testing Atlanta, persons seeking review must petition the United States Court of Appeals for the Eleventh Circuit. For review of the decision concerning Scott Environmental Technology, persons seeking review must petition the United States Court of Appeals for the Third Circuit. For review of the decision concerning Compliance Laboratory, Inc. persons seeking review must petition the United States Court of Appeals for the Fifth Circuit. Failure to petition for review of any of these actions on or before March 5, 1990 will preclude a challenge later in an EPA enforcement action.

FOR FURTHER INFORMATION CONTACT: Nina S. Pelletier, Attorney/Advisor, Manufacturers Operators Division, (EN-340F), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2537.

SUPPLEMENTARY INFORMATION: EPA has determined that all of the actions summarized below are final. Where available, the specific date on which the action became final is indicated. Pursuant to section 307(b)(1) of the Clean Air Act (Act) EPA has determined that except for the decisions on the import testing laboratories, these actions are nationally applicable. Accordingly, judicial review of these actions, exclusive of those pertaining to testing laboratories, is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit on or before March 5, 1990. EPA has determined that the decisions on the import testing laboratories are locally or regionally applicable. Therefore, judicial review of those actions is available only by filing a petition for review on or before March 5, 1990 in the United States Court of Appeals for the particular circuit in which the laboratory is located, as indicated above. Under section 307(b)(2) of the Act, these final actions may not be challenged later in civil or criminal proceedings EPA may bring to enforce these actions. The following EPA actions regarding motor vehicles have become final:

1. By letter dated May 12, 1989, EPA determined that the Porsche 959 did not qualify for a racing vehicle exclusion from the emission regulations of 40 CFR 85.1703. In September 1988, Porsche applied for EPA's prior written approval for the admission of eight Porsche 959 vehicles as racing vehicles. Racing vehicles are excluded from coverage

under the Act if they are not "motor vehicles" as defined in section 216(2) of the Act, which provides that motor vehicles are vehicles "designed for transporting persons or property on a street or highway." EPA determined that the Porsche 959 was capable of being driven on the streets and highways; therefore, the Porsche 959 did not qualify for an exclusion. The decision of May 12, 1989 was final.

2. By letter dated July 13, 1989, EPA determined that the Mitsubishi Mighty Mits SH27 Utility Vehicle did not qualify for an exclusion from regulation under the Act under 40 CFR 85.1703. Mitsubishi sought to distribute and sell the Mighty Mits SH27 as "not a motor vehicle" because it believed the Mighty Mits met the requirements of § 85.1703(a). Section 85.1703(a) provides that a vehicle may be excluded if it cannot exceed 25 miles per hour, lacks practical and safety features and has features rendering street use unlikely and impractical. EPA determined that the Mighty Mits' speed governor was easily disabled; therefore, use of the governor was an insufficient basis to exclude the Mighty Mits SH27 from regulation under the Act. EPA also determined that the Mighty Mits exhibited several practical and safety features and contained instructions for on-road use; therefore, it did not qualify for an exclusion from regulation under the Act. The decision of July 13, 1989 was final.

3. On August 30, 1989, Mitsubishi submitted a plan to perform technical modifications in order to satisfy the exclusion criteria of 40 CFR 85.1703(a)(1). By letter dated August 31, 1989, EPA determined that Mitsubishi's proposal was a sufficient basis to grant an exclusion under 40 CFR 85.1703. The decision of August 31, 1989 was final.

4. By letter dated November 6, 1989, EPA determined that the Daihatsu Hi-Jet did not qualify for an exclusion from regulation under the Act under 40 CFR 85.1703. Daihatsu sought to distribute the Hi-Jet as "not a motor vehicle" because it believed the Hi-Jet met the requirements of § 85.1703(a). Section 85.1703 provides that a vehicle may be excluded if it cannot exceed 24 miles per hour, lacks practical and safety features and has features rendering street use unlikely and impractical. EPA determined that the Hi-Jet's speed governor was easily disabled; therefore, use of the governor was an insufficient basis to exclude the Hi-Jet from regulation under the Act. EPA also determined that the Hi-Jet exhibited several practical and safety features consistent with on-road use and thus did not qualify for an exclusion from regulation under the Act. The decision of November 6, 1989 was final.

5. By letter dated August 1, 1989, EPA suspended GM's certificate of conformity on engine code 1 of the heavy duty diesel engine family KGMO6.2DAB4 for failure to meet the Federal standard for particulate under 40 CFR 86.1010–84. The date of the suspension was the end of production on July 11, 1989. The suspension decision became final on August 1, 1989.

6. By letter of September 15, 1986, EPA removed Emissions Testing Laboratories/Norcal (ETL/Norcal) of San Carlos, California, for at least three years from the list of laboratories recognized as capable of performing the Federal Test Procedure (FTP) for determining emissions compliance of imported nonconforming vehicles under 40 CFR 85.1504. EPA found ETL/Norcal incapable of performing the FTP because of apparent fraud and inadequacies in its testing procedures and laboratory personnel. These findings occurred in the course of an inspection on the laboratory and a review of its test packet submissions. Further, EPA decided to reject all pending test packets from ETL/Norcal. This decision became final on September 15, 1986.

7. By letter of December 18, 1986, EPA removed Environmental Testing Atlanta (ETA) for at least two years from the list of laboratories recognized as capable of performing the FTP. EPA found ETA was not capable of performing the FTP because of apparent fraud and inadequacies in its testing procedures which were found in the course of an inspection and review of its test packet submissions. Further, EPA decided to reject all pending test packets from ETA. This decision became final on December 18, 1986.

8. By letter dated September 8, 1987, EPA removed Scott Environmental Technology (Scott) of Plumsteadville, Pennsylvania for at least one year from the list of laboratories recognized as capable of performing the FTP. EPA found Scott was not capable of performing the FTP because inadequacies in its testing procedures which were found in the course of an inspection and a review of its test packet submissions. Further, EPA decided to reject all pending test packets from Scott. This decision became final on September 8, 1987.

9. By letter of November 9, 1987, EPA removed Compliance Laboratories, Inc. (CLI) of Houston, Texas for at least two years from the list of laboratories recognized as capable of performing the FTP. EPA found CLI was not capable of performing the FTP because of apparent fraud and inadequacies in its testing procedures which were found in the course of an inspection and a review of its test packet submissions. Further, EPA decided to reject all pending test packets from CLI. This decision became final on November 9, 1987.

10. By letter of April 8, 1989, EPA removed Import Certification Laboratories (ICL) of Orange, California for at least three years from its list of laboratories recognized as capable of performing the FTP. EPA found ICL was not capable of performing the FTP because of apparent fraud or inadequacies in its testing procedures which were found in the course of an inspection and a review of its test packet submissions. Further, EPA decided to reject all pending test packets from ICL. This decision became final on April 8, 1988.

11. By letter dated July 19, 1988, EPA removed North American Compliance (NAC) of Santa Ana, California, for at least three years from the list of laboratories recognized as capable of performing the FTP. EPA found NAC was not capable of performing the FTP because it had submitted false or fraudulent information; also, EPA found inadequacies in NAC's testing procedures and laboratory personnel. These findings occurred during the execution of a criminal search warrant by EPA's Office of the Inspector General and the FBI, and in a review of NAC's test packet submissions. Further, EPA decided to reject all pending test packets from NAC. This decision was final on July 19, 1988.

12. On August 30, 1985, the Administrator ordered the recall of 1981 model year General Motors Corporation (GM) vehicles of engine family 12H2AD for their failure to comply with the applicable Federal emission standard for evaporative hydrocarbon. Under 40 CFR 85.1807, a manufacturer who disagrees with the Administrator's finding of nonconformity may file a request for a public hearing with the Administrator within 45 days after the receipt of the Administrator's notification of nonconformity. GM timely requested an administrative hearing. The Administrative Law Judge dismissed the proceeding on May 25, 1988, pursuant to the parties' joint stipulation of dismissal. Therefore, this decision became final on May 25, 1988.

13. By letter dated February 26, 1988, General Motors (GM) submitted a remedial plan for the evaporative hydrocarbon nonconformity in 1981 engine family 12H2AD. GM submitted the plan as part of a negotiated

settlement of administrative litigation between GM and EPA. EPA approved the plan in the settlement agreement dated May 19, 1988. The Administrative Law Judge dismissed the proceeding on May 25, 1988, pursuant to the parties' joint stipulation of dismissal. Therefore, EPA's approval of GM's remedial plan for engine family 12H2AD became final on May 19, 1988.

14. On September 6, 1986, the Administrator ordered the recall of 1981 model year Chrysler vehicles of engine family BCR1.7V2HJ1 for their failure to comply with the applicable Federal emission standard for nitrogen oxides. Under 40 CFR 85.1807, a manufacturer who disagrees with the Administrator's finding of nonconformity may file a request for a public hearing with the Administrator within 45 days after the receipt of the Administrator's notification of nonconformity. Chrysler timely requested an administrative hearing. After Chrysler withdrew its request for a hearing, the Administrative Law Judge dismissed the administrative proceeding with prejudice on June 10, 1988. This decision became final on June 10, 1988.

15. On May 25, 1988, EPA approved Chrysler's remedial plan for the nitrogen oxides nonconformity in 1981 engine family BCR1.7V2HJ1. Chrysler submitted the plan as part of a negotiated settlement of administrative litigation between Chrysler and EPA. The Administrative Law Judge dismissed the administrative proceeding with prejudice on June 10, 1988, after Chrysler withdrew its request for a hearing. Therefore, EPA's approval of Chrysler's remedial plan for engine family BCR1.7V2HJ1 became final on May 25, 1988.

16. On March 22, 1988, the Administrator ordered the recall of 1985 model year GM vehicles of engine family F1G5.7V4NEA4 for their failure to comply with applicable Federal emission standards for carbon monoxide and evaporative hydrocarbon. Under 40 CFR 85.1807, a manufacturer who disagrees with the Administrator's notification of nonconformity may file a request for a public hearing with the Administrator within 45 days after the receipt of the Administrator's notification of nonconformity. GM timely requested an administrative hearing. Pursuant to the parties' joint stipulation, the Administrative Law Judge dismissed the proceeding on September 20, 1988. This decision became final on September 10, 1988.

17. By letter dated September 1, 1988, General Motors (GM) submitted a remedial plan for carbon monoxide and evaporative hydrocarbon nonconformities in 1985 engine family F1G5.7V4NEA4. GM submitted this plan as part of a negotiated settlement of administrative litigation between GM and EPA. EPA approved the plan in a letter dated September 20, 1988. The Administrative Law Judge dismissed the proceeding pursuant to the parties' joint stipulation. Therefore, EPA's approval of GM's remedial plan for engine family F1G5.7V4NEA4 became final on September 20, 1988.

Dated: December 28, 1989.

Richard D. Wilson,

Director, Office of Mobile Sources.

[FR Doc. 90-53 Filed 1-2-90; 8:45 am]

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[FRL 3702-6]

Extension of Time To Make a Final Determination Affirming, Modifying or Rescinding the Recommended Determination for the Proposed Big River Reservoir Project in Rhode Island

AGENCY: Environmental Protection Agency.

ACTION: Notice of an extension of time.

SUMMARY: On October 30, 1989, EPA Headquarters received the Recommended Determination and administrative record for actions recommended by EPA Region I pursuant to 404(c) of the Clean Water Act regarding the proposed Big River reservoir project in Rhode Island. Pursuant to EPA's regulations establishing procedures governing section 404(c) activities, 40 CFR 231.6, the deadline for EPA's Final Determination was originally December 29, 1989.

Due to the magnitude of the record and the limited availability of appropriate staff, and in recognition of the importance of the recommended actions under consideration, EPA finds that more time is required to complete a thorough and careful analysis regarding this project. EPA finds, under its authority contained at 40 CFR 231.8, that there is good cause for extending the period for affirming, modifying, or denying the Regional Recommended Determination until March 1, 1990. This extension will enable EPA to adequately consider the information contained in the administrative record while at the same time complete a final decision without undue delay.

FOR FURTHER INFORMATION CONTACT: Kirk Stark, Team Leader, Elevated Cases Team, Office of Wetlands Protection A-104-F, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 475-7799.

Robert H. Wayland,

Acting Assistant Administrator for Water.

[FR Doc. 90-47 Filed 1-2-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3702-4]

Public Notification of the First National Indian Set-Aside Project Priority List for Wastewater Treatment Facilities

AGENCY: Environmental Protection Agency.

ACTION: Publication Notification of the First National Indian Set Aside Project Priority List for Wastewater Treatment Facilities.

SUMMARY: On November 2, 1989, the Environmental Protection Agency (EPA) adopted the first National Indian Set-Aside Project Priority List that identifies projects within the funding range that may receive a grant from EPA's Indian Set-Aside Grant Program for wastewater treatment facilities. The priority list ranks the projects based on water quality and public health criteria as described in the program guidelines distributed May 18, 1989 to all eligible Tribes and villages. For further information or a copy of the "Guidelines and Requirements for Applying for Grants from the Indian Set-Aside Program", contact Chris Powers (202 382-3770), Office of Municipal Pollution Control (WH-546), 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Background

This grant program is authorized by section 518(c) of the Clean Water Act (CWA) to help pay for planning, design, and building of wastewater treatment systems to serve Indian Tribes. In 1988, the CWA was further amended to make Alaska Native Villages (ANVs) and Tribes in Oklahoma on former reervations eligible to receive grants. The EPA conducted an assessment that identified over $270 million in wastewater treatment needs for Indian Tribes and ANVs.

The CWA authorizes program funding via a ½ percent setaside from the Construction Grants Program appropriations for fiscal years 1987—1990. The 1987—1990. The 1987—1989 appropriations (which are available until expended) total approximately $22 million. To gain experience which developing the new program, grants were awarded to five model projects in 1988 and 1989. EPA has reserved a total

of $4 million to cover expected costs of the model projects. Thus, $18 million is available to fund projects within the funding range from the first National Indian Set-Aside Project Priority List, with approximately $5 million to be added by the 1990 appropriation for the second priority list.

Explanation of Priority Setting Process

The EPA Regions in consultation with the Indian Health Service (IHS) used the guidelines to score 158 requests totalling approximately $95 million. The scores were based on the following evaluation criteria:

Water Quality (surface and ground water)	36
Public Health (consumption and body contact)	54
Preventative Measures (taken by Tribe)	6
Existing Treatment (effectiveness, quality of Operations and Maintenance)	10
Maximum Total Score	106

To assure consistent scoring nationwide, EPA Headquarters independently used the same information and guidelines to score the requests. The few scoring differences found were resolved after consultation with the Regions and IHS. EPA adjusted the funding level for two projects (numbers 7 and 15), after consultations with EPA Regional and IHS staffs. The resulting scores, based strictly on scoring against the published criteria, provide for a nationally consistent ranking of projects.

The Pueblo de Acoma project (number 2 on the list) will not receive a grant in this cycle because the needs represented by the project are currently being funded by a grant from IHS.

Limitation on Project Costs and Grant Conditions

The projects were included in the fundable range of the priority list in their priority order. Identification as a project in the funding range does not guarantee that the Tribe will receive a grant. Before the EPA Region enters into an agreement to make funds available for a priority project, it must determine that all program requirements will be met.

EPA intends to place a condition in each new Indian Set-Aside grant that will limit Federal funding to 100 percent of the eligible costs of the most cost-effective treatment alternative, not to exceed the amount requested by the Tribe in its priority list request. Thus, any escalation of costs due to delays or limitations of the initial estimates must be covered with funds from other sources. EPA will work with any affected Tribe to identify additional resources for the cost-effective treatment alternatives.

As each grant is negotiated, the Regions will place conditions and schedules in each grant to assure that all projects move forward in a timely manner. If Tribes or villages are unable to negotiate a project grant or proceed in accordance with their grant conditions, EPA may release the funds for projects further down on the priority list, or apply the funds to a future funding cycle.

Future Funding Cycle

EPA will also inform each Federally recognized Tribe and ANV of the timing and requirements for the next funding cycle. Projects that did not receive funding in the first cycle will remain on the list. In conjunction with the second funding cycle, a Tribe with a project on the list may provide additional information to the appropriate EPA Region to support its request for priority or remove the project from the list. New projects will be scored and added to the list during the next cycle.

Indian Set-Aside National Project Priority List for Wastewater Treatment Facility Construction

(attachment)

Robert H. Wayland,

Acting Assistant Administrator for Water.

Indian Set-Aside National Project Priority List for Wastewater Treatment Facility Construction

Rank	Tribe Name	Region No.	Score	Project cost	Cumulative cost
1	McGrath	10	105	$650,000	$650,000
*2	Pueblo de Acoma*	6	105	1,156,341	
3	Koyuk	10	104	1,200,000	1,850,000
4	Bois Forte Reservation	5	103	320,000	2,170,000
5	Sheldon Point	10	103	623,000	2,793,000
6	Winnebago	7	102	301,500	3,094,500
7	Pueblo of Zuni	6	102	1,000,000	4,094,500
8	Gambell	10	102	1,035,000	5,129,500
9	Tohono O'Odham (Sells)	9	102	990,000	6,119,500
10	Seneca Nation	2	101	54,500	6,174,000
11	Table Bluff Rancheria Wiyot Tribe	9	101	385,568	6,559,568
12	Nikolai	10	101	750,000	7,309,568
13	Kickapoo	6	101	1,500,000	8,809,568
14	St. Regis Mohawks (Hogansburg)	2	101	1,230,000	10,039,568
15	Passamaquoddy (Indian Township)	1	100.4	2,400,000	12,439,568
16	Cheyenne & Arapaho Tribes of OK	6	100	426,459	12,866,027
17	Selawik	10	100	450,000	13,316,027
18	Kongiganak	10	100	300,000	13,636,027
19	Port Gamble	10	100	1,460,000	15,076,027
20	Ogiala Sioux	8	99	1,143,215	16,219,242
21	Shoshone	8	99	51,200	16,270,442
22	Lower Kalskag	10	99	581,000	16,851,442
23	Menominee Indian Tribe of WI (Keshina)	5	99	250,000	17,101,442
24	Nezperce	10	99	250,000	17,351,442
25	Hoh	10	99	340,000	17,691,442
26	Santee Sioux	7	98	150,000	17,841,442
27	Yurok	9	97	178,200	18,019,642
28	Kipnuk	10	97	500,000	18,519,652
29	White Mountain	10	97	750,000	19,269,642
30	Hopi (Culture Center)	9	97	417,600	19,687,242
31	Oscarville	10	96	218,000	19,905,242

Rank	Tribe Name	Region No.	Score	Project cost	Cumulative cost
32	Makah	10	96	1,520,000	21,425,242
33	Noorvik	10	94	620,000	22,045,242
34	Warm Springs	10	93	500,000	22,545,242
35	Oneida Tribe of Wisconsin	5	92	3,150,000	25,695,242
36	Passamaquoddy (Pleasant Point)	1	91	2,212,000	27,907,242
37	Keweenaw Bay	5	89	1,554,850	29,462,092
38	Stillaguamish	10	88	80,000	29,542,092
39	Kiana	10	88	883,000	30,425,092
40	St. Michael	10	86	500,000	30,925,092
41	Tyonex	10	86	598,000	31,523,092
42	Tohono O'Odham (Assorted)	9	85	591,000	32,114,092
43	Cherokee Nation of Oklahoma	6	85	872,000	32,986,092
44	Nulato	10	85	1,610,000	34,596,092
45	Fond Du Lac	5	84.5	635,000	35,231,092
46	Big Valley Indian Rancheria	9	83	221,495	35,452,587
47	Tohono O'Odham (Queens Well)	9	83	376,000	35,828,587
48	Hopi (Hote Villa)	9	83	759,000	36,587,587
49	Fort McDowell Mohave Apache	9	83	2,000,000	38,587,587
50	St. Regis Mohawks (St. Regis Rd.)	2	83	4,094,400	42,681,987
51	Hopi (Lower Moencopi)	9	82	398,400	43,080,387
52	Paiute (Pyramid Lake)	9	82	797,000	43,877,387
53	Ute (fort Duchesne)	8	82	1,069,000	44,946,387
54	Colorado River Tribes	9	81	84,565	45,030,952
55	Havascopai Tribe	9	81	231,000	45,261,952
56	Navajo Nation of New Mexico	6	81	760,000	46,021,952
57	Seminole-Big Cypress	4	81	1,600,000	47,621,952
58	Navajo Nation of NM (Torreon)	6	80	342,800	47,964,752
59	Quinault (Taholah)	10	80	700,000	48,664,752
60	Navajo Nation of NM (Shiprock)	6	80	1,200,000	49,864,752
61	Osage Tribe of Oklahoma	6	79	250,000	50,114,752
62	Quinhagak	10	79	264,500	50,379,252
63	Quechan Tribe	9	79	289,400	50,668,652
64	Bay Mills Indian Community	5	79	800,000	51,468,652
65	Upper Kalskag	10	79	850,000	52,318,652
66	Elk Valley Rancheria	9	78	69,000	52,387,652
67	Quinault (Queets)	10	77	600,000	52,987,652
68	Sac & Fox Tribes of Oklahoma	6	76	51,117	53,038,769
69	Hopi (Kykotsmovi I)	9	76	362,700	53,401,469
70	White Mountain Apache (McNary)	9	73	267,000	53,668,469
71	Crow	8	73	284,471	53,952,940
72	Hopi (Kykotsmovi II)	9	73	513,500	54,466,440
73	Hopi (Old Oraibi)	9	73	709,800	55,176,240
74	Wh. Mountain Apache (N. Cibecue)	9	72	171,000	55,347,240
75	Hopi (Septic Program)	9	72	195,000	55,542,240
76	Seneca Nation (Irving WWTP)	2	72	310,000	55,852,240
77	Wh. Mountain Apache (S.W. Cibecue)	9	72	372,000	56,224,240
78	Hopi (Polacca I)	9	72	599,000	56,823,240
79	Red Lake Band of Chippewa Indians	5	71.5	469,800	57,293,040
80	White Earth Reserv. (Naytahwaush)	5	70	459,250	57,752,290
81	Cherokee	4	70	1,600,000	59,352,290
82	Miccosukee	4	70	1,600,000	60,952,290
83	Anbler	10	69	329,000	61,281,290
84	Red Lake Band—E. Chippewa Indians	5	68.5	406,800	61,688,090
85	Muscogee (Creek) Nation of Oklahoma	6	68	136,000	61,824,090
86	San Carlos Apache (Lower Peridot)	9	67	107,000	61,931,090
87	Rosebud Sioux (Parmalee)	8	67	115,000	62,046,090
88	Crowe Creek Sioux	8	67	300,000	62,346,090
89	Klukwan	10	67	564,000	62,910,090
90	Kokhanok	10	67	964,000	63,874,090
91	Seneca Nation (TIS)	2	66	509,280	64,383,370
92	Navajo Ntn (Manuelito Chapter House)	6	65	129,800	64,513,170
93	Colville	10	65	250,000	64,763,170
94	Leech Lake Reservation	5	65	300,000	65,063,170
95	Perryville	10	65	725,000	65,788,170
96	Northern Ute (Whiterocks)	8	63	241,000	66,029,170
97	Wh. Mountain Apache (Cibecue Rodeo)	9	62	171,000	66,200,170
98	Hopi (Second Mesa)	9	62	257,700	66,457,870
99	Hopi (Polacca II)	9	62	880,300	67,338,170
100	Chemehuevi	9	61	64,464	67,402,634
101	Holy Cross	10	61	450,000	67,852,634
102	Chickasaw Nation of Oklahoma	6	61	750,000	68,602,634
103	Kaltag	10	60	588,000	69,190,634
104	Big Pine Band of Paiute	9	60	767,300	69,957,934
105	Hopi (Mishongnovi)	9	59	305,200	70,263,134
106	Pueblo de Acoma (Acomito North)	6	58	1,556,341	71,819,475
107	Conf. Salish & Kootenai (Turtle Lake)	8	57	350,000	72,169,475
108	Northern Arapaho	8	56	534,400	72,703,875
109	Southern Ute	8	53	563,129	73,267,004
110	Santo Domingo Tribe of New Mexico	6	52	1,500,000	74,767,004
111	Turtle Mountain Chippewa	8	51	403,600	75,170,604
112	Rosebud Sioux	8	51	650,000	75,820,604

Rank	Tribe Name	Region No.	Score	Project cost	Cumulative cost
113	Northern Cheyene	8	50	200,000	76,020,604
114	White Mountain Apache (Sewer ext.)	9	50	61,000	76,081,604
115	Tohono O'Odham (Santa Rosa Vil)	9	50	260,000	76,341,604
116	Rosebud Sioux (St. Francis)	8	50	400,000	76,741,604
117	White Mountain Apache (Flats)	9	50	814,000	77,555,604
118	Tohono O'Odham (Pisinemo)	9	49	379,000	77,934,604
119	Yakima	10	47	72,500	78,007,104
120	Rosebud Sioux (Spring Creek)	8	46	100,000	78,107,104
121	San Carlos Apache (Septic Tanks)	9	45	78,782	78,185,886
122	Gila River (Sacaton)	9	45	100,000	78,285,886
123	Hopi (Polacca III)	9	45	629,100	78,914,986
124	Conf. Salish & Kootenai (Woodcock)	8	43	325,000	79,239,986
125	Sault Ste. Marie Tribe of Chippewa Ind	5	42	52,470	79,292,456
126	Gila River (Septic Program)	9	42	58,650	79,351,106
127	Coeur D'Alene (Plummer)	10	41	24,000	79,375,106
128	Sisseton-Wahpeton Sioux	8	41	160,000	79,535,106
129	Gila River (Blackwater Community)	9	40	473,280	80,008,386
130	Tohono O'Odham (Chuichu)	9	40	1,880,000	81,888,386
131	Northern Ute (Randlett)	8	39	161,400	82,049,786
132	San Carlos Apache (Baylas)	9	39	371,280	82,421,066
133	Northern Ute (Yellowstone)	8	36	102,800	82,523,866
134	Skokomish	10	35	1,200,000	83,723,866
135	Cocopah Indian Tribe	9	33	561,764	84,285,630
136	Duck Valley Owyhee	9	32	667,000	84,952,630
137	Standing Rock Sioux	8	31	283,465	85,236,095
138	Squaxin	10	29	75,000	85,311,095
139	Hoopa Valley	9	28	1,600,000	86,911,095
140	Yankton Sioux	8	27	478,800	87,389,895
141	Navajo (Coconino)	9	27	525,300	87,915,195
142	Navajo (Kayenta-Demehosto)	9	25	137,244	88,052,439
143	Yankton Sioux	8	24	308,000	88,360,439
144	Hopi (Bacavi)	9	23	75,600	88,436,039
145	Navajo (Coconino)	9	23	92,400	88,528,439
146	Navajo (Rough Rock)	9	23	155,000	88,683,439
147	Hopi (Industrial Park)	9	22	360,500	89,043,939
148	Sata Rosa Ranchoria	9	20	379,830	89,423,769
149	Washoe	9	20	397,000	89,820,769
150	White Mountain Apache (Ski Resort)	9	19	60,000	89,880,769
151	Coeur D'Alene (Desmet)	10	18	49,000	89,929,769
152	Nooksack	10	16	40,000	89,969,769
153	Navajo (Tuba City)	9	16	555,000	90,524,769
154	Navajo (Chinle)	9	14	421,000	90,945,769
155	Navajo (Kayenta)	9	12	500,000	91,445,769
156	Chickasaw Nation of Oklahoma	6	6	750,000	92,195,769
157	Chickasaw Nation of Oklahoma	6	6	1,000,000	93,195,769
158	South Naknek	10	.....	331,000	93,526,769

*Project funded by IHS.

[FR Doc. 90-49 Filed 1-2-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Renewal without change.

Title: Certified Statement—Semiannual Assessment Due From Bank Insurance Fund Members.

Form Number: FDIC 6420/07, 6420/10, 6420/11.

OMB Number: 3064-0057.

Expiration Date of Current OMB Clearance: 03/31/90.

Frequency of Response: Semiannually.

Respondents: Insured depository institutions that are members of the Bank Insurance Fund (BIF).

Number of Respondents: 13,464.

Number of Responses per Respondent: 2.

Total Annual Responses: 26,928.

Average Number of Hours per Response: 1.

Total Annual Burden Hours: 26,928.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before March 5, 1990.

ADDRESSES: A copy of the submission may be obtained by calling or writting the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the period of use of the forms filed by insured depository institutions that are members of the Bank Insurance Fund (BIF) certifying the semiannual assessment due under the provisions of section 7 of the Federal Deposit Insurance Act. The forms used for the certified statement show the deposit liabilities, less authorized deductions, the computation of the assessment base and the amount of the assessment due

for each semiannual assessment period involved.

Dated: December 27, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-35 Filed 1-2-90; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Oakland Terminal

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573. within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200312

Title: Port of Oakland Use Agreement.

Parties:

Port of Oakland (Port)

Hapag Lloyd A.G. d/b/a Euro-Pacific Service

Compagnie Generale Maritime

Incotrans B.V.

Sea-Land Service. Inc.

P & O Containers (TFL) Ltd. d/b/a Trans Freight Lines,

Collectively (PARTIES)

Synopsis: The Agreement grants the Parties a nonexclusive right to use certain assigned premises at the Port's Charles P. Howard Terminal, as their published regularly scheduled Northern California port of call for the berthing of their vessels (vessels owned or operated by the Parties). The Parties will also use the assigned premises for the loading and discharging of cargoes and operations supplemental thereto in Parties all water North Europe-Pacific Coast Service.

By Order of the Federal Maritime Commission.

Dated: December 27, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 90—8 Filed 1-2-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Interstate Bank of Fargo, N.A., and Affiliates Employee Stock Ownership Plan; 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 no later than January 22, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Interest Bank of Fargo, N.A., and Affiliates Employee Stock Ownership Plan, Fargo, North Dakota; to become a bank holding company by acquiring an additional 25.13 percent of the voting shares of First Interstate of North Dakota Inc., Fargo, North Dakota, and thereby indirectly acquire First Interstate Bank of Fargo, N.A., Fargo, North Dakota.

Board of Governors of the Federal Reserve System, December 27, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-23 Filed 1-2-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Ambulatory and Hospital Care Statistics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the NCVHS Subcommittee on Ambulatory and Hospital Care Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2), of the Public Health Service Act, as amended, announces the following meeting.

Name: NCVHS Subcommittee on Ambulatory and Hospital Care Statistics.

Time and Date: January 18-19, 1990, 9 a.m.-5 p.m. (both days).

Place: Room 337A-339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to receive reports on data systems and research concerned with patient-provider encounters in ambulatory and hospital care statistics and to consider the need to review and revise the Uniform Hospital Discharge Data Set.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone number (301) 436-7050.

Dated: December 27, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-45 Filed 1-2-90; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's

advisory committees. MEETINGS: The following advisory commitee meetings are announced:

Gastroenterology-Urology Devices Panel

Date, time, and place. January 18, 1990, 8:30 a.m., First Floor Conference Rm., Piccard Bldg., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; closed presentation of data, 4 p.m. to 4:30 p.m.; Ruth W. Hubbard, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1220.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open pubic hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 15, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for renal extracoporeal shockwave lithotripters and possibly other urological devices.

Closed presentation of data. The committee may discuss trade secret or confidential commerical information regarding the premarket approval applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophthalmic Devices Panel

Date, time, and place. January 25 and 26, 1990, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, January 25, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; open public hearing, January 26, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Daniel W.C. Brown, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 6, 1990, and submit a brief statement of the general nature of the evidence of arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 25, 1990, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses (IOL's), and other class III surgical or diagnostic devices, and may discuss specific PMA's for these devices. If discussion of all pertinent IOL's or other class III surgical or diagnostic device issues are not completed, discussion will be continued the following day. On January 26, 1990, the committee will discuss PMA's for contact lenses and other devices and requirements for PMA approval.

Closed committee deliberation. The committee may discuss trade secret or confidential commercial information relevant to PMA's for IOL's, surgical or diagnostic devices, contact lenses or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 522b(c)(4).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 25 and 26, 1990, 8:30 a.m., Bldg. 31, Conference Rm. 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, January 25, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; closed committee deliberations, 9:30 a.m. to 10:45 a.m.; open committee discussion, 10:45 a.m. to 12:15 p.m.; closed committee deliberations, 1:15 p.m. to 2:45 p.m.; open committee discussion, 2:45 p.m. to 5:15 p.m.; open committee discussion, January 26, 1990, 8:15 a.m. to 10 a.m.; closed committee deliberations, 10 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 3:30 p.m.; Jack Gertzog, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 11, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 25, 1990, 10:45 a.m. to 12:15 p.m., the committee will discuss clinical data from varicella vaccine studies; 2:45 p.m. to 5:15 p.m., other product license applications are still under consideration for this portion of the meeting. An amended **Federal Register** notice may be published when a decision is made. On January 26, 1990, 8:15 a.m. to 10 a.m., the committee will review the intramural research program: "Laboratory of Bacterial Toxins and the Laboratory of Cellular Physiology," Center for Biologics Evaluation and Research (CBER); 11 a.m. to 3:30 p.m., the committee will discuss influenza vaccine formulation for the 1990-1991 flu season.

Closed committee deliberations. On January 25, 1990, the committee will review trade secret or confidential commercial information relevant to pending product license applications in CBER. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)). On January 26, 1990, the committee will review part of the intramural research program in CBER. This session of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with this research program, disclosure of which would constitute a clearly

unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Circulatory System Devices Panel

Date, time, and place. January 29 and 30, 1990, 8:30 a.m., Rm. 503A/529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC

Type of meeting and contact person. Open public hearing, January 29, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; open public hearing, January 30, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1205.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 15, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for several mechanical and energy-emitting angioplasty devices. There will also be discussion and finalization of the Doppler ultrasound protocol for use in prosthetic heart valve characterization as an alternative to the catheter technique.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guidelines (subject C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details of the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or

devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. I), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 26, 1989.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-30382 Filed 12-27-89; 3:38 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-060-4351-12]

Cancellation of Environmental Statement Notice for Moab District, UT

December 20, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation notice, environmental statement, Moab District, Utah.

SUMMARY: This action will cancel a notice published in the **Federal Register** on December 14, 1989 (Vol. 54, No. 239, Page 51327) concerning the availability of a draft environmental assessment of the Utah Division of Wildlife Resources' proposed capture of 20 desert bighorn sheep from the Sid's Mountain Wilderness Study Area.

FOR FURTHER INFORMATION CONTACT: Jim Dryden, Bureau of Land Management, San Rafael Resource Area, 900 North 700 East, Price, Utah 84501 or Moab District Office, P.O. Box 970, Moab, Utah 84532.

Kenneth V. Rhea,

Associate District Manager.

[FR Doc. 90-57 Filed 1-2-90; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-060-90-4333-NPNR]

Intent To Prepare National Recreation Area Feasibility Study

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare national recreation area feasibility study.

SUMMARY: The Wyoming Bureau of Land Management (BLM) is conducting a study to determine the feasibility of designating an area along the North Platte River in Carbon and Natrona counties of Wyoming as a national recreation area.

DATES: The deadline for scoping comments is January 26, 1990. Additional opportunities for public comment will be afforded interested parties and may be sent at any time. The study is scheduled to be completed by September 30, 1990.

ADDRESSES: Comments should be sent to the Bureau of Land Management (NPNR), 1701 East "E" Street, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: Don Whyde at the above address, or phone (307) 261-76000 (FTS 329-7600).

SUPPLEMENTARY INFORMATION: The study officially began November 1, 1989, and is to be completed by September 30, 1990. The report will be submitted to the Wyoming BLM State Director and the Director, BLM, for review before it is submitted with a finding to Congress. Designations of national recreation areas are made only by Congress. The study is to address all uses, and a designation would incorporate existing rights and uses. Current uses include several forms of outdoor recreation; livestock grazing; wildlife habitat management; irrigation storage and power production; coal mining; and others. There is a heavy concentration of recreation and seasonal homes near Alcova Reservoir within the study area.

The BLM currently seeks comments that will help define issues and the scope of the study. Data and information that will provide knowledge of existing and potential recreation-oriented resource uses and other existing and projected resource uses are requested from interested publics.

The study team also seeks comments on what the study boundary should be. The area under study stretches from the southern end of Seminoe Reservoir in Carbon County north to Gray Reef Reservoir in Natrona County. The area includes Seminoe, Pathfinder, Alcova, and Gray Reef reservoirs and related portions of the North Platte River.

James W. Monroe,

District Manager.

[FR Doc. 90-59 Filed 1-2-90; 8:45 am]

BILLING CODE 4310-22-M

Montana

[MT-930-09-4333-12]

Notice of Montana Off-road Vehicle Designations

AGENCY: Butte District Office, Bureau of Land Management, Interior.

ACTION: Notice of off-road vehicle designation decision.

Decision: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR 8340. The following described lands under the administration of the Bureau of Land Management are designated as open, limited, or closed to off-road motorized vehicle use pursuant to the provision of 43 CFR 8342.1.

BLM lands managed by the Headwaters Resource Area and covered by this regionalized travel plan total 89,808 acres. Travel designations for these lands are included in portions of the Headwaters Resource Management Plan and the Dillon Management Framework Plan. These lands lie within Beaverhead, Deerlodge, Jefferson and Silver Bow Counties, Montana.

BLM lands managed by the Dillon Resource Area and covered by this regionalized travel plan total 904,898 acres. Travel designations for these lands are included in the Dillon Management Framework Plan. These lands lie within Beaverhead and Madison Counties, Montana.

These designations are revisions to the Federal Register Notice Published in Vol. 49, No. 208 on Thursday, October 25, 1984. These revisions are necessary to more efficiently manage off-road vehicles on public lands and to coordinate off-road vehicle travel management with neighboring Beaverhead and Deerlodge National Forest lands. Comments received from thirteen public open houses and numerous written responses influenced the changes made in the 1984 designations. This designation order supersedes all other off-road vehicle travel designations for these areas. These designations are published as final, effective immediately, and will remain in effect until rescinded or modified by the authorized officer. These revisions do not affect other restrictions in the 1984 Federal Register Notice which will remain in effect until rescinded or modified by the authorized officer. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Appeals.

I. *Open Designation*—Areas which are designated as open comprise approximately 46,573 acres in Headwaters Resource Area and 694,552 acres in Dillon Resource Area.

II. *Limited Designation*—Areas which are designated as limited comprise approximately 29,499 acres in Headwaters Resource Area and 182,602 acres in Dillon Resource Area. Limited designation was determined appropriate to protect the resources of the public lands, to promote the safety of all users of the public lands, and to minimize conflicts among various uses of the public lands. The following identifies changes to this closure category: areas added, revised or dropped; type of restriction on motorized vehicle travel; the specific area/areas where the restriction occurs; the affected acreage; and a brief rationals for each affected area.

A. Headwaters Resource Area

1. Closed to all motorized vehicles yearlong except on designated routes.

a. Humbug Spires—Moose Creek Road will be open to all motorized vehicle travel yearlong from Interstate 15 exchange to the parking lot at the Humbug Spires Wilderness Study Area boundary (0 acres)—to provide yearlong recreational opportunities associated with the area.

b. Humbug Spires—MacLean Creek Vehicle Way will be closed from December 1 to May 15 from Humbug Spires WSA parking lot to the Deerlodge National Forest boundary between Sections 9 and 16, T1S, R8W (0 acres)—to provide additional recreational opportunities and to establish equitable access for all users.

2. Closed to motorized vehicles from October 15 to December 15.

a. Camp Creek—Little Camp Creek area (626 acre addition)—to improve elk security, reduce soil erosion and limit the spread of noxious weeds.

B. Dillon Resource Area

1. *Tendoy Mountains Area:*

a. *Muddy Creek:* There are 2,200 acres of Montana State lands in Muddy Creek now under BLM ownership. Area restriction will be changed to restrict motorized vehicles to designated routes during the period of May 15 to December 1. The entire area, including designated routes, will be closed to motorized vehicles during the period of December 1 to May 15. This area restriction will apply to all BLM lands in Muddy Creek, including Hidden Pasture. *Reason:* to consolidate and simplify restriction on existing and newly acquired lands. *Total acres* in the closure area: 21,212.

b. *Dixon Mountain:* The travel restriction on 1,410 acres of BLM land east of Dixon Mountain and north of the Dixon Mountain road will be dropped. *Reason:* enhance recreation opportunities. *Total acres* in the closure area: 1,410.

2. *Centennial Area:*

a. *Clover Creek Divide:* The area restriction involving 950 acres of BLM lands in T13S, R5W and Sec. 1, T13S, R6W will be dropped. *Reason:* coordination with USFS. *Total acres* in the closure area: 950.

b. *Price/Peet Creek Area:* A proposed cooperative management agreement with the Montana Department of State Lands (DSL) is under consideration by DSL and the BLM for the western portion of the Price/Peet Creek area. If the proposal is agreed to by both agencies, all BLM and DSL lands located south and west of the main Price/Peet Creek Road will be closed to all motorized vehicles during the period October 15 to May 15 except for a designated route along the East Fork of Corral Creek which crosses BLM and DSL lands which will be closed to all motorized vehicles during the period of December 1 to May 15. *Reason:* provide a better basis to integrate public access needs and meet management objectives to maintain elk security during the hunting season and winter game range period, and to resolve use conflicts. If no agreement is established, the existing BLM travel restrictions will remain in place.

Two additional designated routes will be added to the Price/Peet Creek areas. In the Price Creek area a designated route will be located from the Lakeview Road south to a private inholding in Sections 5 and 6, T15S, R4W. An additional designated route will be added to the eastern end of the Price Creek Road through Section 2, T15S, R4W and through and additional 200 acres of BLM land in T14S, R4W, Sections 34 and 35 which will be added to the closure. These additional designated routes will be closed to all motorized vehicles during the period of December 1 to May 15. *Total acres* in the closure area: 17,157.

3. *Horse Prairie Creek Area:*

a. *Sheser Creek Area:* The area restriction will be changed to one in which all motorized vehicles are restricted to designated routes during the period of October 15 to December 1. The designated route will be the main Sheser Creek Road. *Reason:* big game security during the hunting season and erosion control. *Total acres* in the closure area: 2,440.

4. *Gravelly Range Area:*

a. *Axolotl Lakes Area:* The road from the center of Section 18, T7S, R2W to the NE¼ Section 25, T7S, R2W, will be dropped as a designated route to all motorized vehicles except snowmobiles which may be operated on the road during the period of December 1 to May 15. *Reason:* resource damage in a Wilderness Study Area (WSA) and policy guidelines that restrict extensive maintenance and reconstruction in a WSA. *Total acres* in the closure area: 7,804.

5. *East Pioneer Mountains Area:*

a. *Argenta Area:* The existing 5,944-acre restriction area was revised to include only the 3,644 acres of BLM land actually within the Dillon Municipal watershed. *Total acres* in the closure area: 3,644.

III. *Closed Designation*—Areas which are closed are comprised of 13,736 acres in Headwaters Resource Area and 27,744 acres in Dillon Resource Area.

Detailed maps showing the location of the above-described designations are available from the offices listed below.

ADDRESSES: For further information about these designations, contact any one of the following Bureau of Land Management Offices:

District Manager, Butte District Office, P.O. Box 3388, Butte, Montana 59702, (406) 494–5059

Area Manager, Dillon Resource Area, P.O. Box 1048, Dillon, Montana 59725, (406) 683–2337

Area Manager, Headwaters Resource Area, Butte, Montana 59702, (406) 494–5059

December 21, 1989.

Orval L. Hadley,

Acting District Manager.

[FR Doc. 90–58 Filed 1–2–90; 8:45 am]

BILLING CODE 4310-DN-M

Bureau of Reclamation

Lake Berryessa Reservoir Area Management Plan (RAMP), Napa County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearing for a draft environmental impact statement (DEIS): INT–DES–89–30.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended), the Bureau of Reclamation (Reclamation) announces the availability of a draft Environmental Impact Statement (EIS) which addresses the impacts from several land management, water surface

management, and concession management actions Reclamation is considering for eventual adoption in a Reservoir Area Management Plan (RAMP) for Lake Berryessa.

At workshops held in April and June of 1987 and during an additional commenting period (June 28–August 1, 1988), the public was afforded an opportunity to comment on a variety of actions being considered during Reclamation's initial planning efforts for the RAMP. Reclamation considered input the public provided in order to determine the significant issues and impacts which were analyzed and included in the draft EIS.

DATES: Following availability of the draft EIS, the public will have ninety (90) days to make comments on the actions and issues identified in the document. Written comments should be sent to the Lake Berryessa Recreation Office at the address given below.

Two public hearings have been scheduled in the draft EIS to solicit public comment on the project. The hearings will be held on Saturday, February 10, 1990, from 12:00 p.m. to 5:00 p.m. at the Best Western Motor Hotel, 920 University Avenue, Berkeley, California; and on Tuesday, February 13, 1990, from 7:00 p.m. to 10:30 p.m. at the Clarion Inn, 3425 Solano Avenue, Napa, California.

ADDRESSES: Single copies of the DEIS may be obtained on request to the Regional Director at the address below: Regional Director, Bureau of Reclamation, Mid-Pacific Region (MP-750), 2800 Cottage Way, Sacramento CA 95825; Telephone: (707) 966–2111.

Copies of the DEIS are available for public inspection and review at the following locations: Bureau of Reclamation, Environment and Planning Branch, U.S. Department of Interior, 18th and C Streets, NW., Room 7455, Washington DC 20240, Telephone: (202) 343–4662.

Libraries:

Bureau of Reclamation Library, 2800 Cottage Way, Sacramento, CA 95825
Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and Kipling, Building 67, room 167, Denver, CO 80225, Telephone: (303) 236–6963
Fairfield-Suisun Community Library, 1150 Kentucky, Fairfield, CA 94533
Vacaville Public Library, 680 Merchant, Vacaville, CA 95688
Napa Public Library, 1150 Division St., Napa, CA 94558
Sacramento Central Library, 828 I Street, Sacramento, CA 95814
Main Library, Civic Center, Larkin & McAlister, San Francisco, CA 94101
San Jose Main Library, 180 W. San Carlos, San Jose, CA 95113
Oakland Public Library, 125 14th St., Oakland, CA 94617
University of Davis, Shields Library, Government Documents, Davis, CA 95616

FOR FURTHER INFORMATION CONTACT: Mr. Ron Brockman, Outdoor Recreation Planner, Bureau of Reclamation, Mid-Pacific Region (MP–401), 2800 Cottage Way, Sacramento, California 95825, Telephone: (916) 978–5313; or Mr. Vern Smith, Recreation Manager, Bureau of Reclamation, lake Berryessa Recreation Office, P.O. Box 9332, Spanish Flat Station, Napa, California 94558, Telephone: (707) 966–2111.

SUPPLEMENTARY INFORMATION: Lake Berryessa has been in existence since 1957, after the impoundment of Putah Creek by Monticello Dam. Managed initially by Napa County until 1975, and now by Reclamation, recreation lands at the lake have experienced use changes ranging from dispersed use of undeveloped lands to highly concentrated development and use in seven resort areas. A Public Use Plan (PUP) was prepared by the National Park Service which designated certain areas for development with suggestions regarding specific types of improvements and their locations. over the years, improvements were made which did not always follow the original designations of areas and uses. In addition, some lands were never fully developed as specified in the PUP. To compound this situation, the demand for day use and other short-term recreation facilities has increased while most development has been oriented toward long-term mobile home and travel trailer parks. In view of the above and recognizing the need to further identify the long-range needs and uses of Lake Berryessa, Reclamation has initiated a planning effort which will culminate in a RAMP, updating and revising the earlier PUP.

The draft EIS prepared by Reclamation analyzes the impacts of various actions which are being considered for inclusion and adoption in the RAMP for Lake Berryessa. Key actions involve the development of additional short-term recreation facilities, establishment of a houseboat program, removal and protection of facilities subject to flooding, actions to promote safer and varied water use activities, removal of long-term sites in key shoreline locations during resort reorganizations, expansion of visitor information services, increases in law enforcement presence, establishment of a fish and wildlife management area, and other development and master planning actions.

Environmental consequences of the actions analyzed for various resource categories include soils and topography, water quality, vegetation and wildlife, fish resources, recreational uses, land uses, cultural resources, traffic and circulation, scenic resources, and socioeconomics (recreation visitors, resort tenants, resort owners, and local economy).

The public hearings on the DEIS is designed to receive views and comments from interested organizations and individuals relating to the environmental impacts of the Lake Berryessa Reservoir Area Management Plan. Those wishing to speak at the hearings will be accommodated on a first-come, first-served basis. Speaking time will be limited. Written comments from those wishing to supplement their oral presentations at the hearing should be received by march 2, 1990, in order to be included in the hearing record.

Dated: December 18, 1989.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 90–46 Filed 1–2–90; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits 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. 1531, *et seq.*):

PRT 744922

Applicant: Curt Uptain, Sanger, CA

The applicant requests a permit to live-trap Tipton Kangaroo rats (*Dipodomys n. nitratoides*) in Kern County, California. One project is for the Mojave pipeline and will require verification trapping only. The second project is for the Department of Corrections Delano Prison Facility and will require trapping and relocating the kangaroo rats.

PRT 744916

Applicant: Dr. Harold B. White, Newark, DE

The applicant requests a permit to import egg samples of wild and captive tuatara (*Sphenodon punctatus*), from New Zealand, for the purpose of embryonic research.

PRT 745226

Applicant: Ronald G. Clarke, Juneau, AK

The applicant requests a permit to import one male peregrine falcon (*Falco peregrinus*) from West Germany, for purposes of falconry and captive breeding. The falcon to be imported was born in captivity.

PRT 745218

Applicant: Ringling Bros-Barnum & Bailey Circus, Vienna, VA

The applicant requests a permit to import one captive-bred male tiger (*Panthera tigris*) from Clubb-Chipperfield Ltd., United Kingdom, for circus performances in the United States during which the applicant intends to educate the public with regard to the tiger's ecological role and conservation needs.

PRT 745292

Applicant: Lincoln Park Zoological Gardens, Chicago, IL

The applicant requests a permit to import one captive born male maned wolf (*Chrysocyon brachyurus*) from Howletts and Port Lympne, the John Aspinall Zoo Parks and Gardens, United Kingdom, for captive propagation and display purposes.

PRT 745921

Applicant: New York Zoological Society, Bronx, NY

The applicant requests a permit to import one pair of captive-hatched white-naped cranes (*Grus vipio*) from the Rotterdam Zoo, The Netherlands, for purposes of captive propagation and display.

PRT 745289

Applicant: New York Zoological Society, Bronx, NY

The applicant requests a permit to import two unsexed captive-hatched white-naped cranes (*Grus vipio*) from Vogel Park Walsrode KG, West Germany, for purposes of captive propagation and display.

PRT 745223

Applicant: John Stanley & Associates, Inc., Scotts Valley, CA

The applicant requests a permit to take Santa Cruz long-toed salamanders (*Ambystoma macrodon croceum*) along the Pajaro River near Watsonville, California, for survey purposes. The take activities will consist of possible harassment due to the turning over of boards, logs, etc., and capturing larval salamanders and eggs with dip nets. Such specimens will be immediately released. The purpose of the survey is to document whether or not this species occurs in the flood plain of the Pajaro River. Preliminary surveys will be conduced in the Valencia Pond area and Ellicott Pond Area.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) in Room 430, 4401 N. Fairfax Drive, Arlington, VA 22201, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, VA 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: December 27, 1989.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-4 Filed 1-2-90; 8:45 am]

BILLING CODE 9310-55-M

National Park Service

Intent To Prepare an Environmental Impact Statement; Pictured Rocks National Lakeshore, MI

Summary

Notice is hereby given that the National Park Service (NPS) will prepare an Environmental Impact Statement (EIS), in accordance with section 102 of the National Environmental Policy Act of 1969, for the Beaver Basin Rim Road along with upgrading certain existing roads at Pictured Rocks National Lakeshore, Alger County, Michigan. The EIS will assess the potential impacts of a 12.2-mile scenic road development proposed for construction along the rim of Beaver Basin at Pictured Rocks National Lakeshore. The statement will assess potential environmental impacts on visitor use, primitive character of the area, threatened/endangered species, wildlife, and other natural and cultural resources. Also, potential impacts resulting from eventual improvement of the adjacent segments of Alger County Road (H-58) within the lakeshore boundaries will be analyzed.

Initial issues to be addressed will include noise, wildlife, park visitor experience, primitive park setting, commercial traffic, visitor facilities, and cultural resources.

The Act of October 15, 1966, 80 Stat. 922, 16 USC section 460s *et seq.*, authorizing the creation of the lakeshore, the 1968 and the 1972 Master Plans and the 1981 approved General Management Plan (GMP) included the concept of developing a scenic drive within the national lakeshore. The GMP identified an area between Legion Lake and Twelvemile Beach as the location for the construction of this scenic road. This EIS will evaluate a range of alternative road alignments and corridors, including a no action alternative.

Interested and affected Federal, State, and local agencies, interested groups and individuals are invited to participate in determining the scope of the EIS, issues and alternatives, and impact topics to be analyzed in the EIS.

To assist the NPS in defining issues, identifying impact topics, and critical resources affected, a series of public scoping workshop meetings will be conducted. Representatives of the NPS will be available to discuss issues, resource concerns, and the planning process at each of these meetings. Times and dates of these meetings will be announced at a later date through news releases.

Written comments and suggestions concerning preparation of the EIS should be sent to: Superintendent, Pictured Rocks National Lakeshore, Munising, Michigan 49862 by February 16, 1990.

Dated: December 21, 1989.

William W. Schenk,

Acting Regional Director, Midwest Region, National Park Service.

[FR Doc. 90-9 Filed 1-2-90; 8:45 am]

BILLING CODE 4310-70-M

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Subsistence Resource Commission for Gates of the Arctic National Park.

The following agenda items will be discussed:

(1) Introduction of members and guests.
(2) Review of minutes from last meeting.
(3) Report on chairpersons' meeting in Anchorage (December 1989).
(4) Update on activities in Gates of the Arctic NP&P.
(5) Comments by the State's representative.
(6) Subsistence Hunting Plan
  a. Review of past recommendations
  b. Public discussion and comment
  c. Redraft of recommendations
(7) Old and new business.

DATE: The meeting will begin at 9 a.m. on Saturday, January 27, 1990 and conclude at 5 p.m. The meeting will reconvene at 9 a.m. on Sunday, January 28, 1990 and conclude at 4:30 p.m.

ADDRESS: The meeting will be held at the office of Gates of the Arctic National Park and Preserve (in the Doyon Building), 201 First Avenue, Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Roger Siglin, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707. Phone 465-0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commission is authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Paul F. Haertel,

Acting Regional Director.

[FR Doc. 90-12 Filed 1-2-90; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 16, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 16, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 18th day of December 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AT&T, Inc. (CWA)	King of Prussia, PA	12/18/89	11/30/89	23,716	Telecommunication Equip.
Aalfs Mfg. Co. (UFCW)	Storm Lake, PA	12/18/89	12/4/89	23,717	Jeans & Jackets
After Six, Inc. (Workers)	Charlottesville, VA	12/18/89	12/5/89	23,718	Mens' Formal Shirts
Alexandra Fashions (ILGWU)	N Bergen, NJ	12/18/89	12/1/89	23,719	Ladies' Coats & Jackets
Alorna Coat (Workers)	Hoboken, NJ	12/18/89	12/1/89	23,720	Coats & Suits
Camparii Fashions, Inc. (ILGWU)	Newark, NJ	12/18/89	12/8/89	23,721	Ladies' Coats
Center Fashion, Inc. (ILGW)	Union City, NJ	12/18/89	12/1/89	23,722	Ladies' Wool Coats
Charm Knitting, Mills(Workers)	Passaic, NJ	12/18/89	12/4/89	23,723	Mens' & Womens' Knit Sweaters
Chrysler Corp. (UAW)	Kokomo, IN	12/18/89	12/4/89	23,724	Transmissions
Chrysler Corp (UAW)	Detroit, MI	12/18/89	12/4/89	23,725	Passenger Cars
Chrysler Corp. (UAW)	Toledo, OH	12/18/89	12/4/89	23,726	Automobiles, Trucks & Parts
Chrysler Corp. (UAW)	Huntsville, AL	12/18/89	12/4/89	23,727	Automotive Electronic Components
Clara Fashions (ILGW)	Jersey City, NJ	12/18/89	12/1/89	23,728	Ladies' Coats &
Cliffside (Workers)	Brooklyn, NY	12/18/89	11/20/89	23,729	Knitwear Companies
Consolidated Thermo Plastics	Kenilworth, NJ	12/18/89	12/6/89	23,730	Thermo Plastic Film
Dana Engine Products (UAW)	Richmond, IN	12/18/89	12/8/89	23,731	Piston Rings
Dell Coat Co., Inc. (ILGWU)	Union City, NJ	12/18/89	12/1/89	23,732	Coats & Jackets
Dow Brands, Inc. (Workers)	Piscataway, NJ	12/18/89	12/6/89	23,733	Plastic Bottles
Duquesne Slag Products Co. (Workers)	Pittsburgh, PA	12/18/89	12/1/89	23,734	Slag, Scrap, Waste process from Steel
Elf-Aquintaine Petroleum (Workers)	Houston, TX	12/18/89	11/29/89	23,735	Oil & Gas
Enza Fashion, Inc. (ILGW)	Hoboken, NJ	12/18/89	12/1/89	23,736	Ladies' Suits & Coats
Evanite Fiber Corps (IAM)	Corvallis, OR	12/18/89	12/7/89	23,737	Hardboard & Panels
Fiesta Apparel Inc. (Workers)	Hoboken, NJ	12/12/89	12/1/89	23,738	Ladies' Coats
Flexible Controls Corp. (UAW)	Dearborn, MI	12/18/89	12/7/89	23,739	Cable Assemblies
Floraham Park Fashions, Inc. (ILGWU)	Bayonne, NJ	12/18/89	12/1/89	23,740	Ladies' Dresses
Gregg Originals, Inc. (ILGWU)	Hoboken, NJ	12/18/89	12/1/89	23,741	Coats & Suits
Harris Graphics Corp. (Company)	Kennedale, Tx	12/18/89	12/1/89	23,742	Printing Press Components
Health-Tex, Inc. (Workers)	New York, NY	12/18/89	11/27/89	23,743	Children's Clothing
IRC, Inc. (Company)	Newland, NC	12/18/89	12/4/89	23,744	Resistors
IRC, Inc. (Company)	Boone, NC	12/18/89	12/4/89	23,745	Resistors
Isa Fashions (UGWA)	Hoboken, NJ	12/18/89	12/1/89	23,746	Coats & Suits
J.B. Coat Corp. (Workers)	Hoboken, NJ	12/18/89	12/1/89	23,747	Ladies' Overcoats
Kayem Textiles (Workers)	Guttenberg, NJ	12/18/89	12/1/89	23,748	Lace
Malouf Ranch & Livestock, Co.	Dallas, TX	12/18/89	12/5/89	23,749	Beef Cattle
N.L. Chemicals (Company)	Highstown, NJ	12/18/89	12/7/89	23,750	Titanium Dioxide
Rose Lee Mfg, Inc. (Workers)	Brooklyn, NY	12/18/89	12/7/89	23,751	Children's Sweaters
Sand Springs Oil & Gas (Company)	Tulsa, OK	12/11/89	11/28/89	23,752	Oil & Gas
Shape West, Div. (Company)	Tucson, AZ	12/18/89	12/8/89	23,753	Micro Floppy Disks
Sierra Oilfield Service Co. (Workers)	Oklahoma City OK	12/18/89	12/7/89	23,754	Oil & Gas
Stewart Warner & Instrument Corp. (UAW)	Chicago, IL	12/18/89	12/6/89	23,755	Automotive Gauge

[FR Doc. 90-37 Filed 1-2-90; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

White House Conference on Library and Information Services Advisory Committee; Closed Meeting

AGENCY: U.S. National Commission on Libraries and Information Science.

ACTION: Notice of a closed meeting.

SUMMARY: This notice sets forth the schedule and purpose of a forthcoming closed meeting of the White House Conference Advisory Committee Executive Director Selection Subcommittee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: Jan. 18, 1990, 9:00 a.m. to 6:00 p.m.; Jan. 19, 1990, 9:00 a.m. to 12:00 p.m.

PLACE: Washington, DC.

SUPPLEMENTARY INFORMATION: The White House Conference Advisory Committee Executive Director Selection Subcommittee will meet on January 18, and 19, 1990 to review applications for the position of Executive Director of the White House Conference Staff. The meeting will be closed to the public under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. Law 92–463; 5 U.S.C. Appendix 2) and exemption (6) of section 552b(c) of the Government in the Sunshine Act (Pub. Law 94–409; 5 U.S.C. 552b(c)(6)).

Discussion of the applications will include consideration of the qualifications and fitness of the candidates and will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Advisory Committee proceedings, and are available for public inspection at: 1111 18th Street, NW., Suite 302, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: John W.A. Parsons, Special Assistant, White House Conference, 1111 18th Street, NW., Washington, DC 20036, (202) 254–5100.

Dated: December 27, 1989.

Mary Alice Hedge Reszetar,

NCLIS Associate Director, Designated Federal Official.

[FR Doc. 90–33 Filed 1–2–90; 8:45 am]

BILLING CODE 7527-01-W

NATIONAL ENDOWMENT ON THE ARTS AND HUMANITIES

Humanities Panel Advisory Committees; Renewal

The Humanities Panel Advisory Committee is being renewed for an additional two years.

The Chairman, National Endowment for the Humanities, has determined that the renewal of this committee is necessary and in the public interest in connection with the performance of duties imposed upon the National Endowment for the Humanities by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Dated: December 27, 1989.

Catherine Wolhowe,

Advisory Committee Management Officer (Alternate).

[FR Doc. 90–54 Filed 1–2–90; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company, South Carolina Public Service Authority; Issuance of Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–12, issued to South Carolina Electric & Gas Company (the licensee), for operation of the V. C. Summer Nuclear Station, Unit No. 1 (Summer Station), located in Fairfield County, Jenkinsville, South Carolina.

Environmental Assessment

Identification of Proposed Action

The amendment would consist of a change to the operating license to extend the expiration date to August 6, 2022. The proposed license amendment is responsive to the licensee's application dated August 2, 1985, as supplemented March 30, 1988, June 15, 1989, and September 1, 1989. The Commission's staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Dates of Facility Operating License NPF–12, South Carolina Electric & Gas Company, South Carolina Service Authority, V.C. Summer Nuclear Station, Unit No. 1, Docket Number 50–395," dated December 28, 1989.

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed change in expiration date of the Operating License for the Summer Station. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Related to Operation of Virgil C. Summer Nuclear Station, Unit No. 1," NUREG–0719, May 1981, and more recent NRC policy.

Radiological Impacts

The staff concludes that the Exclusion Area, the Low Population Zone and the nearest population center distance will likely be unchanged from those described in the May 1981 Final Environmental Statement (FES). The population living within 50 miles of the plant in 1980 is essentially the same number of people as was projected to live within this area in the FES. In the FES, the staff projected an upward trend in the population of the region for the years 1990 and 2000. For example, for the years 1990 and 2000 the projected populations were 566,750 and 753,000, respectively. However, based on the 1980 census data, the licensee-projected populations for these years are 523,220 and 587,000, respectively.

The additional period of plant operation would not significantly affect the probability or consequences of any reactor accident. Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulations regarding as-low-as-reasonably-achievable (ALARA) limits and are indicative of future releases. The proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operations, the occupational exposures for the Summer Station have been less than the national average for pressurized water reactors. The licensee is striving for further dose reduction utilizing improved ALARA programs, dose-saving plant modifications, and use of robotics to reduce increased doses

from probable increased maintenance and corrosion product build-up.

Accordingly, annual radiological impacts on man, both offsite and onsite, are not more severe than previously estimated in the FES, and the staff's previous cost-benefit conclusions remain valid.

The environmental impacts attributable to transportation of fuel to and waste from the Summer Station, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S-4 of 10 CFR part 51.52. The values in Table S-4 would continue to represent the contribution of transportation to the environmental costs associated with plant operation.

Non-Radiological Impacts

The Commission has concluded that the proposed extensions will not cause a significant increase in the impacts to the environment and will not change any conclusions reached by the Commission in the FES.

Finding of No Significant Impact

The Commission has reviewed the proposed changes to the expiration date of the Summer Station Facility Operating License relative to the requirements set forth to 10 CFR part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to the action, see (1) the application for amendment dated August 6, 1985, as supplemented on March 30, 1988, June 15, 1989, and September 1, 1989, (2) the Final Environmental Statement Related to Operation of Virgil C. Summer Nuclear Station, Unit No. 1, issued May 1981, and (3) the Environmental Assessment dated December 28, 1989. These documents are available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington, DC, and at the Fairfield County Public Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Dated at Rockville, Maryland, this 28th day of December 1989.

For the Nuclear Regulatory Commission.

John J. Hayes, Jr.,

Project Manager, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-176 Filed 1-2-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on January 11-13, 1990 in Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the Federal Register on November 30, 1989.

Thursday, January 11, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, MD

8:30 a.m.-8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will comment on items of current interest.

8:45 a.m.-9:45 a.m.: Containment Performance Improvement Program (Open)—The Committee will review and report on the NRC staff's proposed containment performance improvement program for all light-water reactor containment types except the BWR Mark I containment. Members of the NRC staff will participate in this discussion.

10:00 a.m.-12:00 Noon: Generic Issue B-56. Diesel Reliability and Associated Regulatory Guide 1.9, Rev. 3 (Open)—The Committee will review and comment on the NRC staff's proposed resolution of this generic issue. Members of the NRC staff and the nuclear industry will participate, as appropriate.

1:00 p.m.-1:30 p.m.: Preparation for Meeting with NRC Commissioners (Open)—The Committee will hold a discussion of the topics to be discussed with the NRC Commissioners, including the status of development of containment performance criteria for future plants, activities of the NRC regional staffs, and other safety-related matters.

2:00 p.m.-3:30 p.m.: Meeting with NRC Commissioners (First Floor Commissioners' Conference Room, One White Flint North, Rockville, Md.)—A meeting will be held with the NRC Commissioners to discuss the items noted above.

4:15 p.m.-4:45 p.m.: Future ACRS Activities (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

4:45 p.m.-6:00 p.m.: Modified Enforcement Policy for Hot Particle Exposures (Open)—The Committee will discuss the NRC Staff's plans to implement a related modification of the NRC enforcement policy. Members of the NRC staff and the nuclear industry will participate, as appropriate.

Friday, January 12, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, MD

8:30 a.m.-10:00 a.m.: Interfacing Systems LOCA (Open)—The Committee will discuss the NRC staff's proposed program on the potential for interfacing systems loss of coolant accidents (LOCAs) in nuclear power plants. Members of the NRC staff will participate in this discussion.

10:15 a.m.-11:15 a.m.: Activities of NRC Office for Analysis and Evaluation of Operational Data (Open)—The Committee will meet with the Director, AEOD, to discuss items of mutual interest, including the distribution of AEOD resources among the various program elements, the rationale associated with AIT/IIT activities, and other safety-related matters.

11:15 a.m.-12 Noon: ACRS Subcommittee Activities (Open)—The Committee will hear reports and hold a discussion of assigned ACRS subcommittee activities related to nuclear power plant safety and Committee plans and procedures.

1:00 p.m.-4:00 p.m.: Operating Nuclear Power Plant Incidents and Events (Open/Closed)—The Committee will discuss recent nuclear power plant incidents and events. These incidents and events will include the Arkansas Nuclear One, Unit 2 potential interfacing systems LOCA event (June 26, 1989), the South Texas, Unit 2 diesel generator failure (November 28, 1989), the Braidwood Station, Unit 1 RCS leakage through the RHR Section Relief Valve (Deember 2, 1989), and the Dresden Nuclear Station, Units 2 and 3 inoperable HPCI system (October 23, 1989).

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed.

4:15 p.m.-5:00 p.m.: Appointment of ACRS Members (Open/Closed)—The Committee will discuss the

status of candidates proposed for appointment to the Committee.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

5:00 p.m.–6:00 p.m.: Preparation of ACRS Reports to NRC (Open)—The Committee will discuss proposed reports to NRC regarding items considered during this meeting.

Saturday, January 13, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD

8:30 a.m.–12:00 Noon and 1:00 p.m.–3:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will complete preparation of ACRS reports to NRC regarding items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 27, 1989 (54 FR 39594). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information applicable to matters being discussed (5 U.S.C. 552b(c)(4)) and information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 7:30 a.m. and 4:15 p.m.

Dated: December 27, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–22 Filed 1–2–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Agreement on Government Procurement; Value of Special Drawing Rights

AGENCY: Office of the United States Trade Representative.

ACTION: Under the authority delegated to the United States Trade Representative by sections 1–104 and 1–201 of Executive Order 12260, I hereby determine that effective on January 1, 1990, the dollar equivalent of 130,000 Special Drawing Right units as referred to in the Agreement on Government Procurement and section 1–104 of Executive Order 12260, and as modified by USTR determination on February 14, 1988 (53 FR 3284), is $172,000.00. The $156,000 amount announced effective February 14, 1988 remains in effect through December 31, 1989.

This determination may be modified as appropriate.

FOR FURTHER INFORMATION CONTACT: Beverly Vaughan, Director for Government Procurement, Office of the United States Trade Representative (USTR), 600 17th Street, NW., Washington, DC 20506 (202) 395–3063.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 90–212 Filed 1–2–90; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–17280; 812–7431]

MacKay-Shields Mainstay Series Fund; Notice of Application

December 22, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for amendment of a prior order of exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: MacKay-Shields Mainstay Series Fund consisting of ten series: MacKay-Shields Capital Appreciation Fund; MacKay-Shields Convertible Fund; MacKay-Shields Global Fund; MacKay-Shields Gold and Precious Metal Fund; MacKay-Shields Government Plus Fund; MacKay-Shields High Yield Corporate Bond Fund; MacKay-Shields Money Market Fund; MacKay-Shields Tax Free Bond Fund; MacKay-Shields Total Return Fund; MacKay-Shields Value Fund (collectively, "MacKay-Shields").

Relevant 1940 Act Section: An amended order is requested under section 6(c) to bring a prior order into conformity with Rule 32a–3, promulgated pursuant to section 32(a) of the 1940 Act.

Summary of Application: MacKay-Shields requests an order, pursuant to section 6(c) of the 1940 Act, to amend a prior order. The amended order will bring the prior order into conformity with subsequently enacted Rule 32a–3, thereby allowing the Board of Trustees of MacKay-Shields to select an independent accountant at a meeting held either 30 days before or 90 days after the end of the fiscal year.

FILING DATES: The application was filed on November 16, 1989.

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 Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 22, 1990, and should be accompanied by proof of service on the Applicant, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; on behalf of Applicants, MacKay-Shields Mainstay Series Fund, 51 Madison Avenue, New York, New York 10010, Attention: Brian Kawakami.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511 or Max Berueffy, Branch Chief, (202) 272–3016.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is

available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. MacKay-Shields is organized as a Massachusetts business trust and is registered under the Act as an open-end, management investment company. MacKay-Shields is a "series company" as defined in Rule 18f-2 of the Act. Each series is advised by MacKay-Shields Financial Corporation or Gamma Advisers Ltd.

2. MacKay-Shields is not required by state law to hold annual shareholder meetings and its fiscal year ends August 31. MacKay-Shields is governed by a Board of Trustees of which at least 40 percent of the members are not "interested persons" as defined by section 2(a)(19) of the Act.

3. The Commission issued an order exempting MacKay-Shields from section 32(a)(1) of the 1940 Act (Investment Company Act Release No. 16733, December 30, 1988 ("Prior Order")). The Prior Order permits MacKay-Shields to select an independent accountant at a board of trustees meeting held more than 30 days but not more than 90 days before or after the beginning of its fiscal year ("180 day window").

4. Subsequent to granting of the Prior Order, the Division promulgated Rule 32a-3 (Investment Company Act Release No. 17077, August 28, 1988). Rule 32a-3 provides, among other things, for the selection of an independent accountant at a board of directors meeting held within 30 days before or 90 days after the beginning of the fiscal year (120 day window). The amended order will bring the Prior Order into conformity with Rule 32a-3 by substituting the previously granted 180 day window for a 120 day window. The 120 day window will provide adequate time for the Board of Trustees of MacKay-Shields to utilize a review procedure to select the independent accountant.

5. For the reasons stated above, the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicant, therefore, requests that the SEC issue an order, pursuant to section 6(c) of the 1940 Act, granting the exemption requested.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 90-55 Filed 1-2-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25007]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 22, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 16, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power and Light Company (70-6903)

Jersey Central Power and Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, an electric utility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed a further post-effective amendment to its application in this proceeding under sections 9(a) and 10 of the Act.

By orders dated November 16, 1983, November 19, 1984, July 30, 1985, and June 27, 1986 (HCAR Nos. 23121, 23486, 23773, and 24138), JCP&L was authorized to acquire from time to time until December 31, 1989 up to $15 million of obligations of its electric customers and to incur up to $200,000 of administrative and other related expenses, arising from such customers' participation in JCP&L's Home Energy Loan Program, Solar Water Heating Conversion Program, and Electric Heat Conversion Program (collectively, "Programs").

JCP&L now proposes to acquire obligations arising from such customers' participation in the Programs, through December 31, 1994, in an agregate amount of up to $15 million and to incur aggregate administrative and other related expenses in the amount of up to $500,000. JCP&L states that such obligations will consist of notes evidencing bank loans made by JCP&L customers in connection with the Program.

Maine Yankee Atomic Power Company (70-7638)

Maine Yankee Atomic Power Company ("Maine Yankee"), Edison Drive, Augusta, Maine 04330, a subsidiary of New England Electric System and Northeast Utilities, both registered holding companies, has filed a declaration pursuant to sections 6(a) and 7 of the Act.

By order dated July 18, 1989 (HCAR No. 24925), Maine Yankee was authorized to enter into a Eurodollar revolving credit agreement. Maine Yankee now proposes to enter into and borrow under an amended Eurodollar revolving credit agreement ("Eurodollar Agreement") with a group of international banks for which the Union Bank of Switzerland is acting as agent (collectively, "Eurodollar Banks") through December 31, 1992. Under the Eurodollar Agreement, Maine Yankee will issue, sell and renew promissory notes ("Euro Notes") to the Eurodollar Banks in an aggregate principal amount of up to $35 million at any one time outstanding with maturities of up to one year from the date of issuance.

The Eurodollar Agreement provides that Maine Yankee may select interest periods for each Euro Note of one, three or six months. The interest rate on each revolving credit loan will be a base rate ("Base Rate") that is equal to either (a) the London Inter-Bank Offering Rate ("LIBOR") for the interest period selected, or (b) if by reason of circumstances affecting the Eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, the interest rate shall be determined on the basis of the Eurodollar Banks' actual costs of funding such loan, plus, in the case of either such Base Rate, ⅝%. The Euro Notes will be secured by a second

lien on Maine Yankee's nuclear fuel inventory, the Power Contracts and the Capital Funds Agreements.

Maine Yankee will use the proceeds of Euro Notes for general corporate purposes, including the acquisition of nuclear fuel, the construction, extension or improvement of its facilities, the improvement and maintenance of its services, and to acquire, redeem or retire its securities.

GPU Nuclear Corporation, et al. (70-7669)

GPU Nuclear Corporation ("GPU-Nuclear"), One Upper Pond Road, Parsippany, New Jersey 07054, a wholly owned service subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding company, and GPU, 100 Interpace Parkway, Parsippany, New Jersey 07054, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 90 and 91 thereunder.

By order dated September 5, 1980 (HCAR No. 21708), GPU was authorized to organize GPU-Nuclear as a service company subsidiary responsible for providing safe operation, maintenance, rehabilitation, design, construction, start-up and testing of all nuclear generating facilities owned by GPU system companies, and related research and development. GPU-Nuclear commenced operations on January 1, 1982.

GPU-Nuclear has been responsible for: (1) The operation and maintenance of Three Mile Island Unit No. 1 ("TMI-1") and Oyster Creek ("Oyster Creek") generating units; (2) for the clean-up of Three Mile Island Unit No. 2 ("TMI-2"), which was disabled in an accident on March 28, 1979; [1] and (3) for the monitoring, maintenance and preparation for ultimate decommissioning of the Saxton Nuclear Experimental Corporation ("Saxton") reactor. TMI-1, TMI-2 and Saxton are jointly owned by Jersey Central Power and Light ("JCP&L"), Metropolitan Edison and Pennsylvania Electric Corporation, each a subsidiary company of GPU. Oyster Creek is owned by JCP&L.

In response to an invitation by Westinghouse Electric Corporation ("Westinghouse"), dated June 28, 1989, GPU-Nuclear has submitted a proposal ("Westinghouse Proposal") to provide radiological decontamination and asbestos removal services at the Bettis Atomic Power Laboratory ("Bettis Lab"), West Mifflin, Pennsylvania, for an initial period of one year with options to renew for three succeeding one year periods, on a cost-plus-fixed-fee basis. The Bettis Lab is operated by Westinghouse for the Department of Energy.

In the event that GPU-Nuclear is selected as the contractor, GPU-Nuclear proposes to form a new subsidiary company ("NewCo") for the purpose of carrying out services under the Westinghouse Proposal. GPU-Nuclear also proposes to provide certain services, including accounting and other administrative services, to NewCo, at cost.

It is further proposed that, through December 31, 1992, (1) NewCo issue and sell, and GPU-Nuclear acquire, 100 shares of NewCo common stock, for a total purchase price of $100; and (2) NewCo fund the cost of providing services under the Westinghouse Proposal by borrowing, from time-to-time, for terms not exceeding 270 days, an amount not to exceed the aggregate of $1 million outstanding at any time either from banks or from GPU, such borrowings to be evidenced by the issuance of notes. GPU proposes to lend such amounts at an interest rate equal to GPU's then current cost of borrowed money. Funds borrowed from banks: (1) Would bear interest at a rate, after giving effect to any fees or compensating balance requirements, not exceeding 125% of the lending bank's prime or base rate for commercial borrowing at the date of issuance of the note evidencing such debt; (2) will be prepayable only to the extent provided therein; and (3) will not be issued as part of a public offering.

GPU-Nuclear states that, although completion of current clean-up activities at TMI-2 will reduce the total level of radiological decontamination activities now being conducted by GPU-Nuclear, it expects that there will continue to be a substantial amount of such work performed at the Oyster Creek, TMI-1 and Saxton facilities, as well as at TMI-2. This ongoing work will involve the same kind of activities as those being proposed to Westinghouse and will include the performance of on-site radiological decontamination and clean-up of equipment and structures and associated radiological surveys, engineering, training, procedure development and quality assurance activities. The continuing services involving radiological decontamination work by GPU-Nuclear for affiliated companies will be at least three times the expected level of services to be provided to Westinghouse.

[1] The clean-up of TMI-2 is now near completion.

The Columbia Gas System, Inc. (70-7672)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed an amendment to its application-declaration filed pursuant to sections 6(a) 7, 9(a), 10, and 12(b) of the Act and Rules 45 and 50(A)(5) thereunder.

On August 31, 1989 (HCAR No. 24946), a notice was issued regarding a proposal by Columbia to establish a Leveraged Employee Stock Ownership Plan ("LESOP") for the purpose of pre-funding all or part of Columbia's obligations to match employee contributions to the existing Employees' Thrift Plan of Columbia Gas System ("Thrift Plan") [2] for up to 15 years, and to provide for the reinvestment of cash dividends paid on shares of Columbia common stock held in the Thrift Plan, Fund B, allocating shares of Columbia common stock in lieu of cash. It was originally proposed that the acquisition of Columbia's common stock by the LESOP would be financed through the issuance of up to $200 million principal amount of medium term notes ("MTNs"), through December 31, 1991, which would be guaranteed on a subordinated basis by Columbia.

It is now proposed that the LESOP not be used for the reinvestment of cash dividends paid on shares of Columbia common stock held in Fund B. It is also proposed that the LESOP no longer finance its acquisition of Columbia's common stock through the issuance of MTNs, as originally proposed, but through the issuance of up to $200 million principal amount of debentures ("Debentures"), through December 31, 1991, under an exception from the competitive bidding requirements of Rule 50 under Subsection (a)(5) thereunder, with the terms and conditions of the Debentures to be negotiated by Columbia. As previously proposed, the debt will be guaranteed by Columbia on a subordinated basis.

[2] Under the Thrift Plan, employees of Columbia system companies ("Participants") may deposit up to 16% of their salary in four available investment options, including Fund B ("Fund B"), which provides for investment on Columbia's common stock. Contributions by Participants are matched by the Columbia system company employing the Participant for up to 6% of a Participant's salary. Columbia's matching contributions are deposited only in Fund B. Columbia currently meets its matching obligations by transferring cash to the trustee of the Thrift Plan, which cash is used to purchase Columbia's common stock. Cash dividends paid on shares of Columbia common stock held in Fund B are reinvested in additional shares of Columbia common stock.

Columbia states that the Debentures will be issued under the terms of the same Indenture under which the MTNs would have been issued. Columbia further states that the Debentures will be noncallable and thus will not comply with the requirements of the Commission's "Statement of Policy Regarding First Mortgage Bonds Subject to the [Act]" (HCAR No. 13105, February 16, 1956), from which Columbia now seeks authorization to deviate. The Debentures will only be subject to mandatory sinking fund provisions designed to amortize the debt over the life of the LESOP. Columbia anticipates that the interest rate on the Debentures will be 9.5% to 10%.

The proceeds of the LESOP's issuance of Debentures will be used to purchase up to 2.5 million shares of authorized but unissued common stock from Columbia, for which Columbia seeks authorization to issue and sell, and to purchase shares of Columbia common stock on the open market. At current market prices, $200 million would purchase approximately 4 million shares, or approximately 9%, of Columbia's total common stock outstanding.

The LESOP's debt principal and interest would be repaid from cash dividends paid on shares of Columbia common stock purchased with the proceeds of the debt. To the extent that such cash dividends are insufficient to service the LESOP's debt, Columbia would make periodic contributions to the LESOP in an amount which, together with the cash dividends, would be sufficient to meet the LESOPs debt principal and interest payments.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90—14 Filed 1-2-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Interest Rates

The interest rate of section 7(a) Small Business Administration direct loans (as amended by Public Law 97-35) and the SBA share of immediate participation loans is eight-and-seven-eighths (8⅞) percent for the fiscal quarter beginning January 1, 1990.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8-1(d)). This rate is weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the January-March quarter of 1990, this rate will be eight (8) percent.

Charles R. Hertzberg,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 90-32 Filed 1-2-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 89-26]

Commercial Space Transportation Advisory Committee Working Group Meeting; Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. 1), notice is hereby given of a joint meeting of the International Competition Working Group and the Innovation and Technology Working Group of the Commercial Space Transportation Advisory Committee. The meeting will be held on Wednesday, January 17, 1990, from 8:30 a.m. to 12:30 p.m. in Room 10234 of the Department of Transportation's headquarters building at 400 Seventh Street, SW. in Washington, DC. The primary purpose for this meeting is to discuss the President's proposal for a mission to the Moon and then Mars, with particular emphasis on the potential roles of commercial space transportation and international cooperation in this initiative.

Representatives from various Federal agencies are expected to attend. This meeting is open to the public, but may be limited to the space available. Additional information may be obtained by contacting Ms. Linda H. Strine at (202) 366-5770.

Dated: December 28, 1989.

Norman C. Bowles,

Associate Director for Licensing Programs, Office of Commercial Space Transportation.

[FR Doc. 89-30394 Filed 12-28-89; 4:09 pm]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 26, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for reviewer and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB review listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0087

Form Number: CF 255

Type of Review: Extension

Title: Declaration for Unaccompanied Articles

Description: Customs Form 255 is completed by each arriving person for each parcel or container which is to be sent from an insular possession at a later date. It is used for claim of benefit purposes to determine a traveler's allowable exemption.

Respondents: Individuals or households; Businesses or other for-profit

Estimated Number of Respondents: 7,500

Estimated Burden Hours Per Response/Recordkeeping: 5 minutes

Frequency of Response: On occasion

Estimated Total Reporting/Recordkeeping Burden: 1,250 hours

Clearance Officer: Dennis Dore, (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880. Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-26 Filed 1-2-90; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 26, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the

Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0141
Form Number: ATF F 2635 (5620.8)
Type of Review: Extension
Title: Claim—Alcohol, Tobacco and Firearms
Description: ATF F 2635 (5620.8) is used by taxpayers to show the basis for a credit remission and allowance of tax on a loss of taxable articles. To request a refund or abatement on taxes excessively or erroneously collected. To request a drawback of tax paid on distilled spirits used in the production of non-beverage products. ATF F 2635 (5620.8) is submitted along with supporting documents to indicate why a credit of Federal tax should be made to the claimant.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 16,000
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 16,000 hours
OMB Number: 1512-0369
Form Number: ATF REC 5300/1
Type of Review: Extension
Title: Licensed Firearms Manufacturers Records of Production, Disposition and Supporting Data
Description: Firearms manufacturers record in a permanent record all firearms manufactured and record their disposition. These records are vital to support ATF's mission to inquire into the disposition of any firearm in the course of a criminal investigation.
Respondents: Businesses or other for-profit
Estimated Number of Recordkeepers: 914
Estimated Burden Hours Per Recordkeeper: 126 hours
Frequency of Response: Other
Estimated Total Recordkeeping Burden: 115,500 hours
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 90-27 Filed 1-2-90; 8:45 am]
BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 26, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Engraving and Printing

OMB Number: 1520-0001
Form Number: BEP 5283
Type of Review: Extension
Title: Owner's Affidavit of Partial Destruction of Mutilated Currency
Description: Office of Currency Standards, Bureau of Engraving and Printing, requests owners of partially destroyed U.S. currency to complete notarized affidavit (Form BEP 5283) for each claim submitted when substantial portions of notes are missing.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 300
Estimated Burden Hours Per Response: 35 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 180 hours
OMB Number: 1520-0002
Form Number: BEP 5287
Type of Review: Extension
Title: Claim for Amounts Due in the Case of a Deceased Owner of Mutilated Currency
Description: Form BEP 5287 is used when Treasury is required to determine ownership in cases of a deceased owner of damaged or mutilated currency.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 180
Estimated Burden Hours Per Response: 55 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 165 hours
Clearance Officer: Louis Haltom (202) 447-0853, Bureau of Engraving and Printing, Room 317A, Engraving and Printing Annex, 14th and C Streets, SW., Washington, DC 20228.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 90-28 Filed 1-2-90; 8:45 am]
BILLING CODE 4840-01-M

Public Information Collection Requirements Submitted to OMB for Review.

Date: December 26, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0833
Form Number: None
Type of Review: Extension
Title: Regulations Under Tax Conventions—Sweden
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Responses: 100
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 25 hours
OMB Number: 1545-0834
Form Number: None
Type of Review: Extension
Title: Regulations Under Tax Conventions—Ireland
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.

Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents: 80
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 20 hours

Clearance Officer

Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-29 Filed 1-2-90; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review.

Date: December 26, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0814
Form Number: None
Type of Review: Extension
Title: Cooperative Hospital Service Organizations
Description: This regulation establishes the rules for cooperative hospital service organizations which seek tax-exempt status under section 501(e) of the Internal Revenue Code. Such an organization must keep records in order to show its cooperative nature and to establish compliance with other requirements in section 501(c).
Respondents: Non-profit institutions
Estimated Number of Recordkeepers: 1
Estimated Burden Hours Per Recordkeeping: 1 hour
Frequency of Response: Other
Estimated Total Reporting/Recordkeeping Burden: 1 hour
OMB Number: 1545-0841
Form Number: None
Type of Review: Extension
Title: Regulations Under Tax Conventions—Austria
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents: 50
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 13 hours
OMB Number: 1545-0845
Form Number: None
Type of Review: Extension
Title: Regulations Under Tax Conventions—France
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents: 200
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 50 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-30 Filed 1-2-90; 8:45 am]

BILLING CODE 4830-01-M

[Supplement to Department Circular—Public Debt Series—No. 35-89]

Treasury Notes, Series AH-1991

Washington, December 20, 1989.

The Secretary announced on December 19, 1989, that the interest rate on the notes designated Series AH-1991, described in Department Circular—Public Debt Series—No. 35-89 dated December 14, 1989, will be 7⅝ percent. Interest on the notes will be payable at the rate of 7⅝ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 90-5 Filed 1-2-90; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series R—No. 36-89]

Treasury Notes, Series R-1993

Washington, December 21, 1989.

The Secretary announced on December 20, 1989, that the interest rate on the notes designated Series R-1993, described in Department Circular—Public Debt Series—No. 36-89 dated December 14, 1989, will be 7⅝ percent. Interest on the notes will be payable at the rate of 7⅝ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 90-6 Filed 1-2-90; 8:45 am]

BILLING CODE 4810-40-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (732), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to

VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: December 26, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Revision

1. Office of General Counsel.

2. Application for Accreditation as Service Organization Representatives.

3. VA Form 2-21.

4. Use of this form will allow individuals to apply for accreditation as a Service Organization representative. It is executed in part by the prospective appointee, completed by an official of the Service Organization, and forwarded for approval by the General Counsel of the Department of Veterans Affairs.

5. On occasion.

6. Individuals or households, State or local governments, Non-profit institutions, and Small businesses or organization.

7. 600 responses.

8. ¼ hour.

9. Not applicable.

Revision

1. Veterans Benefits Administration.

2. Loan Guaranty Funding Fee Transmittal.

3. VA forms 26-8986 and 26-8986-1.

4. Use of these forms will allow lending institutions to transmit funding fees required for VA-guaranteed home loans to a lockbox depository.

5. On occasion.

6. Individuals or households and Businesses or other for-profit.

7. 500,000 responses.

8. ⅙ hour.

9. Not applicable.

[FR Doc. 90-25 Filed 1-2-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 2
Wednesday, January 3, 1990

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, January 8, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded anouncement of bank and bank holding company applications scheduled for the meeting.

Dated: December 29, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-30398 Filed 12-29-89; 1:22 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 1, 8, 15, and 22, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 1

Thursday, January 4

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 8 (Tentative)

Tuesday, January 9

10:00 a.m.
Briefing on Status of Development of Updated Source Term (Public Meeting)

Thursday, January 11

2:00 p.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 15 (Tentative)

Wednesday, January 17

10:00 a.m.
Briefing on Governors' Certification of Low Level Waste Sites (Public Meeting)

Thursday, January 18

2:00 p.m.
Briefing on Status of Proposed Rule on License Renewal (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 22 (Tentative)

Thursday, January 25

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: December 28, 1989.

Andrew L. Bates,

Office of the Secretary

[FR Doc. 89-30397 Filed 12-29-89; 8:45 am]

BILLING CODE 6210-01-M

federal register

Wednesday
January 3, 1990

Part II

Department of Education

Office of Special Education and Rehabilitative Services

Office of Special Education Programs

34 CFR Part 319

Training Personnel for the Education of the Handicapped; Grants to State Educational Agencies and Institutions of Higher Education; Final Rule

Notice Inviting Applications for New Awards for Fiscal Year 1990

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 319

RIN 1820-AA85

Training Personnel for the Education of the Handicapped—Grants to State Educational Agencies and Institutions of Higher Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Training Personnel for the Education of the Handicapped Program under Part D of the Education of the Handicapped Act (EHA), as amended. The present regulations are codified in 34 CFR part 319. These final regulations are needed to implement amendments made to section 632 of the EHA by Public Law 100-630, section 104 (November 7, 1988). Section 632 authorizes grants to State educational agencies (SEAs) and institutions of higher education (IHEs). The intended effect of these final regulations is to clarify the statutory requirements and to improve the operation of the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey Liebergott, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094-M/S 2651), Washington, DC 20202. Telephone: (202) 732-1070.

SUPPLEMENTARY INFORMATION: The Training Personnel for the Education of the Handicapped Program is authorized by sections 631 and 632 of the EHA. Section 631 creates three specific subprograms, providing for grants to (1) nonprofit organizations for parent training and information, (2) IHEs and nonprofit organizations for training personnel for careers in special education and early intervention, and (3) IHEs, nonprofit organizations, and State agencies for special projects. Section 632 provides for grants to SEAs and IHEs for preservice and inservice personnel training.

Under section 632 as amended in 1988, the Secretary is directed to make a grant of "sufficient size and scope" to each SEA for the purpose of assisting States in establishing and maintaining preservice and inservice programs to prepare personnel to meet the needs of handicapped infants, toddlers, children, and youth or supervisors of those persons, consistent with the personnel needs identified in the State's comprehensive system of personnel development under sections 613 and 676(b)(8).

The Secretary is changing the basic method for the allocation of these funds. In previous years, funds under this program have been awarded based on the applicant's need and on the quality of the grant application within a narrow range of funding. This method did not take into consideration the varying personnel training needs of States based on their population of students with handicaps.

The final regulations stipulate that States henceforth will be awarded funds based on their proportionate share of the national "annual child count", i.e. the count of students receiving a free appropriate public education required under Part B of the EHA and Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 as amended by Public Law 100-297. Limited additional funds will be awarded for quality of the application (quality incentive funds). Moreover, the 1988 amendments provide that in any State in which the SEA does not apply for such a grant, any IHE within that State may apply for that grant. If any SEA chooses not to apply for any State grant award, it must notify all IHEs within the State of this decision one month prior to the competition closing date.

The Secretary may also make a limited number of awards to SEAs on a competitive basis.

On August 22, 1989, at 54 FR 34858, the Secretary published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) for section 632, as amended. There are no substantive differences between the NPRM and the final regulations published herein.

A notice requesting transmission of applications under these regulations is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, four parties submitted comments on the proposed regulations. No change was made in regulations as a result of these comments.

Comment: Two commenters questioned the decision to base the allocation of grant funds on each State's proportionate share of the Part B-EHA child count. One commenter maintained that allocating funds based on needs identified in the States' Comprehensive System of Personnel Development (CSPD) was a more realistic way to meet the special education and related services personnel needs of the public schools. According to another commenter, the child count formula would encourage States to label children as handicapped, and thus discourage efforts to strengthen regular education programs. This commenter urged the Secretary to base the training grants on the total birth to age 22 population for each State, or in the alternative, to maintain the current allocation system under which the smaller States receive roughly the same size grant as the larger States.

Discussion: The Department believes that the child count is the most objective and accurate measure of the differing special education and related services personnel needs in each State. The number of students being counted as receiving special education, by extension, reflects the number of teachers serving those students. Therefore, the States with the larger child counts have greater needs for funds for the training of teachers. Since personnel needs are determined by the number of identified children with handicaps in each State, it was determined that the most stable identifier of personnel needs is child count. CSPD information, consisting of numerical data as well as State plan narratives, is a valuable resource in assessing the quality of applications. Numerical data included in the CSPD are variable because of inconsistencies of reporting among the States. This decision is further supported by the fact that child count data are regularly audited, while CSPD information is not.

The need for teacher training is clearly more closely related to the number of children in special education than to the total child population of the State. Thus, the needs of children with handicaps will be better served by basing training support on those children who will be the ultimate beneficiaries of that training, rather than on the total birth to age 22 population.

Changes: None.

Comment: Two commenters misinterpreted the announcement to mean all personnel preparation funding would go through State Departments of Education, and requested that

Institutions of Higher Education (IHE) continue to be supported.

Discussion: These regulations apply only to the State grant portion of the personnel preparation program established by section 632, as amended. IHEs continue to be directly eligible for preservice training grants and special project grants under sections 631 (a) and (b). Thus, these comments were not relevant to the NPRM.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 319

Colleges and universities, Education, Education of handicapped, Education-training, Grant programs-education, Reporting and recordkeeping requirements, State educational agencies, Teachers.

Dated: November 8, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

The Secretary amends title 34 of the Code of Federal Regulations by revising part 319 to read as follows:

PART 319—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED—GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

Subpart A—General

Sec.
319.1 What is the purpose of this part?
319.2 What activities may the Secretary fund?
319.3 What regulations apply to this program?
319.4 What definitions apply to this program?
319.5–319.9 [Reserved]

Subpart B—How Does One Apply for an Award?

319.10 How does an eligible applicant apply for an award?
319.11–319.19 [Reserved]

Subpart C—How Does the Secretary Make an Award?

319.20 How does the Secretary determine the amount of a State grant?
319.21 How does the Secretary make an award under the competitive grant process?
319.22 What selection criteria does the Secretary use in the State grant and competitive grant programs?
319.23–319.29 [Reserved]

Subpart D—What Conditions Must be Met After an Award?

319.30 Is student financial assistance authorized?
319.31 What are the student financial assistance criteria?
319.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?
319.33–319.39 [Reserved]

Authority: 20 U.S.C. 1432 and 1434, unless otherwise noted.

Subpart A—General

§ 319.1 What is the purpose of this part?

The Secretary funds a mandatory State grant program and may conduct a competitive grant program under this part to assist States in establishing and maintaining preservice and inservice training programs that prepare personnel (or supervisors of such personnel) to meet the needs of infants, toddlers, children, and youth with handicaps.

(a) *State grant program.* Under the State grant program, the Secretary makes a grant to each State educational agency (SEA). If an SEA does not apply for a grant, the Secretary makes the grant to an institution of higher education (IHE) within that State.

(b) *Competitive grant program.* Under the competitive grant program, the Secretary may make grants to SEAs only (in addition to the grants awarded under the State grant program).

(Authority: 20 U.S.C. 1432)

§ 319.2 What activities may the Secretary fund?

(a) The Secretary supports preservice and inservice training programs that prepare personnel, or their supervisors, to serve infants, toddlers, children, or youth with handicaps.

(b) Any activities assisted under this part must be consistent with the personnel needs identified in the State's comprehensive system of personnel development under section 613 of the Education of the Handicapped Act.

(Authority: 20 U.S.C. 1432)

§ 319.3 What regulations apply to this program?

The following regulations apply to assistance under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), and part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this part 319.

(Authority: 20 U.S.C. 1432)

§ 319.4 What definitions apply to this program?

The following terms used in this part are defined in 34 CFR 77.1:

Applicant, Application, Award, Department, EDGAR, Fiscal year, Grant period, Preschool, Project, Public, Secretary, State, State educational agency.

(Authority: 20 U.S.C. 1432)

§§ 319.5-319.9 [Reserved]

Subpart B—How Does One Apply for an Award?

§ 319.10 How does an eligible applicant apply for an award?

(a) Each SEA may make an application to the Secretary for a competitive grant under § 319.1(b).

(b) If an SEA elects not to apply for a State grant under § 319.1(a), IHEs within that State may apply for the grant for that State. However, only one State grant may be awarded in each State. If any SEA chooses not to apply for the State grant award, it must notify all IHEs within the State of this decision one month prior to the competition closing date.

(c) If applications are submitted by more than one IHE within a State, the Secretary uses the selection criteria in § 319.22 to evaluate the applications. An IHE that proposes to provide preservice special education and related services training must demonstrate that it meets State and professionally recognized standards for the training of special education and related services personnel, as evidenced by appropriate State and professional accreditation, unless—as indicated in a published priority of the Secretary—the grant is for the purpose of assisting the applicant to meet those standards.

(Authority: 20 U.S.C. 1432)

§§ 319.11-319.19 [Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 319.20 How does the Secretary determine the amount of a State grant?

(a) The Secretary determines the amount of a grant under § 319.1(a) based upon the applicant's need for assistance under this part for activities in the State comprehensive system of personnel development, as follows:

(1) The Secretary provides each SEA a minimum proportionate share of no less than 80% of the funds available under this section, based on the State's proportion of the national child count provided under part B of the Education of the Handicapped Act (EHA) and subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(2) However, in order to ensure that each State receives an award of sufficient size and scope, no State will receive less than $75,000.

(b) After determining a State's grant under paragraph (a) of this section, the Secretary determines annually the additional amount of funds to be awarded for the quality of the application based on the criteria set forth in § 319.22(b).

(Authority: 20 U.S.C. 1432)

§ 319.21 How does the Secretary make an award under the competitive grant process?

(a) The Secretary may make a limited number of awards to SEAs on a competitive basis for the purpose of assisting States in establishing and maintaining preservice and inservice programs to prepare personnel (or supervisors of those persons), to meet the needs of handicapped infants, toddlers, children, and youth, consistent with the personnel needs identified in the State comprehensive system of personnel development.

(b) In any fiscal year, the Secretary may not expend for this competitive program an amount more than 10% of the amount expended under section 632 of the EHA in the preceding fiscal year.

(Authority: 20 U.S.C. 1432)

§ 319.22 What selection criteria does the Secretary use in the State grant and competitive grant programs?

(a) The Secretary uses the criteria in paragraph (b) of this section to evaluate an application for a State grant (SEA or IHE applicant) and for a competitive grant.

(b)(1) *Extent of neeed for the project.* (30 points) The Secretary reviews each application to determine—

(i) The extent to which the project identifies and selects priority needs from the range of personnel needs identified in the State comprehensive system of personnel development;

(ii) The extent of which the project addresses the personnel needs selected by the applicant under paragraph (b)(1)(i) of this section; and

(iii) If appropriate, how the project relates to actual and projected personnel needs for certified teachers in the State as identified by the State educational agency in its annual data report required under section 618 of the Education of the Handicapped Act.

(2) *Program content.* (20 points) The Secretary reviews each application to determine the extent to which—

(i) Competencies that will be acquired by each trainee and how the competencies will be evaluated are identified;

(ii) Substantive content of the training to be provided is appropriate for the attainment of professional knowledge and competencies that are necessary for the provision of quality educational or early intervention services to infants, toddlers, children, and youth with handicaps;

(iii) Benefits to be gained by the number of trainees expected to be graduated or otherwise to complete training and employed over the next five years are described;

(iv) Appropriate methods, procedures, techniques, and instructional media or materials will be used in the preparation of trainees who serve infants, toddlers, children, and youth with handicaps;

(v) If relevant, appropriate practicum facilities are accessible to the applicant agency trainees and will be used for such activities as observation, participation, practice teaching, laboratory or clinical experience, internships, and other supervised experiences of adequate scope, and length;

(vi) If relevant, practicum facilities for model programs will provide state-of-the-art educational services, including use of current and innovative curriculum materials, instructional procedures, and equipment; and

(vii) Program philosophy, program objectives, and activities to be implemented to attain program objectives are related to the educational or early intervention needs of infants, toddlers, children, and youth with handicaps.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) How the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable including, but not limited to, the number of trainees graduated or otherwise to complete training and hired.

(See 34 CFR 75.590, Evaluation by the grantee).

(5) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(5) (i) and (ii) of this section plans to commit to the project;

(iv) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(v) Evidence of the trainer's past experience and training in fields related to the objectives of the project.

(6) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(7) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1432)

§ 319.23–319.29 [Reserved]

Subpart D—What Conditions Must be Met After an Award?

§ 319.30 Is student financial assistance authorized?

A grantee may use grant funds to provide traineeships or stipends. The sum of the assistance provided to a student through this part and any other assistance provided the student may not exceed the student's cost of attendance. "Cost of attendance" means—

(a) Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required to all students in the same course of study;

(b) An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution;

(c) An allowance (as determined by the institution) for room and board costs incurred by the student that—

(1) For a student without dependents residing at home with parents, is not less than $1,500;

(2) For students without dependents residing in institutionally owned or operated housing, is a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board; and

(3) For all other students, is an allowance based on the expenses reasonably incurred by the students for room and board, except that the amount may not be less than $2,500;

(d) For less than half-time students (as determined by the institution), tuition and fees and an allowance for only books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (g) of this section);

(e) For a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(f) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with the study (as determined by the institution);

(g) For a student with one or more dependents, an allowance (as determined by the institution) based on the expenses reasonably incurred for dependent care based on the number and age of the dependents;

(h) For a handicapped student, an allowance (as determined by the institution) for those expenses related to his or her handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(i) For a student receiving all or part of his or her instruction by means to telecommunication technology, no distinction may be made with respect to the mode of instruction in determining costs. This paragraph may not be construed to permit including the cost of rental or purchase of equipment.

(Authority: 20 U.S.C. 1432)

§ 319.31 What are the student financial assistance criteria?

Direct financial assistance may only be paid to students in preservice programs and only if—

(a) The student is qualified for admission to the program of study;

(b) The student maintains satisfactory progress in a course of study as provided in 34 CFR 668.16(e); and

(c) The student is a citizen or a national of the United States.

(Authority: 20 U.S.C. 1432)

§ 319.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for financial assistance to other students during the grant period.

(Authority: 20 U.S.C. 1432)

§§ 319.33–319.39 [Reserved]

[FR Doc. 90–19 Filed 1–2–90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.029]

Office of Special Education Programs

Notice Inviting Applications for New Awards for Fiscal Year 1990

Note To Applicants: This notice is a complete application package. Together with the statute authorizing the program, and applicable regulations governing the program, including EDGAR, the notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

The estimates of funding levels in this notice do not bind the Department of Education to a specific number of grants, unless the amount is otherwise specified by statute or regulation.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74, 75, 77, 79, 80, 81, and 85; and 34 CFR part 319, final program regulations for this program published in this issue of the **Federal Register**.

Program Purpose: The Secretary funds a mandatory State grant program and may conduct a competitive grant program under this part to assist States in establishing and maintaining preservice and inservice training programs that prepare personnel or supervisors of such personnel to meet the needs of infants, toddlers, children, and youth with handicaps.

Eligible Applicants: Under the State grant program, the Secretary makes a grant to each State educational agency (SEA). If an SEA does not apply for a grant, the Secretary makes the grant to an Institution of Higher Education (IHE) within that State.

Under the competitive grant program, the Secretary may make grants to SEAs only (in addition to the grants awarded under the State grant program).

TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

[Application Notice for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards (per year)	Estimated size of awards (per year)	Estimated number of awards	Project period in months
Grants to State Education Agencies and Institutions of Higher Education (84.029H).	Mar. 12, 1990	May 11, 1990	6,450,000	$75,000–$348,052	113,000	57	36
Competitive Grants to State Education Agencies (84.029U).	Mar. 12, 1990	May 11, 1990	650,000	$100,000–$150,000	130,000	5	36

84.029H—Grants to State Education Agencies and Institutions of Higher Education

This program supports preservice and inservice training programs that prepare personnel, or their supervisors, to serve infants, toddlers, children, or youth with handicaps. Any activities assisted under this part must be consistent with the personnel needs identified in the State's comprehensive system of personnel development. Based on a minimum of $75,000 and additional funds based on proportion of child count, individual State allocations are:

Alabama	$75,000
Alaska	75,000
Arizona	75,000
Arkansas	75,000
California	298,052
Colorado	75,000
Connecticut	75,000
Delaware	75,000
District of Columbia	75,000
Florida	143,761
Georgia	75,000
Hawaii	75,000
Idaho	75,000
Illinois	170,383
Indiana	75,000
Iowa	75,000
Kansas	75,000
Kentucky	75,000
Louisiana	75,000
Maine	75,000
Maryland	75,000
Massachusetts	104,063
Michigan	113,072
Minnesota	75,000
Mississippi	75,000
Missouri	75,000
Montana	75,000
Nebraska	75,000
Nevada	75,000
New Hampshire	75,000
New Jersey	120,988
New Mexico	75,000
New York	203,741
North Carolina	75,000
North Dakota	75,000
Ohio	138,646
Oklahoma	75,000
Oregon	75,000
Pennsylvania	147,689
Rhode Island	75,000
South Carolina	75,000
South Dakota	75,000
Tennessee	75,000
Texas	224,164
Utah	75,000
Vermont	75,000
Virginia	80,599
Washington	75,000
West Virginia	75,000
Wisconsin	75,000
Wyoming	75,000
Puerto Rico	75,000
American Samoa	75,000
Guam	75,000
Northern Marianas	75,000
Republic of Palau	75,000
Virgin Islands	75,000

In addition to the basic grant, States may be awarded up to $50,000 (per State) in additional funds based on the quality of their application as determined by the criteria in 319.22.

84.029U—Competitive grants to State Education Agencies

The Secretary will make a limited number of awards to SEAs on a competitive basis under 34 CFR 319.1(b) for the purpose of assisting States in establishing and maintaining preservice and inservice programs to prepare personnel or supervisors of those persons, to meet the needs of handicapped infants, toddlers, children, and youth, consistent with the personnel needs identified in the State comprehensive system of personnel development.

The Secretary especially invites applications which address the following: (1) Bilingual/minority paraprofessional or professional preservice training (2) preservice training of teachers for which the SEA has determined a critically short supply exists; (3) preservice training of teachers holding less than full certification licensure or endorsement; and (4) preservice and inservice training of teachers of infants, toddlers, children, and youth who have conditions which the SEA has not systematically addressed (e.g., AIDS or AIDS related disabilities, fetal alcohol syndrome, closed head injury, child abuse, or drug related disabilities). However, in

accordance with EDGAR at 34 CFR 75.105(c)(1), applications that meet these invitational priorities receive no competitive or absolute preference over applications that do not meet these priorities.

Selection Criteria

The Secretary uses the following criteria to evaluate an application for a State grant (SEA or IHE applicant) and for a competitive grant.

(1) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine—

(i) The extent to which the project identifies and selects priority needs from the range of personnel needs identified in the State comprehensive system of personnel development;

(ii) The extent to which the project addresses the personnel needs selected by the applicant under paragraph (1)(i) of this section; and

(iii) If appropriate, how the project relates to actual and projected personnel needs for certified teachers in the State as identified by the State educational agency in its annual data report required under Section 618 of the Education of the Handicapped Act.

(2) *Program content.* (20 points) The Secretary reviews each application to determine the extent to which—

(i) Competencies that will be acquired by each trainee and how the competencies will be evaluated are identified;

(ii) Substantive content of the training to be provided is appropriate for the attainment of professional knowledge and competencies that are necessary for the provision of quality educational or early intervention services to infants, toddlers, children, and youth with handicaps.

(iii) Benefits to be gained by the number of trainees expected to be graduated or otherwise to complete training and employed over the next five years are described;

(iv) Appropriate methods, procedures, techniques, and instructional media or materials will be used in the preparation of trainees who serve infants, toddlers, children, and youth with handicaps;

(v) If relevant, appropriate practicum facilities are accessible to the applicant agency and trainees and will be used for such activities as observation, participation, practice teaching, laboratory or clinical experience, internships, and other supervised experiences of adequate scope, and length;

(vi) If relevant, practicum facilities for model programs will provide state-of-the-art educational services, including use of current and innovative curriculum materials, instructional procedures, and equipment; and

(vii) Program philosophy, program objectives, and activities to be implemented to attain program objectives are related to the educational or early intervention needs of infants, toddlers, children, and youth with handicaps.

(3) *Plan of operation.* (15 points) The Secretary reviews each application determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) How the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable including, but not limited to, the number of trainees graduated or otherwise to complete training and hired. (See 34 CFR 75.590, Evaluation by the grantee).

(5) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (5)(i) and (ii) of this section plans to commit to the project;

(iv) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(v) Evidence of the trainer's past experience and training in fields related to the objectives of the project.

(6) *Adequancy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(7) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 15, 1989, pages 38342–38343.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA# (applicant must insert number and letter), U.S. Department of Education, Room 4161, 400 Maryland Avenue SW., Washington, DC 20202–0125. Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# [Applicant must insert number and letters]), Washington, DC 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the application should call the U.S. Department of Education Application Control Center at (202) 732–2495.

(3) The applicant must indicate on the envelope and—if not provided by the Department, in item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number, and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (Note: ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.)

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–004).

An applicant may submit information on photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Frank King, Division of Personnel Preparation, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3096–2644), Washington, DC 20202. Telephone: Frank King (202) 732–1070.

Dated: December 27, 1989.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitation Services.

Appendix

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. *Can we get an extension of the deadline?*

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to *all* applications. Waivers for individual applications *cannot* be granted, regardless of the circumstances.

Q. *How many copies of the application should I submit and must they be bound?*

A. Current Government-wide policy is that only an original and two copies need be submitted. The binding of applications is optional. At least one copy should be left unbound to facilitate any necessary reproduction. Applicants should not use foldouts, photographs, or other materials that are hard-to-duplicate.

Q. *We just missed the deadline for the XXX competition, may we submit under another competition?*

A. Yes, but in may not be worth the postage. A properly prepared application should meet the specifications of the competition to which it is submitted.

Q. *I'm not sure which competition is most appropriate. What should I do?*

A. We are happy to discuss the questions with you and provide clarification on the unique elements of the various competitions.

Q. *Will you help us prepare our application?*

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required nor does it guarantee the success of an application.

Q. *When will I find out if I'm going to be funded?*

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. *Once my application has been reviewed by the review panel, can you tell me the outcome?*

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with *anyone*.

Q. *How long should an application be?*

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. Is helpful to include in the appendices such information as:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information relevant to the proposed project. Qualification of consultants and advisory council members should be provided and be similarly brief.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project, including copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. *How can I be sure that my application is assigned to the correct competition?*

A. Applicants should clearly indicate in Block 10 of the face page of their application (Standard Form 424) the CFDA number and the title of the program priority (e.g., 84.023) representing the competition in which the application should be considered. If this

information is not provided, your application may inadvertently be assigned and reviewed under a different competition from the one you intended.

Q. *Will my application be returned if I am not funded?*

A. We no longer return original copies of unsuccessful applications. Thus, applicants should return at least one copy of the application. Copies of reviewer comments will be mailed to applicants who are not successful.

Q. *How should my application be organized?*

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria of the regulations pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project should precede the application narrative.

Q. *Is travel allowed under these projects?*

A. Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual meeting, you may also wish to include a trip to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. *If my application receives a high score from the reviewer does that mean that I will receive funding?*

A. No. It is often the case that the number of applications scored highly by or approved by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of the applications and other relevant factors, determines the applications that can be funded.

Q. *What happens during negotiations?*

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff review and require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget.

Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. *If my application is successful can I assume I will get the estimated/projected budget amounts in subsequent years?*

A. No. The estimate for subsequent year project costs is helpful to us for planning purposes but it in no way represents a commitment for a particular level of funding in subsequent years. Grantees having a multiyear project will be asked to submit a continuation application and a detailed budget request prior to each year of the project.

Q. *What is a cooperative agreement and how does it differ from a grant?*

A. A cooperative agreement is similar to a grant in that its principal purpose is to provide assistance for a public purpose of support or stimulation as authorized by a Federal statute. A cooperative agreement differs from a grant because of the substantial involvement anticipated between the executive agency (in this case the Department of Education) and the recipient during the performance of the contemplated activity.

Q. *Is the procedure for applying for a cooperative agreement different from the procedure for applying for a grant?*

A. No. If the Department of Education determines that a given award should be made by cooperative agreement rather than a grant, the applicant will be advised at the time of negotiation of any special procedures that must be followed.

Q. *How do I provide an assurance?*

A. Simply state in writing that you are meeting a prescribed requirement.

Q. *Where can copies of the* **Federal Register**, *program regulations, and federal statutes be obtained?*

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238.4000–01.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, state, and zip code*):	Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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Notice: Reporting Burden

Public reporting burden for this collection of information is estimated to be 40 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0028, Washington, DC 20503.

Part III—Program Narrative

A. New Grants

Prepare the program narrative statement in accordance with the following instructions for all new grants programs and all new functions or activities of which support is being requested.

Note that the program narrative should encompass each program and each function or activity for which funds are being requested. Relevant selection criteria (included in this package) should be carefully examined for criteria upon which evaluation of an application will be made and the program narrative must respond to such criteria under the related hearings below. The program narrative should begin with an overview statement (Abstract) of the major points covered below.

1. Objectives and Need for This Assistance

Describe the problem and demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used.

Any relevant data based on planning studies should be included or footnoted. Projects involving Demonstration/Service activities should present available data, or estimates for need in terms of number of handicapped children (by type of handicap and by type of service) in the geographic area involved.

Projects involving Training should present available data, or estimates, for need in terms of number of personnel by position type (e.g., teachers, teacher-aides) by type of handicap to be served. Documentation by the SEA should be supplied for 84.029 (Handicapped Personnel Preparation).

2. Results of Benefits Expected

Identify results and benefits to be derived. Projects involved in training activities should indicate the number of personnel to be trained. Projects involved in demonstration/service activities must provide research or other evidence that indicate that the proposed activities will be effective.

3. Approach

a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others.

For example, an application for demonstration/service programs should describe the planned educational curriculum: the types of attainable accomplishments set for the children served; supplementary services including parent education; and the composition and responsibilities of an advisory council.

An application for a training program should describe the substantive content and organization of the training program, including the roles or positions for which students are prepared, the tasks associated with such roles, the competencies that must be acquired; the program staffing; and the practicum facilities including their use by students, accessibility to students and their staffing.

b. Provide for each grant program, function or activity, quantitative projections of the accomplishments to be achieved.

An applications for demonstration/service programs should project the number of children to receive demonstration/services by type of handicapping conditions, and number of persons to receive inservice training.

Training programs should project the number of students to be trained by type of handicapping condition.

For non-demonstration/service and non-training activities of all programs, planned activities should be listed in chronological order to show the schedule of accomplishment and their target dates.

c. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. For demonstration/service child-centered objectives set for project participants. for 84.029 (Handicapped Personnel Preparation), the positions for which students are receiving training should be related to the needs as explained in 1 and 2 above.

For all activities, explain the methodology that will be used to evaluate project accomplishments.

d. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Especially for demonstration/service activities, describe the liaison with community or State organizations as it affects project planning and accomplishments.

e. Present biographical sketch of the project director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the names, training and background for other key personnel engaged in the project.

Note: The application narrative should not exceed 30 double-spaced typed pages (on one side only).

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2 Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3 Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

FY-89 Certification Regarding Drug-Free Workplace Requirements States and State Agencies

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. Section 85.630(b) of the regulation provides that a grantee that is a State may elect to submit an annual certification to the Department in lieu of certificates for each grant during the year covered by the certification. The certificate set out below is a material representation of fact upon which reliance will be placed when the agency determines to award a grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

_____
Organization Name

_____
Name and Title of Authorized Representative

_____
Signature Date

For multiple agency certification only, please append to this form a list of the agencies covered by the terms of this certification.

ED 80-0006

[FR Doc. 90-20 Filed 1-2-90; 8:45 am]
BILLING CODE 4000-01-C

federal register

Wednesday
January 3, 1990

Part III

Environmental Protection Agency

Financial Assistance Program Eligible for Review; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OGWP-FR-3702-2]

Financial Assistance Program Eligible for Review

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency's (EPA) Office of Ground-Water Protection (OGWP) is announcing the availability of $500,000 to fund a new pilot cooperative agreement program, "Wellhead Protection (WHP) Data Management Pilot Projects." These funds will provide financial support for pilot projects aimed at assisting municipalities to acquire and use ground-water and land use data in designing and managing a WHP Program. The cooperative agreements are authorized under section 1442(b)(3)(C) of the Safe Drinking Water Act (SDWA). It is expected that at least seven to ten awards will be made to municipalities in amounts not to exceed $100,000. Eligible applicants are municipalities as defined under section 1401(10) of the SDWA.

FOR FURTHER INFORMATION CONTACT: Robin Heisler, National Program Coordinator, Office of Ground-Water Protection, Mail Code WH-550G, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7770, or the EPA Regional Contact listed below in "Supplementary Information."

SUPPLEMENTARY INFORMATION: The 1986 Amendments to the SDWA established the WHP Program to protect those ground waters that supply wells and wellfields contributing drinking water to public water supply systems. Local governments play an important part in implementing a State WHP Program because of their responsibility for delineation and management of the Wellhead Protection Area(s) (WHPA) in their communities.

Implementing a WHP Program requires the use of ground-water and related geographic data for modeling and mapping the boundaries of the WHPA, locating the sources of contamination, establishing monitoring wells, assessing management options for preventing contamination, or modeling the effects of a spill. Communities need access to data and the ability to analyze them in order to make effective decisions. Management of data is a key element of any WHP Program.

In fiscal year 1990 Congress appropriated $500,000 to EPA for grants to local communities to show how data management efforts of local communities can assist in better decision-making in the implementation of a WHP Program. WHP Program Data Management Pilot Project funds will be awarded through cooperative agreements under the authority of section 1442(b)(3)(C) of the SDWA. Any municipality as defined in the SDWA, section 1401(10) is eligible to apply for WHP Program Data Management Pilot Project funds. If a municipality plans to award these funds to other State and local agencies, counties, universities, and organizations including contractors, to carry out elements of the work, this fact must be indicated in the application.

It is the intention of the EPA's Office of Ground-Water Protection (OGWP) to consider funding both small WHP Program data management projects (less than $25,000) as well as larger projects ($70,000 to $100,000), with the total number of funded projects being between seven and ten. Organizations awarded funds will be required to contribute at least 5% of the total cost of their project in dollars or in-kind goods/services. Cooperative Agreements will be funded by OGWP at EPA Headquarters in Washington, DC after joint review with the Regions. EPA Regional staff will act as project officers on projects awarded within their Region, with Headquarters providing national oversight and coordination.

In awarding these funds to local municipalities, EPA hopes to assist local governments in developing more effective, simple to use data management systems which can be shared by other local and State governments, and which will promote communication among them, the Federal Government, and the public. The information gained in this process will serve to assist State and local governments in the implementation of ground-water protection in their communities and, through the transfer of data management technology derived from these demonstration projects, help implement ground-water protection throughout the United States.

Funds that are awarded under this cooperative agreement program must be used to support data management activities that address the data management activities that address the data needed to make informed decisions relating to a municipal WHP Program. Projects should reflect comprehensive and coordinated planning, data sharing and the necessary steps to implement the project plans. Projects in all stages of development—from established programs to those needing start-up funds—will be eligible for support. Noting that programs in different stages of development have different needs and resources available to them, examples of activities eligible for funding include, but are not limited to, the following:

- Well defined joint municipal agency projects for sharing information with each other and other local agencies as well as with State and Federal systems.
- Use of hydrogeologic or aquifer analysis tools, such as delineation models, with sources of contaminants to determine major risks to municipal wellheads.
- Geographical Information Systems (GIS), which may focus on mapping public well locations, WHPAs, recharge areas, sources of contaminants, and land use patterns, to determine high-risk ground-water management zones in order to control existing contamination, prevent further migration of contaminant plumes, and regulate land use to minimize the potential for contamination.

To apply for funds, municipalities must:

(1) Submit a letter of intent to the EPA Region (see names and addresses below) where the organization is located by February 20, 1990. This letter must be signed by the organization's authorized official and a copy must be sent to the Headquarters National Program Coordinator (see above "For Further Information" section). The letter of intent should include a short description of the proposed project which outlines the goals, planned approaches, and a brief summary of the estimated budget. *To expedite processing, the envelope should include the program title: WHP Data Management Pilot Projects.*

(2) Submit a complete application package to the Grants Operations Branch at EPA Headquarters by April 16, 1990 to the Grants Operation Branch, Grants Administration Division, PM-216F, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Applicants should clearly identify the program by typing *WHP Data Management Pilot Projects/Robin Heisler* in box 10 on the application form (SF424) instead of the "Catalogue of Federal Domestic Assistance" title and number which are not applicable at this time. (Should Congress continue to fund this program in subsequent years, EPA will enter it in the Catalogue.). *To expedite processing, the envelope should include the program title: WHP Data Management Pilot Projects.*

Applications postmarked after April 16, 1990 will not be considered for an award.

An application package will be available from the EPA Regional Contact in January 3, 1990. The application package will contain all appropriate EPA grant application forms needed to submit a formal application to the EPA Headquarters Grants Operation Branch as well as an additional guidance document titled "Wellhead Protection Data Management Pilot Projects: Guidance for FY 1990 Cooperative Agreement Funds." (The Guidance includes the general criteria against which applications will be evaluated.) The Regional Contacts will send applications to all organizations within their Region who submit a letter of intent to participate. They will also act as the point of contact to discuss applicants' proposals and to help them develop a clear and viable project proposal for their formal application. For further information, please contact the EPA Office of Ground Water in the appropriate Region. The names and phone numbers are listed below:

EPA Region I (CT, MA, ME, NH, RI, VT)
Robert Mendoza, Office of Ground Water, Water Management Division, U.S. EPA, Region I—Rm 2113, JFK Federal Building, Boston, MA 02203, (617) 565-3600.

EPA Region II (NJ, NY, PR, VI)
John Malleck, Office of Ground Water, Water Management Division, U.S. EPA, Region II—RM 805, 26 Federal Plaza, New York, NY 10278, (212) 264-5635.

EPA Region III (DC, DE, MD, PA, VA, WV)
Stuart Kerzner, Office of Ground Water, Water Management Division, U.S. EPA, Region III, 841 Chestnut Street, Philadelphia, PA 19106, (215) 597-2786.

EPA Region IV (AL, FL, GA, KY, MS, SC, TN)
Stallings Howell, Office of Ground Water, Water Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, (404) 347-3866.

EPA Region V (IL, IN, MI, OH, MN, WI)
Jerri-Anne Garl, Office of Ground Water, Water Management Division, U.S. EPA, Region V, 230 S. Dearborn Street, Mail Stop 5WG-TUB9, Chicago, IL 60604, (312) 886-1490.

EPA Region VI (AR, LA, OK, NM, TX)
Erlece Allen, Office of Ground Water, Water Management Division, U.S. EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 655-6446.

EPA Region VII (IA, KS, MO, NE)
Don Toensing, Office of Ground Water, Water Management Division, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 236-2970.

EPA Region VIII (CO, MT, ND, SD, UT, WY)
James Dunn, Office of Ground Water, Water Management Division, U.S. EPA, Region VIII, 999 18th Street, Mail Code 8WMGW, Denver, CO 80202-2405, (303) 293-1703.

Region IX (AS, AZ, CA, GU, HI, NV)
Debbie Robinson, Office of Ground Water, Water Management Division, U.S. EPA, Region IX, 215 Freemont Street, Mail Code W-1-G, San Francisco, CA 94105, (415) 744-2140.

EPA Region X (AK, ID, OR, WA)
William Mullen, Office of Ground Water, Water Management Division, U.S. EPA, Region X, 1200 6th Avenue, Mail Code WD-139, Seattle, WA 98101, (206) 442-1216.

The WHP Data Management Pilot Projects program is eligible for intergovernmental review under Executive Order 12372. States' Single Point of Contact (SPOC) must notify the following office in writing within thirty days of this publication whether their State's official E.O. 12372 process will review applications in this program: Grants Policies and Procedures Branch, Grants Administration Division, PM-216F, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Applicants must contact their State's SPOC for intergovernmental review as early as possible to determine if the program is subject to the State's official E.O. 12372 process and what material must be submitted to the SPOC for review. In addition, applications including projects within a metropolitan area must be sent by applicants to the areawide/regional/local planning agency designated to perform metropolitan or regional planning for the area for the agency review.

SPOCs and other reviewers should send their comments concerning applications to the Grants Operation Branch, Grants Administration Division, PM-216F, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, no later than sixty days after receipt of an application/other required materials for review. *To expedite processing, the envelope should include the program title: WHP Data Management Pilot Projects.*

Dated: December 22, 1989.

Robert H. Wayland,

Acting Assistant Administrator for Water.

[FR Doc. 90-52 Filed 1-2-90; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
January 3, 1990

Part IV

Environmental Protection Agency

40 CFR Part 749

Prohibition of Hexavalent Chromium Chemicals in Comfort Cooling Towers; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 749

[OPTS-61012; AD-FRL-3619-4]

RIN 2060-AC13

Prohibition of Hexavalent Chromium Chemicals in Comfort Cooling Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule is being promulgated under section 6 of the Toxic Substances Control Act (TSCA). the rule prohibits the use of hexavalent chromium (Cr^{+6})-based water treatment chemicals in comfort cooling towers (CCT's) and the distribution in commerce of the chemicals for use in CCT's. Persons who distribute in commerce Cr^{+6}-based water treatment chemicals will be required to label the containers of these chemicals. The labels will indicate the increased risk of lung cancer from exposure to Cr^{+6} air emissions and that the use of Cr^{+6}-based water treatment chemicals in CCT's is prohibited. This rule is based on the administrator's determination that use of Cr^{+6}-based water treatment chemicals in CCT's presents an unreasonable risk of injury to human health and that TSCA is the most effective means to manage this risk. The EPA has determined that Cr^{+6} compounds are potent human carcinogens.

This rule triggers export notification requirements under section 12 of TSCA. Persons who export or who intend to export Cr^{+6} chemicals are required to notify EPA of those activities.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on January 17, 1990. This rule shall become effective on February 20, 1990, for water treatment chemical distributors and on May 18, 1990, for CCT owners/operators.

ADDRESSES: *Background Information.* The background information document (BID) for the promulgated rule may be viewed in the docket or obtained from the U. S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Chromium Emissions from Comfort Cooling Towers—Background Information for Promulgated Standards" (EPA-450/3-87-010b). The promulgation BID contains: (1) A summary of all of the public comments made on the proposed rule and EPA's responses to the comments, (2) a summary of the changes made to the rule since proposal, and (3) the final Environmental Impact Statement, which summarizes the impacts of the rule.

Docket. Docket number OPTS-61012 contains supporting information used in developing the proposed rule, comments on the proposed rule, and additional supporting information. A public version of the docket is available for inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays, at the U.S. Environmental Protection Agency, 401 M Street SW., Room. G004, NE Mall, Washington, DC 20460. A reasonable fee may be charged for copying. (See Unit VIII for a description of information in the rulemaking record).

FOR FURTHER INFORMATION CONTACT: For information concerning the policy aspects of the rule, contact Ms. Debbie W. Stackhouse, Standards Development Branch, Emission Standards Division (ESD) (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5258. For information regarding the technical basis of the rule, contact Mr. Ronald E. Myers, Industrial Studies Branch, ESD, telephone number (919) 541-5407, at the same address. For information concerning the health and exposure analyses associated with the rule, contact Ms. Karen L. Blanchard, Pollutant Assessment Branch, ESD, telephone number (919) 541-5503, at the same address.

SUPPLEMENTARY INFORMATION: This preamble first summarizes the final rule to control Cr^{+6} emissions from CCT's. Next, the preamble describes the regulatory authority and presents background information on the development of the rule. The next section presents the significant public comments on the proposed rule and changes made to the final rule. Following that is a summary of the regulatory assessment of the final rule including environmental impacts, substitute water treatment chemicals, risk analysis, economic impacts, and resource and reporting requirements. The next sections include a brief discussion of the finding of unreasonable risk and an analysis of rulemaking under sections 6 and 9 of TSCA. Information on enforcement and confidentiality is described briefly; the information added to the rulemaking record since proposal is described; and regulatory assessment requirements including Executive Order (E.O.) 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are discussed.

I. Summary of the Final Rule

A. Applicability

The prohibitions of this final rule are applicable to the use of Cr^{+6}-based water treatment chemicals in CCT's and distribution in commerce of these chemicals for use in CCT's. Comfort cooling towers are dedicated exclusively to, and are an integral part of, heating, ventilation, and air conditioning (HVAC) or refrigeration systems. The HVAC systems typically are installed in hospitals; hotels; shopping malls; and office, educational, and other commercial buildings. Refrigeration systems are used for ice skating rinks, cold storage (food) warehouses, and other commercial operations. Towers dedicated exclusively to cooling rooms containing computers are also CCT's. The distribution in commerce of Cr^{+6}-based water treatment chemicals and use of these chemicals in closed cooling water systems and in industrial cooling towers (ICT's) are not prohibited by this rule. Closed cooling water systems, or any configuration of equipment in which heat is transferred by circulating water that is contained within the equipment (i.e., water is not discharged to the air), are not subject to the prohibition. Industrial cooling towers are used to remove heat from an industrial process or chemical reaction. The EPA is continuing to investigate the use of Cr^{+6}-based water treatment chemcials in ICT's in a separate study.

B. Prohibitions Against Distribution and Use

This final rule prohibits the use of Cr^{+6}-based water treatment chemicals in existing and new CCT's. The rule also prohibits the distribution of Cr^{+6}-based water treatement chemicals for use in new and existing CCT's.

Typically, the distribution cycle for Cr^{+6}-based water treatment chemicals begins with the production or mining of the chromite ore. The ore is sold to processors who use the ore to produce chromium for use in a variety of processes such as making chromium chemicals, stainless steel, and refractory bricks. Water treatment chemical distributors (i.e., persons who distribute in commerce Cr^{+6}-based water treatment chemicals for use in cooling systems) purchase sodium dichromate from processors of chromium chemicals for use as a corrosion inhibitor in water treatment programs. The water treatment chemical distributors typically formulate their own water treatment programs, which, in turn, are sold to cooling tower users and others (e.g., industrial boiler users). Some small

water treatment chemical distributors may purchase formulated chemicals from processors or blenders or, occasionally, from other distributors and then sell packages of formulated chemicals to cooling system users and others.

The prohibition against distribution in commerce of Cr^{+6}-based water treatment chemicals for use in CCT's applies to water treatment chemical distributors who sell water treatment chemicals directly to CCT owners/operators. These distributors must comply with the prohibition against distribution in commerce of Cr^{+6}-based water treatment chemicals for use in CCT's by February 20, 1990. Owners and operators of CCT's must comply with the prohibition against use of Cr^{+6}-based water treatment chemicals in CCT's by May 18, 1990.

C. Labeling, Recordkeeping, and Reporting

Water treatment chemical distributors are required to label Cr^{+6}-based water treatment chemicals with a warning that Cr^{+6} air emissions increase the risk of lung cancer when inhaled and that use of water treatment chemicals that contain Cr^{+6} in CCT's is prohibited. The labeling requirement in this final rule applies only to water treatment chemical distributors. It does not apply to the producers and processors of chromium ore provided they do not sell water treatment chemicals directly to cooling system owners/operators.

The EPA asserts that there is a strong need for labeling to ensure compliance with the prohibition on use of Cr^{+6} in CCT's. The large number of CCT owners/operators affected by this rule includes those who may need to decide between prohibited (i.e., in CCT's) and permissible (i.e., in ICT's and closed cooling water systems) uses of Cr^{+6}-based water treatment chemicals. Labeling is a necessary mechanism to direct such users toward compliance with the prohibition on use in CCT's.

The water treatment chemical distributors are required to retain records at their companies' headquarters locations of all shipments of Cr^{+6}-based water treatment chemicals for use in cooling systems for a period of 2 years from the date of shipment. The distributors must comply with the labeling and recordkeeping requirements by February 20, 1990. Distributors of Cr^{+6}-based water treatment chemicals also are required to provide an initial report identifying their headquarters and shipment office locations through which their Cr^{+6}-based water treatment chemicals are sold. The water treatment chemical distributors are required to comply with the initial reporting requirements by February 20, 1990, or within 30 calendar days after the distributor first begins distribution of water treatment chemicals, whichever is later. An updated list is required when changes in the headquarters or shipment office information occur and must be postmarked no later than 10 calendar days after the change occurs.

The recordkeeping and reporting requirements will enable EPA to ensure compliance with the rule and conduct inspections effectively. Examination of reports submitted by water treatment chemical distributors will enable EPA to track movement and use patterns, will identify which distributors are maintaining records of shipments of Cr^{+6}-based water treatment chemicals, and will aid in identifying sites where a potential violation may exist. Recordkeeping of shipments of Cr^{+6}-based water treatment chemicals will further aid in identifying sites where there is a potential for violation. It is likely that ICT's and closed cooling water systems in which these chemicals are used would be colocated with CCT's. Therefore, these would be locations at which inspection activities are focused.

II. Authority

Section 6 of TSCA authorizes EPA to impose regulatory controls if there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance presents or will present an unreasonable risk of injury to human health or the environment. To determine whether a risk is unreasonable, EPA balances the probability that harm will occur from the chemical substance under consideration against the social and economic costs to society of placing restrictions on the substance. If EPA determines that an unreasonable risk exists, the least burdensome of one or more of several specified regulatory measures may be applied to the extent necessary to protect adequately against the risk. The EPA has authority under section 6 of TSCA to prohibit the manufacture, processing, or distribution in commerce of a chemical substance or mixture for a particular use. Section 6 authorizes EPA to require warning labels regarding the use, distribution in commerce, or disposal of a chemical substance or mixture. Also, EPA may prohibit any manner or method of commercial use.

The EPA has authority under section 6 to require reporting and recordkeeping related to the regulatory requirements imposed by EPA under section 6. This is particularly important where, as here, such records and reports are necessary for effective enforcement of the section 6 rule. The EPA has used this section 6 recordkeeping and reporting authority previously in its polychlorinated biphenyl and asbestos rules promulgated under TSCA section 6 in 40 CFR parts 761 and 763.

As a result of this rule, any person who exports or who intends to export to a foreign country any chemical substance or mixture that contains Cr^{+6} is required under section 12(b) of TSCA to notify EPA of such exportation or intent to export. The notification requirements are set forth in 40 CFR part 707.

Some water treatment products that contained Cr^{+6} as an inert ingredient were registered as pesticide formulations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). All water treatment products have now been cancelled or reformulated without Cr^{+6} in the chemical mixture. To address future registrations involving Cr^{+6} as an inert ingredient, EPA expects to include Cr^{+6} in category No. 1 on the list of inert ingredients of concern. Sodium dichromate (Chemical Abstract Service [CAS] No. 10588-01-9) is already included in category No. 1. (See 52 FR 13305 *et seq.*, April 22, 1987.)

III. Background

In August 1984, EPA published a final "Health Assessment Document for Chromium" (HAD), EPA-600/8-83-014F, which was part of a comprehensive assessment to determine the potential adverse health effects associated with exposure to Cr^{+6}. Included in the major findings presented in the HAD was the finding that there were sufficient animal and human data to conclude that Cr^{+6} compounds are carcinogenic in humans.

The HAD also concluded that the data are inadequate to classify the carcinogenicity of trivalent chromium (Cr^{+3}) compounds. The Cr^{+3} compounds have not been studied as extensively, and the studies that have been done are inadequate to judge the carcinogenic potential. The EPA's Office of Research and Development is engaged in an epidemiological study to examine further the potential carcinogenicity of Cr^{+3} compounds.

On June 10, 1985 (50 FR 24317), EPA issued a notice of intent to list either total chromium or Cr^{+6} as a hazardous air pollutant under section 112 of the Clean Air Act (CAA). This notice presented a summary of the findings of the HAD and described the preliminary

estimated risks from exposure to chromium air emissions.

After the notice of intent to list was issued in the **Federal Register**, EPA identified CCT's as a class of cooling towers that poses a potentially high annual incidence of lung cancer in humans and for which there was sufficient information available to make a determination on appropriate control techniques. As a result of this decision, EPA published a notice of solicitation of information on potential standards to reduce public exposure to Cr^{+6} air emissions from CCT's (September 15, 1986, 51 FR 32668). Preliminary information on potential standards for CCT's was also presented at a public meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) on September 17, 1986.

Subsequent to the publication of the notice of solicitation of information and the NAPCTAC meeting, EPA initiated an intensive effort to gather data and information on which to base regulations for Cr^{+6} emissions from CCT's. As part of this effort, various regulatory authorities that would be applicable were also investigated, and TSCA was selected as the most appropriate authority.

On March 29, 1988 (53 FR 10206), EPA issued a proposed prohibition of Cr^{+6}-based water treatment chemicals in CCT's under the authority of section 6 of TSCA. The preamble to the proposed rule discussed the availability of the proposal BID, "Background Information Document for Chromium Emissions from Comfort Cooling Towers," EPA-450/3-87-010a, which describes in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the proposal BID were distributed to interested parties. Opportunity also was provided for interested persons to present data, views, or arguments concerning the proposed rule at a public hearing.

The period provided for public comment on the proposed rule extended from March 29, 1988, to May 31, 1988. A public hearing was held on June 13, 1988, at Research Triangle Park, North Carolina. The time period for receipt of comments from the public hearing participants was extended to July 13, 1988. Twenty-seven comment letters were received, and five interested parties testified at the public hearing concerning issues relative to the proposed rule. The comments have been carefully considered and, where determined to be appropriate by EPA, changes have been made to the proposed rule.

IV. Significant Comments and Changes to the Proposed Rule

Comments on the proposed rule were received from water treatment chemical companies, CCT users, industry trade groups, water treatment consultants, a publicly owned treatment works, and an environmental group. A detailed discussion of these comments and responses can be found in the promulgation BID (see **ADDRESSES** section). The summary of comments and responses in the promulgation BID serves as the basis for the revisions that have been made to the rule between proposal and promulgation.

A statement was added to the final rule to clarify that the use of Cr^{+6}-based water treatment chemicals in ICT's and closed cooling water systems and distribution in commerce of the chemicals for use in these facilities are not prohibited by this rule. Minor changes were made to the warning label requirement to indicate that CCT's are towers that are open water recirculation devices and to clarify that inhalation of Cr^{+6} air emissions increases the risk of lung cancer.

Another change made to the rule since proposal was to eliminate the requirement to maintain records of shipments of nonchromate chemicals to CCT's. In addition, the requirement that all water treatment chemical distributors provide a report identifying the company headquarters and shipment offices was changed to require reporting only by distributors of Cr^{+6}-based water treatment chemicals. Several water treatment chemical distributors commented that the proposed requirements would be burdensome and unnecessary. The EPA has reevaluated the need for these records and reports and determined that requiring (1) reporting by distributors that provide only nonchromate water treatment chemicals and (2) recordkeeping of nonchromate shipments would be unnecessary because enforcement of the rule would be adequately accomplished by other provisions.

The final rule requires that shipment records of Cr^{+6}-based water treatment chemicals for use in cooling systems be maintained. The reporting requirement also was revised to clarify that reporting is required only by distributors of Cr^{+6}-based water treatment chemicals for use in cooling systems.

Definitions have been included in the rule for the new terms "cooling system", "closed cooling water system", and "chilled water loop"; and the definition of the term "water treatment chemicals" has been revised. The new and revised definitions clarify that the labeling, recordkeeping, and reporting requirements apply to cooling systems rather than to cooling towers. Definitions also were added for the new terms "distributors" and "Cr^{+6} chemical" to clarify the intent of the rule. The definition of "water treatment chemicals" has been revised by deleting the word "biocides" because biocides are regulated under FIFRA.

The statement of applicability of this rule was revised slightly. This change is of an editorial nature to clarify the intent of the rule, to account for changes to the recordkeeping and reporting requirements, and to improve compliance monitoring efficiency.

The major comments and responses have been summarized in this preamble. Most of the comment letters contained multiple comments. The major comments have been summarized under the following headings: Water Treatment Program Performance, Health Effects/Risk, Regulatory Approach, Recordkeeping and Reporting Requirements, Economic and Cost Impact, Selection of the Source Category, and Monitoring and Control. All comments and responses are included in the promulgation BID.

A. Water Treatment Program Performance

1. *Heavily corroded CCT systems.* Two commenters questioned whether EPA had adequately considered the impact on existing, older CCT systems of switching from Cr^{+6}-based water treatments to nonchromate treatments. One commenter believes that in an existing system being treated with a chromate program, the "protective coating" within piping and equipment would be disrupted during the transition from "proven" chromate treatments to "nonproven" nonchromate treatments. This disruption would lead to increased fouling and to pinhole leakage at least until the replacement inhibitor becomes stabilized. Thus, according to the commenter, existing towers, especially older systems, converted to "nonproven" inhibitors could experience significant downtime and disruptions.

One commenter believes that no nonchromate program can operate successfully in CCT's that are corroded, but are still operative, or that contain deposits. The commenter also believes that no CCT system can remain free of airborne dirt; that unless the pipe surfaces are kept clean from dirt deposits, underdeposit corrosion is inevitable; and that it is not possible to clean a corroded system. The commenter believes the issue of corroded systems must be addressed

because many building owners inherit a CCT system that has been neglected. The commenter also believes that the carbon steel piping rather than the condenser tubes is the most critical component in many CCT systems because underdeposit corrosion is found in piping between the condenser and the CCT. In the CCT's the commenter has observed, the condenser tubes have been properly maintained in all cases. The commenter has examined samples of corroded carbon steel pipe from CCT systems in New York City that used chromate treatment programs and has found an average corrosion rate of about 7 to 10 mils per year (mils/yr). For systems using molybdate treatment programs, the commenter has observed corrosion rates of 7 to 30 mils/yr. To illustrate the severity of the corrosion rate with molybdate treatment programs, the commenter indicated that pipes in some systems had operated satisfactorily on chromates but had failed because of underdeposit corrosion within only 1 to 2 years after switching to molybdate treatment. The commenter believes that these rates are the norm and that the corrosion rates presented in Table 3–1 of the proposal BID are for ideal, clean samples, which rarely exist in actual CCT systems.

The EPA investigated the impact on CCT's of switching nonchromate treatments. According to water treatment chemical distributors, deposition and underdeposit corrosion are rare in CCT's, including older systems, using chromate programs. These CCT's can be easily switched to nonchromate treatment programs. Switching a clean, chromate-based CCT system to a nonchromate program can be accomplished by switching the inhibitor feed and allowing the chemicals in the new program to repair defects in the chromate film as they develop.

Evidence that switching clean systems to nonchromates does not cause significant downtime and disruptions was provided for CCT's used at a research center in Virginia. As described in the proposal BID, EPA evaluated available corrosion results during the 3 to 4 month period after the CCT's were switched from chromate to phosphate treatment programs. These data indicated that no leaks developed in the CCT systems and that acceptable carbon steel corrosion rates of about 2 mils/yr were achieved.

The commenter is correct that airborne dirt will be drawn into CCT's and, if uncontrolled, may deposit on pipes and lead to underdeposit corrosion. The amount of deposition is a function of the airborne dirt levels, the water quality, the CCT operating procedures, and the water treatment program. Typically, water treatment chemical distributors control deposition by adding sufficient levels of appropriate dispersants. The distributors also recommend lowering the cycles of concentration, which is defined as the ratio of the concentration of the dissolved solids or conductivity of the recirculation water to that in the makeup water. Because this may result in more corrosive water, it may also be necessary to use a treatment program with additional inhibitors or higher levels of inhibitors.

Another mechanism to control deposition in some CCT's is to eliminate slow flow or stagnant areas. This may require changing the design or operation of the CCT. For example, CCT's in some new multistory buildings may be designed with one or more chillers per floor that operate only when cooling is needed on that floor. At other times, the water flow is turned off. This lowers energy costs but increases the opportunity for deposition of suspended solids. Typically, CCT's also are shut off for several hours each night. In the rare cases where the above options are unsuccessful or when operators do not want to change treatment programs or operating practices, another option to control suspended solids would be to install a sidestream filter.

The commenter also is correct that nonchromate programs will not work in corroded CCT's. In the rare cases where a system treated with chromates is heavily corroded, it may be necessary to clean the system before a nonchromate program can be implemented successfully. In many cases, on-line cleaning is successful. On-line cleaning often is performed with chelating agents such as sodium or ammonium salts of ethylenediamine tetraacetic acid. Various combinations of phosphates, phosphonates, polymeric dispersants, and synthetic detergents also have been used for on-line cleaning. For example, a program containing molybdate and a polymeric diol has been developed that cleans existing corrosion and prevents its recurrence. Examples of successful on-line cleaning were provided by water treatment chemical distributors that showed deposits and corrosion products are gradually removed over several months. At the same time, corrosion rates were decreased from high levels to less than 1 mil/yr.

For some heavily corroded systems, on-line cleaning may not be adequate. In these cases of severe corrosion, it may be necessary to shut down the system to perform a more rigorous cleaning effort. Chelating agents and other chemicals at elevated temperatures or dilute acid solutions are often used in these cases. According to a cleaning contractor, the procedure typically takes 1 to 3 days. The cleaning contractor cited an example in New York City where a heavily corroded CCT system with 20 chillers on 6 floors was cleaned during a scheduled 3 day shutdown.

The results of cleaning efforts show that it is possible to clean corroded systems and subsequently control corrosion and deposition with nonchromate programs, even in CCT's using poor quality water. Additional information about the performance of various treatment programs under poor quality water conditions is provided in the responses to comments on soft water quality and on high chlorides, hardness, and alkalinity water quality in Units IV.A.2 and IV.A.3, respectively.

The commenter has misunderstood the purpose of Table 3–1 of the proposal BID. The corrosion rates in the table do not refer to average corrosion rates achievable under specific conditions as suggested by the commenter. The purpose of the table is to indicate how various rates are perceived by the corrosion and water treatment industry as a whole. For example, a carbon steel corrosion rate of 7 mils/yr would be considered moderate by most industry representatives, even though in specific applications it might be the best rate that can be achieved. Therefore, EPA believes the rates presented in the table are appropriate for the intended purpose.

2. *Soft water quality.* One commenter stated that EPA did not address the impact of differences in water conditions on the performance of corrosion inhibitor systems and that the proposal BID did not mention scale-forming or corrosive waters. If a scale-forming water is used in the CCT, corrosion problems are minimal. However, when soft, corrosive waters (such as those in the New York City metropolitan area) are present, the commenter believes that the results of corrosion tests would be different than the results with scale-forming water. The commenter believes that corrosive waters similar to those in New York City exist in the northwestern U.S.

To respond to the comment, EPA obtained additional information about the performance of nonchromate treatment programs in CCT's using soft water from eight water treatment chemical distributors. Case history performance data provided by four of the distributors indicate that acceptable

corrosion rates (0.3 to 2.5 mils/yr) can be achieved with nonchromate treatment programs in soft water applications. These corrosion rates are within the range of corrosion rates achieved with nonchromate programs in scale-forming water and are also comparable to corrosion rates achieved with chromate programs. Much of the performance data are for programs used in ICT systems. The information from ICT's is applicable to CCT's because both types of cooling towers use carbon steel distribution pipes, and the primary concern of the commenter is with corrosion of the carbon steel pipes in CCT systems. Four other water treatment chemical distributors did not provide data but they did confirm the effectiveness of nonchromate programs. The data and information obtained from all eight distributors are discussed below and in docket item IV-B-4.

Performance data were provided for a CCT in the northeastern U.S. that uses soft makeup water. The total hardness in the makeup water was 28 parts per million (ppm), the alkalinity was 20 ppm, and the total dissolved solids (TDS) level was 155 ppm. This tower operated with about six cycles of concentration. The treatment program was a molybdate/organophosphate blend that the water treatment chemical distributor claims can be used effectively even in water with zero hardness. Mild steel and copper corrosion rates as measured with coupons were about 0.9 mil/yr and 0.2 mil/yr, respectively. The distributor providing this service considers treatment programs successful if they achieve carbon steel corrosion rates of less than 3 mils/yr.

At an ICT using makeup water with a total hardness of 15 ppm, carbon steel corrosion rates of less than 1.5 mils/yr were achieved. The treatment program, supplied by another water treatment chemical distributor, consisted of a molybdate/orthophosphate/azole formulation that was fed at a rate to yield a molybdate residual of 4 to 6 ppm. A nonionic dispersant also was added, and deposition was insignificant.

Results of laboratory corrosion studies of various nonchromate formulations in low ionic strength water were provided by one water treatment chemical distributor. The total hardness of the tested water was 96 ppm, the alkalinity was 72 ppm, the conductivity was 269 micromnos (μmhos), and the Langelier Saturation Index (LSI) was 0. The LSI indicates the corrosion or scale-forming tendencies of water; positive LSI values indicate that the water tends to be scale forming, and negative LSI value indicate that the water tends to be corrosive. Corrosion rates of 2.0 mils/yr without pitting were achieved in the laboratory with high phosphate and molybdate/orthophosphate/azole formulations. The distributor considers treatment programs to be successful if corrosion rates of less than 3.0 mils/yr are achieved.

Another successful application of a nonchromate program was for an ICT using soft water; the makeup and recirculating water contained total hardness levels of less than 2 ppm and 14 ppm, respectively. The treatment program, supplied by the third water treatment chemical distributor, consisted of orthophosphate and polyphosphate for mild steel protection and tolyltriazole for admiralty brass protection. Mild steel corrosion rates as measured by untreated coupons ranged from 2.2 mils/yr to 2.7 mils/yr. Corrosion rates on pretreated coupons ranged from 0.7 mil/yr to 1.6 mils/yr. Pretreated coupons are chemically passivated similar to the way the metal surfaces in the cooling system are passivated. This distributor believes that actual system corrosion rates are represented more accurately with pretreated coupons than with untreated coupons.

An ICT system in the southeastern U.S. using makeup water that contains low hardness and low alkalinity was able to achieve very low corrosion rates with a nonchromate program. Actual hardness and alkalinity values were not available, but an average corrosion rate of 0.32 mil/yr with no pitting was achieved with a molybdate and polymeric diol treatment program supplied by a fourth water treatment chemical distributor. In addition, there was no deposition or underdeposit corrosion in the system piping. This corrosion rate is as good as or better than results obtained with chromate treatment programs.

Four water treatment chemical distributors indicated that nonchromate treatment programs provide acceptable results when soft makeup water is used, but they did not present case history information. One distributor indicated that if the hardness in the recirculating water is less than about 50 ppm, average corrosion rates of 1 to 2 mils/yr with no pitting can be achieved only with zinc programs. A second distributor indicated that average corrosion rates of 2 to 3 mils/yr without pitting are achieved with molybdate treatment programs in CCT's that use makeup water with calcium hardness levels as low as 14 to 20 ppm and alkalinity of 6 to 9 ppm. These CCT's operate with 10 to 15 cycles of concentration so that the recirculating water has a positive LSI. A third distributor indicated that "excellent" results are obtained in CCT's in Greenville, South Carolina, where the water has total hardness levels of only 2 to 3 ppm. The fourth distributor believes that average corrosion rates of less than 2 mils/yr can be obtained with treatment programs based on various combinations of zinc, phosphonate, orthophosphate, and molybdate when soft makeup water (e.g., total hardness of about 18 ppm and total alkalinity of about 10 ppm) is used. The distributor recommends that the system be operated with 10 or more cycles of concentration to obtain a positive LSI and more than 100 ppm of calcium hardness. In addition, the pH should be maintained above 7.5, which may require the addition of caustic soda.

In summary, the case history performance data and other information obtained from the water treatment chemical distributors show that many nonchromate treatment programs in soft water applications can achieve acceptable carbon steel corrosion rates of less than 2 mils/yr. Several programs can achieve corrosion rates of less than 1.5 mils/yr. These corrosion rates are comparable with corrosion rates achieved in scaleforming water, and the lowest corrosion rates are similar to the rates achieved with chromate programs.

3. *High chlorides, hardness, and alkalinity water quality.* One commenter indicated that no nonchromate program can successfully control corrosion when the water has high chloride, hardness, and alkalinity levels (e.g., along the coast of Florida), especially when operators provide poor daily maintenance. Typically, acid must be added to reduce the alkalinity and control scale. However, acid addition increases the corrosivity of the water. In addition, for waters that also have high levels of chlorides, it is imperative that a tight inhibitor film is formed and maintained to withstand low pH excursions or high chloride excursions because the presence of chloride ions increases the corrosivity of the water.

When contacted for clarification, the commenter recommended that the sodium chloride (NaCl) concentration in recirculating water be limited to about 600 ppm. According to the commenter, CCT's able to operate at about 5 cycles of concentration without exceeding this level are using good to moderate quality water. Based on the original comment, the lowest corrosion rates that the commenter has been able to achieve with nonchromate programs in such water are 2 to 4 mils/yr with some molybdate/dispersant programs. Zinc,

all-organic, and molybdate programs without dispersants or only low levels of molybdate achieved corrosion rates of 4 to 15 mils/yr. Because many of the commenter's customers specify that treatment programs must limit mild steel corrosion to less than 2 mils/yr, the programs described above would be unacceptable to them. According to the commenter, many water supplies in Florida contain 200 to 400 ppm NaCl, and some have higher levels. For CCT's using this water, higher than recommended chloride levels would need to be maintained in the CCT for it to operate at 5 cycles of concentration. The commenter indicated that higher chloride levels would result in higher corrosion rates than those presented above. The commenter also indicated that the CCT could operate successfully at lower cycles of concentration so as not to exceed the maximum recommended chloride concentration, but this would require more makeup water and higher cost (see Unit IV.E.2. for additional discussion of the cost impact).

The commenter also indicated that new programs tested in the laboratory have achieved corrosion rates of 1 to 3 mils/yr with no pitting in water containing 500 to 1,000 ppm NaCl. In a more recent contact, the commenter indicated that corrosion rates of 1 to 4 mils/yr with no pitting have been achieved with the new program in the field. The commenter believes that the field results were not as good as the laboratory results because the system may not have been controlled as well in the field. Another commenter described the severe scaling and underdeposit corrosion problems that occurred in two systems using nonchromate treatment programs in poor quality Florida water.

To respond to these comments, additional information about the performance of nonchromate water treatment programs for CCT's in areas where the makeup water has high chloride, hardness, and alkalinity levels was requested from water treatment chemical distributors and other contacts. The information provided by five distributors indicates that nonchromate treatment programs that provide adequate control of corrosion in CCT's using such water are available. Corrosion rates, as measured with carbon steel coupons, at two CCT's and two ICT's using makeup water similar to water in Florida ranged from less than 1 mil/yr to 1.33 mils/yr. In addition, results of laboratory studies provided by two distributors indicate that corrosion rates of less than 2 mils/yr can be achieved in such water. These data and information are discussed below and in docket item IV–B–2.

Case history performance data were provided by four water treatment chemical distributors on corrosion rates achieved at cooling towers that use water with high chloride, hardness, and alkalinity levels similar to those cited by the commenter. According to one distributor, corrosion is successfully controlled with a nonchromate program in a CCT in Phoenix, Arizona, that uses makeup water similar to that cited by the commenter. The makeup water has a total hardness level of about 176 to 192 ppm (60 percent calcium hardness, 40 percent magnesium hardness), a chloride concentration of about 132 to 148 ppm (equivalent to about 218 to 244 ppm NaCl), and a pH of 7.8. The recirulation water has a total hardness of about 620 to 680 ppm and a chloride level of 480 to 556 ppm (about 790 to 920 ppm NaCl). Based on these levels, the CCT operates with about 3.7 cycles of concentration. Sulfuric acid is added to the recirculating water to reduce the pH to about 7.0. Blowdown and chemical feed are controlled automatically by a conductivity sensor, and acid feed is controlled automatically by a pH sensor. This CCT has used an orthophosphate-based treatment program with dispersants for several years. Corrosion rates as measured with carbon steel coupons average 1 to 1.33 mils/yr with no pitting. In addition, there has been no problem with deposition or underdeposit corrosion in the system piping.

An ICT in Kansas was identified that also used water similar to that cited by the commenter. The recirculating water has chloride levels of 400 to 800 ppm (660 to 1,320 ppm as NaCl) and total hardness levels of 1,000 to 1,500 ppm (calcium hardness accounts for about 40 percent of the total hardness). A phosphate program has been used for the past 10 years. The average corrosion rates as measured with carbon steel coupons have been less than 1 mil/yr, and there have been no problems with deposition or underdeposit corrosion in the system piping.

One of the case studies cited at proposal was for a CCT located in Chesapeake, Virginia. As noted in the proposal BID, the TDS level in the makeup water for this CCT is significantly higher in the summer than during the rest of the year. During the summer of 1986, the TDS level was as high as 2,500 ppm; in other years, the summer average has been about 700 to 800 ppm. During the rest of the year, the TDS level is typically 300 ppm. Most of the additional dissolved solids in summer are NaCl from seawater that enters the reservoir when the river flow is low. According to one water treatment chemical distributor, corrosion rates measured on carbon steel coupons average about 0.5 mil/yr during the summer. In addition, operators indicated that the condenser tubes have been found to be clean when checked each winter, and no problems with deposition or underdeposit corrosion in the system piping have been detected. A phosphonate-based treatment program is used in this CCT.

An ICT at an ethylene production plant uses recirculating water with a total hardness of 390 ppm, chloride concentration of 400 ppm (660 ppm as NaCl), and a total alkalinity of 200 ppm. Carbon steel corrosion rates of less than 1 mil/yr were measured in 60° C (140° F) return water, and no fouling occurred in the plant heat exchangers. Because many dissolved solids are less soluble at higher temperatures, the worst fouling would be expected to occur in the heat exchangers. The absence of deposition in the heat exchangers suggests that the pipes are also clean. Corrosion is controlled at this ICT using a zinc, inorganic phosphate, and organic phosphate corrosion inhibitor program.

Two water treatment companies provided the results of laboratory corrosion studies that evaluated water treatment programs under conditions similar to those cited by the commenter. In one study, water circulating through the test equipment had a total hardness of 400 ppm, a chloride concentration of 412 ppm (824 ppm as NaCl), and an alkalinity level of 20 ppm. Average carbon steel corrosion rates of 0.9 and 1.2 mils/yr were achieved using a high phosphate inhibitor at pH levels of about 7 to 9. Average carbon steel corrosion rates of 1.1 and 1.2 mils/yr were achieved using a molybdate/orthophosphate/azole blend at pH levels of about 7 to 8, and no pitting was observed. The other study was conducted to evaluate the same zinc, inorganic phosphate, and organic phosphate blend used in the ICT at the ethylene production plant described above. The recirculating water used in the laboratory had a total hardness of 1,350 ppm, a chloride content of 600 ppm (990 ppm as NaCl), and an alkalinity level of 50 ppm. The corrosion rate achieved under these conditions was 1.4 mils/yr, which is slightly worse than the 1 mil/yr achieved in the ICT under better conditions. These similar results contrast with the commenter's belief that corrosion rates achieved in the field would be worse than those in the laboratory.

Two additional water treatment chemical distributors did not provide site-specific data but indicated that their nonchromate treatment programs can control corrosion in CCT's using water with high chloride, hardness, and alkalinity levels. One distributor indicated that CCT's using makeup water with 200 to 400 ppm NaCl are easily treated with nonchromates even if the water also contains high hardness and alkalinity levels. This distributor also claims that nonchromate programs can be used successfully in systems containing much higher NaCl levels (e.g., even in brackish water that contains 20,000 to 40,000 ppm NaCl). The other distributor stated that acceptable results (unspecified corrosion rates, but <5 mils/yr) can be achieved with molybdate or all-organic programs. However, if hardness levels are high, it may be necessary to add acid to reduce alkalinity and to increase the level of dispersants to control deposition.

To achieve acceptable results with nonchromates, the system must be properly monitored, controlled, and maintained. Although operators may not maintain and control system parameters properly, as suggested by the commenter, it would not be because adequate programs or information about proper procedures are unavailable. As described above, the case history performance data and other information obtained from the water treatment companies show that acceptable carbon steel corrosion rates of less than 2 mils/yr can be achieved in CCT's ICT's that use water with high chloride, hardness, and alkalinity levels. These corrosion rates are comparable with corrosion rates achieved in average water and are only slightly higher than some of the rates reported by the commenter for chromate programs.

4. *Microbiologically influenced corrosion (MIC).* One commenter noted that nonchromate programs do not control MIC in corroded or deposit-laden systems that use corrosive water. The commenter has measured corrosion rates of 80 to 100+ mils/yr in carbon steel piping for CCT's in New York City that were treated with molybdate and that also suffered from MIC. These rates are not observed in CCT's treated with chromates, and the commenter believes that the microorganisms responsible for MIC are controlled by the inherent toxicity of the chromates.

Corrosion inhibitors are not designed to kill the microorganisms responsible for MIC; this is accomplished with biocides. Because chromium is toxic, however, it may have some incidental biocidal properties. Therefore, greater amounts of biocides may be required when a system is switched to a nonchromate program. Regardless of the corrosion inhibitor, MIC may occur if deposition is not controlled adequately because biocides cannot penetrate the deposit to kill the microorganisms. As indicated in Unit IV.A.1., steps to control deposition of suspended solids, such as modifying the water flow or installation of sidestream filters are available and easily implemented. However, as also described in Unit IV.A.1., if a system is already heavily corroded, it will need to be cleaned before switching to nonchromates. In summary, EPA believes that MIC can be controlled adequately in clean CCT systems by nonchromate treatment programs with good control of deposition and appropriate supplemental biocide programs.

5. *Algae growth.* One commenter has performed research that shows that chromates seem to inhibit algae growth, and many cooling tower operators have found that they need little or no biocide with a chromate program. Also, the commenter believes that old habits may be hard to break and that many operators will not add sufficient biocide with nonchromate treatment programs.

Chromium compounds are sold for use as corrosion inhibitors, not as biocides. However, because of the toxic properties of chromium, chromate treatment programs may have some incidental biocidal properties. Consequently, CCT operators may need to add greater amounts of biocides when they switch to nonchromate treatment programs. Typically, water treatment distributors recommend the amount of biocide necessary with any type of treatment program. The recommended biocide treatment should be incorporated into the CCT operators routine operation and maintenance of the CCT. Installation of equipment to add biocides automatically to the system would simplify the operators' work load. However, the operators would still need to monitor the system periodically (visually and/or chemically) to determine that biological growth is under control.

B. Health Effects/Risk

1. *Adequacy of scientific studies.* Two commenters believe that the results of chromium toxicity studies are not adequate to prove that the highly soluble Cr^{+6} in water treatment chemicals is carcinogenic. Both commenters indicated that many studies show only slightly soluble or insoluble Cr^{+6} to be carcinogenic and that the carcinogenicity of soluble Cr^{+6} shown in some studies may be overstated or the result of other factors.

One commenter cited results of animal inhalation studies that show that only calcium chromate produced a carcinogenic response. Other Cr^{+6} compounds noted to be positive when implanted intrabronchially or intratracheally include sodium bichromate, zinc potassium chromate, zinc chromate, and strontium chromate. In one study cited by the commenter, 20 Cr^{+6}-containing compounds were administered intrabronchially as pellets, and only the sparingly soluble materials produced a carcinogenic response. The components that produced bronchial carcinomas included strontium chromate, calcium chromate, and to a lesser extent, zinc chromate.

The 1984 HAD for chromium (EPA 600/8-83-014F) describes both positive (Steinhoff et al., 1983) as well as negative (Levy and Martin, 1983; and Hueper, 1961) studies on soluble chromates. The experimental protocols used in these negative studies were inadequate, and, thus, the negative findings are not adequate to discount or negate the postive carcinogenic effect observed for soluble chromates in the Steinhoff study. Also, since the time the HAD was published, additional scientific evidence has not only demonstrated the carcinogenic activity of soluble Cr^{+6} in exposed animals (Glaser et al., 1986; Levy et al., 1986; Steinhoff et al., 1986), but also has shown epidemiological evidence associating exposure to soluble Cr^{+6} with an increased cancer risk (Blair, 1980; Franchini et al., 1983; Sorahan et al., 1987). Full references for these citations are provided in the promulgation BID (EPA-450/3-87-010b).

2. *Conflicting interpretations.* One commenter indicated that EPA's position on the carcinogenicity of Cr^{+6} conflicts with that in the 1985 National Institute of Occupational Safety and Health (NIOSH) Pocket Guide for Chemical Hazards, which states that on the basis of current evidence, all Cr^{+6} is carcinogenic except for sodium, potassium, hydrogen, and lithium monochromates and dichromates. Furthermore, this commenter indicated that the Agency for Toxic Substance and Disease Registry (ATSDR) concluded that sodium dichromate was only a weak carcinogen under the test conditions in the Steinhoff study.

The EPA acknowledges that there are varying degrees of scientific support associating an increased cancer risk with exposure for the many chromium compounds. When EPA evaluated the scientific data, the authors of the HAD

took the position that it would be prudent to consider all Cr^{+6} compounds to be carcinogenic given the available data as well as the uncertainties in the data. The EPA's Science Advisory Board (a group of nationally known scientists external to EPA and who give scientific advice to EPA) stated that it "agrees with the position stated in the draft document that Cr(VI) should be classified in Group 1 ('The chemical * * * is carcinogenic to humans') of the criteria adopted by the International Agency for Research on Cancer."

A representative from NIOSH testified before the Occupational Safety and Health Administration (OSHA) on August 1, 1988, on OSHA's proposed rule on air contaminants that, based on evidence published since 1975, NIOSH recommends that OSHA should consider all Cr^{+6} compounds as occupational carcinogens.

The ATSDR document referenced by the commenter on chromium was still in draft form. The EPA has commented to ATSDR that EPA and NIOSH (according to the NIOSH testimony) consider all Cr^{+6} compounds to be carcinogenic and that ATSDR should consider changing its conclusions in the draft document. As of the time of this comment response, the document is still in draft form.

3. *Threshold concept.* One commenter believes that a threshold concept for Cr^{+6} carcinogenicity is scientifically valid. This belief is based on many individual findings published or presented recently that together have resulted in a postulated mechanism for cancer induction. These findings indicated that only soluble and slightly soluble forms of Cr^{+6} can potentially enter cells, that the body has several defense mechanisms against Cr^{+6}, and that Cr^{+6} must be reduced close to the deoxyribonucleic acid (DNA) to produce DNA adducts capable of producing gene mutations.

The commenter indicated that the body defenses against Cr^{+6} begin at inhalation. Particle size determines the amount of Cr^{+6} that is available to the lungs. Various studies have shown that about 5 to 20 percent reaches the lungs and that the rest is cleared and swallowed. Gastric juices efficiently reduce Cr^{+6} to Cr^{+3}, and secretions in the lung have the capacity to reduce some of the Cr^{+6} that enters. Secondary defense is played by the pulmonary alveolar macrophages, which physically reduce Cr^{+6} by engulfing it and by enzymatically reducing it to Cr^{+3}. In addition, up to 2 milligrams (mg) of Cr^{+6} absorbed by the blood can be reduced to Cr^{+3} by plasma. Any Cr^{+6} that enters a cell can be reduced by electron donors in the mitochondria and by enzymes in the microsomes, cytosol, and other cellular organelles.

The commenter also suggested that if the Cr^{+6} gets past these defenses, it may reach the DNA. Several theories have been suggested to explain how the Cr^{+6} interacts with DNA. Although the mechanism is unclear, it is known that the Cr^{+6} must be reduced either close to the DNA or after it is incorporated into DNA beause Cr^{+3} is detected in DNA and has been shown to be active with DNA. Once a DNA adduct is produced, the last line of defense is the DNA repair process by various enzymes. In humans, this defense is good. However, if not repaired, the modified DNA molecule would have the potential to produce mutations. A mutation produced during reproduction of the cell would then have the potential to be cancerous. Although the reduction capacity of the body cannot be precisely quantified, the commenter estimated that it is approximately 100 times or more than that needed for low-level workplace exposures.

The EPA agrees with the commenter that the body has some defense mechanisms to protect against toxic effects of exposure to chromium compounds. These mechanisms include: (1) Clearing and swallowing large particles containing Cr^{+6} reduces the amount of Cr^{+6} available to the lung; (2) effective conversion of Cr^{+6} to Cr^{+3} by the gastric juice, lung secretions, blood, and intracellular organelles (cytosol, mitochondria, and microsomes); and (3) physical reduction of Cr^{+6} by pulmonary alveolar macrophages that engulf it. However, wide intraspecies and interspecies variations and a host of other factors generally affect pharmacokinetics and metabolism of the chromium compounds. In spite of all these protective mechanisms, Cr^{+6} can reach target molecules and induce the carcinogenic process at some dose levels as seen in human and experimental animals.

The commenter mentioned that only the soluble and slightly soluble forms of Cr^{+6} can enter the cell and that insoluble forms cannot. In contrast, EPA believes that even the insoluble compounds can be made bioavailable because body organ systems have a capacity to disintegrate and dissolve insoluble chromium compounds and thereby enter the cell.

The genotoxicity of chromium and its compounds has been studied extensively. The chromium compounds have been evaluated in over 300 short-term tests. Hexavalent chromium has produced positive responses in most of the test systems used to investigate its potential for mutagenicity. To express the positive mutagenic response, Cr^{+6} must enter the cell nucleus in order to interact with DNA and produce a DNA adduct or DNA damage.

Hexavalent chromium compounds have been classified as human carcinogens based on human epidemiologic studies supported by experimental animal studies and in vitro tests with submammalian test systems. However, for practical and statistical reasons, cancer risk associated with the low level exposure cannot be measured directly either by animal experiments or by epidemiologic studies. Therefore, EPA must depend on the current understanding of the mechanism of carcinogenesis. At the present time, the dominant view of the carcinogenesis process involves the concept that most cancer-causing agents also cause irreversible damage to DNA. This position is reflected by the fact that a very large proportion of agents, including Cr^{+6}, that cause cancer are also mutagenic. There is reason to expect that the carcinogenic response, which is initiated by a mutagenic event, is of a nonthreshold nature and thus can be associated with the linear nonthreshold dose-response relationship. Therefore, the hypothesis that was developed by the commenter cannot be considered adequate to establish the existence of a threshold when mutagenic responses are noted to occur.

4. *Biological growth.* One commenter believes that prohibition of chromium may create a potential health hazard from proliferation of biological organisms that far outweighs the risk from Cr^{+6}.

Upon reviewing a significant amount of scientific literature, the only harmful biological organisms that appear to be associated with cooling tower emissions are *Legionella pneumophila*, bacteria responsible for what is commonly referred to as Legionnaire's Disease. These bacteria are found in many water sources including surface water supplies. Several biocides (e.g., chlorine and quaternary ammonium salts) are sold as part of regular treatment programs for controlling these organisms. Chromium compounds are sold for use as corrosion inhibitors, not as biocides. However, because of the toxic properties of chromium there may be some incidental biocidal properties. If readily available biocidal treatment agents are used at concentrations recommended by the manufacturer, growth of biological organisms such as *Legionella pneumophila* is expected to be minimal and increased outbreaks of

disease are not expected to occur as a result of this rulemaking.

C. Regulatory Approach

1. *Export notification.* Two commenters indicated that proposal of a rule under section 6 of TSCA triggers automatic export notification requirements under TSCA section 12(b) for the regulated chemical. One of the commenters also indicated that EPA's interpretation of the TSCA requirements is that they apply to chemicals subject to the triggering regulations rather than to such chemicals in restricted uses. Consequently, under the proposed rule, export notices would be required for any substance or mixture containing Cr^{+6}, regardless of its nature or intended use. Both commenters believe that the rule should be changed to limit the circumstances that would require export notifications. One commenter believes EPA should either restrict the category of chemicals covered by the proposed rule or specify the category of chemicals in the rule for which export notice is required. The other commenter requested that the final rule specifically exempt paint and coatings manufacturers, or their pigment suppliers, from the export notification requirements because they would be unduly burdened by these requirements.

Section 12(b) of TSCA requires that any person who exports or intends to export to a foreign country a chemical substance or mixture for which a rule has been proposed or promulgated under section 5 or 6 must notify EPA of such exportation or intent to export. The EPA is then required to furnish notice of the rule to the government of the country receiving the export. Because the chemical substance subject to this rule is Cr^{+6}, the commenter is correct in noting that export notices would be required for any substance containing Cr^{+6}, not just for Cr^{+6}-based water treatment chemicals. It is not clear that this requirement could be narrowed, as a practical matter, because of the inability to determine the possible end use of the material at the time of export.

The EPA anticipates that the burden of the export notification requirements will be minimal and has incorporated this into the overall estimated cost for industry to comply with the labeling, reporting, and recordkeeping requirements (the estimated cost is described in detail in Unit IV.E.4.). Companies are required only to provide notification the first time they export or intend to export to each country in a calendar year. The notification consists of the company's name and address, chemical name, TSCA section that triggered the notification (section 6 in this case), countries that are the receivers, and the export date or intended export date.

2. *Regulatory authority.* One commenter believes that EPA does not have the authority under TSCA to prohibit the use of Cr^{+6} compounds in CCT's because: (1) TSCA requires that action be taken under other authorities unless it is in the public interest to protect against risk under TSCA, and a court decision (*SED, Inc.* v. *City of Dayton*, 519.F. Supp. 979, 989–90 [S.D. Ohio, 1981]) has upheld this TSCA requirement; (2) there is clear authority under the CAA to protect against the risk of Cr^{+6} air emissions, the only media in which Cr^{+6} poses a risk; and (3) the justifications for using TSCA rather than the CAA do not meet the "public interest" criterion set forth in section 6(c) of TSCA (i.e., the incremental benefit for EPA's enforcement office is not sufficient to show that regulating under TSCA is less costly and more efficient than regulating Cr^{+6} emissions under the CAA). The commenter states that prohibiting the use of a substance is a drastic measure, only to be taken as a last resort when other authorities under which regulations could be developed would not be adequate to address the risk from the substance. The CCT regulation addresses only air emissions of Cr^{+6}, and EPA has already taken steps under the CAA towards regulating air emissions of Cr^{+6}. Also, EPA has stated that recordkeeping under the CAA would be adequate. Consequently, the commenter believes that regulations should be developed under the CAA to protect against the risk posed by Cr^{+6} emissions, possibly by setting a zero emission standard as EPA suggested in the notice of the proposed TSCA rule.

The EPA disagrees that its finding fails to satisfy the "public interest" criterion in section 6(c) of TSCA. The decision to regulate Cr^{+6} under TSCA rather than the CAA is a decision which is wholly left to the discretion of the Administrator. After considering the required factors in section 6(c), EPA believes that the decision to use TSCA in this rulemaking is a reasonable one and that adequate rationale for that decision is presented in the **Federal Register** notice of the proposed rule (53 FR 10206).

The decision cited by the commenter (*SED, Inc.* v. *City of Dayton*) involves the issue of whether the TSCA PCB regulations preempt (under TSCA section 18) State laws that are promulgated to control PCB's. The issue in that case is unrelated to the question of the relationship of TSCA to other Federal laws administered by EPA. Although the Court in SED discusses TSCA section 9, it did not reach a decision which would be controlling in the present rulemaking. Section 9(b) of TSCA explicitly states how the Administrator must resolve issues involving the relationship of TSCA to other EPA statutes. As stated previously, EPA has determined under TSCA section 9(b) that it is in the public interest to use TSCA to protect against the risks from the use of Cr^{+6} in CCT's.

In conclusion, EPA has reviewed the options for limiting exposure to Cr^{+6} emissions from CCT's and has concluded that the reduction in risk to the public and enforcement of the rule for this substance cannot be satisfactorily accomplished in any way other than by prohibiting the use of Cr^{+6}-based water treatment chemicals in CCT's and the distribution in commerce of these chemicals for use in CCT's.

D. Recordkeeping and Reporting Requirements

1. *Water treatment industry burden.* Nine commenters indicated that the requirement to retain records on all CCT customers and all water treatment chemicals used in CCT's, as well as on ICT customers using chromate water treatment, would create a significant burden on water treatment chemical distributors. Two commenters believe that requiring records on nonchromium products (especially from distributors that sell no chromium products) will not help in enforcement of the rule. One of these commenters also believes that EPA enforcement personnel can do a better job if they are not burdened with all the extraneous paperwork on nonchromate use. Another commenter believes that regulation of all chemicals used in water treatment would be a tremendous burden because of the extra paperwork; the commenter questioned why shipping records must be provided for nonhealth hazard chemicals.

Since proposal, EPA has reevaluated the need for records of shipments of nonchromate water treatment chemicals for use in CCT's and has decided not to require maintenance of these records. It was determined that enforcement of the rule would be accomplished by other provisions and that requiring recordkeeping of nonchromium shipments would be unnecessary. In the final rule, recordkeeping of shipments of Cr^{+6}-based water treatment chemicals is required. The EPA also revised the definition of water treatment chemicals and included definitions for several additional terms to clarify that the

recordkeeping applies to shipments of Cr^{+6}-based water chemicals for use in cooling systems, not just for use in ICT's. The net result of these changes is that the cost burden to industry for recordkeeping will be lower than projected at proposal. See Unit IV.E.4. for the revised estimate of the recordkeeping burden.

The recordkeeping provisions described above are required so that enforcement personnel may check records to determinne compliance with the rule by the water treatment chemical distributors. The recordkeeping also will aid in determining sites where Cr^{+6}-based water treatment chemicals are being used in cooling systems. Industrial cooling towers and closed cooling water systems in which these chemicals are used are likely to be colocated with CCT's. Therefore, these will be locations at which inspection activities are focused. Existing records kept by water treatment chemical distributors are expected to meet the recordkeeping requirements of this rule with only slight modifications.

Seven commenters believe that it would be sufficient and more appropriate to maintain records only on customers still receiving Cr^{+6}-based water treatment chemicals; records indicating that these chemicals were shipped only for use in ICT's would show compliance with the prohibition of use in CCT's. As an alternative, three commenters believe that information on CCT's, if necessary, should be supplied by the CCT owners/operators or by the CCT manufacturers, not by the water treatment chemical distributors.

As previously mentioned, EPA has reevaluated the recordkeeping requirements and agrees with the commenters that records of Cr^{+6}-based water treatment chemicals are adequate to ensure compliance with the rule. Therefore, only records of shipments of Cr^{+6}-based water treatment chemicals are required in the final rule. However, as also mentioned in the response to the previous comment, EPA has clarified that the recordkeeping requirement applies to shipments of Cr^{+6}-based water treatment chemicals for use in cooling systems, not just for use in ICT's.

The EPA disagrees that CCT owners, or manufacturers should supply the records necessary to ensure compliance. For purposes of determining compliance with this rule's requirements, EPA has determined that the most effective approach is to require recordkeeping by persons who distribute Cr^{+6}-based water treatment chemicals in commerce. The EPA has also determined that recordkeeping by the water treatment chemical distributors significantly reduces the overall recordkeeping, reporting, and enforcement burden of the rule because the number of distributors is much smaller than the number of CCT owners, operators, and manufacturers.

2. *Authority.* One commenter questionned EPA's authority under TSCA to require shipping records and records on chemicals that are not controlled by TSCA. Three other commenters believe that EPA does not have the authority to require such records. Two commenters noted that TSCA section 6(a) provides EPA with the authority to further regulate the use of a chemical determined to cause an unreasonable risk to human health or the environment. The two commenters indicated that TSCA section 8(a) provides EPA with the authority to require ancillary recordkeeping for section 6(a) chemicals. However, the commenters believe that the proposed rule's recordkeeping requirements for chemicals that have not been shown to cause unreasonable hazards to human health or the environment are not covered by either TSCA section. Also, one commenter indicated that TSCA section 8(a) is rather specific regarding the type of recordkeeping that can be required, and shipping records are not one of the types of records listed.

Since proposal, EPA has reevaluated the need for records of shipments of nonchromate water treatment chemicals for use in CCT's and has decided not to require maintenance of these records.

3. *Burden on small business.* Seven commenters were concerned that the recordkeeping requirements in the proposed rule would place an unreasonable burden on the resources of small businesses. One commenter indicated that many (if not most) water treatment chemical distributors are small businesses without the computers or manpower to comply with the proposed recordkeeping requirements.

There may be water treatment chemical distributors that are small businesses. However, EPA does not believe that the resources of small businesses will be unduly burdened by compliance with the recordkeeping requirements of the rule, especially since the final rule requires that only records of Cr^{+6}-based water treatment chemicals for use in cooling systems be maintained. Existing records kept by small water treatment chemical distributors are expected to meet the recordkeeping requirements of this rule with only slight modification. Storage capacity (either computer or paper files) is not expected to increase. In addition, a distributor that does not need a computer now will not need to purchase one to comply with the recordkeeping requirements of the rule. The total cost to the water treatment chemical industry of labeling, recordkeeping, and reporting requirements is estimated to be about $87,000/yr. This cost is less than 1 percent of gross water treatment chemical industry sales of approximately $90 million/yr. The average cost burden that individual distributors of Cr^{+6}-based water treatment chemicals would incur as a result of the labeling, recordkeeping, and reporting requirements is estimated to be $435/yr over a 3-year period. Therefore, the cost of recordkeeping requirements of the rule is not expected to cause any economic hardships on small businesses.

Six commenters were opposed to the reporting requirements of the proposed rule, particularly for distributors of nonchromate water treatment programs. Two commenters stated that because of the numerous reporting requirements already in place, including those under the Superfund Amendments and Reauthorization Act (SARA), OSHA, TSCA, FIFRA, and State and local laws, the drain on resources for small businesses is large. One commenter believes that completing the initial report required by the proposed rule, in addition to the proposed recordkeeping requirements, will require time and archive space these small companies cannot afford.

The EPA has reevaluated the reporting requirements and has decided not to require reports by distributors that provide only nonchromate water treatment chemicals. It was determined that these reports would be unnecessary because enforcement of the rule would be accomplished by other provisions. However, in the final rule, reporting by distributors of Cr^{+6}-based water treatment chemicals is required. The required reporting is minimal and consists of identification of the distributor name, address, telephone number, and name of contact for both the headquarters and the shipment office locations through which Cr^{+6}-based water treatment chemicals are sold.

The reporting requirements also have been clarified to indicate that they apply to distributors of Cr^{+6}-based water treatment chemicals used in cooling systems. At proposal, reporting was required by distributors of all water treatment chemicals used in CCT's and by distributors of Cr^{+6}-based water treatment chemicals used in ICT's. This clarification should not increase the reporting burden because most

distributors provide chemicals for use in both cooling towers and closed cooling water systems. As stated in Unit IV.E.4., the average cost of the reporting requirements for distributors of Cr^{+6}-based water treatment chemicals over the first 3 years of the rule is estimated to be about $30 per company per year. Therefore, EPA believes that the reporting requirements of the final rule do not pose an undue burden on water treatment chemical distributors.

E. Economic and Cost Impact

1. *Nationwide costs.* Two commenters believe that EPA has underestimated the cost impact of the proposed rule. Based on conversations with water treatment chemical distributors, one commenter believes that the cost of technical service provided by the distributors will increase significantly with nonchromates, whereas the proposal BID indicates that the cost is not expected to increase significantly. The monitoring and control equipment necessary to use nonchromates are estimated by the commenter to cost between $5,000 and $10,000 per CCT system. Another commenter sells a basic control system for over $2,500 (not including installation costs) that includes automated feed, bleed-off, and pH control equipment. If separate acid feed or mixing equipment is required, the cost would be even higher. Consequently, the commenter believes that EPA's estimate of $500 for this type of equipment is low. The commenter also believes EPA's estimate of 15-year life expectancy for this equipment is optimistic because many components, such as pH probes, were found to have life spans as short as 1 year or less. To illustrate annual nonchromate treatment program costs, the commenter selected as examples four typical CCT's (150 to 350 tons) using different nonchromate treatment programs for which the annual costs were $2,160 to $4,590. These costs include the cost of the corrosion inhibitor and technical service as well as other expenses such as additional biocides for phosphate programs; however, annualized equipment costs are not included. In addition to the control equipment and chemical treatment costs, one commenter believes that additional staff would be needed to monitor the equipment, instrumentation, and CCT's.

To respond to this comment, EPA obtained additional information about automatic control equipment and water treatment program costs from water treatment chemical distributors and other contacts. The additional information provided shows that costs for both control equipment and nonchromate treatment program chemicals and technical service were underestimated in the proposal BID, but not by as much as the commenters have suggested. The revised cost estimates are summarized below and are discussed in more detail in docket item IV–B–1.

In the proposal BID, it was reported that the only necessary automatic control equipment was a blowdown controller, and the controller life was assumed to be 15 years. New information from six water treatment chemical distributors shows that a chemical feed pump and a water meter also are needed and that equipment life expectancy should be 10 years. The information also indicates that acid is added in about 25 percent of the CCT's to reduce pH and alkalinity levels. For these CCT's, a pH controller and an acid feed pump would be needed in addition to the other equipment described above. Finally, it was assumed that about 3 percent of all CCT's are in high-rise buildings that would need high-pressure feed pumps.

The revised capital costs were based on information obtained from six water treatment chemical distributors, one automatic control equipment manufacturer, and one CCT user. All of the estimated capital costs are purchase costs. Installation costs have not been included because it was assumed that installation would be performed by the building or facility maintenance personnel as part of their regular duties. The revised costs that would be incurred by a typical CCT for a blowdown controller, standard corrosion inhibitor feed pump, and water meter are about $1,100. For the 25 percent of CCT's that also add acid to reduce pH and alkalinity levels, a pH controller and an acid feed pump would cost an additional $1,150. For the 3 percent of the CCT's that would require a high-pressure pump, the capital cost would increase by $450. Based on these estimates, the average capital cost per CCT has been revised to $1,400. In addition to initial capital costs, the new information indicates that replacement of conductivity probes is necessary every 3 years at a cost of $100, and pH probes must be replaced every 2 years at a cost of $150. Based on these capital and replacement costs, the annualized automatic control equipment cost is about $300 per CCT.

The chemical treatment program costs reported in the proposal BID were underestimated because they were average costs for both ICT's and CCT's and because they did not include biocide costs. The revised chemical treatment program costs were based on estimates provided by seven water treatment chemical distributors and two CCT users. For nonchromate programs, the revised chemical treatment cost is $300/million pounds (M lb) of blowdown, which is 150 percent higher than the estimate at proposal. The revised chemical treatment cost for chromate programs is $215/M lb of blowdown, which is 260 percent higher than the proposal estimate. These estimates include the cost for biocides as well as the cost for the corrosion inhibitor formulation.

The total annual cost to switch CCT's from chromate to nonchromate treatment programs is the sum of the annual cost difference between nonchromate and chromate treatment programs, the annualized capital cost for control equipment, and the annualized cost for replacement equipment. The total annual nationwide cost is estimated to be $20 million, which is more than two times higher than the $9.4 million in the proposal BID. This new estimate is based on the worst-case assumption that all 37,500 CCT's switching from chromate to nonchromate treatment programs would need to install automatic controls. Even under this worst-case scenario, EPA believes the estimated costs are reasonable as is the revised cost-effectiveness value. Cost effectiveness was calculated using the total annual nationwide cost and a revised estimate of the annual incidence based on a best estimate of the emissions (see docket item IV–B–1). The calculated cost effectiveness of eliminating Cr^{+6}-based treatment programs is $1 million per cancer case avoided.

The economic impact of the rule has been revised based on the new costs. As indicated in the proposal BID, if it is assumed that the costs will be passed on in the form of rental rate increases, the average impact on rental rates for the smallest size towers is estimated to be $0.45/square meter ($m^2$) ($0.04/square foot [ft^2]). This cost would represent a rent increase of about 0.3 percent. The impact on rental rates decreases as CCT (and building) size increases.

The costs discussed above do not include costs for additional staff to monitor the equipment, instrumentation, and CCT's as suggested by the commenter. The level of effort to monitor, control, and maintain a CCT system using a nonchromate treatment program is similar to that for a CCT using a typical chromate program. Typical activities include sampling the cooling water on a weekly or daily basis (30 minutes); analyzing the samples for

the inhibitor or tracer concentration (10 to 20 minutes); visual inspection of the system daily; adjusting the automatic controls, as necessary; inspecting and cleaning the chemical feed system, cooling water pump, and conductivity sensor once a month (about 1 hour); and periodically adding biocide (and acid, if not added automatically). These activities require a level of effort of up to about 2 hours per day (h/d). Most building support staffs consist of at least two persons between whom the work can be divided. The impact on most building support staffs may be significantly less than 2 h/d, because weekly checks of the water are sufficient for many automatically controlled nonchromate programs; simple analyses are available for molybdate, zinc, and phosphate; and operators of CCT's on typical chromate programs already perform some of these tasks.

2. *High chloride, hardness, and alkalinity water quality.* One commenter believes that the economic impact of the proposed rule on individual CCT's using poor quality makeup water that contains high chloride, hardness, and alkalinity levels would be enormous (specifically in the Florida area) and estimates that the total costs could exceed $1 billion for Florida alone. The commenter indicates that both the replacement frequency of highly corrodible components of the CCT system and the replacement of these components with more expensive corrosion-resistant components must be considered. The commenter described specific repairs and improvements that could be required and provided the costs for some of them.

The commenter also believes that higher operating costs are incurred by CCT's in Florida using poor quality water supplies. In many cases, more frequent cleaning of the heat transfer equipment would be necessary to remove scale, which is produced by many of these water supplies at the effective pH levels of the inhibitors. Cleaning may be accomplished on-line with expensive and unpredictable chelating agents. Alternatively, the system could be shut down and cleaned with acid, which can cost $500 or more depending on the size of the chiller. Scale also impairs the heat transfer process and, thus, results in higher energy consumption and cost to maintain the design cooling requirement. Water costs also would increase for these CCT's. To illustrate how water costs could increase, the commenter presented the following example. If the cycles of concentration in the CCT are kept low because corrosion inhibitors that are less effective than chromate are used, water usage increases. At five cycles of concentration (typical for chromate programs), bleed off is about 0.7 gallons of water per minute (gal/min) per 100 tons of air conditioning. At two cycles, the bleed-off rate would be about 2.7 gal/min per 100 tons of air conditioning. For a 1,000-ton CCT operating at full capacity, the increase in water usage would be an additional 20 gal/min or over 28,000 gal/d. The commenter indicated that some water in Florida now costs over $5/1,000 gal, but even at $3/1,000 gal, this increased water usage would result in increased operating costs of over $2,500 per month.

As indicated in Unit IV.A.3., information obtained by EPA from water treatment chemical distributors and other contacts shows that nonchromate programs are available that effectively control corrosion in CCT's using makeup water containing high chloride, hardness, and alkalinity levels. Consequently, EPA disagrees that more frequent replacement of system components would be required for CCT's using nonchromate chemicals with poor quality makeup water and has not considered such costs in developing the final rule. Because these programs also have been shown to control scale in high chloride/high hardness water through the addition of acid and dispersants, the commenter's claim that energy use would increase also is unsupported. However, the additional information obtained by EPA indicates that the commenter is correct in stating that increased water usage would occur for these CCT's. To determine the impact of the increased water costs and to incorporate revisions to other costs resulting from the new information, EPA conducted a new cost analysis for CCT's using water with high chloride, hardness, and alkalinity levels such as those in Florida. The total annual cost for a hypothetical analysis of nonchromate substitution for all Florida CCT's was estimated based on the additional cost of chemicals, water, and automatic control equipment. The annual incidence also was revised based on the typical chromate concentration provided by the commenter and on the best estimate emission factor developed by EPA since proposal. The following discussion summarizes the results of this analysis, and docket item IV–B–2 further describes how the costs were estimated.

Information on the chemical cost of treating cooling water with high chloride, hardness, and alkalinity levels was solicited from several water treatment chemical distributors. Only two distributors provided chemical cost information, and this information was used to calculate the chemical cost difference between nonchromate and chromate treatment programs in Florida. These costs include the cost of the corrosion inhibitor, acid, dispersants, and biocides. An 89 percent utilization rate was assumed for the Florida CCT's, which is higher than the nationwide average rate of 46 percent. Based on information received from two water treatment chemical distributors, the Florida CCT's were assumed to operate at 3.8 cycles of concentration as opposed to 5 cycles of concentration assumed in the proposal BID. Therefore, the makeup water rate in Florida towers using the poor quality makeup water is about 9 percent higher than average. The water cost for Florida was assumed to be $3/1,000 gallons, also higher than the nationwide average. Automatic control equipment capital costs for Florida were assumed to be no different from the costs for an average CCT as presented in Unit IV.E.1. Finally, for the purpose of this analysis, it was assumed that all chromate-using CCT's in Florida use water with high chloride, hardness, and alkalinity levels, thus overstating the cost impact.

Based on these assumptions, the total annual cost of the hypothetical analysis for approximately 1,700 chromate-using CCT's in Florida to switch to nonchromate treatment programs is estimated to be about $6.6 million, much lower than the $1 billion estimated by the commenter. The hypothetical annual incidence for this analysis was estimated to be about 3 cases/yr. This annual incidence is based on a chromate concentration of 25 ppm rather than 10 ppm as reported in the proposal BID. The higher concentration was used because the commenter indicated that the typical chromate concentration in towers using the poor quality water is greater than 20 ppm. Even under this worst-case scenario, EPA believes the estimated costs are reasonable as is the revised cost-effectiveness value of $2 million per cancer case avoided.

The commenter also believes that the proposed rule would have a significant economic impact on small businesses using CCT's with makeup water with high chloride, hardness, and alkalinity levels. To illustrate this impact, the commenter estimates that a 15-story condominium could incur high costs to repair corrosion damage or to upgrade the equipment before failure. The commenter also noted that annual operating costs for such a building could increase by $50,000 due to increased

chemical costs, increased water usage, and higher energy costs (in high-scaling situations).

As discussed in the previous response, EPA does not believe that CCT's using water with high chloride, hardness, and alkalinity levels will need to replace or repair equipment due to corrosion any more frequently when using nonchromate programs than when using chromate programs. However, EPA's revised cost analysis for such CCT's did show that annualized costs would be greater for them than for CCT's using good quality water. The revised total annual costs for switching from chromate to nonchromate programs for CCT's in these poor water quality areas (such as Florida) ranged from about $600 per year for the smallest model tower (27 tons) to $18,400 per year for the largest model tower (1,520 tons). These costs are higher than costs for average CCT's, but the average impact on rental rates for the smallest building is estimated to be less than 1 percent. These costs and the impact on rental rates are considered reasonable.

3. *Heavily corroded CCT systems.* One commenter believes that the cost to repipe buildings as a result of total system failure should be addressed because some buildings with heavily corroded CCT systems have been faced with this cost soon after they switched to nonchromate treatment programs. For a high-rise building with an extensive piping network, this cost would overwhelm the other costs of switching to nonchromates. The commenter cited corrosion rates of 7 to 10 mils/yr under chromate programs and 7 to 30 mils/yr under nonchromate programs for systems using soft, naturally corrosive New York City municipal water.

As indicated in Unit IV.A.1., the majority of CCT systems using chromate treatment programs are not heavily corroded and can be easily switched to nonchromates. Two options exist for dealing with heavily corroded systems that are switched to nonchromates. These options are (1) switching directly to nonchromate treatment programs without cleaning (noncleaning option) and (2) cleaning before or concurrent with the switch to nonchromate treatment programs (cleaning option). The EPA evaluated the total annual cost, annual incidence, and cost effectiveness of the rule for these options. The analysis was performed for all six model towers and is discussed in detail in docket item IV–B–3. However, only the results of the analyses for the largest size model tower are summarized below because this model tower represents the CCT's used in high-rise buildings as described by the commenter.

The cost of both options is a function of the pipe life. For a corroded CCT system using a chromate treatment program, the average remaining life was estimated to be about 4 years. For the noncleaning option, the average pipe life was estimated to be about 1 year under nonchromate programs. The average pipe life for the cleaning option was estimated to be 19 years, or 15 years longer than for the existing chromate program.

The total annual cost of the noncleaning option is based on the annualized pipe replacement cost for the years of life lost by switching to nonchromate treatment programs, the additional annual chemical cost for nonchromate programs, and the annualized automatic control equipment cost. Based on pipe replacement costs from one water treatment chemical distributor and the estimated pipe life, the annualized pipe replacement cost of the noncleaning option was estimated to be $5,100/yr. The annual chemical cost difference between chromate and nonchromate programs was estimated to be about $2,900/yr based on cost data from two water treatment chemical distributors for soft water applications. The average annualized automatic control equipment cost is about $300/yr. This cost is the same for all towers, as described in Unit IV.E.1. Based on these costs, the total annual cost of the noncleaning option is estimated to be about $8,200/yr for the largest size model tower.

The total annual cost of the cleaning option is based on (1) the annualized difference between the initial cost for cleaning and the present value of the cost of continuing to use chromate in a corroded system and (2) the same increased chemical and automatic control equipment costs as for the noncleaning option. Based on cost information from a cleaning company, the estimated pipe replacement cost, and the estimated pipe life, the annualized difference between the initial cost for cleaning and the present value of the cost of continuing to use chromate in a corroded system indicates that cleaning results in an annual cost savings of about $7,800/yr over the existing chromate program. Even when the additional chemical and automatic control equipment costs are included, the cleaning option results in an annual cost savings of about $4,700/yr.

For heavily corroded systems, the annual incidence is estimated to be three times higher than average. This annual incidence is based on a new, best estimate of the Cr^{+6} emissions and a tower utilization rate of 33 percent. The annual incidence also is based on a chromate concentration of 40 ppm, which, according to the commenter and two water treatment chemical distributors, is typical for soft water applications such as those in New York City.

The total annual cost of $8,200/yr for the noncleaning option, the option with the highest cost, was used in analyzing the total annual cost of switching to nonchromate treatment programs in heavily corroded systems. Based on this cost and the revised annual incidence, the best estimate of the cost effectiveness is about $1 million per cancer case avoided. The EPA believes these costs are reasonable.

In addition to the cost analysis for heavily corroded systems, EPA also evaluated the cost for clean CCT systems using soft water because the commenter claimed that corrosion rates are worse in soft water than in scale-forming water (see Unit IV.A.2.). This analysis is summarized below and is presented in detail in docket item IV–B–4. As indicated in Unit IV.A.2., information obtained by EPA from water treatment distributors shows that acceptable corrosion rates can be achieved with nonchromate treatment programs in CCT's using soft water. Therefore, the cost of the rule for CCT's using soft water is based on the same annual chemical and automatic control equipment cost information described above except that the provided chemical cost was scaled to the nationwide average utilization rate of 46 percent. It also was assumed that the distribution of the six model towers using soft water is the same as the nationwide distribution of the model towers. Based on these assumptions and conditions, the total annual cost of the rule ranges from about $300/yr for the smallest model tower to about $3,600 for the largest model tower. As with the analysis for heavily corroded systems, the annual incidence was revised using a typical chromate concentration of 40 ppm for soft water applications. The cost effectiveness based on these costs and revised annual incidence values is about $500,000 per cancer case avoided. The EPA believes these costs are reasonable.

4. *Water treatment industry burden.* One commenter concluded that the estimated labeling, recordkeeping, and reporting cost of $169,900 per year would be the average cost of compliance for each of 400 water treatment chemical distributors because the alternative of

$425/year seems very low. This would lead to the removal from the economy of about $68 million/year (or $204 million over 3 years) that the commenter believes would be better used by investing in expansion.

The commenter's conclusion about the labeling, recordkeeping, and reporting cost to industry is incorrect. For the proposed rule, the estimated cost averaged over the first 3 years of the rule was $425 per company and $169,900 for the industry. These costs were considered reasonable because most of the required records are already kept by the water treatment chemical distributors, and any additional information could be easily obtained and recorded after an initial modification is made to the existing recordkeeping format. However, the labeling, recordkeeping, and reporting burden has been reevaluated since proposal. The requirement that records be maintained of nonchromate shipments to CCT's has been deleted as described in Unit IV.D.1., and the reporting requirement has been revised as described in Unit IV.D.3 to exempt distributors that provide only nonchromate water treatment chemicals. In addition, the cost impact of the export notification requirements has been estimated. Application of the labeling, recordkeeping, and reporting requirements has also been clarified as described in Units IV.D.1. and IV.D.3., but these clarifications should not change the cost impact.

At proposal, it was estimated that there are a total of about 400 water treatment chemical distributors. Since proposal, it was assumed that about 200 of the distributors provide both Cr^{+6}-based and nonchromate water treatment chemicals, and the other 200 distributors provide only nonchromate water treatment chemicals.

The 200 distributors providing Cr^{+6}-based water treatment chemicals would be affected by all of the labeling, recordkeeping, and reporting requirements. For these 200 distributors, the revised cost averaged over the first 3 years of the rule is estimated to be $435 per distributor per year. This cost comprises $30 for reporting, $225 for recordkeeping, and $180 for labeling. In addition, the cost impact of the export notification requirements accounts for a very small part of the total annual cost. It was assumed that 10 of these 200 distributors also export Cr^{+6}-based water treatment chemicals to 1 country. For these 10 distributors, the estimated cost impact of the export notification requirements averaged over the first 3 years of the rule is $50 per distributor per year. The rule would have no cost impact on the 200 distributors selling only nonchromate chemicals because they would not be affected by the labeling, recordkeeping, and reporting requirements. The estimated annual cost for the water treatment chemical industry over the first 3 years of the rule is about $87,000.

F. Selection of the Source Category

Eight commenters believe that EPA should regulate Cr^{+6} chemicals in CCT's, and five of the commenters support the proposed rule because they believe that Cr^{+6} is a health hazard that should be removed from the environment. One commenter believes that Cr^{+6} also should be banned from use in boilers and closed hot and chilled water cooling systems. This commenter also supports the proposed rule because chromate is detrimental to pump seals and valve packings, stains floors and ceilings, and is nonbiodegradable. Another commenter supports the proposed rule because users will not change to nonchromates unless forced to do so.

The proposed rule was based on EPA's determination that the use of Cr^{+6}-based water treatment chemicals in CCT's presents an unreasonable risk to human health and that TSCA is the most effective means to control this risk. The final rule will effectively eliminate the use of Cr^{+6}-based water treatment chemicals in CCT's. The recordkeeping and reporting provisions, by identifying both users and distributors of Cr^{+6}-based water treatment chemicals, will allow EPA to identify potential violations by CCT operators and water treatment chemical distributors. The labeling requirements will ensure that distributors and users are aware of the hazard associated with Cr^{+6}-based water treatment chemicals and informed of the restrictions on their use.

However, EPA disagrees with the commenter that Cr^{+6}-based water treatment chemicals should be banned from boilers and other closed systems under this rule. The EPA has determined that the primary exposure pathway of concern is by inhalation. Because airborne Cr^{+6} emissions are not expected from boilers, closed cooling water systems, and closed chilled water loops, EPA has no current plans to regulate Cr^{+6} use in these systems.

Several changes have been made to the rule to clarify that the prohibitions on distribution and use do not include closed systems (or ICT's). First, the following statement has been added to § 749.68(e) of the rule:

Distribution in commerce of hexavalent chromium-based water treatment chemicals for use in, and commercial use of hexavalent chromium-based water treatment chemicals in, industrial cooling towers and in closed cooling water systems are not prohibited.

Second, several changes have been made to the definition in § 749.68(d) of the rule. A new term, "cooling system," has been defined as any cooling tower or closed cooling water system. "Closed cooling water system" also is a new term that has been defined as any configuration of equipment in which heat is transferred by circulating water that is contained within the equipment and not discharged to the air. One type of closed cooling water system is a chilled water loop that transfers heat from air handling units or refrigeration equipment to a refrigeration machine, i.e., a chiller. Finally, the definition of the existing term "water treatment chemicals" has been revised slightly to indicate that it applies to chemicals used to treat water in cooling systems, not cooling towers. The definition of the term "cooling tower" has not changed. These changes make it clear that the prohibitions against distribution and use of Cr^{+6}-based water treatment chemicals apply only to open water recirculation CCT's.

G. Monitoring and Control

Two commenters indicated that Cr^{+6} is often used as a tracer in nonchromate treatments because it is easier to monitor, gives more accurate results than analyses for many nonchromates (e.g., phosphonates), and is cost effective. Consequently, one commenter requested that Cr^{+6} at least be allowed as a tracer for use with nonchromate water treatment programs. The other commenter would like to find an easier test for phosphonate or another legal tracer.

The EPA believes that there is not a justifiable need to allow the use of Cr^{+6} as a tracer because acceptable alternatives exist, such as molybdenum and orthophosphate. Tracers are often included in water treatment programs to aid in monitoring the level of corrosion inhibitor in the water. Periodic analysis of the concentration of phosphonate or other organic chemicals used in organic-based treatment programs is necessary to ensure that adequate levels are maintained to inhibit corrosion. Because these analyses are difficult and time-consuming, a tracer such as molybdenum for which analysis is more simplified is sometimes used. The ratio of the tracer to the corrosion inhibitor (e.g., phosphonate) is known, and fluctuations in concentration of the tracer would indicate corresponding

fluctuations in concentration of the corrosion inhibitor.

Two water treatment chemical distributors have indicated that molybdate can be used as a tracer at concentrations above about 2 ppm and can be measured reliably by a simple colorimetric test. Another distributor indicated that molybdenum concentrations as low as 1 ppm are reliably measured by a colorimeter. One test kit manufacturer has also developed a new method with which concentrations even less than 1 ppm can be measured with a colorimeter. Several water treatment distributors indicated that molybdenum concentrations lower than 1 ppm could be used as a tracer, but more difficult and costly spectrophotometric analysis may be required. The distributor could perform these analyses at least monthly, if necessary, because the CCT owners/operators would not likely have the required equipment. According to one distributor, substituting molybdenum at 2 ppm as a tracer would add about 20 percent to the cost of the treatment program. Another distributor estimated that using molybdenum at 1 ppm would increase the cost of the treatment program by 5 to 10 percent.

Another tracer than can be used instead of Cr^{+6} or molybdate is orthophosphate. Low levels (2 to 12 ppm) are added to the system, and samples are analyzed colorimetrically for total phosphate. Any phosphate that is contained in the raw water is accounted for in the analysis. A low-level orthophosphate test kit costs about the same as chromate test kits.

The EPA agrees with the commenters that the phosphonate tests are more difficult to perform and subject to more error than the tests for tracers. However, conscientious operators can get acceptable results. Furthermore, these results can be periodically confirmed by digesting a sample and testing for phosphate. Sales representatives from some water treatment companies perform these tests on a monthly or quarterly basis. Many of the major companies are conducting research in this area, and at least one test kit manufacturer recently developed a less time-consuming digestion kit that it believes will be easier for the CCT operators to use. In addition, a water treatment chemical distributor has developed what it believes is a simpler and more reliable test for phosphonate. These developments will make it easier for CCT operators to use nonchromate treatment programs without tracers.

For the reasons discussed above, the final rule prohibits all uses of Cr^{+6} at any concentration as a tracer in nonchromate water treatment programs. The EPA believes that acceptable alternative tracers are available and that accurate tests are available (and others are under development) at a reasonable cost for tracers and for phosphonate.

I. Regulatory Assessment

A. Environmental Impacts

Prohibition of Cr^{+6} use in CCT's reduces emissions of Cr^{+6} to near zero. There may be low levels of Cr^{+6} in the recirculating water, typically less than 0.15 ppm, as a result of naturally occurring Cr^{+6} in the makeup water. This rule is intended to restrict the use of Cr^{+6} as an additive to the cooling water and is not intended to contol Cr^{+6} that may be naturally occurring. Emissions and emissions reductions represent only those that result from the use of Cr^{+6} as an additive in CCT's.

Emission reductions were presented as a range at proposal because of the uncertainty associated with the emission factors for Cr^{+6} emissions from model cooling towers. However, EPA has developed a "best estimate" emission factor to reflect more accurately emission data obtained by EPA since proposal. The range of emission factors presented at proposal was based on results of EPA-sponsored emission tests at two ICT's equipped with low-efficiency drift eliminators (LEDE's). The emission factors express Cr^{+6} emissions at a percent of Cr^{+6} recirculation rate in the cooling tower. This format is not affected by differences between ICT's and CCT's (recirculation rate, chromate concentration, and cooling range, etc.). Therefore, the ICT emission factors are considered applicable to CCT's.

The results from two emission tests produced a very substantial range from 0.0066 percent for one test run from one tower to 0.19 percent for another test run from a different tower. A close examination of the test results that supported these emission factors indicates that their use is probably inappropriate. The sample used to calculate the lower-bound emission factor has been invalidated due to problems encountered in sample recovery prior to analysis. The sample used to calculate the upper-bound emission factor produced a result that is inconsistent with the chemical feed rates applied at the tower and cannot be supported by an engineering evaluation. Although the lower- and upper-bound emission factors are considered extreme, they were used at proposal to bound the nationwide average emissions from CCT's.

An alternative, "best estimate" emission factor has been developed and used to calculate a best estimate of the nationwide annual Cr^{+6} emissions from CCT's. This emission factor is based on the average of two EPA-sponsored emission tests (one of which was conducted after the proposal BID was prepared), five industry-sponsored tests, and drift specifications from a drift eliminator manufacturer. For detailed information on the rationale and basis for the best estimate emission factor, see docket item IV–B–5. The best estimate emission factor is considered by EPA to reflect most accurately available emissions data and to be representative of actual emission rates nationwide. Based on the best estimate emission factor, the estimated nationwide Cr^{+6} emission reduction resulting from the final rule is 33 Mg/yr (34 tons/yr).

Since proposal, an additional EPA-sponsored emission test was conducted to analyze Cr^{+6} emissions from cooling towers. Results of this test showed conversion of Cr^{+6} (the substance subject to this rule) to Cr^{+3} (the carcinogenic potential of Cr^{+3} is still under investigation). Based on this test, it appears likely that some conversion of Cr^{+6} to Cr^{+3} is occurring in the cooling tower.

It is not clear from this test what amount of conversion would be applicable on a nationwide basis to CCT's. Several conditions associated with the emission test are atypical of most CCT's. The chromate levels in the recirculation water of the tower being tested were more than an order of magnitude greater than those maintained in a typical CCT. In addition, the cooling water chemistry was atypical in that the mineral and solids content was extremely low. Also, the process being cooled by the tested tower involved condensation of live steam through direct contact with the recirculating water. In addition, unlike the majority of CCT's that are commonly equipped with LEDE's, the tower tested was equipped with a high-efficiency drift eliminator (HEDE). It is not known what effects these unique conditions had on conversion within the tower tested. Furthermore, because of the various atypical conditions associated with this test, it is difficult to assess reliably the conversion that might be occurring in CCT's.

Water pollution impacts are unchanged since proposal. As CCT owners and operators currently using Cr^{+6}-based water treatment chemicals switch to nonchromate programs, discharges of Cr^{+6} from CCT's will be completely eliminated; however,

discharges of nonchromate water treatment chemicals are expected to increase by approximately 18 percent. The nationwide increase in phosphorus discharges from CCT's to sewage treatment plants is estimated to be less than 0.1 percent, assuming that 15 percent of the CCT's currently use Cr^{+6} and would switch to phosphate-based treatment programs.

The EPA stated at proposal that there would be no impact on solid waste disposal as a result of the rule, and this conclusion also remains unchanged for the final rule. Typically, CCT wastewater discharges are not treated onsite to remove Cr^{+6}. In cases where sewage treatment plants are receiving chromium in quantities large enough to treat, it is likely that sources other than CCT's contribute most of the Cr^{+6}; thus, the effect of reducing Cr^{+6} in CCT's would be negligible.

Finally, as at proposal, the energy impacts of the final rule resulting from increased power requirements for automated control systems are expected to be negligible.

B. Substitute Water Treatment Chemicals

Typical nonchromate water treatment formulations currently used in CCT's for corrosion inhibition are based on phosphates, molybdates, and organics. Combinations of polyphosphates and orthophosphates can be used alone at concentrations of 10 to 30 ppm. However, it is more common to add phosphonate and/or polymeric disperants with the phosphates to reduce scaling. With these combinations, effective corrosion control can be achieved. Water treatment chemical distributors state that molybdates are not a commonly used treatment program primarily because of their high cost and because the corrosion protection provided by molybdate is not as effective for copper (of which most CCT heat exchangers are made) as it is for mild steel. However, a combination of up to 15 ppm molybdates with an azole and phosphate can provide effective corrosion protection for both copper and mild steel. A number of organic compounds can be used alone as corrosion inhibitors. Polyamines, phosphonides, and phosphonium compounds have been used, but the most common are the azoles. Zinc may be used also but must be used with combinations of phosphates, phosphonates, organics, or polymeric dispersants to be most effective. Nonchromate water treatment programs for use in CCT's are readily available from the same distributors who sell Cr^{+6}-based water treatment chemicals and are already in use at 75 to 90 percent of the CCT's.

The EPA concluded at proposal that, based on available information, the health risks from exposure to these substitutes are less (and, in most cases, much less) than that from exposure to Cr^{+6}. This conclusion remains unchanged for the final rule. The EPA has reviewed the health effects literature data base for information on nonchromate water treatment chemicals published since September 1986. The only noteworthy cites were several studies associated with mutagenic potential. Mutagenic activity is not, by itself, indicative of serious health hazards such as cancer or other adverse reproductive outcomes, but it can be used as additional supportive evidence when valid long-term positive studies are available. Such positive studies are not available for any of the nonchromate water treatment chemicals assessed. Consequently, the new information does not contradict the original conclusion that nonchromate water treatment chemicals are considered to be less hazardous than Cr^{+6}.

The EPA also has evaluated the health effects of zinc (52 FR 32597, August 28, 1987) and found that there is insufficient evidence to evaluate the carcinogenic potential of zinc or zinc oxide and no evidence suggesting that zinc is teratogenic. Zinc compounds are, therefore, considered less hazardous than Cr^{+6} compounds.

C. Risk Analysis

The EPA selected the Human Exposure Model to estimate two numerical measures of risk to public health for Cr^{+6} emissions from CCT's as described in Appendix B of the proposal BID. Since proposal, EPA has reanalyzed the data for the two indices and changed both (i.e., the estimated nationwide annual incidence of lung cancer and the maximum individual risk [MIR]) based on the best estimate emission factor discussed in Unit V.A. of this preamble. The revised nationwide annual incidence of lung cancer attributable to Cr^{+6} emissions from CCT's is estimated to be about 20 cases per year.

The revised MIR is estimated to be 2×10^{-4}. This means that if a person were continuously exposed for 70 years to the maximum annual concentrations predicted, the probability of that person developing lung cancer is estimated to be approximately 2 in 10,000. This probability is significantly greater than that estimated at proposal, and reaffirms the Administrator's conclusion that use of Cr^{+6} chemicals in CCT's presents an unreasonable risk of injury to human health. The estimates of MIR provided at proposal ranged from about 1 to 2 orders of magnitude lower than the new MIR estimate and were based on incorrect model input data.

The EPA's approach to estimating public health risks is explained in detail in Appendix B of the proposal BID ("Background Information Document for Chromium Emissions From Comfort Cooling Towers," EPA-450/3-87-010a). For detailed information on the revised risk estimates, see docket items IV-B-6 and IV-B-7.

D. Economic and Cost Impacts

Since proposal, EPA reanalyzed the capital and annual costs of switching CCT's from chromate to nonchromate water treatment programs. Information obtained from water treatment chemical distributors and other contacts showed that costs for automatic control equipment and for nonchromate treatment program chemicals and technical service were underestimated at proposal. The revised total annual costs range from 60 to 260 percent higher than at proposal for the largest to the smallest model CCT's, respectively. Development of the revised costs is discussed fully in Unit IV.E.1. of this preamble and in the promulgation BID. The capital cost of automatic feed and monitoring equipment has been annualized over 10 years rather than 15 years as presented in the proposed rule. The interest rate used in the calculation of the annualized cost was 10 percent. The revised total annual nationwide cost of switching to nonchromate treatment programs, including the cost for automatic control equipment, is estimated to be about $20 million. Based on this cost and the associated reduction in the incidence of lung cancer of about 20 cases per year, the cost effectiveness of eliminating Cr^{+6}-based water treatment programs is estimated to be $1 million per cancer case avoided.

To account for possible conversion effects of Cr^{+6} to Cr^{+3} in CCT's, the highest conversion rate measured during the additional EPA-sponsored test discussed previously was assumed. The resulting nationwide cost effectiveness using an 80 percent conversion rate is estimated to be about $5 million per cancer case avoided. This estimate is believed to be worst case because conversion in CCT's is expected to be less than 80 percent.

Another discount approach currently being considered by EPA as an alternative to the conventional approach described above of using a single discount rate (interest rate) is a two-

stage procedure that takes into consideration both the opportunity cost of the displaced resources and the consumer rate of time preference. The opportunity cost assumes the capital costs incurred by companies from government action would displace other private investments. The consumer rate of time preference assumes government action will increase operating costs of companies that will be passed through to consumers in the form of higher prices and, as a result, consumption of goods and services would be reduced. Using the two-stage approach, the estimated capital costs are annualized using the marginal rate of return on capital (interest rate). Total annual benefits and total annual costs then are discounted back to present value using a consumer rate of time preference (consumption rate of interest).

For the two-stage approach, capital costs were annualized with a 7 percent interest rate, and both costs and benefits were discounted with a 3 percent consumption rate of interest. In the economic literature the consumption rate of interest is reported between 0 and 4 percent. The consensus of EPA economists is that 3 percent is a reasonable value for the consumption rate of interest. The cost effectiveness of eliminating Cr^{+6}-based water treatment programs using these rates in the two-stage approach is estimated to be $0.95 million per cancer case avoided. The cost effectiveness is slightly lower than that obtained with the conventional discounting approach because an interest rate of 7 percent was used. If a 10 percent interest rate were used in this case, the two discounting approaches would yield the same cost effectiveness.

In previous regulatory actions under TSCA, EPA has used both discounted and undiscounted benefits to estimate cost effectiveness. Using undiscounted benefits (i.e., applying a 0 percent consumption rate of interest) and the same two-stage approach as above, the estimated cost effectiveness of eliminating Cr^{+6}-based water treatment programs in CCT's is $0.8 million per cancer case avoided.

Although the cost estimates for the final rule are higher than those at proposal, they are still considered reasonable and would not impose an undue adverse economic impact on CCT owners or operators. It is expected that the revised costs of the nonchromate programs for the smallest CCT's would add an average of less than $0.45/m^2$ ($0.04/ft^2$) to rental rates if all costs were passed through in the form of increased rental rates. This cost would represent a rent increase of about 0.3 percent. The impact on rental rates decreases as CCT (and building) size increases.

E. Resource and Reporting Requirements

Any recordkeeping requirement is subject to the Paperwork Reduction Act of 1980. In the proposal, EPA estimated that 400 water treatment chemical distributors would be affected by the labeling, recordkeeping, and reporting requirements. The resulting aggregate cost to industry of these requirements was estimated to be an average of about $170,000 per year for the first 3 years the rule is in effect.

Since proposal, EPA reevaluated the need for records of shipments of nonchromate water treatment chemicals to CCT's and has decided not to require maintenance of these records. In addition, the final rule clarifies that the labeling, recordkeeping, and reporting requirements apply to cooling systems, not to cooling towers. As a result of these changes, the labeling, recordkeeping, and reporting burden to industry has been reevaluated. In addition, the burden of export notification has been estimated.

Distributors that sell Cr^{+6}-based water treatment chemicals would be subject to all labeling, recordkeeping, and reporting requirements. In addition, some of these distributors would be subject to the export notification requirements. It is estimated that 10 distributors export Cr^{+6}-based water treatment chemicals. The revised estimate of aggregate cost to the water treatment chemical distributors of the required labeling, recordkeeping, reporting, and export notification requirements is about $87,000 per year for the first 3 years the rule is in effect.

Producers and chemical manufacturers of Cr^{+6} chemicals other than water treatment chemicals are also expected to be affected by the export notification requirements. It was assumed that 2 producers of sodium dichromate each export to 20 countries and that 20 chemical manufacturers of Cr^{+6} chemicals each export to 1 country. For the producers, the estimated cost averaged over the first 3 years of the rule is about $1,000 per company per year. The cost impact for the chemical manufacturers averaged over the first 3 years of the rule is $50 per company per year.

VI. Finding of Unreasonable Risk

In the March 29, 1988, proposed rule, EPA concluded that the avoidance of a potential cancer risk to the public exposed to Cr^{+6} air emissions from CCT's outweighs the social and economic costs of the rule. Accordingly, the Agency found, after considering issues required by TSCA section 6(c), that continued use of Cr^{+6}-based water treatment chemicals in CCT's presents an unreasonable risk of injury to human health.

As discussed in Units V.A. and V.D., EPA has made changes since the proposal in its conclusions regarding the rule's environmental and economic impacts. Notwithstanding these changes, EPA still finds that the continued use of Cr^{+6}-based water treatment chemicals in CCT's presents an unreasonable risk of injury to human health. This finding is based upon the rationale set forth in the proposal and the revised information discussed in the above sections.

VII. Analysis Under Sections 6 and 9 of TSCA

If EPA determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another Federal law administered by the Agency, TSCA sections 6(c) and 9(b) require that EPA use the other Federal law unless EPA finds that it is in the public interest to use TSCA. In making a public interest finding, EPA must consider: (1) All relevant aspects of the risk; (2) a comparison of the estimated costs of complying with actions taken under TSCA and under the other law; and (3) the relative efficiency of actions under TSCA and the other law to protect against risk of injury.

The EPA could protect against the risk in this case by using section 112 of the CAA. Section 112 provides that EPA may establish emission standards for pollutants it has listed as hazardous air pollutants. To protect against the risk from using Cr^{+6} in CCT's, EPA could establish emission standards under section 112 at a level which provides an ample margin of safety to protect the public health.

With respect to the consideration required under section 6(c) of all relevant aspects of the risks, actions under either TSCA or the CAA could protect against the risks from emissions of Cr^{+6} from CCT's. Moreover, the economic impact on the CCT owners and operators of switching to nonchromate water treatment programs would be essentially the same whether the Agency regulated under TSCA or the CAA. However, EPA finds that it is in the public interest to use TSCA instead of the CAA because TSCA is more efficient in this case. The TSCA is particularly well suited here because it contains regulatory tools that can be used to regulate the risks of using Cr^{+6}

in CCT's in a more effective manner. Hexavalent chromium emissions are released from a large number of unidentified CCT's nationwide. Under TSCA, EPA can address the risk from these emissions not only by regulating use, but also by regulating distribution. Unlike section 112 of the CAA, TSCA section 6 provides authority to prohibit directly the distribution and use of Cr^{+6}-based water treatment chemicals. In addition, EPA can require recordkeeping, reporting, and labeling under section 6.

The effect of using TSCA in the above manner would also be to provide a better mechanism for enforcement. The number of water treatment distributors that sell corrosion inhibitors constitutes a much smaller population than the estimated number of CCT's (approximately 200 Cr^{+6}-based water treatment distributors vs. 250,000 CCT's). By prohibiting the distribution of Cr^{+6} for a specific use under TSCA, the distributors would also be required to comply with recordkeeping and chemical labeling requirements. The records would identify cooling system owners or operators to whom the Cr^{+6}-based water treatment chemicals are being distributed. Enforcement personnel could concentrate on examining the distributor records and sites where the Cr^{+6}-based water treatment chemicals are being used. Under the CAA, EPA would have to inspect 250,000 CCT's to determine compliance.

VIII. Enforcement

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under section 6 of TSCA. Therefore, failure to comply with this rule would be a violation of section 15 of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to: (1) Use for commercial purposes a chemical substance which such person knew or had reason to know was distributed in commerce in violation of a rule under section 6; (2) fail or refuse to establish and maintain records, submit reports, or permit access to or copying of records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day operation in violation of this rule could constitute a separate violation. Knowing or willful violations of this rule could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of this rule and seizing any chemical substance or mixture manufactured or imported in violation of this rule.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. The EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report materially false or misleading information or cause it to be reported.

IX. Confidentiality

A person may assert a claim of confidentiality for any information submitted to EPA in connection with this rule. Any claim of confidentiality must accompany the information when submitted to EPA.

Persons claiming information as confidential should do so by circling, bracketing, or underlining it and marking it with "CONFIDENTIAL." The EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

X. Rulemaking Record

The EPA has established a record for this rulemaking [docket number OPTS-61012]. This record includes basic information considered by EPA in developing this rule and appropriate **Federal Register** notices. The record includes the categories of information listed in the proposed rule (53 FR 10206). Public comments received on the proposed rule have been added to existing subcategory IV-D, Additional Comments Received. In addition, the following categories have been added.

Subcategory III-A. Notice of Proposed Rulemaking.
Subcategory III-B. Proposed Support Document.
Subcategory IV-B. Additional EPA Factual Memoranda.
Subcategory IV-C. Additional EPA Correspondence to Persons Outside the Agency.
Subcategory IV-F. Transcript of Hearing.

Confidential business information, while part of the record, is not available for public review. A public version of the record, without any confidential business information, is available for inspection and copying at the address in the **ADDRESSES** section of this preamble.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under E.O. 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule is not major because it will not result in any of the adverse impacts set forth in section 1 of E.O. 12291 as grounds for finding a rule to be major. The industry-wide total annual cost will be about $20 million, which is considerably less than the $100 million established as the criterion for a major rule in the Order. The final rule will not cause any significant increase in costs or prices for any sector of the economy or for any geographic region. The economic analysis of the effect on the industry as a result of the rule did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion of the Order).

This rule was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291. Any written comments from OMB to EPA and any EPA responses to those comments are available for public inspection in the public file at the docket location listed under the **ADDRESSES** section of this preamble.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rule imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060-0193.

Public reporting burden for this collection of information is estimated to

average 4.2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 749

Chemicals, Chromium, Cooling towers, Environmental protection, Export notification, Hazardous substances, Hexavalent chromium, Labeling, Recordkeeping and reporting requirements.

Dated: December 22, 1989.

William K. Reilly,

Administrator.

Therefore, 40 CFR chapter I is amended by adding part 749, consisting at this time of § 749.68 under subpart D, to read as follows:

PART 749—WATER TREATMENT CHEMICALS

Subparts A-C—[Reserved]

Subpart D—Air Conditioning and Cooling Systems

Sec.
749.68 Hexavalent chromium chemicals in comfort cooling towers.

Authority: 15 U.S.C. 2605 and 2607.

Subpart A-C—[Reserved]

Subpart D—Air Conditioning and Cooling Systems

§ 749.68 Hexavalent chromium chemicals in comfort cooling towers.

(a) *Chemical substance subject to this section.* Hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588-01-9), is subject to this section.

(b) *Purpose.* The purpose of this section is to impose certain requirements on activities involving hexavalent chromium to prevent unreasonable risks associated with human exposure to air emissions of hexavalent chromium from comfort cooling towers.

(c) *Applicability.* This section is applicable to hexavalent chromium use in comfort cooling towers and to distribution in commerce of hexavalent chromium-based water treatment chemicals for use in cooling systems.

(d) *Definitions.* Definitions in section 3 of the Toxic Substances Control Act, 15 U.S.C. 2602, apply to this section unless otherwise specified in this paragraph. In addition, the following definitions apply:

(1) *Act* means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

(2) *Chilled water loop* means any closed cooling water system that transfers heat from air handling units or refrigeration equipment to a refrigeration machine, or chiller.

(3) *Closed cooling water system* means any configuration of equipment in which heat is transferred by circulating water that is contained within the equipment and not discharged to the air; chilled water loops are included.

(4) *Comfort cooling towers* means cooling towers that are dedicated exlusively to and are an integral part of heating, ventilation, and air conditioning or refrigeration systems.

(5) *Container* means any bag, barrel, bottle, box, can, cylinder, drum, or the like that holds hexavalent chromium-based water treatment chemicals for use in cooling systems.

(6) *Cooling tower* means an open water recirculating device that uses fans or natural draft to draw or force ambient air through the device to cool warm water by direct contact.

(7) *Cooling system* means any cooling tower or closed cooling water system.

(8) *Distributor* means any person who distributes in commerce water treatment chemicals for use in cooling systems.

(9) *EPA* means the Environmental Protection Agency.

(10) *Hexavalent chromium chemicals* means any combination of chemical substances containing hexavalent chromium and includes hexavalent chromium-based water treatment chemicals.

(11) *Hexavalent chromium-based water treatment chemicals* means any hexavalent chromium, alone or in combination with other water treatment chemicals, used to treat water.

(12) *Industrial cooling tower* means any cooling tower used to remove heat from industrial processes, chemical reactions, or plants producing electrical power.

(13) *Label* means any written, printed, or graphic material displayed on or affixed to containers of hexavalent chromium-based water treatment chemicals that are to be used in cooling systems.

(14) *Person* means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.

(15) *Shipment* means the act or process of shipping goods by any form of conveyance.

(16) *Water treatment chemicals* means any combination of chemical substances used to treat water in cooling systems and can include corrosion inhibitors, antiscalants, dispersants, and any other chemical substances except biocides.

(e) *Prohibition of distribution in commerce and commercial use.* (1) All persons are prohibited from distributing in commerce hexavalent chromium-based water treatment chemicals for use in comfort cooling towers.

(2) All persons are prohibited from commercial use of hexavalent chromium-based water treatment chemicals in comfort cooling towers.

(3) Distribution in commerce of hexavalent chromium-based water treatment chemicals for use in, and commercial use of hexavalent chromium-based water treatment chemicals in, industrial cooling towers and closed cooling water systems are not prohibited.

(f) *Effective dates.* (1) The prohibition described in paragraph (e)(1) of this section against distributing in commerce hexavalent chromium-based water treatment chemicals for use in comfort cooling towers is effective February 20, 1990.

(2) The prohibition described in paragraph (e)(2) of this section against using hexavalent chromium-based water treatment chemicals in comfort cooling towers is effective May 18, 1990.

(g) *Labeling.* (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals after February 20, 1990, shall affix a label, or keep affixed an existing label in accordance with this paragraph, to each container of the chemicals. The label shall consist of the following language:

WARNING: This product contains hexavalent chromium. Inhalation of hexavalent chromium air emissions increases the risk of lung cancer. Federal law prohibits use of this substance in comfort cooling towers, which are towers that are open water recirculation devices and that are dedicated exclusively to, and are an integral part of, heating, ventilation, and air conditioning or refrigeration systems.

(2) The first word of the warning statement shall be capitalized, and the type size for the first word shall be no smaller than 10-point type for a label

less than or equal to 10 square inches in area, 12-point type for a label above 10 but less than or equal to 15 square inches in area, 14-point type for a label above 15 but less than or equal to 30 square inches in area, or 18-point type for a label above 30 square inches in area. The type size of the remainder of the warning statement shall be no smaller than 6-point type. All required label text shall be in English and of sufficient prominence and shall be placed with such conspicuousness, relative to other label text and graphic material, to ensure that the warning statement is read and understood by the ordinary individual under customary conditions of purchase and use.

(h) *Recordkeeping.* (1) Each person who distributes in commerce any hexavalent chromium-based water treatment chemicals for use in cooling systems after February 20, 1990, shall retain in one location at the headquarters of the distributor documentation showing:

(i) The name, address, contact, and telephone number of the cooling system owners/operators to whom the chemicals were shipped.

(ii) The chemicals included in the shipment, the amount of each chemical shipped, and the location(s) at which the chemicals will be used.

(2) The information described in paragraph (h)(1) of this section shall be retained for 2 years from the date of shipment.

(i) *Reporting.* (1) Each person who distributes in commerce any hexavalent chromium-based water treatment chemicals for use in cooling systems shall report to the Regional Administrator of the EPA Region in which the distibutor headquarters is located. The report shall be postmarked not later than February 20, 1990, or 30 days after the person first begins the distribution in commerce of hexavalent chromium-based water treatment chemicals, whichever is later, and shall include:

(i) For the headquarters, the distributor name, address, telephone number, and the name of a contact.

(ii) For the shipment offices through which hexavalent chromium-based water treatment chemicals are sold for use in cooling systems, the distributor name, address, telephone number, and the name of a contact.

(2) The report identified in paragraph (i)(1) of this section shall be updated as changes occur in the distributor headquarters or shipment office information. The updated report shall be submitted to the Regional Administrator and postmarked no later than 10 calendar days after the change occurs.

(3) A person may assert a claim of confidentiality for any information submitted to EPA in connection with this rule. Any claim of confidentiality must accompany the information when submitted to EPA. Persons claiming information as confidential should do so by circling, bracketing, or underlining it and marking it with "CONFIDENTIAL." EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, Subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

(j) *Enforcement.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(k) *Inspections.* EPA will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this section.

[FR Doc. 90-50 Filed 1-2-90; 8:45 am]

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Wednesday, January 3, 1990

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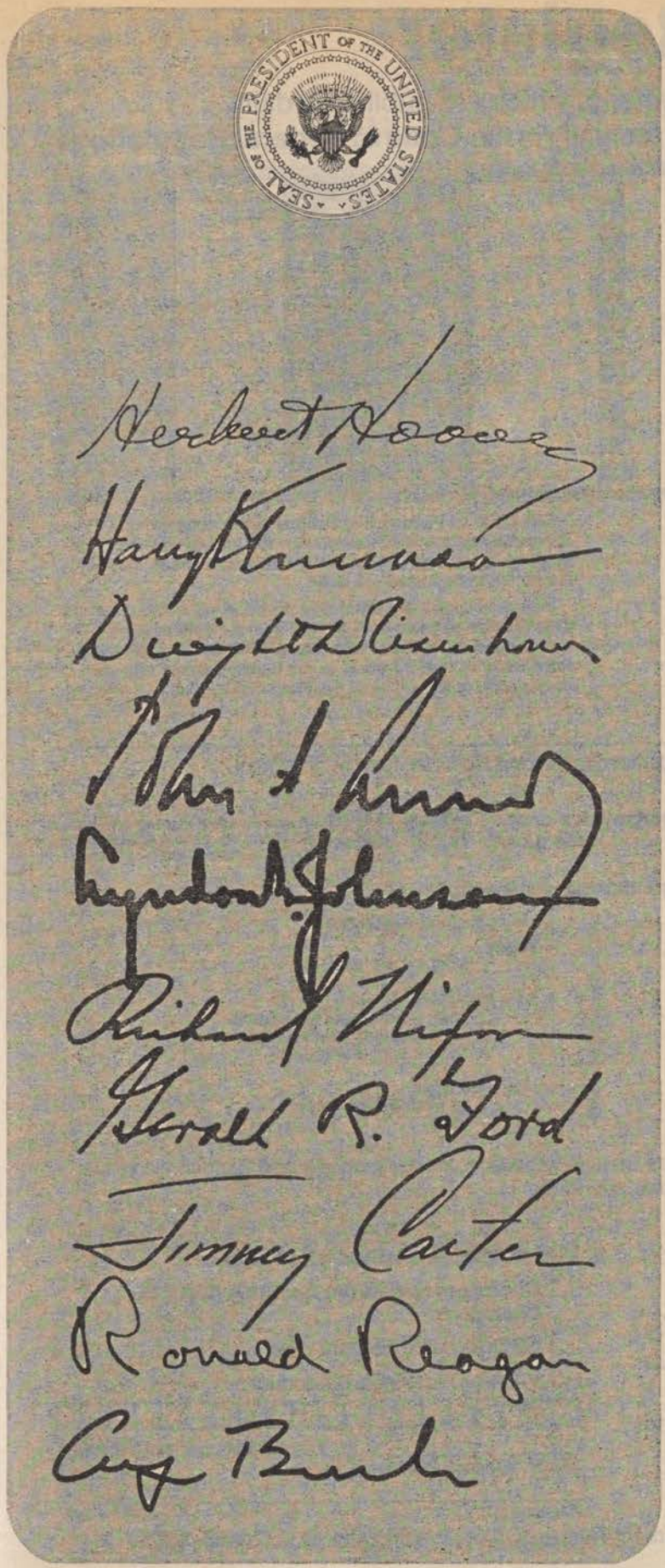

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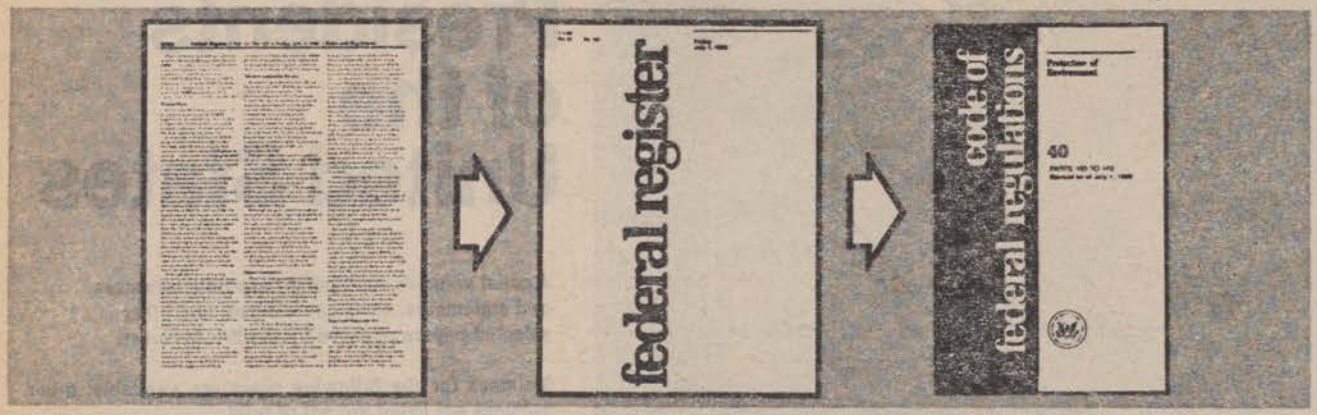

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