Briefings on How To Use the Federal Register—
For information on briefings in Houston, TX, and Atlanta, GA, see announcement on the inside cover of this issue.
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How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT
WHO: The Office of the Federal Register.
WHAT: Free public briefings [approximately 2 1/2 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.
  3. The important elements of typical Federal Register documents.
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.

HOUSTON, TX
WHEN: March 10; at 9 am.
WHERE: Room 4415, Federal Building, 515 Rusk Avenue, Houston, TX.
RESERVATIONS: Call the Houston Federal Information Center on the following local numbers:
  Houston 713-229-2552
  Austin 512-472-5495
  San Antonio 512-224-4471
  New Orleans 504-589-6696

ATLANTA, GA
WHEN: March 26; at 9 am.
WHERE: LD. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA.
RESERVATIONS: Call the Atlanta Federal Information Center, 404-331-2170.
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The President  

Proclamation 5609 of February 17, 1987  

American Red Cross Month, 1987  

By the President of the United States of America  

A Proclamation  

Few events humble men more than natural disasters. Last year in the United States alone, hurricanes, floods, and tornadoes killed 290 people and destroyed property valued at $15 billion. Working to mitigate the human toll of that devastation were nearly 90,000 American Red Cross disaster relief workers—95 percent of whom were volunteers—helping the victims first to survive, and then to rebuild their lives.  

Disaster assistance speaks to the deepest and purest ideals of the Red Cross movement. It is the reason the Red Cross was formed more than a century ago, and it remains the truest example of its continuing commitment to service.  

The American Red Cross has responded to recent disasters swiftly and magnanimously, as it always has. Since September, nearly a dozen major disasters—including eight large-scale floods in the South and Midwest—have pressed the American Red Cross into action. But disaster is not the only spur. Social services, health and safety programs, blood and tissue efforts, and international activities all galvanize our Red Cross into service.  

The organization continues to lead the way in making the Nation’s blood supply as safe as possible. It recently introduced testing to reduce post-transfusion non A, non B hepatitis, following up its 1985 implementation of HTLV-III testing for AIDS. It also launched its Look Back initiative, a program that notifies people who have been transfused with blood or blood components from donors who later tested positive for the AIDS antibody. Finally, the American Red Cross undertook a massive AIDS public education effort to spread the facts about the disease.  

The American Red Cross continues to train millions of students in first aid, cardiopulmonary resuscitation, water safety, and small craft operation. It maintains vital communication services to the Nation’s military through a network of Red Cross posts at 277 domestic and overseas military installations. Every 11 seconds, the Red Cross helps someone in our Armed Forces or a member of a service family. Last summer, the Red Cross formed the National Bone Marrow Donor Registry, giving new hope to thousands of patients with life-threatening blood diseases. Finally, the American Red Cross continues to aid foreign disaster victims. Its response to the October 1986 earthquake in San Salvador included cash, goods, and staff services valued at more than half a million dollars. Work still goes on in the aftermath of the terrible September 1985 earthquake in Mexico City, where Red Cross workers from around the world are helping the victims to rebuild.  

No one can predict when the next river will flood or the next storm will hit. No one can foresee the next threat to the Nation’s health. What is predictable is that we will face such threats and emergencies, and that the American Red Cross will be there to offer help and hope.
NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America and Honorary Chairman of the American National Red Cross, do hereby proclaim the month of March 1987 as American Red Cross Month. I urge all Americans to continue to give blood, to volunteer their time whenever possible to assist in this great service, and to give generous support to the work of the American Red Cross and its local chapters.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of February, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.
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 907
[Navel Orange Regulation 648]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 648 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 20, 1987, through February 28, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 648 (§ 907.948) is effective for the period February 20, 1987, through February 28, 1987.


SUPPLEMENTARY INFORMATION: 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 has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action 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 Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986-87 adopted by the Navel Orange Administrative Committee. The committee met publicly on February 17, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 9 to 1 vote (with Simmons wanting open movement) a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges is improving.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907
Agricultural marketing service, Marketing agreements and orders, California, Arizona, Oranges (Navel).
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 has determined that this action will not have a significant economic impact on a substantial number of 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 Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986-87. The committee met publicly on February 17, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that demand is fairly steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

PART 910—[AMENDED]
1. The authority citation for 7 CFR Part 910 continues to read as follows:
2. Section 910.849 is added to read as follows:
§ 910.849 Lemon Regulation 549.
The quantity of lemons grown in California and Arizona which may be handled during the period February 22 through February 28, 1987, is established at 270,000 cartons.
William J. Doyle,
Acting Director. Fruit and Vegetable Division, Agricultural Marketing Service.

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE
International Trade Administration
15 CFR Parts 371, 374, and 386
[Docket No. 70223-7023]

General Licenses for Exports to Cooperating Governments and Certified End-Users

AGENCY: Export Administration. International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: On June 23, 1986, Export Administration published a proposal for a general license C-CEU that would authorize exports to Certified End-Users. Export Administration has decided to defer consideration of that proposal and promulgate a new regulation that differs from the proposed rule in several respects. As compared to the June 23, 1986, proposal, our new regulation removes the exclusion on certain high technology products and drops the requirement that exporters must obtain telephonic clearance from the Office of Export Licensing prior to shipment. Moreover, this new rule differs from the proposal in that only enterprises controlled by COCOM governments will be eligible for Certified End-User status.

Following consultation with other COCOM member governments, Export Administration will publish a list of Certified End-Users in the Export Administration Regulations. Although C-CEU is initially limited to COCOM participants, at a later date Export Administration may make controlled enterprises of other countries eligible for Certified End-User status.

This rule also recognizes the special status of national government agencies of cooperating governments by establishing a new General License GG. This new general license will permit unrestricted exports of virtually all commodities to those agencies wherever they are located within the cooperating countries and to their diplomatic and consular missions throughout the free world.

In addition, new procedures are being developed that will reduce the U.S. licensing requirements on exports to and reexports by private sector enterprises in these countries.

If Export Administration decides to pursue its proposal of June 23, 1986, it will at that time consider all comments submitted in connection therewith.


FOR FURTHER INFORMATION CONTACT: John Black, Regulations Branch, Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:
Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule mentions collection of information requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These collections have been approved by OMB under Control Numbers 0625-0001 and 0625-0156.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because of notice of proposed rulemaking and an opportunity for
List of Subjects in 15 CFR Parts 371, 374, and 386

Exports. Reporting and recordkeeping requirements.

Accordingly, Parts 371, 374, and 386 Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR Part 371 and 386 continues to read as follows:


2. The authority citation for 15 CFR Part 374 continues to read as follows:


PART 371—[AMENDED]

3. A new § 371.14 is added to read as follows:

§ 371.14 General license GCG; shipments to agencies of cooperating governments.

(a) Scope. A general license designated GCG is established subject to the provisions of § 371.14, authorizing exports to any destination as follows:

(1) Commodities for official use within national territory. Any commodity consigned to and for the official use of any agency of a cooperating government located within the territory of any cooperating government.

(2) Diplomatic and consular missions. Any commodity consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Groups T and V.

(b) Definition of Cooperating Government Agency. The term "agency of a cooperating government" includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. Cooperating Governments are the governments participating in COCOM (see § 370.2) and such others as may be designated.

(c) Petroleum Exports. The provisions of this § 371.14 do not apply to the products listed in Supplement No. 3 to Part 377 unless, in addition to meeting the other requirements of § 371.13, the exporter, prior to exporting such products, has assembled the documentary evidence described in § 371.19 establishing that the product was not derived from a Naval Petroleum Reserve. Crude petroleum may be exported only under a valid license issued pursuant to § 371.6(d)(1).

(d) Exclusions. (1) No export prohibited by § 371.6(c) may be made under this general license.

(2) No supercomputers may be exported under this general license.

4. A new § 371.20 is added to read as follows:

§ 371.20 General license G-CEU: certified end-users.

A general license designated G-CEU is established, authorizing exports to Certified End-Users of any eligible commodity that will be used by the Certified End-User (CEU).

(a) Eligible end-users. Commodities may be exported under General License G-CEU only to cooperating national government controlled enterprises included in Supplement 1 to Part 371. Cooperating governments are those participating in COCOM (see § 370.2) and such other governments as may be designated. For the purposes of this general license, a controlled enterprise is any entity that is controlled in fact by a cooperating member government that performs commercial or utility, not governmental, functions.

(1) "Control in fact" consists of the authority or ability of a government to establish the general policies or to control the day-to-day operations of the entity.

(2) An entity will be presumed to be controlled in fact by a government, subject to rebuttal by competent evidence, when such government:

(i) Owns or controls more than 50 per cent of the outstanding voting stock of the corporation;

(ii) Has the authority and the ability to name or control the votes of a majority of the members of the board of directors of the corporation;

(iii) Has control or other powers to name the management of the corporation; or

(iv) Has powers similar to those listed in paragraph (a)(2) (i), (ii), or (iii) of this section with regard to unincorporated entities.

(b) Eligible countries. Exports may be made to any CEU located in the national territory of any cooperating government, provided the commodities will be consigned to and for use by the CEU at a destination within such territory.

(c) Commodity restrictions. General License G-CEU may be used for export of any commodity on the Commodity Control List except supercomputers.

(d) End-use restriction. This procedure only authorizes a Certified End-User (1) to use the commodities obtained under General License G-CEU at its own facilities located in an eligible country, or (2) to dispose of the commodities to other Certified End-Users, subject to all G-CEU restrictions, except that a Certified End-User may incorporate U.S. parts, components, or materials received under General License G-CEU into foreign made end products for purposes of resale or reexport to eligible countries.

5. A new Supplement 1 is added to Part 371 to read as follows:

Supplement 1 to Part 371—Certified End-Users

The following enterprises have been designated as Certified End-Users and are eligible to receive U.S. origin commodities under the provisions of General License G-CEU.

(No Certified End-Users have been identified at this time.)

PART 374—[AMENDED]

§ 374.2 [Amended]

6. In § 374.2, paragraph (a)(1) is amended by inserting "G-CEU, GCG," between "G-COM," and "G-NNR,.

PART 386—[AMENDED]

§ 386.6 [Amended]

7. In § 386.6, paragraph (a)(1)(ii) is amended by revising "or G-COM" to read "G-COM, or G-CEU."


Vincent F. DeCalm,
Deputy Assistant Secretary for Export Administration.

[BFR Doc. 87-3656 Filed 2-19-87; 8:45 am]
BILLING CODE 3510-DT-M
Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Interim Rule

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations governing applicants for hydroelectric licenses and exemptions that seek benefits under section 210 of the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. 3244–3 (1982), for projects to be located at a new dam or diversion. In so doing, the Commission is implementing the provisions of the newly enacted Electric Consumers Protection Act of 1986 (ECPA), Pub. L. No. 99-495 (Oct. 16, 1986). Section 8(a) of ECPS amended section 210 of PURPA to create a new section 210(j) which imposes three new environmental requirements before applicants for licenses or exemptions can obtain PURPA benefits for small hydroelectric facilities utilizing new dams or diversions.1 Section 8(e) of ECPS also imposes a moratorium of approximately two years on the grant of PURPA benefits to projects at new dams or diversions while Congress, with the assistance of the Commission, studies the matter. Section 8(b) of ECPS, however, provides for four categories of exceptions from the new requirements and the moratorium. Three of these are self-implementing. The fourth, covering an applicant that filed an application for a license or exemption after the date of enactment of ECPS, operates if that applicant successfully petitions the Commission for a finding that before the enactment of ECPS it committed substantial monetary resources toward the development of the project and the completion of all filing requirements of the Commission.

Section 8(b)(4)(A) of ECPS requires the Commission to issue a rule by February 13, 1987 implementing this fourth exception. Accordingly, this interim rule implements the new environmental conditions imposed by section 8(a) of ECPS, and implements the exception provision of section 8(b) of that statute. In a separate notice of proposed rulemaking, the Commission will propose to implement other provisions of section 8 of ECPS affecting the availability of PURPA benefits to hydroelectric projects located at a new dam or diversion.2

II. Background

Section 210 of PURPA requires electric utilities to sell electricity to, and purchase electricity from, qualifying small power production facilities. The Federal Power Act (FPA) defines “small power production facility” to include facilities with a power production capacity of 80 megawatts or less that produce electric energy solely by the use of renewable resources.3 The Commission has interpreted “renewable resources” to include water used at hydroelectric projects located at either an existing or a new dam or diversion.4 On October 16, 1986, Congress enacted ECPS. In section 8(e) of ECPS, Congress imposed a moratorium of approximately two years on the availability of PURPA benefits to hydroelectric projects located at a new dam or diversion. The purpose of the moratorium is to allow Congress time to evaluate whether PURPA benefits should continue to be extended to small hydroelectric projects that create new dams or diversions of water.5

Section 8 of ECPS also amends section 210 of PURPA to add a new section 210(j) which imposes three environmental conditions on a license and exemption applicants for hydroelectric projects located at a new dam or diversion that will have to meet to qualify for PURPA benefits. The three new conditions of section 8(a) are:

[1] At the time of issuance of the license or exemption for the project, the Commission must find that the project will not have substantial adverse effects on the environment, including recreation and water quality due to adverse environmental effects requirement);

[2] At the time the application for a license or exemption for the project is accepted by the Commission, such project cannot be located on any segment of a natural watercourse which:

(A) Is included in, or designated for potential inclusion in, a State or national wild and scenic river system, or

(B) The State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development (“protected rivers requirement”);

1 Section 8 of ECPS defines a “new dam or diversion” as a dam or diversion that requires, for purposes of installing any hydroelectric power project, construction or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or other similar devices).

2 The notice will propose procedures for the filing and processing of a second petition that alleges that a project meets the requirement against substantial adverse environmental effects added by section 8 of ECPS.


4 Small Power Production and Cogeneration Facilities—Qualifying Status. 45 FR 17659 at 17660 (Mar. 20, 1980).

5 In order to develop a factual record concerning the impact of extending PURPA benefits to hydroelectric projects located at a new dam or diversion, section 8(d) of ECPS requires the Commission to conduct a study to be submitted to Congress to determine whether PURPA benefits should be available to these projects. The moratorium will end at the expiration of the first full session of Congress following the session during which the Commission reports to Congress on the results of the study.
affirmatively grants the exception upon application, in the form of a petition. The statute requires that a petition seeking an exception from the fish and wildlife agency condition requirement (because the applicant had already committed substantial resources) must be filed within 18 months after the enactment of ECPA (that is, by April 16, 1988).7

Section 8(b)(4)(C) of ECPA provides that an applicant for license or exemption that files a commitment of resources petition prior to the time the license or exemption is issued, file a second petition requesting an initial determination from the Commission on whether the project satisfies the requirement against adverse environmental effects. If an applicant’s commitment of resources petition is granted, the Commission will make an initial determination on the adverse environmental effects petition. Section 8 further provides that, if the Commission initially determines that the project as proposed would not satisfy the adverse environmental effects requirement, then the applicant will be provided a reasonable opportunity to propose measures to mitigate the adverse environmental effects found before the Commission finally acts on the license or exemption application and makes a final determination on whether the adverse environmental effects requirement has been met.

III. Discussion

A. New Requirements for Projects Located at a New Dam or Diversion to Qualify for PURPA Benefits

Currently, pursuant to 18 CFR 282.203(a) (1966), all small power production facilities can qualify for PURPA benefits if they meet certain requirements.8 ECRA added three additional requirements for hydroelectric small power production facilities to be located at new dams or diversions to qualify for PURPA benefits. This interim rule amends the Commission’s regulations to implement these new requirements. These projects will not qualify for PURPA benefits while the moratorium imposed by section 8(e) of ECPA is in effect.

8 If the Commission denies the commitment of resources petition, the project cannot obtain PURPA benefits during the moratorium period, and, after that period, all of the new conditions must be satisfied without exception. ECPA, section 8(b)(4)(D).

These requirements are:

1. The primary energy source of the facility must remain, together with the capacity of any other facilities which use the same energy resource, owned by the same person, and are located at the same site, not exceed 80 megawatts. 18 CFR 282.203(a)(20)

2. The facility must be owned by a person primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities). 18 CFR 282.203(e)(20)

9 These requirements are:

1. That in order to adequately and equitably protect, mitigate damages to, and, enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project, each license issued under this Part shall contain such conditions for such protection, mitigation, and enhancement. Subject to paragraph (3), such conditions shall be based on recommendations made to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

2. Whenever the Commission believes that any recommendation referred to in paragraph (1) may be inconsistent with the purposes and requirements of this Part or other applicable law, the Commission and the agencies referred to in paragraph (1) shall attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If, after such attempt, the Commission does not adopt in whole or in part a recommendation of any such agency, the Commission shall publish each of the following findings (together with a statement of the basis for each of the findings):

(A) A finding that adoption of such recommendation is inconsistent with the purposes and requirements of this Part or with other applicable provisions of law.

(B) A finding that the conditions selected by the Commission comply with the requirements of paragraph (1).

Thus the United States Fish and Wildlife Service, the National Marine Fisheries Service, and State fish and wildlife agencies. The Commission makes such recommendations regarding a license for which a commitment of resources petition is granted, but they could not impose mandatory conditions, as they are authorized to do when section 30(c) applies.

Although section 8 of ECPA speaks of excepting both license and exemption applicants from the fish and wildlife terms and conditions requirement if their petitions are granted, it stipulates elsewhere that nothing in ECPA will affect the application of section 30(c) of the FPA to any petition issued after the enactment of ECPA. Accordingly, section 30(c) would continue to apply to an exemption for which a commitment of resources petition is granted, since section 405(d) of PURPA, 16 U.S.C. 2705(d) (1982), specifies that exempted projects of under 5 megawatts installed capacity are subject to section 30(c) of the FPA. Both applicants for license and exemption, however, will obtain the other benefits of a favorable ruling on this petition: they will be excepted from the moratorium and, if they have filed an adverse environmental effects petition (proposed regulations setting out the form in which this petition will be filed and processed will be issued separately in a notice of proposed rulemaking) Commissioner will rule on that second petition instead of dismissing it.

6 16 U.S.C. 422c(c) (1962). Section 30(c) of the FPA, as amended by section 7 of ECPA, requires that, before issuing an exemption from licensing, the Commission shall consult with the United States Fish and Wildlife Service, National Marine Fisheries Service, and the State agency exercising administration over the fish and wildlife resources of the State in which the facility is or will be located, in the manner provided by the Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.), and shall include in any such application—

(1) Such terms and conditions as the Fish and Wildlife Service, National Marine Fisheries Service, and the State agency each determine are appropriate to prevent loss of, or damage to, such resources and to otherwise carry out the purposes of such act, and

(2) Such terms and conditions as the Commission deems necessary to ensure that such facility continues to comply with the provisions of this section and terms and conditions included in any such exemption.

7 If a license applicant’s commitment of resources petition is granted, new section 10(j) of the FPA, added by section 8(b) of ECPA, would apply instead of section 30(c). Section 10(j) reads as follows:

1. That in order to adequately and equitably protect, mitigate damages to, and, enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project, each license issued under this Part shall contain such conditions for such protection, mitigation, and enhancement. Subject to paragraph (2), such conditions shall be based on recommendations made to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

2. Whenever the Commission believes that any recommendation referred to in paragraph (1) may be inconsistent with the purposes and requirements of this Part or other applicable law, the Commission and the agencies referred to in paragraph (1) shall attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If, after such attempt, the Commission does not adopt in whole or in part a recommendation of any such agency, the Commission shall publish each of the following findings (together with a statement of the basis for each of the findings):

(A) A finding that adoption of such recommendation is inconsistent with the purposes and requirements of this Part or with other applicable provisions of law.

(B) A finding that the conditions selected by the Commission comply with the requirements of paragraph (1).

Thus the United States Fish and Wildlife Service, the National Marine Fisheries Service, and State fish and wildlife agencies. The Commission makes such recommendations regarding a license for which a commitment of resources petition is granted, but they could not impose mandatory conditions, as they are authorized to do when section 30(c) applies.

Although section 8 of ECPA speaks of excepting both license and exemption applicants from the fish and wildlife terms and conditions requirement if their petitions are granted, it stipulates elsewhere that nothing in ECPA will affect the application of section 30(c) of the FPA to any petition issued after the enactment of ECPA. Accordingly, section 30(c) would continue to apply to an exemption for which a commitment of resources petition is granted, since section 405(d) of PURPA, 16 U.S.C. 2705(d) (1982), specifies that exempted projects of under 5 megawatts installed capacity are subject to section 30(c) of the FPA. Both applicants for license and exemption, however, will obtain the other benefits of a favorable ruling on this petition: they will be excepted from the moratorium and, if they have filed an adverse environmental effects petition (proposed regulations setting out the form in which this petition will be filed and processed will be issued separately in a notice of proposed rulemaking) Commissioner will rule on that second petition instead of dismissing it.
However, projects excepted from the moratorium may qualify for PURPA benefits if they meet or are excepted from each of the three new environmental requirements.

### B. Exceptions from New Requirements for Projects Located at a New Dam or Diversion to Qualify for PURPA Benefits

In this rule, the Commission is implementing all four statutory exceptions from the moratorium and from the new environmental requirements for qualification for PURPA benefits.

The regulatory text of the first three exceptions merely tracks the terms of Section 8 of ECPA. The Commission is excepting from the moratorium and from all three new requirements any project located at a Government dam where non-Federal hydroelectric development is permitted, and any project for which an application for license or exemption was filed and accepted before October 16, 1986. The Commission is also excepting from the moratorium, the adverse environmental effects requirement, and the fish and wildlife conditions requirement—not but from the protected rivers requirement—any project for which an application for license or exemption was filed before October 16, 1986, and is accepted by the Commission before October 16, 1989.

The fourth exception applies to a project for which an applicant demonstrates, in a petition filed with the Commission, that a substantial commitment of monetary resources was made prior to the enactment of ECPA. The project will be excepted from the moratorium and from the fish and wildlife agency conditions requirement, but not from the adverse environmental effects requirement or the protected rivers requirement. The regulations provide standards and procedures governing petitions claiming a substantial monetary commitment.

#### 1. Definition of commitment of substantial monetary resources. The Commission finds that an applicant will have shown the substantial commitment of monetary resources required by Congress to except it from the fish and wildlife agency conditions requirement if the applicant demonstrates that, before October 16, 1986, it expended or committed to expend at least 50 percent of the total cost of preparing an application that is accepted for filing by the Commission pursuant to 18 CFR 4.32(c). The total cost includes (but is not limited to) the cost of agency consultation, engineering studies conducted pursuant to 18 CFR 4.36, and the Commission’s requirements for filing a license or exemption application.

The Commission recognizes that the term “substantial” is a relative one and could be interpreted to mean different amounts. There is little legislative guidance on the term as used in section 8 of ECPA. The Commission is adopting a 50 percent standard because it believes that this standard reflects the intent of Congress to limit the benefits of this exception to applicants that had committed substantial funds to the development of the project and to the completion of the Commission’s filing requirements. Congress did not require an applicant to show that it had completed all pre-filing consultation before the enactment of ECPA. Generally, a potential developer that has completed all pre-filing consultation on a project will file a development application for that project expeditiously—usually within a month. Thus, most development applications for which all § 4.38 consultation was completed by the October 16, 1986 enactment of ECPA probably were filed with the Commission by the end of 1986. Because Congress made the petitioning procedure available up to as much as 18 months after the enactment of ECPA, the Commission believes that Congress intended that the expenditure of, or commitment to expend, by October 16, 1986, a significant portion of the total cost of filing an acceptable application could constitute a “commitment of substantial monetary resources” by that date. Indeed, the House Committee Report states that if completion of environmental consultations prior to enactment is not to be considered the benchmark for the interpretation of the term “substantial” (emphasis added).

The 50 percent standard is also supported by the fact that the 18-month period for filing a commitment of resources petition is half the standard 36-month term for preliminary permits, during which potential license or exemption applicants typically complete feasibility studies and consultation. Accordingly, the Commission is requiring that the commitment of resources petition must demonstrate that at least 50 percent of the total cost of producing an application that is accepted for filing by the Commission pursuant to § 4.32(c) had been expended or committed to be expended before October 16, 1986.

#### 2. Filing and processing of commitment of resources petition.

Section 8 of ECPA requires only that the commitment of resources petition be filed before April 16, 1988, and that the petition apply to an application for license or exemption filed on or after October 16, 1986. The Commission is requiring that an applicant for license or exemption must either file its application and the commitment of resources petition together or submit with its application a request for an extension of time, not to exceed 90 days, or April 16, 1988, whichever occurs first, in which to file the petition.

The Commission will not accept a commitment of resources petition before a license or exemption application is filed. Until an application is filed, a developer will not be in a position to provide the information about the cost of the application upon which the Commission intends to base its decision as to whether the developer qualifies for this exception. In addition, only when a license or exemption application is filed does it become clear that a developer will in fact proceed with its project. Thus, this limitation will save the Commission from expending resources to rule on exception petitions for projects which do not ripen into development applications. Finally, as a practical matter, if a developer is unable to file a license or exemption application within the 18-month period Congress provided for the filing of a commitment of resources petition, there is a strong likelihood that the developer’s project was not far enough along in the process of obtaining regulatory approval to fall within the group Congress intended would qualify for this particular exception.

The Commission recognizes that some applications for projects that will qualify for this exception will have been filed between the effective date of ECPA and the effective date of this rule. The Commission is therefore allowing those who filed an application for license or exemption on or after October 16, 1986, but before the effective date of this rule, 90 days after the effective date of this rule to file the commitment of resources petition.

While the moratorium imposed by section 8(e) of ECPA is in effect, filing a commitment of resources petition is the only means to seek PURPA benefits for projects located at a new dam or diversion for which applications were filed on or after October 16, 1986. Because the Commission staff will process applications for a license or exemption for these projects differently if PURPA benefits are sought, the Commission needs the commitment of resources petition as soon as possible.
after an application is filed. The Commission recognizes, however, that the filing date of a project application has significant value to an applicant, since when two or more applicants are competing for a project site, the first-filed application may be favored. The Commission believes that both of these factors can be accommodated by a rule providing that the commitment of resources petition may be filed up to 90 days after an application is filed (but not beyond April 16, 1988) as long as an extension request is submitted with the application. First, the applicant will be allowed up to 90 days after it files its application to file the petition. Second, whether the petition itself or an extension request is submitted with the application, the Commission will know at the time the application is filed whether PURPA benefits are sought for the project.

Section 8(b)(4)(A) of ECPA requires an applicant to provide written notice of the filing of a commitment of resources petition to affected Federal and State agencies. The Commission is therefore requiring that the commitment of resources petition must show that the applicant has served the petition on the appropriate Federal and State agencies. The petition must also show any preliminary permits issued for the project. This information is necessary for the Commission staff to determine whether the petition makes the required showing. If an applicant has already submitted any of the required information in its project application, instead of resubmitting that information, the applicant may indicate in the petition on what pages of the application the information can be found.

As proof of a monetary commitment of 50 percent before October 16, 1988, the petition must include an itemized statement of the costs that were expended or committed to be expended on the application before October 16, 1988. In order to prove that all of these expenses are directly related to the development of the project and to the diligent and timely completion of all requirements of the Commission for filing an acceptable application for license or exemption, the applicant must submit whatever correspondence or other documentation may be available.

Section 8(b)(4)(B) of ECPA establishes a rebuttable presumption that the applicant has made the required showing of monetary commitment if it held a preliminary permit for the project and had completed all of the environmental consultations required by the Commission's regulations before October 16, 1986. The Commission is therefore providing that an applicant that held a preliminary permit for a project and had completed the consultation required under § 4.38 may submit the permit's project number instead of submitting cost information.

Because an application is not accepted for filing until any deficiencies under § 4.32(d) are corrected, the cost of correcting deficiencies will be included in the total cost of submitting an acceptable application. Accordingly, the Commission is requiring any applicant that has filed a commitment of resources exception petition to include in submission correcting application deficiencies a statement of the costs expended in making the corrections.

As required by section 8(b)(4)(A) of ECPA, when the exception petition is filed, the Commission will issue a notice of the petition in the Federal Register, § 2 will make the petition publicly available, and will provide interested persons 45 days to comment on any aspect of the petition. The petition will be available for public inspection at the Division of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. The Commission is providing the petitioner with fifteen days to file any response to the comments after the public comment period expires.

The Commission is delegating to the Director of the Office of Hydropower Licensing (Director) the authority to act on this petition. At the time the license or exemption application is accepted for filing pursuant to § 4.32(e), the Director will be able to compare the total cost of submitting an acceptable application with the cost the applicant demonstrates it had expended or committed to expend by October 16, 1988, to determine whether the 50 percent threshold has been met.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act requires that a final rule issued by a regulatory agency following a period of notice and comment must contain an analysis of the impact of the rulemaking on small entities. Because this interim rule is being issued without notice and comment, the Commission believes that the provisions of the Regulatory Flexibility Act do not apply to this rulemaking.

In preparing this rule, however, the Commission has considered the impact of the rulemaking on small entities. The Commission believes that the interim rule will not have a substantial impact on a significant number of small entities, but instead, will benefit many small entities. The rule established several categories of projects which are either automatically excepted from the provisions of the rule or which, through a petitioning procedure, can be expected from some of the provision of the rule.

V. Notice and Comment

Notice and comment procedures are not required under the Administrative Procedure Act when the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to the public interest. The legislative history of the Administrative Procedure Act indicates that notice and comment is impracticable "when the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rulemaking proceedings." The Commission finds that in this instance providing for notice and comment before the issuance of this final rule is impractical or unnecessary. Congress required the Commission to issue a rule prescribing the form of the commitment of resources exception petition within 120 days following enactment of ECPA. As to that part of these regulations, the Commission did not have enough time to allow for notice and comment and the Commission is therefore publishing these regulations on an interim basis. As for the other aspects of these rules, the Commission has merely tracked the requirements of the statute, so that notice and comment is unnecessary.

The Commission invites all interested persons to submit written data, views, or other information on the matters in this interim rule. The Commission will consider these comments before issuing final regulations.

All comments in response to this interim rule should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, and should

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13 In a competitive proceeding, if the plans of the applicants are equally well adapted to develop, conserve, and utilize in the public interest the water resources of the region, and either none of or all of the applicants are municipalities or states, the Commission will favor the applicant first to file. 18 CFR § 4.37(b) (1986).


2. Section 292.203 is amended by revising paragraph (a) introductory text and adding a new paragraph (c) to read as follows:

§ 292.203 General requirements for qualification.

(a) Small power production facilities. Except as provided in paragraph (c) of this section, a small power production facility is a qualifying facility if it:

* * * * *

(c) Hydroelectric small power production facilities located at a new dam or diversion. (1) General rule. Except as provided in paragraph (c)(2) of this section and § 292.208 of this part, a hydroelectric small power production facility that impounds or diverts the water of a natural watercourse by means of a new dam or diversion is a qualifying facility if:

(i) It meets the requirements in paragraph (a) of this section;

(ii) The Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality, when it issues the license or exemption for the project;

(iii) The Commission finds, when it accepts the application for license or exemption for the project for filing under § 4.32(e) of this chapter, that the project is not located on any segment of a natural watercourse that:

(A) Is included in (or designated for potential inclusion in) a State or National Wild and Scenic River System, or

(B) The State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural or scenic attributes which would be adversely affected by hydroelectric development; and

(iv) The project meets the terms and conditions set by the appropriate fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

(2) Exception. A hydroelectric small power production facility that impounds or diverts the water of a natural watercourse by means of a new dam or diversion is not a qualifying facility if the moratorium described in section 8(c) of the Electric Consumers Protection Act of 1986 (ECPA), Pub. L. No. 99–495, is in effect. The moratorium applies to a license or an exemption issued on or after October 16, 1986. The moratorium will end at the expiration of the first full session of Congress following the session during which the Commission reports to Congress on the results of the study required under section 6(d) of ECPA.

3. New § 292.208 are added to Subpart B to read as follows:

§ 292.208 Exceptions from requirements for hydroelectric small power production facilities located at a new dam or diversion.

(a) The requirements of § 292.203(c)(1)(ii) through (iv) of this part do not apply if:

(1) An application for license or exemption is filed for a project located at a Government dam, as defined in section 3(10) of the Federal Power Act, at which non-Federal hydroelectric development is permissible.

(2) An application for license or exemption was filed and accepted before October 16, 1986;

(b) The requirements of § 292.203(c)(1)(ii) and (iv) of this part do not apply if an application for license or exemption was filed before October 16, 1986 and is accepted for filing by the Commission before October 16, 1989.

(c) The requirements of § 292.203(c)(1)(ii) of this part do not apply to an applicant for license or exemption that filed a petition pursuant to § 292.209 of this part, if that petition is granted.

(d) Any application covered by paragraph (a), (b), or (c) of this section is excepted from the moratorium imposed by section 8 of the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495.

§ 292.209 Petition alleging commitment of substantial monetary resources before October 16, 1986.

(a) An applicant covered by § 292.203(c) of this part whose application for license or exemption was filed on or after October 16, 1986, but before April 16, 1988, may file a petition for exception from §§ 292.203(c)(1)(iv) and 292.203(c)(2) of this part. The petition must show a commitment of substantial monetary resources, as defined in paragraph (b) of this section, on the project before October 16, 1986. Subject to rebuttal, a showing of the commitment of substantial monetary resources will be presumed if the applicant held a preliminary permit for the project and had completed environmental consultations pursuant to § 4.38(e) of this chapter before October 16, 1986.

(b) “Commitment of substantial monetary resources” means the
expenditure of, or commitment to expend, at least 50 percent of the total cost of preparing an application for license or exemption for a hydroelectric project that is accepted for filing by the Commission pursuant to § 4.32(e) of this chapter. The total cost includes (but is not limited to) the cost of agency consultation, environmental studies, and engineering studies conducted pursuant to § 4.38 of this chapter, and the Commission’s requirements for filing an application for license or exemption.

(c) Time of filing petition. (1) General rule. Except as provided in paragraph (c)(2) of this section, the applicant must:

(i) File the petition with the application for license or exemption; or

(ii) Submit with the application for license or exemption a request for an extension of time, not to exceed 90 days, whichever occurs first, in which to file the petition.

(2) Exception. If the application for license or exemption was filed on or after October 16, 1986, but before March 23, 1987, the petition must be filed by June 22, 1987.

(d) Filing requirements. A petition filed under this section must include the following information or refer to the pages in the application for license or exemption where it can be found:

(1) A certificate of service, conforming to the requirements set out in § 365.2010(h) of this chapter, certifying that the applicant has served the petition on the Federal and State agencies required to be consulted by the applicant pursuant to § 4.38 of this chapter;

(2) Documentation of any issued preliminary permits for the project;

(3) An itemized statement of the total costs expended on the application;

(4) An itemized schedule of costs the applicant expended or committed to be expended, before October 16, 1986, on the application, accompanied by supporting documentation including but not limited to:

(i) Dated invoices for maps, surveys, supplies, geophysical and geotechnical services, engineering services, legal services, document reproduction, and other items related to the preparation of the application, and

(ii) Written contracts and other written documentation demonstrating a commitment made before October 16, 1986, to expend monetary resources on the preparation of the application, together with evidence that those monetary resources were actually expended; and

(5) Correspondence or other documentation to support the items listed in paragraphs (d)(3) and (d)(4) of this section to show that the expenses presented were directly related to the preparation of the application.

(6) The applicant must include in its total costs statement and in its schedule of the costs expended or committed to be expended before October 16, 1986, the value of services that were performed by the applicant itself instead of contracted out.

(7) If the applicant held a preliminary permit for the project and had completed pre-filing consultation pursuant to § 4.38 of this chapter before October 16, 1986, instead of submitting the information listed in paragraphs (d)(3), (d)(4), and (d)(5) of this section, the applicant may submit a statement identifying the preliminary permit by project number.

(8) If the application is deficient pursuant to § 4.32(d) of this chapter, the applicant must include with the information correcting those deficiencies a statement of the costs expended to make the corrections.

(e) Processing of petition. (1) The Commission will issue a notice of the petition filed under this section and publish the notice in the Federal Register. The petition will be available for inspection and copying during regular business hours in the public reference room maintained by the Division of Public Information.

(2) Comments on the petition. The Commission will provide the public within 45 days from the date the notice is issued to submit comments. The applicant for license or exemption may answer any comments filed during that period no later than 15 days after the expiration of the public comment period.

(3) Commission action on petition. The Director of the Office of Hydropower Licensing will determine whether or not the applicant for license or exemption has made the showing required under this section.

PART 375—[AMENDED]

1. The authority citation for Part 375 is revised to read as follows:


2. A new paragraph (hh) is added to § 375.314 to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

(hh) Pass upon petitions filed under § 292.209 of this chapter.

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY
31 CFR Part 16

Revocation of Regulations; Loan Prepayments by Federal Financing Bank and Guaranteed by Rural Electrification Administration

AGENCY: Department of the Treasury.

ACTION: Final rule; revocation of regulations.


FOR FURTHER INFORMATION CONTACT: John Bowman, Acting Deputy Assistant General Counsel, Office of the General Counsel, Room 2326, Department of the Treasury, Main Treasury Building, Washington, DC 20220 (202) 566-8737.

Procedural Requirements

Because Congress has repealed the statute under which the regulations revoked herein became necessary, a notice and public comment period is impractical, unnecessary, and contrary to the public interest pursuant to 5 U.S.C. 553 (b)(8). Similarly, for good cause it is found that a delayed effective
Part 706—[Amended]

Accordingly, 32 CFR Part 706 is amended as follows:

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


§ 706.2 [Amended]

2. Table Three of § 706.2 is amended by adding the following Navy ships to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

YTB-752 .........:....................................—• 3.97
YTB-758 . ...............................................

3. Table Four of § 706.2 is amended by adding the following numbered note which reflects navigational light certifications issued by the Secretary of the Navy:

2. The following harbor tugs are equipped with a hinged mast. When the mast is in the lowered position as during a towing alongside or pushing operation, the two masthead lights required by Rule 24(c) and the all around lights required by Rule 27(b)(i) will not be shown; however, an auxiliary masthead light not meeting with Annex I, section 2[a][i] height requirement will be exhibited.

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Number</th>
<th>Masthead lights, etc. of visibility Rule 21(b)</th>
<th>Side lights, etc. of visibility Rule 21(b)</th>
<th>Stern light, etc. of visibility Rule 21(c)</th>
<th>Stem light, distance of ship sides in meters, Annex I</th>
<th>Stern light, distance forward of stern in meters, Rule 21(c)</th>
<th>Forward anchor light, height above hull in meters, Annex I</th>
<th>Anchor lights, relationship of all light to forward light in meters, Annex I</th>
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<tr>
<td>YTB-752</td>
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</tr>
</tbody>
</table>
POSTAL SERVICE

39 CFR Part 111

Solicitations in the Guise of Bills, Invoices, or Statements of Account

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulation implementing statutory provisions on the mailing of solicitations in the guise of bills, invoices, or statements of account. It clarifies an existing regulation by removing possible ambiguity and makes more specific and prominent a required warning regarding the true nature of solicitations which resemble bills.


FOR FURTHER INFORMATION CONTACT: George C. Davis, (202) 268-3076.

SUPPLEMENTARY INFORMATION: On December 22, 1986, the Postal Service published for comment in the Federal Register (51 FR 45782) proposed changes to the Domestic Mail Manual which would amend the regulation on the mailing of solicitations in the guise of bills, invoices, or statements of account. Interested persons were invited to submit comments on the proposed changes by January 21, 1987.

Three commenters responded to our invitation, two in writing, one orally, all favorably. In view of this favorable response, the Postal Service hereby adopts the proposal without change and makes the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:


2. Revise 123.4 to read as follows:

123.4 Nonmailable Written, Printed or Graphic Matter Generally

(a) Solicitations in the Guise of Bills, Invoices, or Statements of Account (39 U.S.C. 3001(d); 39 U.S.C. 3005). Any otherwise mailable matter which reasonably could be considered a bill, invoice, or statement of account due, but is in fact a solicitation for an order, is nonmailable unless it conforms to .41a through .41f below. A nonconforming solicitation constitutes prima facie evidence of violation of 39 U.S.C. 3005.

However, compliance with this section will not avoid violation of Section 3005 if any portion of the solicitation or any accompanying information misrepresents a material fact to the addressee. For example, misleading the addressee as to the identity of the sender of the solicitation or as to the nature or extent of the goods or services offered may constitute a violation of section 3005.

a. The solicitation must bear on its face the disclaimer prescribed by 39 U.S.C. 3001(d)(2)(A) or, alternatively, the notice: THIS IS NOT A BILL, THIS IS A SOLICITATION, YOU ARE UNDER NO OBLIGATION TO PAY THE AMOUNT STATED ABOVE UNLESS YOU ACCEPT THIS OFFER. The statutory disclaimer or the alternative notice must be displayed in conspicuous boldface capital letters or a color prominently contrasting (see .41e below) with the background against which it appears, including all other print on the face of the solicitation and that are at least as large, bold and conspicuous as any other print on the face of the solicitation but not smaller than 30-point type.

b. The notice or disclaimer required by this section must be displayed conspicuously apart from other print on the page immediately below each portion of the solicitation which reasonably could be construed to specify a monetary amount due and payable by the recipient. It must not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or that introduces, modifies, qualifies, or explains the prescribed text, such as "Legal notice required by law." See example following paragraph f.

c. The notice or disclaimer must not, by folding or any other device, be rendered unintelligible or less prominent than any other information on the face of the solicitation.

d. If a solicitation consists of more than one page or if any page is designed to be separated into portions (e.g., by tearing along a perforated line), the notice or disclaimer required by this section must be displayed in its entirety on the face of each page or portion of a page that might reasonably be considered a bill, invoice, or statement of account due as required by paragraphs .41a and .41b, supra.

e. For purposes of this section, the phrase "color prominently contrasting" excludes any color, or any intensity of an otherwise included color, which does not permit legible reproduction by ordinary office photocopying equipment used under normal operating conditions, and which is not at least as vivid as any other color on the face of the solicitation. For the purposes of this section the term "color" includes black.

f. Any solicitation which states that it is nonmailable under this section is nonmailable.

Amendments to Part 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:


2. Revise 123.4 to read as follows:

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However, compliance with this section will not avoid violation of Section 3005 if any portion of the solicitation or any accompanying information misrepresents a material fact to the addressee. For example, misleading the addressee as to the identity of the sender of the solicitation or as to the nature or extent of the goods or services offered may constitute a violation of section 3005.

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c. The notice or disclaimer must not, by folding or any other device, be rendered unintelligible or less prominent than any other information on the face of the solicitation.

d. If a solicitation consists of more than one page or if any page is designed to be separated into portions (e.g., by tearing along a perforated line), the notice or disclaimer required by this section must be displayed in its entirety on the face of each page or portion of a page that might reasonably be considered a bill, invoice, or statement of account due as required by paragraphs .41a and .41b, supra.

e. For purposes of this section, the phrase "color prominently contrasting" excludes any color, or any intensity of an otherwise included color, which does not permit legible reproduction by ordinary office photocopying equipment used under normal operating conditions, and which is not at least as vivid as any other color on the face of the solicitation. For the purposes of this section the term "color" includes black.

f. Any solicitation which states that it is nonmailable under this section is nonmailable.

Example

SOLICITATIONS INCORPORATED

RETAIL STORES

CAR-RT-SORT™

RETAIL STORE

1515 MAIN STREET

ANYWHERE, USA

X

SIGNATURE

IMPORTANT: THIS FORM MUST BE RETURNED TO ENSURE YOUR CORRECT DIRECTORY LISTING. Please correct listing and ZIP Code if necessary.

FOLD HERE

MAKE CHECK PAYABLE TO: Solicitations Incorporated, P.O. Box 10000, City, State, ZIP Code

BUSINESS LISTINGS TO APPEAR IN THE 1987 SOLICITATIONS INCORPORATED DIRECTORY

AMOUNT: $50.00 FOR EACH LISTING.

THIS IS NOT A BILL.
THIS IS A SOLICITATION.
YOU ARE UNDER NO OBLIGATION TO PAY THE AMOUNT STATED ABOVE UNLESS YOU ACCEPT THIS OFFER.
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

43 CFR Part 1780
[Circular No. 2589; WO-150-06-4380-11]

Advisory Committees; Appointment and Reappointment to District Advisory Councils, etc.; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction.

SUMMARY: The Department of the Interior is correcting errors in the October 29, 1986 (51 FR 39528) final rulemaking on Advisory Committees in Part 1780, Advisory Committees; Appointment and Reappointment to District Advisory Councils, etc., published in the Federal Register on October 29, 1986 (51 FR 39528).

§ 1784.3 [Corrected]
1. Section 1784.3, paragraph (b)(4) is corrected to read as follows:

(4) A person who has served an appointed term of less than 3 years on a council to fill a vacancy occurring for reasons described in paragraph (b)(2) of this section may, at the discretion of the Secretary, be reappointed to two consecutive 3-year terms;

2. Section 1784.3, paragraph (b)(5) is corrected to read as follows:

(5) A person who has served 2 consecutive 3-year terms on a council may be subsequently appointed no earlier than 3 years after his or her last date of membership on that council. However, the Secretary may waive this 3-year waiting period and appoint that person to a 1-year term, upon determining that the member’s continued or renewed service on the council is in the public interest and critical to the effective functioning of the council, and the responsible district manager has certified that these conditions have been met.

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 10

Environmental Considerations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Environmental Impact Statements and environmental assessments will no longer be required for those community-wide exceptions for floodproofed residential basements which meet certain technical standards.

EFFECTIVE DATE: March 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Scheibel, Associate General Counsel, FEMA, 500 C Street, SW., Washington, DC 20472. Telephone: (202) 646-4100.

SUPPLEMENTARY INFORMATION: Pursuant to 44 CFR 10.8(d), on September 5, 1986, in the Federal Register, the Federal Emergency Management Agency (FEMA) published a proposed rule to amend its regulations to expand the list of categorical exclusions, actions which are not subject to the application of 44 CFR Part 10 of FEMA’s regulations. That part implements the National Environmental Policy Act of 1969 and the regulations of the Council on Environmental Quality (40 CFR Parts 1500 through 1506).

No comments were received, consequently FEMA is publishing this notice of a final rule. This relates to the final rule published in the Federal Register by FEMA on August 25, 1986, which included supplemental information on “Exceptions for Floodproofed Residential Basements.” FEMA determined, after reviewing exception requests and conducting a study, that such exceptions will continue to be granted but under a simplified procedure.

The simplified procedure would be based solely on a technical review by FEMA of flooding characteristics in the community to determine if the community met criteria in § 60.6(c) of the final rule published in the Federal Register on August 25, 1986. If a community met the criteria, no finding would be required that there would be severe hardship or gross inequity if the exception were denied and no special environmental clearance (environmental assessment or Environmental Impact Statement) would be prepared.

This regulation is not a major rule within the meaning of the term in Executive Order 12291 nor will it have a significant economic impact on a substantial number of small entities. Hence, no regulatory impact statements have been prepared. Also there are no information collection requirements needing clearance under 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 10

Environmental impact statements.
Accordingly, FEMA will amend § 10.6(c)(2) of Part 10, Chapter 1, Subchapter A of Title A as follows:

PART 10—ENVIRONMENTAL CONSIDERATIONS

1. The authority citation for Part 10 continues to read as follows:


§ 10.8 [Amended]

2. Section 10.8(c)(2) as amended by adding paragraph (c)(2)(ix) to read as follows:

(ix) Community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6 (c) under the National Flood Insurance Program.


Julius W. Becton, Jr.,
Director, Federal Emergency Management Agency.

[FR Doc. 87-3418 Filed 2-19-87; 8:45 am]

BILLING CODE 6710-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2, 21, 22, 23, 25, 62, 73, and 74

[General Docket No. 86-285; FCC 86-562]

Establishment of a Fee Collection Program To Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This action creates new rules and procedures for implementing the Schedule of Charges and other provisions established by the Consolidated Omnibus Budget Reconciliation Act of 1985 ("Budget Act") that prescribe charges for certain regulatory actions provided to the public (sections 5002(e) and 5002(f) of Pub. L. Number 99-272, 47 U.S.C. 138). The Budget Act establishes a Schedule of Charges for various communications services under the Commission’s regulatory jurisdiction; creates procedures for modifications to the Schedule of Charges; delineates charges and other penalties for late payments; exempts specific radio services and entities from charges; and provides for Commission-approved waivers and deferrals. The Budget Act also directs the Commission to prescribe appropriate rules and regulations to carry out the provisions of this legislation.

2. On June 25, 1986 the Commission adopted a Notice of Proposed Rule Making to consider new rules and procedures for fee collection (General Docket Number 86-285, FCC 86-301, 51 FR 25792 (July 16, 1986)). This document detailed proposed new collection procedures and discussed the intended calculation of each fee in the Schedule of Charges. The Commission received and reviewed 54 public comments and 13 reply comments. The Commission’s consideration of its proposed rules and the public comments in response to them was guided by three distinct prongs: (1) The fee collection process should not have an adverse impact on the Commission’s application processing and equipment authorization programs; (2) fees should be collected and deposited in the most cost effective manner possible; and (3) fees should impose little or no additional paperwork burden on the public.

Amount of Charges

3. The Commission adopts the statutory Schedule of Charges into its rules exactly as approved by the Congress. The Commission determines that the fees may not be changed, except to reflect increases or decreases in the Consumer Price Index, without future legislation.

Retention and Refund of Charges

4. The Commission decides that fees will be retained by the government irrespective of the Commission’s ultimate disposition of the underlying application or filing. Fees will be returned in certain limited instances. These include: applications or filings with an insufficient fee, fees submitted with applications or filings not requiring a fee; unnecessary filings requiring no staff action; submissions from an applicant who cannot meet a prescribed age requirement; instances when a waiver request is granted; overpayments of $8 or more; and instances when the Commission adopts new rules that nullify applications already accepted for processing.

5. In response to comments suggesting partial or full refunds for applications rejected on substantive grounds, the Commission notes that it incurs a cost regardless of the final result to the applicant and that it proposed to Congress that these fixed processing costs be recovered in equal amounts from each applicant. According to the Commission, neither the Budget Act nor its legislative history would require the apportioning of fees according to the actual work done on any particular application.

Role of FCC FORMS

6. The Commission decides that a new fee form need not accompany the required fees. For the present, the public will be expected to submit fees with the current OMB-approved application forms or in approved filing formats. However, applicants are urged to attach a cover letter to the application or filing that details the number and type of fees.
encompassed by the submission. The Commission rejects the use of fee receipts, as it does not believe they would serve any useful purpose, justifying their costs. Applicants will receive receipts through their cancelled checks or “receipt copies” of the application provided to the Commission.

Payment Locations

7. The Commission concludes that certain changes in the filing locations for feeable applications are necessary in order to comply with the cash management directives of the Deficit Reduction Act of 1984 and Department of Treasury regulations. As of April 1, 1987 the public must submit feeable private radio applications to the Treasury lockbox bank located in Pittsburgh, Pennsylvania. The Public will be able to mail or hand carry its applications to the lockbox bank. (Mailing addresses and delivery times for all feeable FCC submissions will be provided in a later Order.) The Commission will not accept feeable applications sent to Gettysburg. Feeable applications mailed or delivered to this location will be returned to the sender without processing.

8. The Commission will continue to receive mass media and common carrier applications at its headquarters building in Washington, DC. Equipment authorization applications, now filed with the Commission’s laboratory near Columbia, Maryland, will be filed at the headquarters building as of April 1, 1987. The Commission indicates that equipment authorization applications will be processed in order of their receipt at the Washington, DC location. This change in filing location should not impact overall speed of processing.

9. The public should continue to submit applications directly to the appropriate frequency coordinator for those applications in the private radio land mobile radio services that are subject to the mandatory frequency coordination procedures established in Private Radio Docket 83-737. Statutory fees will not be due from the applicant at the time it submits an application to a frequency coordinator. However, the applicant may attach the statutory fee to the application in the form of a check or money order made payable to the Federal Communications Commission. In the absence of an agency relationship between the coordinator and the applicant for the coordinator to serve as a fee filing agent, a payment instrument that commingles the statutory fee and the coordinator’s fee will be returned to the applicant. The coordinator will mail or otherwise deliver the application and attached fee to the Treasury lockbox bank within three days of the completion of coordination. The applicant may then choose to submit the statutory fee to the frequency coordinator after it receives notice from the coordinator that its application is ready for submission to the Commission. The coordinator will have three days from its receipt of the fee from the applicant to forward the fee and application to the Treasury lockbox bank. It is the coordinator’s responsibility not to forward applications requiring a fee to the Treasury lockbox bank without such fees.

Timing of Payments

10. Unless an applicant is granted a deferral of fees under the authority of section 8(d)(2) of the Communications Act, all fees will be due in full upon submission of an application or filing to the Commission. Partial payments or installment payments will not be permitted. Therefore, no submission will be deemed sufficient for processing by the appropriate bureau or office unless the full fee is attached. The Commission indicates that for it to allow partial payments, an extensive billing and collection program would be necessary. Any such billing program adds significantly to the cost of a cash management system, delays the Treasury’s receipt of funds, and ultimately decreases the amount of regulatory costs recovered by the government. Should an applicant believe it has filed an incorrect fee and wish to correct this error, it should resubmit the application or filing with the entire fee attached.

Method of Payment

11. The public may pay its fees by check, bank draft, or money order made payable to the Federal Communications Commission and drawn upon funds deposited in a bank in the United States. In most instances, one payment instrument must accompany each application or filing. A single payment instrument will be permitted for multiple applications if these applications are filed simultaneously on behalf of the same legal applicant, request the same Commission action in the same radio service on the same FCC Forms. If the single payment is insufficient, all of the applications encompassed by the payment will be returned to the applicant.

12. The Commission rejects alternative payment methods, such as deposit/drawing accounts and credit cards, because they would either place additional administrative burden on the processing staff, intertwine the agency with private fee decisions, or delay payments to the Treasury. The conditions imposed on the payment of multiple applications through one payment instrument are necessary to avoid the commingling of separate legal applicants and to aid the staff in processing, auditing and accounting for fees.

Penalties for Late or Failed Payments

13. The Commission will dismiss as unacceptable for processing any application or filing that is not accompanied by a sufficient fee. When the Commission permits an untimely paid application to enter the processing system, that is, one not accompanied by a sufficient fee, it will bill the applicant for the amount due plus a 25 percent penalty on the amount owed. Untimely payments, resulting in a bill to the applicant, will be permitted only when a deferral request is granted or when the staff does not detect the insufficient fee payment in 30 calendar days or less from the receipt of the application. Prior to this date, the application will be dismissed if an insufficient payment is discovered. If an applicant is billed and does not pay by the date indicated, its application will be dismissed or its authorization rescinded.

14. While the Commission believes that section 8(d)(2) of the Communications Act gives it the authority to dismiss an application whenever the fee underpayment is discovered, such a policy would upset the ongoing activities of applicants and licensees who relied on the first fee review by the staff. The 30 calendar day rule provides a clear demarcation point as to the consequences of a fee underpayment. This time frame is consistent with the amount of time needed by the bureau to complete a second review of the fee and report mistakes to the fee staff. This second review will significantly decrease the errors in fee collection that could otherwise result in an expensive accounting program and lost revenues to the government.

15. The Commission also decides that all instruments of authorization will be conditioned upon final payment of the applicable fee. Therefore, if the Commission receives word that a payment instrument has failed for insufficient funds, the authorization will be automatically rescinded and the grantee notified to cease operations. If the application is still pending, it will be dismissed. In response to the comments, the Commission notes that it is not concerned with determining fault for failed payments, as payment remains the ultimate responsibility of the
applicant. However, the Commission will instruct its depositary banks to present all instruments to the drawer's bank twice before returning the instrument to the Commission as an uncollectible item. This should allow the applicant to correct inadvertent errors.

Finally, the Commission notes that it has the authority to condition its grants upon payment of the fee and need not hold a revocation hearing under section 312 of the Communications Act. The Supreme Court has stated that the hearing requirement cannot be interpreted as withdrawing from the Commission the rulemaking authority necessary to conduct its business, particularly when Congress has specifically authorized limitations against licensing that the Commission must implement. See, U.S. v. Storer Broadcasting Company, 351 U.S. 192, 202-203 (1956).

Modifications to the Schedule of Charges

16. In line with the statutory formula contained in new section 8(d)(1) of the Communications Act, the Commission will review the Schedule of Charges every two years after the date of enactment and adjust these charges to reflect changes in the Consumer Price Index for all Urban Consumers (CPI-U). Adjustments to fee under $100 will not occur until the change equals at least five dollars, or in the case of $100 or more, until the CPI-U has changed by five percent. All fees requiring adjustment will be rounded up or down to the next five dollar increment.

Radio Services and Entities Exempt From Charges

17. New section 8(d)(1) of the Communications Act and the Budget Act's legislative history create specific exemptions from the fee requirement. The Commission concludes that these exemptions will constitute all of the radio services and entities exempt from the Schedule of Charges. Unlike the former fee program, which was implemented under the authority of the Independent Offices Appropriation Act of 1985 and allowed the Commission to consider "public policy and interest served" in creating fees, the Budget Act establishes discrete fees and specific exemptions to them. The Commission believes it is without authority to create additional exemptions beyond those approved by Congress.

18. All applicants and licensees in the Public Safety and Special Emergency Radio services are exempt from fees. This exemption includes all of the specific radio services encompassed within these categories (See 47 CFR 90.15 and 90.33 for a delineation of these radio services).

19. Applicants, permittees, on licensees of noncommercial educational broadcast stations in the FM and TV services, as well as AM applicants, permittees or licensees who certify that the station will operate or does operate in conformance with § 73.503 of the rules, are exempt from fees associated with these services. The exemption also applies to stations operated on a noncommercial educational basis on reserved transmission. Applications by these stations for any other mass media, private radio, or common carrier authorization will also be exempt from fees if the radio service is used in conjunction with the noncommercial educational broadcast station on a noncommercial educational basis. (See 47 U.S.C. 397(14)).

20. Fees will not be required for applications or filings made by interconnection organizations—such as the Public Broadcasting Service or National Public Radio—funded directly or indirectly through the Corporation for Public Broadcasting if the mass media, private radio or common carrier service is used in conjunction with the interconnection organization on a noncommercial educational basis. (See 47 U.S.C. 397(14)).

21. Governmental entities are exempt from any fee in the Schedule of Charges. These entities are defined at new § 1.1112(f) of the Commission's rules. The Commission rejects the proposed modifications to the rules as unnecessary and complicating. In addition, the Commission rejects the suggestion to permit a non-governmental license holder to assert the exemption on behalf of a governmental user who is the sole user of the facility. Such an assertion would clearly violate section 8(d)(1) of the Communications Act, which limits the exemption to "governmental entities licensed in other services" (emphasis added).

Waivers and Deferrals

22. The Commission decides to consider waivers and deferrals on a case by case basis for specific applicants who file requesting such action on their own behalf. It rejects the comments seeking categorical waivers of deferrals as inconsistent with the narrow authority by the Congress to consider specific requests. In accordance with 8(d)(2) of the Communications Act, the waiver of deferral will be granted for good cause shown when such action will promote the public interest. Those requesting a waiver of deferral will have the burden of demonstrating that, for each request, a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the specific regulatory action of the FCC. These requests will be acted upon by the Managing Director, with the concurrence of the General Counsel, and must accompany the underlying application or filing.

Effective Date of Schedule of Charges

24. The Commission decides that fee collection will begin on April 1, 1987. Applications or filings received at the Commission or the Treasury lockbox bank on or after this date will require a fee. The postmark date will not determine whether a fee is required. There will be no grace period for improperly filed application or insufficient fees. Applications on file with the Commission prior to April 1, 1987 will not require a fee. However, applications on file prior to this date that are designated for hearing on or after April 1, 1987 will be subject to the hearing charge. The hearing fee is justified because it represents a charge for a prospective action of the Commission in which the applicant may choose not to participate.

Procedural Matters

25. Final Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

26. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

27. Accordingly, it is hereby ordered, that, pursuant to authority contained in section 3002(e) of Pub. L. Number 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985, and in sections 4(1), 4(2), 4(3) and 303(r) of the Communications Act of 1934, as
amended. 47 U.S.C. 154(i), 154(j), 156(f)
and 303(r). Parts 0, 1, 2, 21, 22, 23, 25, 62,
73, and 74 of the Commission's rules are
amended as set forth below. These rules and
regulations are effective 30 days after publishing in the Federal Register.

List of Subjects
47 CFR Part 0
Organization and functions.
47 CFR Part 1
Administrative practice and procedure.
47 CFR Part 2
Communications equipment.
47 CFR Part 21
Communications common carriers.
47 CFR Part 22
Communications common carriers.
47 CFR Part 23
Communications common carriers.
47 CFR Part 25
Communications common carriers.
47 CFR Part 62
Communications common carriers.
47 CFR Part 73
Radio and television broadcasting.
47 CFR Part 74
Radio and television broadcasting.

Rule Amendments
47 CFR Parts, 0, 1, 2, 21, 22, 23, 25, 62,
73, and 74 are amended as follows:

PART 0—COMMISSION
ORGANIZATION
1. The authority citation for Part 0
continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1062 as
amended; 47 U.S.C. 154, 303 unless otherwise
noted. Implement 5 U.S.C. 552, unless otherwise
noted.

2. 47 CFR 0.231 is amended by revising
paragraph (c); redesignating paragraph (l) as paragraph (h); and by
removing existing paragraph (b) as
follows:

§ 0.231 Authority delegated.

(c) The Managing Director, or his
designee, upon securing concurrence of the General Counsel, is delegated
authority to act upon requests for
waiver or deferral of fees established
under Subpart G. Part 1 of this chapter.

3. 47 CFR 0.284 is amended by removing existing paragraph (a)(3) and
redesignating paragraphs (a)(4) through
(a)(11) as paragraphs (a)(3) through
(a)(10).

4. 47 CFR 0.332 is amended by removing existing paragraph (c) and
redesignating paragraphs (d) through (j)
as paragraphs (c) through (l).

5. 47 CFR 0.406 is amended by revising
paragraph (b)(2) to read as follows:

§ 0.406 The rules and regulations.

(b) * * *

(2) Part 1, practice and procedure.
Subpart A of Part 1 contains the general rules of practice and procedure. Except
as expressly provided to the contrary,
these rules are applicable in all
Commission proceedings and should be
of interest to all persons having business
with the Commission. Part 1 also
contains certain other miscellaneous
provisions. Subpart B contains the
procedures applicable in formal hearing
proceedings (see § 1.201). Subpart C
contains the procedures followed in
making or revising the rules or
regulations. Subpart D contains rules
applicable to applications for licenses in
the Broadcast Radio Services, including
the forms to be used, the filing
requirements, the procedures for
processing and acting on such
applications, and certain other
matters.

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1062,
as amended; 47 U.S.C. 154, 303. Implement 5
U.S.C. 552, unless otherwise noted.

7. 47 CFR 1.80 is amended by revising
paragraph (h) to read as follows:

§ 1.80 Forfeiture proceedings.

(h) Payment. The forfeiture should be
paid by check or money order drawn to
the order of the Federal
Communications Commission. The
Commission does not accept
responsibility for cash payments sent
through the mails. The check or money
order should be mailed to the Forfeiture
Unit, Financial Services Branch, FCC,
Box 19209, Washington, DC 20036,

8. 47 CFR 1.221 is amended by adding
new paragraphs (f), (g), and Note to read as
follows:

§ 1.221 Notice of hearing; appearances.

(f) A processing fee must accompany
each written appearance filed with the
Secretary in certain cases designated for
hearing or after the date fee

(g) A written appearance that does not
contain the proper fee, or is not
accompanied by a waiver or deferral
request as per § 1.1115 of
the Commission's rules, shall be dismissed
and returned to the applicant by the fee
processing staff. The presiding judge
will be notified of this action and may
dismiss the applicant with prejudice for
failure to prosecute if the written
appearance is not resubmitted with the
correct fee within the original 20 day
filing period.

Note:—If the parties wish to file a
settlement agreement with the
Administrative Law Judge, the hearing fee
need not accompany the Notice of
Appearance. In filing the Notice of
Appearance, the applicant must clearly indicate that a settlement agreement has been filed. The fact that there are ongoing negotiations that may lead to a settlement does not affect the requirement to pay the hearing fee. If the settlement agreement is not effected, the hearing must be paid immediately.

9. 47 CFR 1.742 is revised to read as follows:

§ 1.742 Place of filing, fees, and number of copies.

All applications shall be tendered for filing at the Commission’s main office in Washington, D.C. Hand-delivered applications will be dated by the Secretary upon receipt (mailed applications will be dated by the Mail Branch) and then forwarded to the Common Carrier Bureau. The number of copies required for each application and the nonrefundable processing fees (see Subpart G) must accompany each application in order to qualify it for acceptance. For filing and consideration are set forth in the rules in this chapter relating to various types of applications. However, if any application is not of the types covered by this chapter, an original and two copies of such application shall be submitted.

10. 47 CFR 1.762 is revised to read as follows:

§ 1.762 Interlocking directorates.

Applications under section 212 of the Communications Act for authority to hold the position of officer or director of more than one carrier subject to the Act or for a finding that two or more carriers are commonly owned shall be made in the form and manner, with the number of copies set forth in Part 62 of this chapter. The Commission shall be informed of any change in status of any person authorized to hold the position of officer or director of more than one carrier, as required by Part 62 of this chapter.

11. 47 CFR 1.764 is amended by revising paragraph (a) to read as follows:

§ 1.764 Discontinuance, reduction, or impairment of service.

(a) Applications under section 214 of the Communications Act for the authority to discontinue, reduce, or impair service to a community or part of a community or for the temporary, emergency, or partial discontinuance, reduction, or impairment of service shall be made in the form and manner, with the number of copies specified in Part 63 of this chapter (see also Subpart G, Part 1 of this chapter). Posted and public notice shall be given the public as required by Part 65 of this chapter.

12. 47 CFR 1.766 is amended by revising paragraph (a) to read as follows:

§ 1.766 Consolidation of domestic telegraph carriers.

(a) Applications under section 22 of the Communications Act by two or more domestic telegraph carriers for authorization to effect a consolidation or merger or by any domestic telegraph carrier to acquire all or any part of the domestic telegraph properties, domestic telegraph facilities, or domestic telegraph operations of any carrier shall contain such information as is necessary for the Commission to act upon such application under the provisions of section 222 of the Act.

13. 47 CFR 1.767 is amended by revising paragraph (a) to read as follows:

§ 1.767 Cable landing licenses.

(a) Applications for cable landing licenses under 47 U.S.C. 34–39 and Executive Order No. 10530, dated May 10, 1954, should be filed in duplicate and in accordance with the provisions of that Executive Order. The applications should contain the name and address of the applicant; the corporate structure and citizenship of officers if a corporation; a description of the submarine cable, including the type and number of channels and the capacity thereof; the location of points on the shore of the United States and in foreign countries where cable will land (including a map); the proposed use, need, and desirability of the cable; and such other information as may be necessary to enable the Commission to act thereon. A separate application shall be filed with respect to each individual cable system for which a license is requested, or for which modification or amendment of a previous license is requested.

14. 47 CFR 1.772 is revised to read as follows:

§ 1.772 Application for special tariff permission.

Applications under section 203 of the Communications Act for special tariff permission shall be made in the form and manner, with the number of copies set out in Part 61 of this chapter.

15. Part 1, Subpart G consisting of § 1.1101 through 1.1118 is revised in its entirety to read as follows:

Subpart G—Schedule of Statutory Charges and Procedures for Payment

<table>
<thead>
<tr>
<th>Sec.</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1101</td>
<td>Authority</td>
</tr>
<tr>
<td>1.1102</td>
<td>Schedule of charges for private radio services</td>
</tr>
<tr>
<td>1.1103</td>
<td>Schedule of charges for equipment approval services</td>
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<tr>
<td>1.1104</td>
<td>Schedule of charges for mass media services</td>
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<td>Schedule of charges for common carrier services</td>
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<td>Waivers or deferrals</td>
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<td>Error claims</td>
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</table>

Subpart G—Schedule of Statutory Charges and Procedures for Payment


1.1101 Authority.

Authority for this Subpart is contained in Title V, section 5002 (e) and (f) of the Consolidated Omnibus Reconciliation Act of 1985 (47 U.S.C. 158), which directs the Commission to prescribe charges for the regulatory services it provides to many of the communications entities within its jurisdiction. This law adds a new section 8 to the Communications Act of 1934, as amended, which includes a Schedule of Charges as well as procedures for modifying and collecting these charges.

1.1102 Schedule of charges for private radio services.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for private radio authorizations submitted to the Commission.

Private Radio Service

Marine Coast Stations:

<table>
<thead>
<tr>
<th>New Authorizations</th>
<th>Modifications and Assignments</th>
<th>Renewals</th>
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<tbody>
<tr>
<td>$60</td>
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Operational Fixed Microwave Stations:

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<tbody>
<tr>
<td>$105</td>
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Land Mobile Radio Licenses:

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Charges and Procedures for Payment Subpart G—Schedule of Statutory Charges and Procedures for Payment


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Charges and Procedures for Payment Subpart G—Schedule of Statutory Charges and Procedures for Payment


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</table>

### § 1.1104 Schedule of charges for mass media services.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for mass media authorizations submitted to the Commission.

#### Mass Media Service

**Commercial TV Stations**
- New and Major Change Constructions Permits Application Fee: $2,250
- Minor Changes Application Fee: $500
- Hearing Charge: $6,000
- License Fee: $24,150

**Station Assignment and Transfer Fees:**
- Application Fee (Forms 314/315): $500
- Application Fee (Form 316): $70
- Renewals: $30

**Commerical Radio Stations**
- New and Major Change Constructions Permits: $2,000
- Application Fee AM Station: $1,800
- Minor Changes Application Fee:
  - AM: $325
  - FM: $30
- License Fee: $3375
- Directional Antenna License Fee (AM only): $75
- Station Assignment and Transfer Fee:
  - Application Fee (Forms 314/315): $500
  - Application Fee (Form 316): $70
  - Renewals: $30

**TV Transmitters and LPTV Stations**
- New & Major Change Constructions Permits Application Fee: $375
- License Fee: $75

### § 1.1103 Schedule of charges for equipment approval services.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for equipment approvals submitted to the Commission.

#### Equipment Approval Service

**Certification:**
- Receivers (Except TV & FM):
  - New and Major Change Constructions Permits: $250
  - Minor Changes: $500
  - Type Acceptance:
    - Approval of Subscription TV Systems: $2,000

- Certification fees are also required under the abbreviated procedures for private label equipment and non-permissive changes. Radiotelegraph automatic alarm systems and ship and lifeboat radiotelegraph transmitters are subject to $325 type acceptance fee.

- Fee applies to previously tested and approved equipment resubmitted for approval under new identification or for minor modification without FCC testing.

- An additional fee is required for each license submitted for a comparative proceeding.

- Fees do not apply to stations that operate as noncommercial educational stations.

- A separate fee is required for each application submitted.

- An additional fee is required for each application for a construction permit to make major changes in a previously authorized facility.

- A separate fee is required for special temporary authority; requests for extension of time and the replacement of construction permits, requests for remote control operations, or modifications that may be made without prior authorization from the FCC.

- Fee is required for each application designated for hearing in a new or major minor change construction permit comparative proceeding and applications designated in comparative proceeding requests to make an application accompanying the Notice of Appearance filed under §1.221 of the rules.

- An additional fee is required for each application for a license to cover a construction permit. No fee is required for requests to determine power by the direct method or license modifications that may be made without prior authorization from the FCC.

- Fee not applicable to any license modification that may be made without prior authorization from the FCC.

- Fee is required for each application for a direction antenna license. This fee is in addition to the $325 fee for an AM station license.

- An additional fee of $75 is required for each station license or construction permit requested for assignment or transfer regardless of the number of forms used. These fees are in addition to the fees for the full service licenses that may be simultaneously assigned or transferred.

- An additional fee of $20 is required for each application requesting a station renewal.

- An additional fee is required for each land mobile radio license or construction permit. A separate fee is required for each application to reflect a change in the type of TV transmitter associated with the construction permit or output power of a visual transmitter to accommodate a change in the antenna type or transmission line.

**Station Assignment and Transfer Fee:**
- Renewals:
  - $36
- Auxillary Services Major Actions:
- Application Fee: $40
- Renewals: $15

**Cable Television Service:**
- Cable Television Relay Service:
  - Construction Permits: $135
  - Renewals: $135
  - Modifications: $135
- Cable Special Relief Petitions—Filing Fee: $700

**Direct Broadcast Satellite:**
- Major Change Construction Permits:
  - Application for Authorization to Construct a Direct Broadcast Satellite: $1,800
  - License to Operate Satellite: $500
  - Hearing Charge: $6,000

- An additional fee of $75 is required for each license or construction permit requested to be assigned or transferred.

- Auxiliary services include Remote Pickup stations, TV and Auxiliary broadcast services, inexpensive, low power, and Low Power Auxiliary stations.

- The fee will be required for applications for changes in frequency, power, antenna, construction permit, and construction permit applications in which the Commission may direct.

- A separate fee is required for each license requested for assignment or transfer.

- An additional fee is required for each application for a license to cover a construction permit. No fee is required for requests to determine power by the direct method or license modifications that may be made without prior authorization from the FCC.

- Fee not applicable to any license modification that may be made without prior authorization from the FCC.

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<table>
<thead>
<tr>
<th>Service Type</th>
<th>Fee</th>
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</thead>
<tbody>
<tr>
<td>Initial License (First License or Renewal)</td>
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<tr>
<td>Modifications (Per call sign)</td>
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<tr>
<td>Renewals (Per station)</td>
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</tr>
<tr>
<td>Minor Modifications (Per station)</td>
<td>$20</td>
</tr>
<tr>
<td>Initial Construction Permit &amp; Major Modification Applications (Per cellular system)</td>
<td>$200</td>
</tr>
<tr>
<td>Assignments &amp; Transfers (Per call sign)</td>
<td>$500</td>
</tr>
<tr>
<td>Initial covering license (Per cellular system)</td>
<td>$250</td>
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<tr>
<td>Nonwireline carrier</td>
<td>$50</td>
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<tr>
<td>Renewals</td>
<td>$50</td>
</tr>
<tr>
<td>Minor modifications</td>
<td>$50</td>
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<tr>
<td>Additional licenses</td>
<td>$50</td>
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<tr>
<td>Rural Radio (Central Office, Interoffice, or Relay Facilities)</td>
<td>$200</td>
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<tr>
<td>Initial Construction Permit (Per transmitter)</td>
<td>$90</td>
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<td>Assignments &amp; Transfers (Per call sign)</td>
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<td>Modifications (Per station)</td>
<td>$100</td>
</tr>
<tr>
<td>Local Television or Point to Point Microwave Radio Service: Construction Permits</td>
<td>$100</td>
</tr>
<tr>
<td>Modifications of Construction Permits</td>
<td>$100</td>
</tr>
<tr>
<td>Initial License for New Frequency (station)</td>
<td>$100</td>
</tr>
<tr>
<td>Renewals of Licenses (per station)</td>
<td>$135</td>
</tr>
<tr>
<td>Assignments &amp; Transfers of License (Per station)</td>
<td>$45</td>
</tr>
<tr>
<td>International Fixed Public Radio (Public &amp; Control Stations): Initial Construction Permits</td>
<td>$450</td>
</tr>
</tbody>
</table>

Assignments & Transfers of Station Authorization (per earth station) | $450 |

All Other Applications (per earth station) | $90 |

Small Transmitter/Receiver equipment (2 meters or less) | $3,000 |

Lead Authorization (per application) | $7,000 |

Routing Authorization (per earth station) | $1,000 |

All Other Applications | $1,500 |

Initial Station Authorization | $1,000 |

Space Stations: Applications for Authority to Construct a Space Station | $1,800 |

Applications for Authority to Launch & Operate a Space Station | $1,800 |

Satellite System Applications | $5,000 |

Initial Station Authorization (per system) | $1,800 |

Assignments & Transfers of Systems | $1,333 |

All Other Applications (per request) | $90 |

Multipoint Distribution Service: Construction Permits | $1,100 |

Modifications of Construction Permits | $1,100 |

Initial License (Per channel) | $400 |

Renewals of Licenses | $135 |

Assignments & Transfers of Control (Per station) | $45 |

Section 214 Applications: Applications for Overseas Cable Construction | $8,100 |

Applications for Domestic Cable Construction | $540 |

All Other 214 Applications | $450 |

$1.1106 Schedule of charges for common carrier service requests.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for common carrier authorizations submitted to the Commission.

### COMMON CARRIER SERVICE

#### Domestic Public Land Mobile Stations (Base Dispatch, Control & Repeater Stations):

- New or Additional Facility Authorizations (Per transmitter) | $200 |
- Assignments & Transfers (Per call sign) | $50 |
- Renewals (Per station) | $20 |
- Minor Modifications (Per station) | $20 |

These requests require an additional fee of $20 per station.

Each request for the assignment of a construction permit or license or for transfer of control of a construction permit may be required to pay a fee of $20 per call sign requested.

An additional fee of $50 is required for each cellular system requested for renewal.

A fee is required per each cellular system.

An additional fee of $50 is required per each cellular system.

Should the Commission permit the expansion of this service into coastal waters other than the Gulf of Mexico by rule or waiver, the fees established for offshore radio would be required.

An additional fee of $135 is required for each application for a construction permit or modification thereof. No fee is required for requests for special temporary authority or waiver, and no fee is required for a construction permit or modification thereto. No fee is required for requests for special temporary authority or waiver, and no fee is required for a construction permit or modification thereto.

No fee is required for permanent authority that does not require a modified construction permit.

This fee is required in addition to that for a construction permit although a license and construction permit may be required.

An additional fee of $450 is required for each station requested.

An additional fee of $450 is required for each application for assignments and transfers (Base Dispatch, Control & Repeater Stations).

An additional fee of $325 is required for each license renewed.

An additional fee of $325 is required for each station modified.

An additional fee of $1,100 is required for each application for an initial construction permit to construct and/or operate a domestic or international transmission earth station, or private or common carrier service or for telemetry, tracking, and command functions.

Assignments & Transfers of Station Authorization (per earth station) | $450 |

All Other Applications (per earth station) | $90 |

Small Transmitter/Receive equipment (2 meters or less) | $3,000 |

Lead Authorization (per application) | $7,000 |

Routing Authorization (per earth station) | $1,000 |

All Other Applications | $1,500 |

Initial Station Authorization | $1,000 |

Space Stations: Applications for Authority to Construct a Space Station | $1,800 |

Applications for Authority to Launch & Operate a Space Station | $1,800 |

Satellite System Applications | $5,000 |

Initial Station Authorization (Per system) | $1,800 |

Assignments & Transfers of Systems | $1,333 |

All Other Applications (per request) | $90 |

Multipoint Distribution Service: Construction Permits | $1,100 |

Modifications of Construction Permits | $1,100 |

Initial License (Per channel) | $400 |

Renewals of Licenses | $135 |

Assignments & Transfers of Control (Per station) | $45 |

Section 214 Applications: Applications for Overseas Cable Construction | $8,100 |

Applications for Domestic Cable Construction | $540 |

**Note:**
- These requests require an additional fee of $20 per station.
- Each request for the assignment of a construction permit or license or for transfer of control of a construction permit may be required to pay a fee of $20 per call sign requested.
- An additional fee of $50 is required for each cellular system requested for renewal.
- A fee is required per each cellular system.
- An additional fee of $50 is required per each cellular system.
- Should the Commission permit the expansion of this service into coastal waters other than the Gulf of Mexico by rule or waiver, the fees established for offshore radio would be required.
- An additional fee of $135 is required for each application for a construction permit or modification thereof. No fee is required for requests for special temporary authority or waiver, and no fee is required for a construction permit or modification thereto. No fee is required for requests for special temporary authority or waiver, and no fee is required for a construction permit or modification thereto.
- No fee is required for permanent authority that does not require a modified construction permit.
- This fee is required in addition to that for a construction permit although a license and construction permit may be required.
- An additional fee of $450 is required for each station requested.
- An additional fee of $450 is required for each application for assignments and transfers (Base Dispatch, Control & Repeater Stations).
- An additional fee of $325 is required for each license renewed.
- An additional fee of $325 is required for each station modified.
- An additional fee of $1,100 is required for each application for an initial construction permit to construct and/or operate a domestic or international transmission earth station, or private or common carrier service or for telemetry, tracking, and command functions.
be made in certain limited instances as set out at §1.1111 of this subpart.

§ 1.1107 Payment of charges.

(a) Each application or other filing submitted to the Commission on or after April 1, 1987 for which a fee is prescribed by §§1.1102 through 1.1105 of this subpart must be accompanied by a remittance in the full amount of the fee due.

(b) Filings for which no remittance is received or for which an insufficient remittance is received shall be dismissed and the application returned to the applicant or his designated agent without processing.

(c) Unless otherwise stated in this subpart, no application or other filing will be deemed sufficient for processing unless the correct fee is attached. The Commission reserves the right to discontinue processing and dismiss any application or filing if, at any time, further examination that an insufficient fee has been submitted.

(d) Application returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. The additional fee will then be required with the resubmission. The entire fee will be forfeited if the application is not resubmitted to the Commission by the appropriate resubmission deadline. Applicants should attach a copy of the Commission request for additional or corrected information, or a stamped copy of the original submission, to their resubmission.

(e) Should the staff change the status of an application, resulting in an increase in the fee due, the applicant will be billed for the remainder under the conditions established by §1.110(b) of the rules.

Note.—Due to the statutory requirements applicable to tariff filings, the procedures for handling tariff filings may vary from the procedures set out in the rules.

§ 1.1108 Form of payment.

(a) Fee payments should be in the form of a check, bank draft or money order denominated in U.S. dollars and deposited in a United States financial institution. These payment instruments must be made payable to the Federal Communications Commission. The Commission discourages applicants from sending cash and will not be responsible for cash sent through the mails.

(b) Applicants are required to submit one check, bank draft or money order with each application. Multiple checks, bank drafts or money orders for a single application or filing are not permitted.

(i) One check, bank draft or money order may be submitted for multiple applications in those instances where:
   (A) Applications are received simultaneously as one package; and
   (B) Are from the same legal applicant; and
   (C) Request the same Commission authorization (e.g., renewal, assignment), in the same radio service; and
   (D) All applications represented by the single payment instrument are the same numbered FCC Form or prescribed filing.

(ii) In those instances where a single check, bank draft or money order is remitted for multiple applications, the applicant should attach to the remittance an accounting sheet or notice stating what fees are covered by the check or money order. Otherwise, fee processing staff will be required to match the remitted funds to the accompanying applications to determine whether sufficient funds have been submitted.

(iii) If the single remittance is found to be insufficient, all applications associated with the remittance will be dismissed and returned to the applicant. Applications will not be forwarded for staff processing on a pro rata basis.

(c) All fees collected will be paid into the general fund of the United States Treasury in accordance with Pub. L. 99-272 and this subpart. Applications or other filings and their attached fees must be submitted to the locations and addresses listed in §0.401 of the Commission's rules. These materials must be submitted as one package. The Commission cannot take responsibility for matching forms, fees, or applications submitted at different times or locations.

§ 1.1110 Filing locations.

Applications or other filings and their attached fees must be submitted to the locations and addresses listed in §0.401 of the Commission's rules. These materials must be submitted as one package. The Commission cannot take responsibility for matching forms, fees, or applications submitted at different times or locations.

§ 1.1110 Conditionality of Commission or staff authorizations.

(a) Any instrument of authorization granted by the Commission, or by its staff under delegated authority, will be conditioned upon final payment of the applicable fee, as prescribed by Pub. L. 99-272 and this subpart. As applied to checks and money orders, final payment shall mean receipt by the Treasury of funds cleared by the financial institution on which the check or money order is drawn.

(i) If, prior to a grant of an instrument of authorization, the Commission is notified that final payment has not been made, the application or filing will be:
   (i) Dismissed and returned to the applicant;
   (ii) Shall lose its place in the processing line;
   (iii) And will not be accorded nunc pro tunc treatment if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization, the Commission is notified that final payment has not been made, the Commission will:

(i) Automatically rescind that instrument of authorization for failure to meet the condition imposed by this subsection; and

(ii) Notify the grantee of this action; and

(iii) Not permit nunc pro tunc treatment for the resubmission of the application or filing if the relevant deadline has expired.

(3) Upon receipt of a notification of rescission of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of the fee or issued a bill for an insufficient payment under this subpart until a future established date, further processing or grant or authorization shall be conditioned upon final payment of the fee, plus other required charges for late payments, by the date prescribed by the terms of the deferral decision or bill. Failure to comply with the terms of the deferral decision or bill shall result in the automatic dismissal of the application or rescission of the authorization for failure to meet the condition imposed by this subpart. Payments received by the Commission after the date established in the deferral decision or bill will be returned to the remitter. The Commission shall:

(1) Notify the grantee that the authorization has been rescinded;

(2) Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization.

(2) Not permit nunc pro tunc treatment to applicants who attempt to refile after the original deadline for the underlying submission.

§ 1.1111 Return or refund of charges.

(a) The full amount of any fee submitted will be returned or refunded, but
as appropriate, in the following circumstances:

(1) When no fee is required for the application or filing.

(2) When the fee processing staff or bureau/office determines that an insufficient fee has been submitted within 30 calendar days of receipt of the application or filing and the application or filing is dismissed.

(3) When the application is filed by an applicant who cannot fulfill a prescribed age requirement.

(4) When the Commission adopts new rules that nullify applications already accepted for filing, or new law or treaty would render useless a grant or other positive disposition of the application.

(5) When a waiver is granted in accordance with this subpart.

Note.—Payments in excess of an application fee will be refunded only if the overpayment is $8 or more.

§ 1.1112 General exemptions to charges.

No fee established in §§ 1.1102 through 1.1105 of this subpart, unless otherwise qualified herein, shall be required for:

(a) Applications filed for the sole purpose of amending or modifying a pending application (if a fee is otherwise required) so as to comply with new or additional requirements of the Commission’s rules or the rules of another Federal Government agency affecting the pending authorization. However, if the applicant also requests an additional modification or the renewal of its authorization, the appropriate fee must accompany the application. Fee exemptions arising out of this exception will be announced to the public in the orders amending the rules or in other appropriate Commission notices.

(b) Applicants in the Special Emergency Radio and Public Safety Radio services.

(c) Applicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees who certify that the station will operate or does operate in accordance with § 73.503 of the rules.

(d) Applicants, permittees, or licensees qualifying under § 1.1112(c) requiring Commission authorization in any other mass media service, private radio service, or common carrier radio communications service otherwise requiring a fee if the radio service is used in conjunction with the noncommercial educational broadcast station on a noncommercial educational basis.

(e) Applicants, permittees, or licensees not qualified under § 1.1112(c) if such organization is one that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting. Requests for Commission authorization in any mass media radio service, private radio service, or common carrier radio communications service otherwise requiring a fee will not require the fee if the radio service is used in conjunction with these organizations on a noncommercial educational basis.

(f) Applicants, permittees or licensees who qualify as governmental entities. For purposes of this exemption a governmental entity is defined as any state, possession, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

Note.—Applicants claiming exemptions under the terms of this subpart must certify as to their eligibility for the exemption through a cover letter accompanying the application or filings. This certification is not required if the applicable FCC Form requests the information justifying the exemption.

§ 1.1113 Adjustments to charges.

(a) The schedule of fees established by §§ 1.1102 through 1.1105 of this subpart shall be adjusted by the Commission every two (2) years, beginning two years after the date of enactment of the authorizing legislation, April 7, 1996.

(1) The fees will be adjusted by the Commission to reflect the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) from the date of enactment of the authorizing legislation to the date of adjustment, and every two years thereafter, to reflect the percentage change in the CPI-U in the period between the adjustment date and the enactment date.

(2) Adjustments based on the percentage CPI-U change will be applied against the base fees as enacted or amended by Congress. Adjustments will not be calculated based upon the previously modified fee.

(b) Increases or decreases in charges will apply to all categories of fees covered by this subpart. Individual fees will not be adjusted until the increase or decrease, as determined by the net change in the CPI-U since the date of enactment of the authorizing legislation, amounts to at least $5 in the case of fees under $100, or 5% or more in the case of fees of $100 or greater. All fees will be adjusted upward to the next $5 increment.

(c) Adjustments to fees made pursuant to these procedures will not be subject to notice and comment rulemakings, nor will these decisions be subject to petitions for reconsideration under § 1.429 of the rules. Requests for modifications will be limited to correction of arithmetical errors made during an adjustment cycle.

§ 1.1114 Penalty for late or insufficient payments.

(a) Applications or filings accompanied by insufficient fees or no fees will be dismissed and returned to the applicant by the fee processing staff if discovered in 30 calendar days or less from receipt of the application or filing at the Commission.

(b) Applications or filings accompanied by insufficient fees or no fees which are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from the receipt of the application or filing at the Commission. A penalty charge of 25 percent of the amount due will be added to each bill. Any Commission actions taken prior to timely payment of this bill are contingent and subject to rescission.

(c) Applicants to whom a deferral of payment is granted under the terms of this subsection will be billed for the amount due plus a charge equaling 25 percent of the amount due. Any Commission actions taken prior to timely payment of these charges are contingent and subject to rescission.

§ 1.1115 Waivers or deferrals.

(a) The fees established by this subpart may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest.

(b) Requests for waivers or deferrals will only be considered when received from applicants acting in respect to their own applications. Requests for waivers or deferrals of entire classes of services will not be considered.

(c) Requests for waivers or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel.

(1) Applicants seeking waivers should submit the request for waiver with the application or filing as well as the required fee. Submitted fees will be returned if a waiver is granted.

(2) Applicants who are not granted a waiver, and have not attached the fee due pending approval of a waiver, will
have their applications returned in accordance with § 1.111. They will not be responsible for delays in acting upon these requests.

§ 1.1116 Error claims.

Applicants who wish to challenge a staff determination of an insufficient fee may do so in writing. These claims should be addressed to the same location as the original submission marked “Attention Fee Supervisor”.

Appendix B—[Removed]


PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

17. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

18. 47 CFR 2.909 is amended by adding a new paragraph (f) to read as follows:

§ 2.909 Written application required.

(f) Each application shall be accompanied by the processing fee prescribed in Subpart G of Part 1 of this chapter.

PART 21—DOMESTIC FIXED PUBLIC RADIOCOMMUNICATION SERVICES

19. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 21.20 [Amended]

20. 47 CFR 21.20 is amended by removing existing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(9) as paragraphs (b)(2) through (b)(8).

PART 22—PUBLIC MOBILE SERVICE

21. The authority citation for Part 22 continues to read as follows:


§ 22.20 [Amended]

22. 47 CFR 22.20 is amended by removing existing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(9) as paragraphs (b)(2) through (b)(8).

PART 23—INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

23. The authority citation for Part 23 continues to read as follows:


24. 47 CFR 23.50 is amended by revising paragraph (d) to read as follows:

§ 23.50 Place of filing application; fees and number of copies.

(d) Each application shall be accompanied by a fee prescribed in Subpart G of Part 1 of this chapter.

PART 25—SATELLITE COMMUNICATIONS

25. The authority citation for Part 25, Subpart H, continues to read as follows:


§ 25.523 [Amended]

26. 47 CFR 25.523 is amended by removing paragraph (c).

PART 62—APPLICATIONS TO HOLD INTERLOCKING DIRECTORATES

27. The authority citation for Part 62 continues to read as follows:


28. 47 CFR 62.22 is revised to read as follows:

§ 62.22 Form of application; number of copies; size of paper, etc.

The original application and two copies thereof shall be filed with the Commission. Each copy shall bear the dates and signatures that appear on the original and shall be complete in itself, but the signatures on the copies may be stamped or typed. The application shall be submitted in typewritten or printed form, on paper not more than 8 1/2 inches wide and not more than 11 inches long, with a left-hand margin of approximately 1 1/4 inches, and if typewritten, the impression must be on only one side of the paper and must be doubled spaced.

PART 73—RADIO BROADCAST SERVICES

29. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 303, 307, 48 Stat. 1081, 1082 as amended, 1083, as amended; 47 U.S.C. 301, 303, 307. Other statutory or executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

30. 47 CFR 73.943 is amended by revising paragraph (a) to read as follows:

§ 73.943 Individual construction of encoders and decoders.

(a) A station licensee who constructs decoders and/or encoders for use at his station and not for sale must submit the fees required for certification and type acceptance applications. Requests for waiver or deferral of fees will be considered on a case by case basis. See Subpart G, Part 1 of this section for fees due and waiver procedures.

31. 47 CFR 73.3010 is amended by revising paragraph (a)(5) to read as follows:

§ 73.3010 Cross references to rules in other parts.

(5) Subpart G “Schedule of Statutory Charges and Procedures for Payment”.

32. 47 CFR 73.3517 is amended by revising paragraph (a) to read as follows:

§ 73.3517 Contingent applications.

(a) Upon filing of an application for the assignment of a license or construction permit, or for a transfer of control of a license or permittee, the proposed assignee or transferee may, upon payment of the processing fee prescribed in Subpart G Part 11 of this chapter, file applications in its own name for authorization to make changes in the facilities to be assigned or transferred contingent upon approval and consumation of the of the assignment or transfer. Any application filed pursuant to this paragraph must be accompanied by a written statement from the existing licensee which specifically grants permission to the assignee or permittee to file such application. The processing fee will not be refundable should the assignment or transfer not be approved. The existing licensee or permittee may also file a contingent application in its own name, but fees in such cases also not refundable.

33. 47 CFR 73.3550 is amended by revising paragraph (a) to read as follows:
§ 73.3550 Requests for new or modified call sign assignments.

(a) Requests for new or modified call sign assignments for broadcast stations shall be made by letter to the Secretary, FCC, Washington, DC 20554. An original and one copy of the letter shall be submitted. Incomplete or otherwise defective filings will be returned by the FCC. As many as five call sign choices, listed in descending order of preference, may be included in a single request. A call sign may not be reserved.

* * * * *

PART 74—EXPERIMENTAL AUXILIARY AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

33. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1002, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1021, 1002, as amended; 1083 as amended; 47 U.S.C. 301, 303, 307, unless otherwise noted.

35. 47 CFR 74.5 is amended by revising paragraph [a][4] to read as follows:

§ 74.5 Cross reference to rules in other parts.


* * * * *

Federal Communications Commission.

William J. Tricarico, Secretary.

[FR Doc 87-3496 Filed 2-19-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notropis simus pecosensis (Pecos Bluntnose Shiner)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a fish, Notropis simus pecosensis (Pecos bluntnose shiner), to be a threatened species and designates critical habitat for it under the authority contained in the Endangered Species Act of 1973, as amended. A special rule is established to allow take of this subspecies in accordance with applicable State laws and regulations. Notropis simus historically occurred in the Rio Grande in New Mexico from El Paso, Texas, north to near Albuquiu Reservoir on the Chama River, and in the Pecos River in historic range. The most important factor in the species’ decline is reduced flow in the main channel of the river due to water storage, irrigation, and water diversion. Some stretches of the Pecos River are frequently dry downstream from impoundments. This rule will implement Federal protection provided by the Endangered Species Act of 1973, as amended, for Notropis simus pecosensis.

EFFECTIVE DATE: The effective date of this rule is March 23, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Regional Office of Endangered Species, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 4009, Albuquerque, New Mexico 87103.


SUPPLEMENTARY INFORMATION:

Background

Notropis simus was first collected in 1874 in the Rio Grande near San Ildefonso, New Mexico, and was first described by Cope in 1875 (Cope and Yarrow 1875). It was originally thought that Notropis simus was a single species whose range extended throughout the entire Rio Grande to its mouth, and that there was an undescribed species of Notropis which occupied the Pecos River. However, in 1962, Chernoff et al. did extensive taxonomic analyses of the species and determined that Notropis simus actually consists of two subspecies. The first of these, Notropis simus pecosensis, was historically found in the Rio Grande drainage from the Chama River, north of Santa Fe, New Mexico, downstream in the Rio Grande to El Paso, Texas. The other subspecies, Notropis simus pecosensis, was historically found in the Pecos River from just north of the town of Santa Rosa, New Mexico, downstream to the town of Carlsbad, New Mexico. A third form, which was originally thought to be Notropis simus, was determined to be a related species, Notropis orca (phantom shiner), whose range historically overlapped with that of Notropis simus from near Taleta, New Mexico, downstream to El Paso. Additionally, Notropis orca occupied the remainder of the Rio Grande from El Paso downstream to its mouth. However, Notropis orca has been collected only once in the past 30 years, when a single specimen was taken in 1975 from the lower Rio Grande, and the species may now be extinct.

Because of various alterations to the Rio Grande and Pecos River systems, primarily the diversion of water from the streams and the construction of impoundments, both subspecies of Notropis simus have undergone significant decline. Notropis simus simus, which was common in the mainstream Rio Grande throughout the 1930’s and 1940’s and was sufficiently common in the 1940’s to be used as a bait fish (Koster 1957), has not been collected since 1964. Notropis simus pecosensis is still extant throughout a large portion of its range, and is now known to occupy the mainstream Pecos River from near the town of Fort Sumner, New Mexico, downstream to the town of Artesia, New Mexico, a distance of 175 mi. (282 km.). However, habitat for the species in this stretch is spotty and often marginal, and the present numbers of Notropis simus pecosensis are much reduced. A 1982 survey done by the New Mexico Department of Game and Fish in the Pecos River found only 76 specimens of this subspecies in their single largest collection. This is in contrast to single collections of 1,482 specimens in 1939 and 618 specimens in 1944.

Lands along the Pecos River are primarily privately owned, with small areas of Bureau of Land Management (BLM) lands scattered along the Pecos River between Fort Sumner and Roswell, New Mexico. A small portion of the Pecos River flows through the Bitter Lakes National Wildlife Refuge. The water of the Pecos River is administered by the States of New Mexico and Texas through the Pecos River Compact. The U.S. Bureau of Reclamation (BR) and the Army Corps of Engineers (COE) operate dams on the river in accordance with the Compact.

Notropis simus pecosensis is a moderately large-sized shiner (adults reach lengths of up to 3.5 in. (9 cm.) of...
the family Cyprinidae. It has a deep, spindle-shaped, silvery body, and a fairly large mouth which is overhung by a bluntly rounded snout (Koster 1957). In 1982, Notropis simus pecosensis was collected most frequently in the main stream channel, over a sandy substrate with low velocity flow, and at depths between 7 in. and 16 in. (17 and 41 cm.). Backwaters, riffles, and pools were also used by younger individuals. Natural springs, such as those in the Santa Rosa and Lake McMillan areas, also serve as habitat for Notropis simus pecosensis, and are sources of continuous water flow (New Mexico Department of Game and Fish 1982).

Threats to the continued survival and recovery of Notropis simus pecosensis include restricted flow from reservoirs, water diversions for irrigation, silisation, and pollution from agricultural activities along the river. These habitat modifications have been detrimental to all fish species in the Pecos River, including Notropis simus pecosensis.

The Rio Grande Fishes Recovery Team (RGFRT), whose responsibilities include Notropis simus, has been concerned about its status since 1978. The team believed at that time that Notropis simus was found only in the Rio Grande and that its range extended from near Santa Fe, New Mexico, to Brownsville, Texas. Since the last collection of Notropis simus known at the time was from 1964 near Santa Fe, New Mexico, it was feared that the species was likely already extinct. Efforts to list Notropis simus were then dropped until recent work determined that the species still existed. It has been determined recently that a previously unnamed form of the Pecos River is in fact a valid subspecies of Notropis simus (Chernoff et al. 1982) but that it is still extant in the Pecos River (New Mexico Department of Game and Fish 1982). Therefore, the RGFRT feels that the species was likely already extinct. Efforts to list Notropis simus were then dropped until recent work determined that the species still existed. It has been determined recently that a previously unnamed form of the Pecos River is in fact a valid subspecies of Notropis simus (Chernoff et al. 1982) but that it is still extant in the Pecos River (New Mexico Department of Game and Fish 1982). Therefore, the RGFRT feels that the species was likely already extinct.

The COE submitted the following comments (C=Comment, R=Service response): C. The COE responsibility on the Pecos River is strictly limited to flood control. All other flow is administered by the State of New Mexico in accordance to the Pecos River Compact. R. The Service did not mean to imply that the Corps had control over the water rights in the Pecos River. The statement in question was intended to indicate that the flow of the Pecos River was controlled by dams and other structures, such structures having been built and maintained by the Corps and the BR. The rule has been changed to more accurately state the administration of the water of the Pecos River. C. The Corps pointed out that its 1982 search for the Rio Grande subspecies also included a verification of the identification of over 27,000 fish specimens that were collected in 1977 from the Rio Grande between Cochiti Lake and Bosque del Apache National Wildlife Refuge. Thus the 1982 survey covered a much larger area than was indicated in the rule. R. Mention of this survey has been removed from the rule since it is irrelevant to the listing of the Pecos subspecies. C. The Corps noted that it supports the Endangered Species Act in planning and construction responsibilities, as well as on lands and waters administered by it. R. This was noted in the rule. C. The Corps did not foresee any significant consequences of the proposal on its activities, and feels that any future flood control measures they might undertake in the Pecos

The 1982 status report by the New Mexico Department of Game and Fish (NMGF) also provided new biological and distribution data on the Pecos subspecies. Recommended listing of Notropis simus pecosensis as a threatened species, and recommended areas of critical habitat in the Pecos River. If such habitat was to be designated.

Notropis simus pecosensis is presently listed by the State of New Mexico as an endangered species, Group 2 (N.M. State Game Commission, Reg. No. 624). It was included (as Notropis simus) in the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454) in category 1. Category 1 indicates that the Service has substantial information on hand to support listing the species as endangered or threatened. The Service was petitioned on April 12, 1983, by the Desert Fishes Council to list Notropis simus pecosensis. Evaluation of this petition by the Service revealed that substantial information was presented indicating that the petitioned action might be warranted. A notice of this finding was published in the Federal Register on June 14, 1983 (48 FR 27273). Subsequently, finding that the petitioned action was warranted, the Service published a proposed rule to list this subspecies on May 11, 1984 (49 FR 20031).

Summary of Comments and Recommendations

In the May 11, 1984, proposed rule (49 FR 20031) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the De Baca County News in Fort Sumner, New Mexico, on June 7, 1984, and in the Daily Record in Roswell, New Mexico, on June 6, 1984, which invited general public comment. Thirteen comments were received and are discussed below. Five requests for a public hearing were received from local water development and irrigation groups and from the State of New Mexico. Public meetings were held in Artesia and Albuquerque, New Mexico, on August 7 and 20, 1984, respectively. Interested parties were contacted and notices of those meetings and notices of the meetings were published in the Daily Press in Artesia, New Mexico, the Daily Record in Roswell, New Mexico, and the Current Argus in Carlsbad, New Mexico on July 19, 23, and 24, 1984, respectively, and in the Federal Register on August 3, 1984. A press release for the Artesia meeting was sent out on July 19, 1984.

Six letters were received in support of the proposal. One letter was received in opposition to the proposal. Two letters were received in opposition to acquisition of water rights for the proposed species by any manner other than purchase, and four letters expressed neither support nor opposition. Summaries of the comments and questions in these letters and the Service's response to those comments follow:

Support for the proposal was received from the American Society of Ichthyologists and Herpetologists, the Desert Fishes Council, and the International Union for Conservation of Nature and Natural Resources. The Texas Parks and Wildlife Department stated that it has no additional information on Notropis simus and that it presumes the species to be extirpated from Texas. Dr. Carter Gilbert of The Florida State Museum supported the proposal, and commented that propagating Notropis simus pecosensis in captivity has been unsuccessful, making it more vital that the subspecies natural habitat be preserved, and that the special rule will reduce onerous permit burdens. Dr. Clark Hubbs, of the University of Texas at Austin and a member of the Rio Grande Fishes Recovery Team, supported the proposal, and pointed out that the statement in the proposal, that the bluntnose shiner was "sufficiently common to be used as a bait fish (Koster 1957)," is misleading, since the decline of the species occurred earlier than 1957.

...
drainage could benefit *Notropis simus pecosensis*. C. The State of New Mexico is attempting to acquire water rights to establish a permanent pool at Santa Rosa Lake, upstream from the proposed critical habitat. This could be affected by the listing of the Pecos bluntnose shiner. R. This has been added to the rule.

The BR submitted the following comments: C. The information on the Brantley Dam project is outdated, construction having commenced in 1983. In addition, the references to the possible adverse effects of Brantley Dam on the Pecos bluntnose shiner are erroneous since no bluntnose shiner are found in the Brantley Dam area. The Major Johnson Springs population of bluntnose shiner, which the rule indicates will be affected by the dam, was not found in the 1982 New Mexico Department of Game and Fish study. In addition, information should be included on BR's plans to maintain a minimum flow below the dam and construct a channel which will simulate preferred habitat for *Notropis simus pecosensis*. R. The rule has been changed to remove references to adverse effects from Brantley Dam, and to the apparently now extirpated Major Johnson Springs population of bluntnose shiner. The plans for minimum flow and habitat simulation below the dam have been added. C. The waters of the Pecos River are not controlled by the BR, but by the States of New Mexico and Texas through the Pecos River Compact. R. The Service's response to this is the same as to the Corps' similar comment—see response to COE. C. The Bureau objected to the statement in the rule that natural springs serve as good habitat for *Notropis simus pecosensis*. R. Although the 1982 New Mexico Department of Game and Fish study did not confirm that such springs are good habitat for this fish, the study did indicate that past surveys have found such springs occupied by the bluntnose shiner. It is reasonable to assume that since the flows in the Pecos River become very low to nonexistent, the continuous spring flow is used by the bluntnose shiner to survive through periods of no flow in the river. C. BR requested that the final rule outline specifically how present water deliveries and diversions, as well as ground and river water pumping, will be affected by critical habitat designation. R. This information has been briefly outlined in the final rule. Further information is found in the economic analysis of this critical habitat designation. C. The authorized Pecos River Water Salvage Project and the McMillan Delta Project should be mentioned in the final rule. R. These projects have been included in the final rule. C. BR suggested that the location of Brantley Dam be included in the critical habitat map. R. Brantley Dam is located about 15 mi. (24 km.) below the lower critical habitat boundary and does not affect the designated critical habitat. Therefore, it was not included on the critical habitat map. C. BR requested that the critical habitat southernmost boundary be moved 0.8 mi. (1.25 km.) upstream to the U.S. Highway 82 bridge. R. The Service agrees that this would make a more easily definable boundary and has made this change in the final rule.

The BLM stated that it can mitigate the impacts resulting from oil and gas development along the river, and that although this critical habitat designation will affect BLM planning and resource activities in the area it will continue to cooperate in the protection of listed species. It provided maps showing BLM lands in the area and noted that there are significant areas of private lands with Federal subsurface mineral estate located in the critical habitat area.

The U.S. Soil Conservation Service (SCS) requested the deletion of the 50 ft. (15 m.) riparian zone from the proposed critical habitat designation. This zone contains ranching and farming lands on which the SCS has involvement. The Service has reconsidered the critical habitat designation in light of this request and other biological information received during the comment period. Consideration of several biological factors resulted in the removal of the 50 ft. (15 m.) riparian zone from the proposed critical habitat. Stream banks of the Pecos River have been highly modified by human activities and native riparian vegetation is virtually nonexistent along most of the critical habitat. In some areas croplands reach to the river's edge. Erosion has eliminated other areas of riparian vegetation resulting in denuded and eroded stream banks. While there is close correlation between quality of riparian vegetation and quality of fish habitat in cold clear water streams, this does not appear to be the case for warm water streams in the arid southwestern U.S. Although many activities along the stream banks of the Pecos River may have adverse impacts on the bluntnose shiner, the Service did not think that riparian areas as a whole were critical to the survival of the species. Therefore the Service has deleted the 50 feet (15 m.) riparian zone from the final critical habitat designation for biological reasons.

The NMCF supported the proposal and submitted the following comments: C. Brantley Dam is not proposed, it is now under construction. In addition, the statements as to the possible adverse effects to the Pecos bluntnose shiner from Brantley Dam are incorrect. R. See response to BR. C. *Notropis simus pecosensis* is not presently known to occur in Major Johnson Springs. R. See response to BR. C. There is no evidence that feedlot operations are a contributing adverse factor to the portion of the Pecos River containing *Notropis simus pecosensis*. R. Statements of adverse effects to this species from feedlots were removed from the final rule. C. The 1982 NMCF report did not recommend designating critical habitat in the Pecos River as the proposal states. Instead, that report identified portions of the river as "essential" to the Pecos bluntnose shiner. R. The 1982 report identified "essential" portions of the river and recommended those as appropriate for critical habitat designation if such designation were to be made. These portions were used as the critical habitat designation; however, the NMCF recommendation was made clear in the final rule. C. The State listing for *Notropis simus pecosensis* is as Group 2, not as Group 1 as was stated in the proposal. R. This was corrected in the final rule. C. Reduced flooding has not been shown to have detrimental effects on *Notropis simus pecosensis* spawning, as was stated in the proposed rule. R. The Service agrees that such detrimental effects on spawning are strictly conjectural and the statement in question has been removed. C. Two fish species mentioned as exotic predators in the proposed rule are probably native to the Pecos River and the 1982 NMCF report showed no association between the black bullhead and the Pecos bluntnose shiner. The black bullhead was mentioned in the proposed rule as a possible exotic predator on the bluntnose shiner. R. The portion of the rule pertaining to the threat of predation was revised to reflect this information. C. The New Mexico Habitat Protection Act (17-6-1 through 17-6-11) gives the State a mechanism for limited habitat protection. Statute 30-8-2 makes pollution of water illegal, and Statute 17-4-14 makes it illegal to dewater areas used by game fish. R. The final rule has been changed to reflect the fact that the State has certain limited habitat protection powers. C. The proposed rule does not mention the proposed recreation pool at Santa Rosa Reservoir.
or the possible changes in irrigation practices being considered by the Ft. Sumner Irrigation District and their possible effects on the Pecos bluntnose shiner. R. These projects have been included in the final rule. C. The NMCF is concerned about the possibility of inadvertent taking of *Notropis simus pecosensis* by bait dealers in the portions of the Pecos River open for bait taking. It feels that a program for the education of the people of the Pecos Valley, and for the reasonable prosecution of violations needs to be worked out. R. The Service agrees that these actions will be needed, and will work closely with the State to develop such programs. However, these actions cannot occur until *Notropis simus pecosensis* is legally recognized as a federally threatened species. C. NMCF also outlined what it sees as various possibilities for the protection and enhancement of Pecos bluntnose shiner habitat in the Pecos River through work with the existing water rights and for changes in those existing rights.

The law firm of McCormick and Forbes submitted comments for the Carlsbad Irrigation District. The firm suggested that proper administration of existing Pecos River water rights would alleviate some of the threats to the Pecos bluntnose shiner, and recommended that any waters of the Pecos River determined to be necessary to augment or maintain critical habitat for the Pecos bluntnose shiner be purchased under New Mexico law, and that funds be appropriated to pay for any required water releases and monitoring.

A Pecos Valley farm submitted comments in opposition to the acquisition of water rights in the area, by any manner except purchase from willing sellers, for the purpose of maintaining minimum flow as outlined in the proposal for the Brantley Dam project.

The public hearing held in Artesia, New Mexico was attended by 25 people, including representatives of the Carlsbad Irrigation District (CID), the New Mexico Interstate Stream Commission (NMISC), the Pecos River Pumphers Association (PRPA), the BR, the NMCF, and several local bait businesses. Nine people made oral statements and three written statements were submitted.

Many of the comments submitted at the hearing repeated those presented as written comments and are discussed above. Many comments represented the concern by local bait dealers that the proposed action would affect their livelihood. They were also concerned about the existing pollution and dewatering of the Pecos River and the resultant depletion of the bait fishes. The Service responded that the listing of the Pecos bluntnose shiner and ensuing action to assure its recovery may result in better habitat conditions in the river for all minnows. The NMISC noted that the Brantley Dam is now under construction, and the population of *Notropis simus pecosensis* at Major Johnson Springs apparently no longer exists which were both discussed above. NMISC hopes that the Service does not intend to require maintenance of minimum flows in the Pecos River. R. The Service does not address the maintenance and recovery needs of different species during the listing process. These needs will be addressed in the recovery plan which will be written for this species following listing. The Service feels that the problems of water allocation in the Pecos River can be worked out to meet existing agricultural, municipal, and industrial needs as well as the needs of the Pecos bluntnose shiner. C. The proposal failed to mention the possible creation of a permanent recreation pool at Santa Rosa Reservoir and its effects on the proposed critical habitat. R. This has been addressed in the COE comments and response above. C. Water flow in the river channel below Fort Sumner could be changed substantially by changes being considered in irrigation practices from gravity (flood) to sprinklers. R. This was noted in the final ruling. C. NMISC feels the Service should reconsider its determination that no Environmental Assessment is needed for this action. R. The Service's position on this is given in this rule in the National Environmental Policy Act section. An economic analysis has been prepared to address the economic issues of the critical habitat designation. C. The area proposed as critical habitat from Hagerman to Artesia is often dry according to records from gauges located near Hagerman and Artesia. NMISC is concerned that the Service will require draconian measures to maintain a flow in this section via releases from reservoir storage. R. While the gauges located at Hagerman and Artesia often record no flow in the river, the U.S. Geological Survey (USGS) records cumulative groundwater seepage in this stretch of river averaging 50 cubic feet per second [cfs] (1.4 cubic meters per second) [cms] (Welder 1973).

C. The Service may wish to consider propagating the Pecos bluntnose shiner at Dexter National Fish Hatchery in Dexter, New Mexico for use in restocking enhing of the reaches of the critical habitat, the river and perhaps other stream systems. R. The Service has attempted to propagate this species at the Dexter hatchery, but has been unsuccessful so far. Successful propagation may be possible with new techniques, and further attempts may be made. Such stock will be used in recovery of this species within its historic range.

The public hearing held at Albuquerque, New Mexico was attended by one person, a representative of the U.S. Soil Conservation Service. The comments made were essentially the same as those submitted by letter and are addressed above.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that *Notropis simus pecosensis* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Notropis simus pecosensis* (bluntnose shiner) are as follows:

A. **The present or threatened destruction, modification, or curtailment of its habitat or range.** Water diversion and impoundment, primarily for irrigation purposes, have resulted in drastic modification and destruction of *Notropis simus pecosensis* habitat in the Pecos River, and in a resulting decline in the range and abundance of this species. *Notropis simus pecosensis* was recently collected only in the middle portion of its historic range and its presence in recent collections is notably less than in previous years. Irrigational use of water determines the volume and timing of the Pecos River flow between April and October, and releases of water from Lake Sumner fluctuate greatly during this time. In addition, flow downstream of the lake is also decreased by diversions from the main channel and by pumping of ground and river water. Average monthly flows between April and October may fluctuate from 814 cfs. to 15 cfs. (23.0 to 0.42 cms.). Within any given month, daily flows may fluctuate from 1505 cfs. to 5 cfs. (42.5 to 0.14 cms.) or less. In contrast, flows from November to March are consistently low, with the average monthly flow between 80 cfs. and 10 cfs. (2.26 and 0.28 cms).
Another factor detrimental to *Notropis simus pecosensis* is the contribution of pollutants to the river by agricultural operations along the Pecos River. Runoff from cultivated fields and livestock operations, and irrigation water returns have adverse effects on the water quality in the river.

Several water projects and changes in irrigation practices being considered in the Pecos Valley may potentially affect *Notropis simus pecosensis* and its habitat. The New Mexico Parks and Recreation Commission has recently been granted a permit to establish and maintain a permanent recreation pool in Santa Rosa Reservoir. The granting of this permit is presently under appeal. Establishment of this permanent pool would reduce flow in the Pecos River below Alamogordo Reservoir by approximately 1,600 acre-feet per year. This reduction would further deplete the water available to sustain *Notropis simus pecosensis*.

The Fort Sumner Irrigation District is considering changes in its current irrigation practices, involving conversion from flood irrigation to sprinkler irrigation. This would result in changes in the flow in the river downstream and may impact the Pecos bluntnose shiner. The BR’s Pecos River Basin Water Salvage Project is a continuing program to reduce the consumptive use of water in the Pecos River basin by removal of phreatophytic vegetation. Activity on this project began in 1967 and continued until 1971, resulting in the clearing of about 53,000 acres (21,458 hectares) (ha.), including stretches of the Pecos River flood plain from Lake Sumner to about 14 mi. (23 km.) downstream, between Acme and Artesia, and downstream from Lake McMillan. A 50 ft. (15 m.) wide riparian zone was left on either side of the river and such activity probably has only minor effect on bluntnose shiner and its habitat.

In connection with the BR’s construction of Brantley Dam, three projects are planned in the Pecos River nearby *Notropis simus pecosensis* habitat. One of these is the transfer of approximately 2,200 acres (890 ha.) of land and water rights near Artesia to the NMDGF for development into a waterfowl management area as mitigation for losses associated with the Brantley Dam project. This area is downstream from the designated critical habitat for the Pecos bluntnose shiner, and should have little or no effect on that species.

The second project is the McMillan Delta project which originally included a water salvage channel and floodway extending from about 3.5 mi. (5.8 km.) upstream of the U.S. Highway 82 bridge downstream to Lake McMillan. The scope of this project has changed with the construction of Brantley Dam and plans for breaching McMillan Dam. The Delta Project is not likely to involve any work upstream from the U.S. Highway 82 bridge, and therefore, will not affect the critical habitat area. The third project includes plans to maintain a minimum flow of 20 cfs. (.56 cm/s.) below Brantley Dam, and to construct a special channel below the dam to simulate previously existing conditions at Major Johnson Springs, thereby providing habitat for several species of fish including, potentially, *Notropis simus pecosensis*. This project may provide significant potential for improvement of the status of this species.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** There is no evidence to suggest overutilization of this fish for any of these purposes.

**C. Disease or predation.** Although it is unlikely that predation is a major factor in the decline of *Notropis simus pecosensis*, it has probably played a minor role with increasing importance as the populations have come under greater stress from other factors. The presence of some exotic predators in the same collections as *Notropis simus pecosensis* would indicate that at least some predation is occurring. Predation, particularly by exotic fishes, has been shown to be a factor in the decline of other native fishes of the American Southwest.

**D. The inadequacy of existing regulatory mechanisms.** *Notropis simus pecosensis* is listed by the State of New Mexico as an endangered species, thereby providing habitat for several species of fish including, potentially, *Notropis simus pecosensis*. This project may provide significant potential for improvement of the status of this species.

Thus, endangered status is not appropriate.

**Critical Habitat**

Critical habitat, as defined by section 3 of the Act means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical
habitat is being designated for *Notropis simus pecosensis* to include two sections of the Pecos River in New Mexico. The first section begins approximately 10 mi. (16 km.) south of Fort Sumner, De Baca County, and extends approximately 64 mi. (103 km.) downstream into Chaves County. The second area is approximately 37 mi. (60 km.) long, between Hagerman and Artesia in Chaves and Eddy Counties.

These areas were chosen for critical habitat designation because they presently support relatively abundant, self-perpetuating populations of *Notropis simus pecosensis*. Both sections contain permanent flow sustained by substantial local groundwater seepage, and thus are not dependent on irrigation and dam water releases. Although *Notropis simus pecosensis* is also present outside these areas, habitat there is marginal and it is thought that only inside these areas is reproduction occurring. The areas chosen for critical habitat designation provide all the ecological, behavioral, and physiological requirements necessary for the survival of *Notropis simus pecosensis*, and no smaller or alternative area would allow for the species’ long term survival and recovery.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public and private) which may adversely modify such habitat or may be affected by such designation. All of the water in the Pecos River is legally allocated and is used for municipal and irrational uses. Irrigation uses greatly affect the volume of the river, and the heavy flow from April to October. The volume of water released from storage areas varies greatly and, at times, can result in little or no downstream flow. Water is also removed by diversion from the main channel and by ground and river water pumping (New Mexico Department of Game and Fish 1982). The sporadic water supply is the greatest threat to *Notropis simus pecosensis* and its habitat. The section of the river between Acme and Dexter has been affected greatly by the lack of water; no flows have been recorded for 10 percent of each year (New Mexico Department of Game and Fish 1982). Other threats to the critical habitat include water pollution from municipal sewage, agricultural areas, and fish toxics.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of relevant additional information obtained during the public comment period and public hearing.

The boundaries of the proposed critical habitat have been adjusted to remove the riparian zone and to relocate the extreme southern boundary of critical habitat about 75 mi. (12.5 km.) upstream to the U.S. Highway 82 crossing. These changes were based on new biological information concerning the critical habitat and to facilitate identification of the critical habitat area (see Summary of Comments and Recommendations).

The estimated lengths of the proposed critical habitat have also been recalculated using more accurate measurement techniques. The recalculated lengths are stream lengths that reflect the meandering character of the river and provide a more exact estimate of the actual stream miles (kilometers) proposed as critical habitat. The legal description of the upper boundary of the southern section of critical habitat has also been corrected. The Pecos River enters on the west boundary of section 7 in Chaves County, New Mexico, not on the north boundary as incorrectly stated in the proposed rule. These recalculations and the boundary correction do not change the actual area originally proposed as critical habitat.

The critical habitat designation in the final rule consists of about 64 mi. (103 km.) from a point about 10 mi. (16 km.) south of Fort Sumner in De Baca County. The second section consists of about 36 mi. (60 km.) from a point near the town of Artesia in Chaves County downstream to near the town of Artesia in Eddy County. The areas fronting the Pecos River critical habitat consists of about 101 mi. (163 km.) of land, Federal 14.5 mi. (23.5 km.), State 8 mi. (13.0 km.), and private 78.5 (126.5 km.). The Service has prepared an economic analysis of this critical habitat designation. No significant economic or other impacts are expected from the critical habitat designation for the Pecos bluntnose shiner. This conclusion is based on current management of grazing and oil and gas leasing in the vicinity of the proposed critical habitat; the absence of ongoing or planned SCS or COE projects within or in the vicinity of critical habitat; BR’s current management objectives, water projects, and operational procedures within or near the proposed critical habitat areas; Federal Highway Administration (FHWA) erosion control and other policies for road and bridge construction; current uses and management of the water in the Pecos River basin by the Forest Service, National Park Service (NPS), Environmental Protection Agency (EPA), BR, COE, USGS, Office of Water Research and Technology (OWRT), Postal Service, and the Service; NMG’s management of the BR acquisition area that fronts the critical habitat; and the unquantifiable benefits that may result from the designation. In addition, no State or private activities involving Federal funds or permits are expected to affect or be affected by the proposed critical habitat designation.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 (see revision at 51 FR 19926, June 3, 1986). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The water of the Pecos River is administered by the States of New Mexico and Texas through the Pecos River Compact. However, the COE and the BR operate dams on the river in accordance with the Compact, and regulation of the flow in the river is through these dams. Most of the lands along the river are privately owned.
with small portions of land under BLM and Fish and Wildlife Service administration. In addition, other activities along the Pecos River involving Federal funds or permits include administration of the National Pollution Discharge Elimination System (NPDES) permits by the EPA, maintenance of phreatophytic vegetation clearing by the BR, road and bridge construction and maintenance by the FHWA, grazing and mineral (oil and gas) leasing by BLM, approval of Section 404 permits for oil, gas, and water pipelines by COE, and provision of technical assistance by the SCS. Currently, Federal involvement in these activities is apparently compatible with the critical habitat designation. Therefore, no economic or other impacts are expected to result from the critical habitat designation.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.25, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would otherwise be suffered if such relief were not available.

The above discussion generally applies to threatened species of fish and wildlife. However, the Secretary has discretion under section 4(d) of the Act to issue such special regulations as are necessary and advisable for the conservation of threatened species. The Pecos bluntnose shiner is threatened primarily by habitat disturbance or alteration, not by intentional, direct taking of the species or by commercialization. Given this fact and the fact that the State regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State’s collection permit system is more than adequate to protect the species from excessive taking, so long as such takes are limited to: Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act.

Therefore, the special rule allows takes to occur for the above-stated purposes without the need for a Federal permit if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of the species, thereby facilitating its conservation. For these reasons, the Service has concluded that this regulatory proposal is necessary and advisable for the conservation of Notropis simus pecosensis.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service’s reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation 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.). The critical habitat of the Pecos bluntnose shiner is administrated by the States of New Mexico and Texas. Approximately 101 mi. (163 km.) of Federal (14.5 mi.—23.5 km.), State (8 mi.—13.0 km.), and private (78 mi.—125.5 km.) land front the portions of the Pecos River proposed as critical habitat. Currently, Federal involvement in activities along the Pecos River is apparently compatible with the designation of critical habitat. Therefore, no significant economic impacts are expected to result from the critical habitat designation. In addition, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by the designation. These determinations are based on a Determination of Effects of Rules that is available at the Region 2 Office of Endangered Species, U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Room 4000, Albuquerque, New Mexico 87103.

Literature Cited


Author

This rule was prepared by S.E. Steffesrud, Endangered Species staff, Region 2, Albuquerque, New Mexico (505/766–3972 or FTS 474–3974).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).
5302 Federal Register / Vol. 52, No. 34 / Friday, February 20, 1967 / Rules and Regulations

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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


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

§ 17.11 Endangered and threatened wildlife.

(h) * * *

Species

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
<th>Historic range where endangered or threatened</th>
<th>Status</th>
<th>Critical habitat</th>
<th>Special rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fishes:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shiner, Pecos bluntnose</td>
<td>Notropis simus pecosensis</td>
<td>U.S.A.</td>
<td>Entire</td>
<td>T</td>
<td>17.44(r)</td>
</tr>
</tbody>
</table>

3. Add the following as a special rule to § 17.44(r):

§ 17.44 Special rules—fishes.

Pecos bluntnose shiner, Notropis simus pecosensis.

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act, or;

(ii) Incidental to State permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (1) through (3) above.

4. Amend § 17.95(e) by adding critical habitat of the Pecos bluntnose shiner in the same sequence as the species appears in the list at § 17.11 as follows:

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

Pecos bluntnose shiner (Notropis simus pecosensis).

1. New Mexico: De Baca and Chaves Counties. Pecos River from point at the north boundary of NE ¼ Sec. 2, T1N, R26E (approximately 10 mi. (16 km.) south of Fort Sumner) extending downstream approximately 64 mi. (103 km.) to a point at the south boundary SW ¼ Sec. 35, T5S; R25E.

2. New Mexico: Chaves and Eddy Counties. Pecos River from the west boundary NW ¼ Sec. 7; T14S; R27E, extending downstream approximately 37 mi. (60 km.) to the NW ¼ Sec. 18; T15S; R27E (to the U.S. highway 82 bridge near Artesia).
Constituent elements include clean, permanent water; a main river channel habitat with sandy substrate; and a low velocity flow.

Dated: November 28, 1986.
P. Daniel Smith, Acting Assistant Secretary for Fish and Wildlife and Parks.

FOR FURTHER INFORMATION CONTACT:
Nancy A. Marx, Division of Refuges, Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC 20240; Telephone 202-343-3922.

SUPPLEMENTARY INFORMATION:

The Fish and Wildlife Service is amending certain refuge-specific fishing regulations in 50 CFR Part 33. It has been determined that, to the extent practicable, make refuge fishing programs consistent with State regulations. The rulemaking is also updating §33.2, Office of Management and Budget information collection approval numbers which have become obsolete. The policies of the Department of the Interior (Department) is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, the October 31 proposed rule had a 30-day comment period. No public comments were received. Therefore, the proposed refuge-specific fishing regulations will be published, with minor technical corrections, as final in this rulemaking.

Conformance With Statutory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 666dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and the public use of NWRs. Specifically, Section 4(d)(1)(A) of the Refuge System Administration Act authorizes the Secretary of the Interior (Secretary) under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The Refuge Recreation Act authorizes the Secretary to administer the refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Fishing plans are developed for each fishing program on a refuge prior to the opening of the refuge to fishing. In some cases refuge-specific fishing regulations are included as a part of the fishing plans to ensure the compatibility of the fishing programs with the purposes for which the refuge was established.

Compliance with the Refuge Administration and Refuge Recreation Acts is ensured when the fishing plans are developed and the determinations required by these Acts are made prior to the addition of the refuge to the list of areas open to fishing in 50 CFR.

Continued compliance is ensured by annual review of fishing programs and regulations. It has been determined that, with respect to each of the refuges listed in these regulations, fishing is compatible with the purposes for which those refuges were established, and is an appropriate incidental or secondary use.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in cost of prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include
small businesses, organizations or governmental jurisdictions.

These amendments to the codified refuge-specific fishing regulations will make relatively minor adjustments to existing fishing programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. The benefits accruing to the public are expected to exceed the costs of administering this rule. Accordingly, the Department has determined that this rule is not a “major rule” within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). These requirements are presently approved by OMB as cited below:

<table>
<thead>
<tr>
<th>Type of information collection</th>
<th>OMB approval No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic and public use permits</td>
<td>1018-0014</td>
</tr>
</tbody>
</table>

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

Compliance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of refuges to the list of areas open to sport fishing in 50 CFR. Refuge-specific fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a NWR. The changes in this rulemaking will not significantly alter the existing uses of the refuges involved.

Information regarding the conditions that apply to individual refuge fishing programs, any restrictions related to public use on the refuge and a map of the refuge are available at refuge headquarters. This information can also be obtained from the Regional Offices of the Service at the addresses listed below.

Region 1—California, Hawaii, Idaho, Nevada, Oregon and Washington:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1602, 500 Multnomah Street, Portland, Oregon 97232; Telephone (503) 231-6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766-2324.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin:

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee and the Virgin Islands:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303; Telephone (404) 221-3538.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, Telephone (617) 965-9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80255; Telephone (303) 236-4608.

Region 7—Alaska:

Nancy A. Marx, Division of Refuges, Fish and Wildlife Service, Washington, DC, is primary author of this final rulemaking document.

List of Subjects in 50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

PART 33—AMENDED

Accordingly Part 33 of Chapter I of Title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 33 is revised to read as follows:

2. Section 33.2(e) is amended by changing the number “33.54” to “33.55.”

3. Section 33.2(e) is amended by revising the table to read as follows:

§ 33.2 General regulations and information collection requirements.

<table>
<thead>
<tr>
<th>Type of information collection</th>
<th>OMB approval No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic and public use permits</td>
<td>1018-0014</td>
</tr>
</tbody>
</table>

§ 33.3 (Amended)

4. Section 33.3(e) is amended by changing the number “33.54” to “33.55.”

§ 33.4 (Amended)

5. Section 33.4 is amended by changing the number “33.54” to “33.55” in the introductory text.

6. Section 33.5 is amended by revising paragraph (d) to read as follows:

§ 33.5 Alabama.

(d) Wheeler National Wildlife Refuge.
Fishing is permitted on designated areas of the refuge subject to the following conditions:
(1) Bank fishing is not permitted around the shoreline of the refuge headquarters.
(2) All other refuge waters are open to fishing year-round unless otherwise posted.

7. Section 33.8 is amended by adding paragraphs (a) (4) and (5) to read as follows:

§ 33.8 Arkansas.

(a) Big Lake National Wildlife Refuge.

(4) Boats may be launched only in designated areas.

(5) ATVs and airboats are prohibited.

8. Section 33.9 is amended by revising paragraph (g) as follows:

§ 33.9 California.

(9) Modoc National Wildlife Refuge.
Fishing is permitted only on Dorris Reservoir subject to the following conditions:
(1) Fishing is not permitted during the migratory waterfowl hunting season.
(2) Fishing is permitted during daylight hours only.

9. Section 33.12 is added to read as follows:

§ 33.12 Delaware.
(a) Prime Hook National Wildlife Refuge. Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:
   (1) Boats used on Fleetwood or Turkle ponds must be propelled manually or by electric motors.
   (2) Those portions of Fleetwood and Turkle ponds having wood duck nesting boxes are closed to public entry from March 1 through June 30.
   (3) Boats may be launched from designated access points or public roads.
   (4) Bank fishing and crabbing is permitted only at designated access points and public right-of-ways.

10. Section 33.13 is amended by revising paragraphs (f) and (h) to read as follows:

§ 33.13 Florida.
(1) Lower Suwannee National Wildlife Refuge. Fishing is permitted on designated areas of the refuge subject to the following conditions:
   (1) Bank fishing is permitted in interior refuge creeks, borrow pits and canals from March 15 to September 30 during daylight hours only.
   (2) Fishing from a boat is permitted in all navigable tidal and freshwater creeks year-round.
   (b) Merritt Island National Wildlife Refuge. * * *
   (2) The daily limit is 20 fish for the Kennedy Athletic Recreational Site (K.A.R.S.) Marina in the Banana River, the Eddy Creek "trout hole" in Mosquito Lagoon and the Patillo Creek in the Indian River during the period from November 15 through March 31.

   (4) Vehicle access north and south of Haulover Canal is limited to designated and/or posted access points and launch areas.
   (5) Boat launching or mooring between sunset and sunrise is permitted only at Beacon 42 Fish Camp and Bairs Cove.

11. Section 33.14 is amended by redesignating paragraphs (a) through (h) as (a) through (j); adding new paragraph (a); and revising paragraph (g)(1) to read as follows:

§ 33.14 Georgia.
(a) Banks Lake National Wildlife Refuge. Fishing is permitted on designated areas of the refuge subject to the following conditions:
   (1) Fishing is permitted year-round during daylight hours.
   (2) Night fishing is permitted from March 1 through October 31.
   (3) Only the use of pole and line or rod and reel is permitted.
   (g) Savannah National Wildlife Refuge. * * *
   (1) Fishing is permitted on refuge impoundments from March 15 through October 25.

12. Section 33.17 is amended by revising paragraphs (b)(1) through (3) to read as follows:

§ 33.17 Illinois.
(1) Crab Orchard National Wildlife Refuge. * * *
   (1) Crab Orchard Lake—West of Wolf Creek Road—fishing from boats is permitted all year. Trotlines/jugs must be removed from sunrise until sunset, from Memorial Day through Labor Day; east of Wolf Creek Road—fishing from boats is permitted March 15 through September 30. Fishing from the bank is permitted all year only at the Wolf Creek and Route 148 causeways; on the entire lake—trotlines/jugs must be checked daily and must be removed on the last day they are used. It is illegal to use stakes to anchor any trotlines; they must be anchored only with portable weights and must be removed on the last day they are used. All noncommercial fishing methods are permitted, except underwater apparatus is prohibited.
   (2) A-41. Bluegill, Blue Heron, Manners, Honkers and Visitors Ponds. Fishing is permitted only from sunrise to sunset March 15 through September 30. No boats or flotation devices are allowed.
   (3) Little Grassy and Devils Kitchen Lakes. Fishing is permitted all year from a boat on the bank. Trotlines/jugs are prohibited. Use of boat motors of more than 10 horsepower is prohibited.

13. Section 33.22 is amended by revising paragraphs (b)(2), (e)(2), (f)(1) through (f)(5); and adding paragraphs (b)(6), and (f)(6) through (f)(9) to read as follows:

§ 33.22 Louisiana.
(b) Catahoula National Wildlife Refuge. * * *
(2) Fishing is permitted in the Duck Lake impoundment and discharge waters from March 1 through October 31 during daylight hours only.

6. Boats may not be left on the refuge overnight.

§ 33.23 Louisiana.
(a) Lower Lafourche National Wildlife Refuge. * * *
(5) Boats with 25 horsepower or less are permitted in refuge impoundments. The use of boat motors is prohibited in open marsh or marsh ponds. Boat access to refuge marshes, ponds and impoundments is restricted to designated routes.

7. Shrimp may be taken by cast nets only; crabs and crawfish may be taken by hand lines and/or ring nets of 30 inches in diameter or less.

8. Daily shrimp (heads on) take and/or possession limit is 25 pounds or 24 quarts per vehicle during the State inside water shrimp season; and 10 pounds take and/or possession limit per vehicle during the rest of the year.

9. Daily crab and/or crayfish take and/or possession limit is 100 pounds or 96 quarts per vehicle.

10. The use or possession of commercial fishing equipment as prescribed by State law is prohibited on the refuge, except during the open inside water shrimp season and within legal hours. Commercial shrimpers may use the parking area and ramps at Hog Island Gulley, Headquarters and West Cove as access points directly to and from Calcasieu Lake and be in possession of commercial fishing equipment and/or catches.

11. Section 33.22 is amended by adding paragraph (b) to read as follows:
§ 33.23 Maine.
(b) Pond Island National Wildlife Refuge. Fishing is permitted on designated areas of the refuge subject to the following conditions: Fishing is permitted from August 16 through the last day of February.
15. Section 33.25 would be amended by redesignating paragraph (c) as (d) and adding a new paragraph (c) to read as follows:
§ 33.25 Massachusetts.

(c) Nantucket National Wildlife Refuge. Fishing is permitted on designated areas of the refuge subject to the following conditions:
(1) Fishing is permitted on the ocean beach only.
(2) A permit is required for the use of over-the-sand surf fishing vehicles.

16. Section 33.32 is amended by revising paragraphs (a)(3) and (b)(2) to read as follows:
§ 33.32 Nevada.

(a) Pahranagat National Wildlife Refuge. * * *
(3) The use of boats, rubber rafts or other floating devices is not permitted on North Marsh.
(b) Ruby Lake National Wildlife Refuge. * * *
(2) Only dike fishing is permitted in the areas north of Brown Dike and east of the Collection Ditch with the exception that fishing by wading and from personal flotation devices is permitted in Unit 21 and portions of Unit 10.

17. Section 33.34 is amended by revising paragraph (a)(3) to read as follows:
§ 33.34 New Jersey.

(a) Edwin B. Forsythe National Wildlife Refuge. * * *
(3) South Dike anglers may park at the headquarters and South Tower parking areas only.
18. Section 33.37 is amended by revising paragraph (b)(4) to read as follows:
§ 33.37 North Carolina.

(b) Mattamuskeet National Wildlife Refuge. * * *
(4) All fish lines and crabbing equipment must be attended.

19. Section 33.39 is added to read as follows:
§ 33.39 Ohio.

(a) Cedar Point National Wildlife Refuge. Fishing is permitted on designated areas of the refuge subject to the following conditions:
(1) Fishing is allowed from June 1 through August 31 during daylight hours only.
(2) Boats or flotation devices are not permitted.
(b) Ottawa National Wildlife Refuge. Fishing is permitted on designated areas of the refuge subject to the following conditions:
(1) Fishing is allowed from June 1 through August 31 during daylight hours only.
(2) Boats or flotation devices are not permitted.
(3) Fishing is restricted to persons 16 years or younger or 65 years or older.

20. Section 33.41 is amended by revising paragraph (a)(3) to read as follows:
§ 33.41 Oregon.

(a) Malheur National Wildlife Refuge. * * *
(3) Fishing is permitted from one-half hour before sunrise to one-half hour after sunset.

21. Section 33.44 is amended by revising paragraph (b)(2) to read as follows:
§ 33.44 South Carolina.

(b) Carolina Sandhills National Wildlife Refuge. * * *
(2) Fishing is permitted from one-half hour before sunrise to one-half hour after sunset.

22. Section 33.46 is amended by adding paragraph (a)(6) to read as follows:
§ 33.46 Tennessee.

(a) Cross Creeks National Wildlife Refuge. * * *
(6) North Cross Creek, Lee Creek and Commissary Creek areas and boat ramps to these areas are closed to fishing during the refuge waterfowl hunt.

23. Section 33.51 is amended by revising paragraphs (a)(1) and (2), and (b)(1) and (2) to read as follows:
§ 33.51 Washington.

(a) Columbia National Wildlife Refuge. * * *
(1) Only nonmotorized boats are permitted on the chain of lakes extending from Soda Lake through Upper Hampton and on Crab Creek and its impoundments below Marsh Unit I.
(2) Motorized boats are permitted on all other refuge waters open to fishing except in Marsh Unit I.
(b) McNary National Wildlife Refuge. * * *
(1) Fishing is permitted on the Hanford islands and Strawberry Island Divisions from July 1 through September 30.
(2) Fishing is permitted on the McNary Division from March 1 through September 30.

24. A new § 33.55 is added to read as follows:
§ 33.55 Pacific Islands Territory.

(a) Johnston Atoll National Wildlife Refuge. Fishing, lobstering and shell and coral collecting are permitted on designated areas of the refuge subject to the following conditions:
(1) Lobsters of one pound or more may be taken from the Lagoon area from September 1 through May 31, but not by spearing; no female lobsters bearing eggs may be taken at any time.
(2) The use of nets, except throw-nets of one and one-half inches diagonal measure minimum, is prohibited in the lagoon.

Daniel Smith,
Assistant Secretary for Fish and Wildlife and Parks.
[FR Doc. 87-3415 Filed 2-19-87; 8:45 am]
BILLING CODE 4310-55-M
Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 982 and 999

Filberts/Hazelnuts Grown in Oregon and Washington, Filbert Imports; Withdrawal of Proposed Amendment of Grade Requirements for Domestic and Imported Shelled Filberts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule to amend the grade (quality) requirements under Marketing Order No. 982 for shipments of shelled filberts grown in Oregon and Washington, by reducing from 2.0 percent to 1.0 percent the tolerance for mold, rancidity, decay, or insect injury. This document also withdraws a proposal to make the same changes in the grade requirements for imported shelled filberts under § 999.400. After review of the comments received on the proposals, it has been determined that there is insufficient evidence to support a reduction in the tolerance.


FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC, 20250, (202) 447-5697.

SUPPLEMENTARY INFORMATION: On March 10, 1986, notice was published in the Federal Register (51 FR 8201) to amend Subpart—Grade and Size Regulation (7 CFR 982.101), by amending § 982.101, Exhibit A. This subpart is issued under the marketing agreement, as amended, and Order No. 982, as amended (7 CFR 982, 51 FR 22545), regulating the handling of filberts grown in Oregon and Washington. The marketing agreement and order are collectively referred to in this document as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

For domestically produced filberts, the March 10, 1986, notice contained a proposal based on a recommendation submitted by the Filbert/Hazelnut Marketing Board to amend the grade (quality) requirements for shelled filberts by reducing the cumulative tolerance from 2.0 percent to 1.5 percent for four defects—mold, rancidity, decay, or insect injury, with no more than 1.0 percent, cumulatively, for mold, rancidity, or insect injury (as is currently provided). The proposed rule further specified that the 1.5 percent tolerance would be reduced to 1.0 percent after a period of one year.

Notice was also given in the same document of a proposal to amend the grade requirements for imported shelled filberts in § 999.400 (Exhibit A) by making the same changes as proposed for domestic filberts. That section is issued pursuant to section 8e (7 U.S.C. 608e-1) of the Act. Section 8e provides, in part, that whenever a marketing order issued by the Secretary of Agriculture, pursuant to the Act contains any terms and conditions regulating the grade, size, quality, or maturity of filberts produced in the United States, the importation of filberts into the United States be prohibited unless the commodity with the grade, size, quality, and maturity provisions of the order or comparable restrictions promulgated under section 8e.

The Department received a request filed on behalf of the Association of Food Industries, Inc. to extend the comment periods provided in the notice to allow more time for interested parties to analyze the proposal and submit written comments thereon. Subsequently, the April 8, 1986, Federal Register (51 FR 11932), announced that the comment period had been extended by 60 days to June 9, 1986, to ensure that all such parties were provided adequate time to submit written comments.

The notice of proposed rulemaking also solicited comments with respect to any other possible quality standard for domestic and imported filberts. The Department received a request filed on behalf of the Association of Food Industries, Inc. to extend the comment periods provided in the notice to allow more time for interested parties to analyze the proposal and submit written comments thereon. Subsequently, the April 8, 1986, Federal Register (51 FR 11932), announced that the comment period had been extended by 60 days to June 9, 1986, to ensure that all such parties were provided adequate time to submit written comments.

A total of 290 comments were received on the proposal. Two hundred sixty-nine comments supporting the proposed 1.0 percent tolerance for four defects were received from domestic filbert growers, the Association of Oregon Hazelnut Industries (AOHI) representing domestic growers, and several members of Congress.

The record shows that domestic filbert production is increasing. The U.S. produced a record 24,600 tons (9,840 kernelweight tons) in 1985 and crops of about 28,000 tons (11,600 kernelweight tons) are expected by 1990. Experience shows that there has been little, if any, growth in demand for U.S. inshell filberts. Thus, the domestic industry anticipates that the likely area for market growth to occur is primarily with shelled filberts. In 1985, shipments, of U.S. shelled filberts totaled 4,843 kernelweight tons, substantially exceeding the average shipment level for the previous four years of 2,144 tons.

The principle argument advanced in support of the proposed 1.0 percent tolerance is that such a reduced tolerance is necessary to enable the domestic filbert industry to develop new markets for the increasing supplies of domestically produced filberts. Commenters supporting the change asserted that the domestic markets for filberts will not grow to meet anticipated increases in supply unless domestic users can be assured that there are "reliable" sources of high quality filberts available.

Commenters in favor of reduced tolerances argue that, under the current 2.0 percent tolerance for the four defects, the necessary level of quality assurance is not present, and thus, U.S. users lack the confidence necessary to develop new products and otherwise develop new markets for filberts. The AOHI cites statements from four Oregon trade organizations involved in the marketing of filberts, which report that some domestic users will not increase their purchases unless they are assured of uniformly better quality. However, it is also true that domestic filbert handlers already voluntarily pack to a 1.0 percent standard for the four defects. Thus, the proposed reduced tolerance would have little or no effect on the quality of domestically packed filberts.

Proponents of the domestic pack, handlers have had limited success in expanding domestic markets because of the presence of lower quality imported filberts competing with domestically produced filberts. However, a survey of imports during the period August 1984 through July 1986, indicates that 94.2 percent of all lots offered for importation passed the current 2.0
percent requirements. In addition, 87.5 percent of the lots which passed the current requirements would have passed at the 1.5 percent tolerance level, and 67.3 percent of those lots would have passed at the 1.0 percent tolerance level. Further, a survey by handlers revealed that the majority of the imports that would not have passed the lower standards were imported by a small number of users, primarily for processing into bakery products. These imports contend that because of the higher oil content of imported filberts, that such filberts are superior to U.S. filberts for processing into bakery products. Thus, the record shows that while a significant percentage of imported filberts fall between the current and proposed 1.0 percent quality level, these nuts are not generally in competition with the domestic nuts for use in whole shelled products. Accordingly, the proponents failed to demonstrate that low quality imports are, in fact, retarding market growth.

The AOHI further maintains that the tightening of domestic and imported quality standards in 1982 increased U.S. consumption of filberts by 39 percent (50 percent for shelled filberts) for the period 1979-1984. The AOHI presentation, however, overstates the increase in U.S. consumption of filberts by comparing two years (1979 and 1984) of unseasonally low and high levels of filbert shipments, respectively. A more objective analysis shows that the estimated U.S. consumption of shell filberts has increased since the imposition of grade requirements for shelled filberts in 1978, although somewhat more modestly than asserted by the AOHI. The estimated consumption since 1978 (with the percentage increase over the previous four-year period) is as follows: 1978-81 (1.0 percent tolerance for mold, rancidity, or insect injury—no specific requirement for decay), 5,134 tons (a 12 percent increase); and, 1982-1985 (2.0 percent tolerance for mold, rancidity, decay or insect injury with not more than 1.0 percent for mold, rancidity, or insect injury) 6,434 tons (a 25 percent increase). However, the AOHI presentation does not fully examine other factors which are likely to have contributed to this growth, such as increased supplies of U.S. filberts as prices competitive with imported filberts of the same quality, and the recent increased domestic consumption of tree nuts generally. Furthermore, the AOHI does not take into account that the actual quality level of domestically packaged filberts is below the stated tolerance level already. Thus, proponents failed to establish that the proposed change is likely to achieve the goal of increasing U.S. markets for filberts.

Twenty-one comments were received from importers and users of Turkish filberts, consumer groups, the Embassies of Turkey and Italy, and the Association of Food Industries (AFI), in opposition to any reduction in the current 2.0 percent tolerance for four defects for domestic and imported filberts. These commenters, as articulated by the AFI, argue that any reduction in the minimum grade tolerance would be unnecessarily restrictive involve substantial costs to American consumers, and discriminate mainly against shelled filberts from the primary foreign supplier (Turkey), where filberts may sometimes have a higher incidence of decay than do U.S. filberts because of different cultural practices and longer transit times to U.S. markets. Moreover, the Turkish Embassy and others said that Turkish exporters would be less willing to ship filberts to the U.S. if more restrictive regulations were in effect, because the exporters bear the risk for transportation costs when shipments are rejected, and in fact suggested that there might be a total cessation of Turkish exports in the rejection rate for filberts not meeting the import standard were to exceed the current 5-10 percent level. The AFI and a number of U.S. users of Turkish filberts stated that domestic users of imported filberts (U.S. nut salters and confectionary manufacturers) favor Turkish filberts because of such filberts' higher oil content, and are satisfied with current quality levels. The AFI and others claimed that such users might be unwilling to accept the expected increased prices for imported filberts which could meet a more restrictive tolerance. They argue that prices would increase because of a smaller supply of imported filberts. In fact, no U.S. users of either domestic or imported filberts filed comments in favor of the proposal. The Department's review of the comments and the available data does not support a reduction of the four defect tolerances to 1.5 percent and, subsequently to 1.0 percent as was proposed, because there was insufficient evidence presented to show that U.S. consumption of filberts will continue to increase if quality tolerances are reduced further, especially in view of possible price increases to consumers. Moreover, the evidence was inconclusive that reduced tolerances are necessary to promote greater purchases of shelled filberts. Furthermore, consumers and commercial users could be adversely impacted by possible supply shortages and abnormal price increases, and the record indicates that such reduced tolerances would not be in the public interest.

Therefore, it is hereby found that the current grade requirements for domestic and imported shelled filberts, § 902.161 and 999.400, respectively, tend to effectuate the declared policy of the Act and shall remain in effect. The proposed amendments published in the Federal Register on March 10, 1986, (51 FR 8201) are hereby withdrawn.

List of Subjects
7 CFR Parts 982

7 CFR Part 982
Food grades and standards, Imports, Dates, Walnuts, Prunes, Raisins, Filberts.


Thomas R. Clark,
Acting Director, Fruit and Vegetable Division.

[FR Doc. 87-3660 Filed 2-19-87; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service
9 CFR Parts 160 and 161

[Docket No. 87-007]

Requirements and Standards for Accredited Veterinarians

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This document extends the comment period by 30 days, until March 25, 1987, for a proposed rule entitled "Requirements and Standards for Accredited Veterinarians." This action will provide interested persons with additional time to prepare comments on the proposed rule.

DATE: Written comments must be received on or before March 25, 1987.

ADDRESS: Send written comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86-048. Comments received may be inspected in Room 728 of the Federal
Accordingly, we are extending this comment period for 30 days, until March 25, 1987.

Docket
 |
| Description of the petition |
|---|---|
| 25162 Regional Airline Association | Description of the Petition: Petitioner proposes to add a new paragraph to § 43.3(h) which would permit foreign original equipment manufacturers to maintain equipment they manufacture. Petitioner proposes to amend §§ 135.435(a) and 135.443(b) to provide an exception to the certificated airman requirements for work performed by foreign original equipment manufacturers. Regulations Affected: 14 CFR 43.3(h), 135.435(a), and 135.443(b). |
| 25154 Air Transport Association of America | Description of Petition: To delete the requirement for burn ointment in first-aid kits. Regulations Affected: 14 CFR Part 121, Appendix A. Petitioner’s Reason for Rule: The petitioner states, on behalf of its member airlines and other Part 121 air carriers, that the use of burn ointment is obsolete for emergency treatment of minor burns. Petitioner states the preferred treatment is simply the application of ice or cold water. Petitioner further states that most, if not all, burn ointments have expiration dates which create unnecessary record-keeping, inspections, and replacement. |

### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

**14 CFR Ch. I**

**[Summary Notice No. PR-87-2]**

**Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

**SUMMARY:** Pursuant to FAA’s rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public’s awareness of this aspect of FAA’s regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and be received on or before April 20, 1987.

**ADDRESSES:** Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 150 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 287-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).


John H. Cassidy,
Assistant Chief Counsel, Regulations and Enforcement Division.

### PETITIONS FOR RULEMAKING

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**Petitions for Rulemaking: Withdrawn or Denied**

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<tr>
<td>24867</td>
<td>Mr. Stephen B. Jordan</td>
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Description of Petition: To establish Flight Level intervals between FL290 and FL420 as follows: Westbound FL290, FL300, FL320, FL360, FL390, FL420; Eastbound FL290, 315, 345, 375, 405. Regulations Affected: 14 CFR 91.121. Denied: December 19, 1986.

[FR Doc. 87-3565 Filed 2-19-87; 8:45 am]

**BILLING CODE 4910-13-M**
DEPARTMENT OF LABOR

Employment and Training Administration

29 CFR Part 90

Certification of Eligibility To Apply for Worker Adjustment Assistance

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes to revise the regulations on certifications of eligibility to apply for worker adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974 (Pub. L. 93-618), as amended. The action: proposed rule is intended to reduce the proposed regulations must be received DATE: by the Department of Labor on or before March 23, 1987.

ADDRESS: Send comments on this proposed rule to the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

All comments received will be available for public inspection during normal business hours in Room 6434, at the above address.

FOR FURTHER INFORMATION CONTACT: Glenn M. Zech, Deputy Director, Office of Trade Adjustment Assistance, Employment and Training Administration, 601 D Street, NW., Washington, DC 20213; telephone (202) 376-2046 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The trade adjustment assistance (TAA) for workers program provides trade readjustment allowance (TRA) payments and reemployment services including training, job search allowances, and relocation allowances to workers whose separation from employment is linked to import competition. To qualify for TAA, workers must file a petition with the Department of Labor. A factfinding investigation is conducted to substantiate whether increased imports of articles like or directly competitive with those produced by the workers' firm have contributed importantly to decreased company sales and/or production and to workers' separations. Regulations at 29 CFR Part 90 establish the procedures and processes for filing petitions, conducting factfinding investigations, issuing determinations on petitions, requesting administrative reconsideration or judicial review of negative determinations, and other pertinent information.

The changes proposed in this document are:

1. The last sentence of § 90.1 has been deleted since the delegation of authority cited has been superseded. A reference to the appropriate delegation of authority is not necessary because the delegation of authority is noted in the proposed amended authority citation.

2. The definition of “Act,” § 90.2 is changed by adding “as amended” before the period in the definition and by amending the U.S.C. citation to read 19 U.S.C. 2271-2273, 2395. Using “as amended” is appropriate since the Trade Act of 1974 has been amended several times since 1974. The U.S.C. citation is amended because section 284 of the Act, 19 U.S.C. 2395, has been enacted regarding judicial review.

3. The definition of “Certifying officer,” § 90.2, is changed to include the Director, Office of Trade Adjustment Assistance, to eliminate responsibilities of certifying officers to conduct public hearings under section 221(b) of the Act and to issue subpoenas, and to change the organizational location of certifying officers from the Bureau of International Labor Affairs in the Employment and Training Administration.

4. A definition for “Deputy Director,” § 90.2 is added since this officer is assigned new responsibilities for conducting public hearings under section 221(b) of the Act and for issuing subpoenas.

5. The definition of “Director,” § 90.2 is changed to reflect the change in organizational location of the Director from the Bureau of International Labor Affairs to the Employment and Training Administration, and to eliminate responsibility for certifying officers whether or not to issue certifications of eligibility because the Director will be a certifying officer.

6. The definition of “Increased imports,” § 90.2, is changed by deleting reference to trade agreement concessions proclaimed by the President beginning in 1968 and by identifying in general terms a representative base period for determining whether imports increased consistent with the Department's practice that has been upheld by the courts.

7. Because of organizational changes by the Department, references to the Bureau of International Labor Affairs in the following additional sections are changed to the Employment and Training Administration: § 90.2 Date of filing: § 90.11(c) Contents: § 90.18(a)

Determinations subject to reconsideration; time for filing; and § 90.31(a) Where to file, date of filing.

8. Section 90.12, Investigation, is changed by adding verification of petition as a condition for initiating an investigation and by deleting the sentence concerning the investigation report and recommendation since it reflects internal operating procedures and its deletion will provide additional administrative flexibility.

9. Responsibility for conducting and presiding over public hearings is changed from the certifying officer to the Director and Deputy Director, Office of Trade Adjustment Assistance, in § 90.13(a)(2) and (d). Because these two officials are involved in the day-to-day operation and management of the adjustment assistance certification program, they can more quickly respond to requests for and schedule public hearings.

10. Responsibility for issuing subpoenas requiring the attendance and testimony of witnesses and the production of evidence is changed from the Secretary or certifying officer to the Director and Deputy Director, Office of Trade Adjustment Assistance, in § 90.16(a). (2) and (d). Paragraph (a) is revised by deleting the words “Not later than 15 days after receipt of the recommendations forwarded pursuant to § 90.15,” since it concerns internal operating procedures and its deletion will provide greater administrative efficiency and flexibility.

11. Section 90.15, Recommendation, is deleted since it reflects internal operating procedures and its deletion will provide greater administrative efficiency and flexibility.

12. Section 90.16(a), General, is revised by deleting the words “Not later than 15 days after receipt of the recommendations forwarded pursuant to § 90.15,” since it concerns internal operating procedures and its deletion will provide greater administrative efficiency and flexibility.

Paragraph (a) also is revised to incorporate the statutory 60-day time
Classification—Executive Order 12291

The proposed rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Department believes that this proposed rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 6 U.S.C. 605(b), as provided in the Regulatory Flexibility Act. This rule will affect only the procedures of the Labor Department in processing petitions for trade adjustment assistance for workers. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance as No. 17.245, "Trade Adjustment Assistance—Workers."

List of Subjects in 29 CFR Part 90

Administrative practice and procedure, Employment, Foreign trade, Labor, Trade adjustment assistance, Unemployment.

Words of Issuance

For the reasons set out in the preamble, Part 90 of Title 29 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 90 is revised to read as follows:

Authority: 19 U.S.C. 2270; Secretary's Order No. 3-81, 46 FR 31117.

2. Section 90.1 is revised to read as follows:

§ 90.1 Purpose.

The purpose of this Part 90 is to set forth regulations relating to the responsibilities vested in the Secretary of Labor by the Trade Act of 1974, (Pub. L. 93-618) concerning petitions and determinations of eligibility to apply for worker adjustment assistance. Section 246 of the Act directs the Secretary of Labor to prescribe regulations which will implement the provisions relating to adjustment assistance for workers. This part will provide for the prompt and effective disposition of workers’ petitions for certification of eligibility to apply for adjustment assistance.

3. Section 90.2 is amended by revising the definitions for "Act," "Certifying officer," "Date of filing," "Director," and "Increased imports" and by adding the definition for "Deputy Director" to read as follows:

§ 90.2 Definitions.


"Certifying officer" means an official, including the Director, Office of Trade Adjustment Assistance, in the Employment and Training Administration, United States Department of Labor, who has been delegated responsibility to make determinations and issue certifications of eligibility to apply for adjustment assistance, and to perform such further duties as may be required by the Secretary or by this Part 90.

"Date of filing" means the date on which petitions and other documents are received by the Office of Trade Adjustment Assistance, Employment and Training Administration, United States Department of Labor, Washington, D.C. 20213.

"Deputy Director" means the Deputy Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, United States Department of Labor, Washington, DC.

"Director" means the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, United States Department of Labor, Washington, DC.

4. The first two sentences of paragraph (c) of § 90.11 are revised to read as follows:
§ 90.11 Petitions.
(c) Contents. Petitions may be filed on a U.S. Department of Labor form. Copies of the form may be obtained at a local office of a State Employment Security Agency or by writing to the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213. * * *

8. Section 90.12 is revised to read as follows:

§ 90.12 Investigation.
Upon receipt of a petition, properly filed and verified, the Director of the Office of Trade Adjustment Assistance shall promptly publish notice in the Federal Register that the petition has been received. The Director shall initiate, or order to be initiated, such investigation as he determines to be necessary and appropriate. The investigation may include one or more field visits to confirm information furnished by the petitioner(s) and to elicit other relevant information. In the course of any investigation, representatives of the Department shall be authorized to contact and meet with responsible officials of firms, union officials, employees, and any other persons, or organizations, both private and public, as may be necessary to marshal all relevant facts to make a determination on the petition.

6. The first sentence of paragraph (a)(2) and paragraph (d) of § 90.13 are revised to read as follows:

§ 90.13 Public hearings.
(a) * * *
(2) Any other person found by the Director or Deputy Director to have a substantial interest in the proceedings. * * *

(d) Presiding officer. The Director or Deputy Director shall conduct and preside over public hearings. * * *

7. Paragraphs (a), (b) and (d) of § 90.14 are revised to read as follows:

§ 90.14 Subpens power.
(a) The Director or Deputy Director may require, by subpoena, in connection with any investigation or hearing, the attendance and testimony of witnesses and the production of evidence the issuing official in his or her discretion deems necessary to make a determination.

(b) If a person refuses to obey a subpoena issued under paragraph (a) of this section, the Director or Deputy Director may petition the United States District Court within the jurisdiction of which the proceeding is being conducted requesting an order requiring compliance with such subpoena.

(d) Subpoenas issued under paragraph (a) of this section shall be signed by the Director or Deputy Director and shall be served either in person by an authorized representative of the Department of Labor or by certified mail, return receipt requested. The date for compliance shall be not earlier than seven (7) calendar days following service of the subpoena.

§ 90.15 (Removed)
8. Section 90.15 is removed and reserved.

9. § 90.16 paragraph (a) and the introductory, text of paragraph (b) are revised to read as follows:

§ 90.16 Determinations and certifications of eligibility to apply for adjustment assistance.
(a) General. Within 60 days after the date of filing of a petition, a certifying officer shall make a determination on the petition. If, however, for any reason, a certifying officer has not made a determination in 60 days after the date of filing of the petition, the certifying officer shall make the determination as soon thereafter as possible. If the determination is affirmative, the certifying officer shall issue a certification of eligibility as provided in paragraphs (b), (c), (d) and (g) of this section. If the determination is negative, the certifying officer shall issue a notice of negative determination as provided in paragraphs (b) and (f) of this section.

(b) After reviewing the relevant information necessary to make a determination, the certifying officer shall make findings of fact concerning whether:

10. Section 90.17 is amended by removing and reserving paragraph (c) of such section, and by revising the first sentence of paragraph (d) of such section as follows:

§ 90.17 Termination of certification of eligibility.

(d) Notice of termination. A certifying officer shall determine whether or not such certification shall be terminated.

§ 90.18 Reconsideration of determinations.
(a) Determinations subject to reconsideration; time for filing. Any worker, group of workers, certified or recognized union, or authorized representative of such worker or group, aggrieved by a determination issued pursuant to the Act and § 90.16(e), 90.16(f), 90.16(g), or 90.17(d) may file an application for reconsideration of the determination with the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213. All applications must be in writing and must be filed no later than thirty (30) days after the notice of the determination has been published in the Federal Register.

(b) Notice of negative determination regarding application for reconsideration. Upon reaching a determination that an application for reconsideration does not meet the requirements of paragraph (c) of this section, the certifying officer shall issue a negative determination regarding the application and shall promptly publish such a negative determination in the Federal Register a summary of the determination, including the reasons therefor. Such summary shall constitute a Notice of Negative Determination Regarding Application for reconsideration. A determination issued pursuant to this paragraph shall constitute a final determination for purposes of judicial review pursuant to section 284 of the Act, 19 U.S.C. 2395, and 90.19(a).

(h) Notice of revised certification of eligibility and notice of revised determination. Upon reaching a determination on reconsideration that a group of workers has met all the requirements set forth in section 222 of the Act and paragraph (b) of § 90.16, the certifying officer shall issue a revised determination concerning certification of eligibility to apply for adjustment assistance and shall promptly publish in the Federal Register a summary of the revised determination together with the reasons for making such a revised determination (with the exception of information which the certifying officer determines to be confidential). Such summary shall include a certification of eligibility in accordance with paragraph
decreased. The summary shall constitute a Notice of Revised Certification of Eligibility when the determination under reconsideration was a negative determination or a certification containing a negative determination. A determination issued pursuant to this paragraph shall constitute a final determination for purposes of judicial review pursuant to section 284 of the Act, 19 U.S.C. 2395, and § 90.19(a).

(i) Notice of negative determination on reconsideration. Upon reaching a determination on reconsideration that a group of workers has not met all the requirements set forth in section 222 of the Act and paragraph (b) of the §90.16, the certifying officer shall issue a negative determination on reconsideration and shall promptly publish in the Federal Register a summary of the determination together with the reasons for making such determination (with the exception of information which the certifying officer determines to be confidential). Such summary shall constitute a Notice of Negative Determination on Reconsideration. A determination issued pursuant to this paragraph shall constitute a final determination for purposes of judicial review pursuant to section 284 of the Act, 19 U.S.C. 2395, and § 90.19(a).

12. Section 90.19 is revised to read as follows:

§ 90.19 Judicial review of determinations.
(a) General. Pursuant to section 284 of the Act, 19 U.S.C. 2395, any worker, group of workers, certified or recognized union, or authorized representative of such worker or group, aggrieved by a final determination issued pursuant to the Act and §§ 90.16(c), 90.16(f), 90.16(g), 90.17(d), 90.18(e), 90.18(h) or 90.18(i) may commence a civil action for review of such determination with the United States Court of International Trade within sixty (60) days after the notice of determination has been published in the Federal Register.

(b) Certified record of the Secretary. Upon receiving a copy of the summons and complaint from the clerk of the Court of International Trade, the certifying officer shall promptly certify and file in such court the record on which the determination was based. The record shall include transcripts of any public hearings, the findings of fact made pursuant to § 90.16(b), 90.18(e), 90.18(h) or 90.18(i), and other documents on which the determination was based.

(c) Further proceedings. If a case is remanded to the Secretary by the Court of International Trade for the taking of further evidence, the Director or Deputy Director shall direct that further proceedings by conducted in accordance with the provisions of Subpart B of this part, including the taking of further evidence. A certifying officer, after the conduct of such further proceedings, may make new or modified findings of fact and may modify or affirm the previous determination. Upon the completion of such further proceedings, the certifying officer shall certify and file in the Court of International Trade the record of such further proceedings.

(d) Substantial evidence. The findings of fact by the certifying officer shall be conclusive if the Court of International Trade determines that such findings of fact are supported by substantial evidence.

13. Paragraph (a) of §90.31 is revised to read as follows:

§ 90.31 Filing of documents.
(a) Where to file, date of filing. Petitions and all other documents shall be filed at the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW, Washington, DC 20213. If properly filed, such documents shall be deemed filed on the date on which they are actually received in the Office of Trade Adjustment Assistance.

14. Paragraph (a) of §90.32 is revised to read as follows:

§ 90.32 Availability of information.
(a) Information available to the public. Upon request to the Director of the Office of Trade Adjustment Assistance, members of the public may inspect petitions and other documents filed with Director under the provisions of this Part 90, transcripts of testimony taken and exhibits submitted at public hearings held under the provisions of this Part 90, public notices concerning worker assistance under the Act and other reports and documents issued for general distribution.

* * * * *

Roger D. Semerad,
Assistant Secretary of Labor.

DEPARTMENT OF DEFENSE
Office of the Secretary
32 CFR Part 199
[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Birthing Centers

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule defines "birthing center," establishes birthing centers as a category of institutional health care provider and prescribes the criteria for assessing a birthing center's application for authorized status. This action is necessary to expand CHAMPUS beneficiary options for safe maternity care through recognition of the changes in the way services for a normal pregnancy and childbirth are currently delivered and priced in the civilian community.

DATES: Written comments must be received on or before March 23, 1987.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Policy Branch, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Joseph W. Baker, Policy Branch, OCHAMPUS, telephone (303) 861-4091.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the Federal Register on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8-R was reissued in the Federal Register on July 1, 1986 (51 FR 24008).

The emergence of birthing centers and outpatient hospital birthing rooms as providers of low-risk maternity care reflects the trend of increased availability of traditional inpatient hospital services as ambulatory care. Currently, hospitals are the only class of institutional provider eligible for reimbursement for maternity care of CHAMPUS beneficiaries. Since the last OCHAMPUS review of the birthing center approach to maternity care, there has been considerable development of quality assurance standards and oversight capability. At least 28 states specifically regulate birthing centers and accreditation is available through the Commission for the Accreditation of Freestanding Birth Centers as well as through the Accreditation Association...
for Ambulatory Health Care. The medical literature does not establish any extraordinary risk associated with a healthy mother giving birth out-of-hospital when assisted by either a physician or certified nurse-midwife.

Currently, the cost of certain childbirth services, including related maternity care, may be shared between the CHAMPUS and the beneficiary when provided by a hospital, physician, or certified nurse-midwife. Hospital-based birthing room services will continue to be reimbursed as other hospital services. The status of physicians and certified nurse-midwives as CHAMPUS individual professional providers is not affected by this proposed rule.

Each CHAMPUS beneficiary has a specific financial responsibility, established by statute (10 U.S.C. 1079(b) and 1066), for a portion of the cost of health care services and supplies received from civilian sources. Accordingly, this proposed rule preserves the active duty dependent’s limited cost-share responsibility for maternity care (generally $25) and has no effect upon the current maternity care cost responsibility for other categories of beneficiaries (25 percent of the birthing center all-inclusive rate).

Active duty dependents are the predominate users of the CHAMPUS maternity care benefit. Inasmuch as childbirth services (and associated maternity care) are widely classified as surgical procedures, birthing center services and outpatient hospital-based birthing room services (because they are similar to the childbirth services portion of the birthing center program) will be classified, through administrative action currently authorized by § 199.6(b)(4)(iv), as ambulatory surgery for purposes of beneficiary cost-share determination.

This proposed rule will enhance the scope of the CHAMPUS maternity care benefit, yet the CHAMPUS cost for all-inclusive maternity care provided by a birthing center is expected to average 35 percent less than current CHAMPUS costs for conventional two-provider (individual professional and hospital) normal maternity care. Specific advantages to the CHAMPUS beneficiary include the availability of another type of provider of maternity care and natural childbirth services at a low beneficiary cost comparable to inpatient childbirth services and an outpatient alternative to conventional inpatient childbirth services which require a Nonavailability Statement (NAS). (A NAS, issued by a Uniformed Services Medical Treatment Facility (USMTF) if the facility is unable to provide required inpatient medical services, is a prerequisite for CHAMPUS consideration of a claim for non-emergency inpatient care from any beneficiary who resides within a USMTF catchment area. The DoD requires that CHAMPUS beneficiaries living within a USMTF catchment area first seek non-emergency inpatient care from the USMTF before seeking care in the civilian community. Non-emergency inpatient hospital services received in conjunction with birthing center or hospital-based outpatient birthing room services will require a NAS before CHAMPUS can consider the claim for services).

OCHAMPUS recognizes that quality of care relies upon the professional skill and personal integrity of individual care givers, upon local regulation of health care services delivery, and upon the activities of independent professional accreditation bodies. OCHAMPUS will reinforce existing professional and local governmental oversight by requiring licensure and accreditation, provider agreements, utilization review, and by establishing certain basic operational standards. Written agreements will also be required to ensure qualified physician oversight and immediate transfer for emergency care to an acute care hospital.

Reimbursement for services furnished by an authorized birthing center will be limited to the lower of the CHAMPUS established all-inclusive rate or the center’s most favored all-inclusive rate to any other individual or third party payer. The CHAMPUS birthing center all-inclusive rate is the sum of the CHAMPUS allowable professional charge for all-inclusive obstetrical care plus the average CHAMPUS allowable charge for supplies, laboratory, and delivery room associated with a normal inpatient delivery. The rate will be established annually for each state; reimbursement for an incomplete course of care will be prorated.

We have determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a “major rule” under Executive Order 12291.

Accordingly, we certify that this proposed rule, if promulgated as a final rule, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This proposed rule is being published in the Federal Register at the same time that it is being coordinated within the Department of Defense, and with other interested agencies, to expedite the receipt of comments.

List of Subjects in CFR Part 199

Claims, Handicapped, Health insurance, Military Personnel.

Accordingly, it is proposed to amend 32 CFR, Part 199 to read as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

1. The authority citation for Part 199 continues to read as follows:


2. Section 199.2(b) is amended by revising the definitions of “admission” and “certified nurse-midwife” and by adding definitions for “birthing center,” “birthing room,” “freestanding,” “high-risk pregnancy,” “institution-affiliated,” “institution-based,” “low-risk pregnancy,” “most-favored rate,” and “natural childbirth” in alphabetical order as follows:

§ 199.2 Definitions.

* * * * *

(b) Specific definitions.

Admission. The formal acceptance by an OCHAMPUS authorized institutional provider of a CHAMPUS beneficiary for the purpose of diagnosis and treatment of illness, injury, pregnancy, or mental disorder.

Birthing center. A health care provider which meets the requirements established by § 199.6(b)(4)(iv) of this Part.

Birthing room. A room and environment designed and equipped to provide care, to accommodate support persons, and within which a woman with a low-risk, normal, full-term pregnancy can labor, deliver and recover with her infant.

Certified nurse-midwife. An individual who meets the requirements established by § 199.6(c)(3)(D) of this Part.

Freestanding. Not “institution-affiliated” or “institution-based.”

High-risk pregnancy. A pregnancy is high-risk when the presence of a currently active or previously treated medical, anatomical, physiological illness or condition may create or increase the likelihood of a detrimental effect on the mother, fetus, or newborn and presents a reasonable possibility of the development of complications during labor or delivery.

Institution-affiliated. Related to an OCHAMPUS authorized institutional provider through a shared governing
body but operating under a separate and distinct license or accreditation.

**Institution-based.** Related to an OCHAMPUS authorized institutional provider through a shared governing body and operating under a common license and shared accreditation.

**Low risk pregnancy.** A pregnancy is low-risk when the basis for the ongoing clinical expectation of a normal uncomplicated birth, as defined by reasonable and generally accepted criteria of maternal and fetal health, is documented throughout a generally accepted course of prenatal care.

**Most-favored rate.** The lowest usual charge to any individual or third-party payer in effect on the date of the admission of a CHAMPUS beneficiary.

**Natural childbirth.** Childbirth without the use of chemical induction or augmentation of labor or surgical procedures other than episiotomy or perineal repair.

3. Section 199.4 is amended by revising paragraph (b)(1), removing paragraphs (c)(3)(xi) and (c)(3)(xii), redesignating paragraphs (c)(3)(xiii) and (c)(3)(xiv) as (c)(3)(xi) and (c)(3)(xii) and adding paragraph (e)(16) to read as follows:

**§ 199.4 Basic program benefits.**

(b) **Institutional benefits.** (1) General. Services and supplies provided by an institutional provider authorized as set forth in § 199.6 of this Part may be cost-shared only when such services or supplies:

(i) Are otherwise authorized by this Part;

(ii) Are medically necessary;

(iii) Are ordered, directed, prescribed, or delivered by an OCHAMPUS authorized individual professional provider as set forth in § 199.6 of this Part or by an employee of the authorized institutional provider who is otherwise eligible to be a CHAMPUS authorized individual professional provider;

(iv) Are delivered in accordance with generally accepted norms for clinical practice in the United States;

(v) Meet established quality standards and

(vi) Comply with applicable definitions, conditions, limitations, exceptions, or exclusions as otherwise set forth in this part.

(e) **Maternity care.**

(i) The CHAMPUS basic program may share the cost of medically necessary services and supplies associated with maternity care which are not otherwise excluded by this Part. However, failure by a beneficiary to secure a required Nonavailability Statement (DD Form 1251) as set forth in paragraph (a)(9) of this section will waive that beneficiary's right to CHAMPUS cost-share of certain maternity care services and supplies.

(ii) Notwithstanding any other provisions of this Part all otherwise covered services and supplies related to maternity care shall be cost-shared on the basis of the beneficiary's express intention to deliver in a hospital inpatient childbirth unit or a hospital outpatient childbirth unit or a birthing center or at home.

(iii) A valid Nonavailability Statement (NAS) applies to all related maternity care received from a civilian source while the beneficiary resided within the military catchment area responsible for issuance of the Nonavailability Statement.

(iv) Otherwise covered medical services and supplies directly related to "Complications of pregnancy," as defined in § 199.2, will be cost-shared on the same basis as the related maternity care for a period not to exceed 42 days following termination of the pregnancy and thereafter cost-shared on the basis of the inpatient or outpatient status of the beneficiary when medically necessary services and supplies are received.

4. Section 199.6 is amended by adding new paragraph (b)(4)(xi), redesignating the existing paragraphs (e)(4) and (e)(6) as (e)(5) and (e)(6), and adding new paragraph (e)(4) to read as follows:

**§ 199.6 Authorized providers.**

(b) **.*.*.*.*.**

(4) **.*.*.*.*.**

(xi) **Birth center.** A birthing center is a freestanding or institution-affiliated outpatient maternity care program which principally provides a planned course of outpatient prenatal care and outpatient childbirth service limited to low-risk pregnancies; excludes care for high-risk pregnancies; limits childbirth to the use of natural childbirth procedures; and provides immediate newborn care.

(A) **Certification requirements.** A birthing center which meets the following criteria may be designated as an authorized CHAMPUS institutional provider:

(1) The predominant type of service and level of care rendered by the center is otherwise authorized by this Part.

(2) The center is licensed to operate as an institutional ambulatory health care provider and meets all licensing or certification requirements that are extant in the state, county, municipality, or other political jurisdiction in which the center is located.

(3) The center is accredited by a nationally recognized accreditation organization whose standards and procedures have been determined to be acceptable by the Director, OCHAMPUS.

(4) The center complies with the OCHAMPUS birthing center standards provision of this Part.

(5) The center has entered into a participation agreement with OCHAMPUS in which the center agrees, in part, to:

(i) Accept payment for maternity services based upon the reimbursement methodology for birthing centers;

(ii) Collect from the CHAMPUS beneficiary only those amounts that represent the beneficiary's liability and amounts for services and supplies that are not a benefit of the CHAMPUS;

(iii) Make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts which represent the beneficiary's liability;

(iv) Permit access by the Director, OCHAMPUS, or a designee, to the clinical record of any CHAMPUS beneficiary, to the financial and organizational records of the center, and to reports of evaluations and inspections conducted by state or private agencies or organizations;

(v) Submit claims first to all health benefit and insurance plans primary to the CHAMPUS to which the beneficiary is entitled and to comply with the double coverage provisions of this Part;

(vi) Notify OCHAMPUS in writing within seven days of the emergency transport of any CHAMPUS beneficiary from the center to an acute care hospital or of the death of any CHAMPUS beneficiary in the center.

(6) A birthing center shall not be a CHAMPUS-authorized institutional provider and CHAMPUS benefits shall not be paid for any service provided by a birthing center before the date the participation agreement is signed by the Director, OCHAMPUS, or a designee.

(B) **CHAMPUS birthing center standards.**

(1) **Environment:** The center has a safe and sanitary environment, properly constructed, equipped, and maintained to protect health and safety and meets the applicable provisions of the "Life Safety Code" of the National Fire Protection Association.

(2) **Policies and procedures:** The center has written policies and procedures which are consistent with the recommendations and guidelines for ambulatory care programs in the most recent edition of "Standards for Obstetric-Gynecologic Services," (or a successor publication) published by the
American College of Obstetricians and Gynecologists, or in the most recent edition of the “Standards for Nurse-midwifery Practice” (or a successor publication) published by the American College of Nurse-midwives.

(4) Beneficiary care: Each woman admitted to the center will be cared for by or under the direct supervision of a specific licensed physician or a specific certified nurse-midwife who is otherwise eligible as a CHAMPUS individual professional provider.

(5) Admission and emergency care criteria and procedures. The center has written clinical criteria and administrative procedures, which are reviewed and approved annually by a physician related to the center as required by paragraph [B-4](xii)[B-4] of this section for the exclusion of a woman with a high-risk pregnancy from receipt of care and for management of maternal and neonatal emergencies.

(6) Back-up hospital: The center has a written memorandum of understanding (MOU) with at least one acute-care hospital which documents that the hospital will accept and treat any woman or newborn transferred from the center who is in need of emergency obstetrical, or neonatal medical care.

(7) Emergency medical transportation. The center has a written memorandum of understanding (MOU) with at least one ambulance service which documents that the ambulance service is routinely staffed by qualified personnel who are capable of the management of critical maternal and neonatal patients during transport and which specifies the estimated transport time to each backup acute-care hospital with which the center has a transfer agreement. The MOU must be renewed annually.

(8) Professional staff: The center’s professional staff is legally and professionally qualified for the performance of their professional responsibilities.

(9) Medical records: The center maintains full and complete written documentation of the services rendered to each woman admitted and each newborn delivered.

(10) Quality assurance: The center has an organized program for quality assurance which includes, but is not limited to, written procedures for regularly scheduled evaluation of each type of service provided, of each mother or newborn transferred to a hospital, and of each death within the facility.

(11) Governance and administration: The center has a governing body legally responsible for overall operation and maintenance of the center and a full-time employee who has authority and responsibility for the day-to-day operation of the center.

(4) Reimbursement of birthing centers.

(i) Reimbursement for maternity care and childbirth services furnished by an authorized birthing center shall be limited to the lower of the CHAMPUS established all-inclusive rate or the center’s most-favored rate.

(ii) The all-inclusive rate shall include the following to the extent that they are usually associated with a normal pregnancy and childbirth: laboratory studies, prenatal management, labor management, delivery, post-partum management, newborn laboratory studies, newborn care, birth assistant, certified nurse-midwife professional services, physician professional services, and the use of the facility.

(iii) The CHAMPUS established all-inclusive rate will be calculated annually from the sum of the CHAMPUS allowable professional charge for total obstetrical care for a normal pregnancy and delivery and an amount equal to the sum of the statewide average CHAMPUS allowable institutional charge for supplies, laboratory, and delivery room for a normal hospital delivery for each state.

(iv) Otherwise authorized services designated in guidelines issued by the Director, OCHAMPUS, or a designee, shall be reimbursed at the lesser of the billed charge or the CHAMPUS allowable charge.

(v) Reimbursement for an incomplete course of care will be prorated based upon the all-inclusive rate in effect at the time of admission.
SUPPLEMENTARY INFORMATION: Under Section 107 of the Act, USEPA has designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for particulate matter (total suspended particulates—(TSP)), sulfur dioxide (SO₂), carbon monoxide (CO), ozone, and nitrogen dioxide (NO₂). See 40 FR 8832 (March 5, 1975), and 40 CFR Part 81. For these areas, Part D of the Act requires that the State revise its SIP to provide for attaining the primary NAAQS by December 31, 1982 (in certain cases, by December 31, 1987, for ozone and/or CO). These SIP revisions must also provide for attaining the secondary NAAQS as soon as practicable. The requirements for an approvable SIP are described in a “General Preamble” for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67122 (November 23, 1979).

Background

On September 3, 1981 (46 FR 44172), USEPA disapproved Illinois Rule 203(d)(5)(B)(ii) for coke oven charging and Rule 203(d)(5)(B)(iii) of coke oven pushing. The charging rule was disapproved because the procedure for determining compliance was vague and because the State did not demonstrate that its charging limit of 170 seconds of visible emissions for five charges was reasonably available control technology (RACT). The pushing rule was disapproved because of the following deficiencies:

(1) The regulation is ambiguous about whether the 0.03 or 0.06 gr/dscf limitation applies to traveling hood stationary gas cleaning control systems;
(2) The term “stationary hood system” applies to coke side sheds and an emission limitation of 0.03 gr/dscf is excessively lenient because of unique shed dilution effects;
(3) The regulation lacks testing definitions; and
(4) The 90 percent design efficiency provision is not a quantifiable emission limitation and the rule lacks opacity standards for pushing.

The Illinois Environmental Protection Agency (IEPA) agreed to correct the first, third, and fourth deficiencies in source operating permits and to submit these permits to USEPA. (The second deficiency became moot because there are no coke side sheds in Illinois.) On November 24, 1982 (47 FR 53057), USEPA proposed to approve Rule 203(d)(5)(B)(iii) with the understanding that the State was to ensure the application of RACT by including test methods and pushing opacity limits in source operating permits. The State was also to apply the 0.03 gr/dscf emission limit to traveling hood stationary gas cleaning control systems and submit the revised operation permits to USEPA.

On August 9, 1983, the State provided USEPA operating permits for coke batteries at Interlake, Incorporated, and Granite City Steel. These permits did not contain the provisions that the State had agreed to include in them.

USEPA proposed to disapprove Rule 203(d)(5)(B)(iii) on March 27, 1985 (50 FR 12943), because the State had not implemented the terms of the agreement reached with USEPA which have provided RACT-level controls. USEPA disapproved Illinois Rule 203(d)(5)(B)(iii) on January 16, 1989 (51 FR 2399).

IEPA developed amended Rules 212.443(b) for charging and 212.443(c) for pushing to correct deficiencies in Illinois’ TSP SIP. Amended Rules 212.443(b) and (c) were submitted to Illinois Pollution Control Board (Board) by IEPA. Citizens for a Better Environment (CBE), and affected steel companies as a joint proposal on January 3, 1986.¹

The Board finally adopted these coke oven pushing and charging rules in a September 25, 1986, Final Order for docket R85-33. This Final Order was submitted to USEPA as a proposed revision to the Illinois SIP on October 30, 1986.

It should be noted that Illinois has recodified its environmental regulations. These regulations are now part of Title 35 of the Illinois Administrative Code (35 IAC), more specifically subtitle B: Air Pollution, Chapter 1: Pollution Control Board. The revised designation of these rules reflects the new recodification system. See the Recodification discussion below.

Recodification and Description of Revisions

USEPA’s detailed evaluation of this proposed SIP revision is contained in a March 17, 1988, technical support document and a December 5, 1989, addendum to that document. Both of these documents are available for inspection at the Region V Office listed above.

The charging rule 212.443(b) provides for a visual emission limit of 125 seconds over 20 charges with an exemption of 1 in 20 charges. The pushing rule 212.443(c) provides for a visual emission limit of 20 percent opacity averaged over four consecutive pushes considering the highest average of six consecutive readings in each pushing operation. The rule also imposes both a visual emission limit and mass emission limitation on control equipment devices. The visual emission limit requires a 20 percent opacity limit averaged over 6 minutes. The mass emission limit sets a limit of 0.040 pounds of TSP per ton of coke pushed. USEPA believes that Rules 212.443(b) and (c) represent RACT and that they will correct the present deficiencies related to coke oven pushing and charging in the Illinois TSP SIP because they are enforceable.

In addition to providing revised coke oven pushing and charging regulations, this September 25, 1986, Final Order recodifies the remaining coke oven rules. The following table summarizes this recodification.

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<thead>
<tr>
<th>Old number</th>
<th>Recodified number</th>
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<tr>
<td>203(d)(5)(B)(ii)</td>
<td>212.443(b)</td>
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<tr>
<td>203(d)(5)(B)(iii)</td>
<td>212.443(c)</td>
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<td>203(d)(5)(B)(iv)</td>
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<td>203(d)(5)(B)(v)</td>
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<td>203(d)(5)(B)(vi)</td>
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<td>203(d)(5)(B)(vii)</td>
<td>212.443(g)</td>
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¹ This joint proposal is an outgrowth of a suit filed by CBE in the U.S. District Court for the Northern District of Illinois. CBE v. EPAT (No. 80-C-905 N.D. Ill.).

USEPA Analysis of the Recodification

Rule 203(d)(5)(B)(i) provides that Rule 202 (the general visible emission limitation) shall not apply to by-product coke plants and was approved on September 3, 1981 (46 FR 44172).

Rule 212.444(a) provides that Subpart B of Part 212 (recodified general visual emission limitation) shall not apply to by-product coke plants. Rule 212.443(e) is approvable but Subpart B (of Part 212) is not part of the Illinois SIP. This rule was vacated and remanded by the Illinois Appellate Court on September 22, 1978 and is therefore no longer enforceable as part of the Illinois SIP (see Commonwealth Edison v. Pollution Control Board 25 Ill. App. 3d 571, 323 NE 2d 84).

Rules 203(d)(5)(B)(iv) and 203(d)(5)(B)(vii) were approved by USEPA on September 3, 1981. The recodifications of these rules, 212.443(d)(2) and 212.443(g) are approvable.

Rule 203(d)(5)(B)(ix) was approved by USEPA on October 4, 1983 (48 FR 45245), and the recodification of this rule is approvable.

Rules 203(d)(5)(B)(v)(aa), 203(d)(5)(B)(v), 203(d)(5)(B)(v), and
203(d)(5)(B)(viii) were conditionally approved by USEPA on September 3, 1981 (46 FR 44172). The conditions have not been satisfied. The recodifications of these rules may be incorporated into the SIP as conditionally approved rules.

Proposed Rulemaking Action

USEPA proposes to approve the incorporation into the IL CAS 212.443(b) and (c), into the Illinois TSP SIP. USEPA also proposes to approve the incorporation of the related recodified rules into the TSP SIP, 35 IAC 212.443(a), 212.443(d)(1) and (2), 212.443(e), 212.443(f), 212.443(g), 212.443(h) and 212.443(i), USEPA cautions that because 35 IAC 212.443(d)(1), 212.443(e), 212.443(f) and 212.443(h) were conditionally approved on September 3, 1981 (46 FR 44172), the recodified rules are also proposed for incorporation as conditionally approved.

Public comment is solicited on the proposed SIP revision and on USEPA’s approval of it. Public comments should be submitted to the Region V address listed above. Public comments received by March 23, 1987 will be considered in the development of USEPA’s final rulemaking action.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709). The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7402.


Vadlos V. Adamkus,
Regional Administrator.

[FR Doc. 87–3646 Filed 2–19–87; 8:45 am]

BILLING CODE 6560–50

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 63 and 66

[CC Docket No. 86–494]

Regulatory Policies and International Telecommunications

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of inquiry and proposed rulemaking.

SUMMARY: This Notice initiates an inquiry and proposed rulemaking concerning the interrelationship of the FCC’s regulatory policies with the telecommunications policies of foreign governments. This proceeding was initiated to determine the actual and potential effects of foreign regulations and practices on the FCC’s ability to ensure the efficiency, equity and national security goals of the Communications Act. The proceeding will seek to determine what actions the Commission can, and should, consider to promote liberalization in international telecommunications.

DATES: Comments are due on or before April 17, 1987, and reply comments are due on or before May 22, 1987.


FOR FURTHER INFORMATION CONTACT: William Kirch or John Copes at 202–632–4047.


The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission’s copy contractor, International Transcription Service, (202) 887–9800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Summary of the Notice of Inquiry and Proposed Rulemaking

1. With this Notice of Inquiry and Proposed Rulemaking NOI–PRM, this Commission institutes a proceeding to determine whether the public interest requires that the telecommunications policies of foreign governments be considered in the formulation of Commission regulatory policies concerning the provision of telecommunications goods and services within the United States and the provision of telecommunications services between the United States and foreign countries.

2. In the Inquiry portion of the Notice we focus on the development of an “international model” that would represent an “ideal” to be sought in international telecommunications and a benchmark against which national and international policies and practices may be compared. Specifically, the Inquiry seeks to develop criteria that could be used to develop an international model based on four objectives: (1) Open entry; (2) nondiscrimination; (3) technological innovation; and (4) international comity.

3. We describe the regulatory policies that this Commission has adopted to promote these four objectives. We begin by pointing out that the principal limitation on the exercise of monopoly power in a market economy is the possibility of competitive entry, and we detail the opening of U.S. telecommunications markets to competitive supply. We also express concern, however, that certain foreign practices may serve to limit the entry of U.S. common carriers, enhanced service providers, and telecommunications equipment manufacturers. Therefore, we request that parties address the question of establishing model criteria for open entry for U.S. telecommunications service providers and equipment manufacturers in international telecommunications.

4. We also describe the measures that we have taken to ensure nondiscriminatory treatment of competing firms in the provision of telecommunications goods and services within the United States and between the United States and foreign points. We point out that we have traditionally been concerned in international telecommunications, however, with the possibility that foreign administrations, which often have a monopoly in their home markets, would be able to obtain unduly favorable terms and conditions from U.S. firms by setting these firms against one another in a process referred to as “whipsawing.” We request that parties address whether there are more effective mechanisms than those we currently employ to ensure nondiscriminatory treatment of U.S. international service providers and to promote meaningful competition in international telecommunications. To address the specific question of “whipsawing” through the allocation of return traffic, for example, we request that parties comment on three alternative approaches: (1) Customer choice of the carrier; (2) “sender keep all”; and (3) proportional return allocation. We also recognize, however, that there may be a variety of other ways in which U.S. international carriers, enhanced service providers, or equipment manufacturers may be subject to discriminatory treatment and we invite comment on how other questions of nondiscriminatory treatment of American firms in international telecommunications can be addressed.

5. We begin our discussion of technological innovation by pointing out that section 7 of the Communications Act explicitly states that it is the policy of the United States to encourage the
provision of new technologies and services to the public. We explain that we have promoted technological and market innovation in telecommunications through policies that provide for open entry and ensure the absence of unjust or unreasonable discrimination by carriers against competing suppliers. We continue by making it clear that our preference for marketplace forces extends to the development of technical standards for the provision of telecommunications goods and services and, as a result, we have limited technical standards to those that directly achieve statutory purposes. We point out that we have repeatedly stated our belief that international standardization should be flexible and should accommodate a variety of national telecommunications polices, but that our strong domestic preference has been for voluntary standardization by the private sector, not the government. As a result, we express concern that the prescription by foreign governments of mandatory standards that are arrived at without the participation of U.S. firms may directly and adversely affect the competitiveness of U.S. telecommunications firms and their ability to participate in foreign markets.

We encourage parties to comment on the criteria that could be used to address the adoption of international standards that are both openly developed and no more detailed or restrictive than necessary.

6. We discuss the final objective of international comity, by which we mean the mutual recognition and accommodation by nations of their differing philosophies, policies and laws, by discussing the commonly recognized principle of reciprocal treatment among nations. We point out that our pro-competitive policies have opened up U.S. terminal equipment, core equipment, common carrier services and enhanced services markets to competitive supply by both domestic and foreign suppliers of telecommunications goods and services. We also discuss the U.S. commitment to international comity through work with other countries in the North Atlantic Consultative Process, the International Telecommunication Union, INTELSAT, INMARSAT, and the General Agreement on Tariffs and Trade. We invite parties to comment on whether the criteria used to develop the objective of international comity should include existing or proposed provisions promulgated under any generally accepted international arrangement.

7. To ensure that we are fully discharging our mandate under the Communications Act, we seek comment in the second portion of our inquiry on the actions that we might consider to encourage the closer approximation in international telecommunications of the ideal represented by the model. We point out that our primary interest in this proceeding is the effect of foreign regulations or practices on the price, variety, quality or technological sophistication of telecommunications goods and services provided to U.S. consumers. Specifically, we wish to determine the implications of foreign regulations and practices on the U.S. telecommunications industry and the U.S. consumer, and to determine what measures, if any, we can and should consider to promote greater access for U.S. telecommunications service providers and equipment manufacturers abroad. Towards that end, we invite parties to comment on the specific question of our authority to take regulatory action based on the effect that foreign policies and practices have, or may have, on the price, variety, quality, and technological sophistication of telecommunications goods and services provided to U.S. consumers.

We also encourage parties to comment on our authority to take actions based on more general concerns, such as the telecommunications trade or employment implications of foreign policies and practices, that have, or may have, a negative aspect on our ability to ensure that the efficiency, equity and national security goals provided for in the Communications Act are met.

8. We recognize that any actions taken by this Commission that would serve to limit foreign access to the U.S. market could have significant trade, commercial, foreign policy, antitrust, labor and national security implications. Therefore, we invite parties to comment on the manner in which market access determinations should be made, including whether we should rely primarily, although not exclusively, upon the executive branch's determining that specific foreign markets are closed to U.S. telecommunications service providers and equipment manufacturers. We encourage parties to comment on whether the specific criteria developed in the context of our international model could be used by either the executive branch agencies or this Commission to determine the "openness" of specific foreign markets.

9. We also recognize that there may be some circumstances that are inevitable degree of, ambiguity in any method of determining whether an entity is "foreign-owned" as well as determining whether a given foreign market is considered "open" or "closed." Therefore, we encourage parties to comment on the definition of defining firms as foreign-owned and the questions of ownership by entities from two or more foreign countries, some of which may be "open" to U.S. firms, while others may be "closed." We also recognize that this is a dynamic field and that the regulatory approaches to telecommunications in many foreign countries are undergoing constructive changes. Therefore, we ask parties to comment on the implementation issues associated with any measures we might propose or adopt in this proceeding.

10. We state that while the focus of our analysis of our authority to take actions discussed in the Notice is the Communications Act, we are aware that we should also consider whether other statutes might limit our ability to incorporate reciprocity standards into our regulations. Therefore, parties are invited to comment on any other provisions of law that may be relevant to the proposals discussed in our inquiry.

11. We seek initial comment on what actions we should consider, such as conditioning the grant of section 214 certificates, to address the treatment of U.S. carriers in the home jurisdiction of the foreign-owned carrier. Specifically, we seek comment on what types of foreign practices could be taken into consideration in the grant or revocation of Section 214 certificates for foreign-owned carriers. We also make it clear that we wish to consider the further liberalization of our regulations for carriers from countries with "open" markets. For example, we seek initial comment on whether we can and should consider the adoption of a general policy favoring grants of microwave licenses to foreign-owned companies whose governments have "opened" their telecommunications markets to U.S. service providers. Moreover, we seek initial comments on actions that we might consider, such as our classifying foreign-owned carriers as nondominant for the provision to U.S. consumers of telecommunications services between the United States and foreign points, should that carrier's "home" country allow U.S. carriers to provide common carrier services to its consumers. We also encourage parties to address the actions that we might consider, including the possibility of allowing a more flexible pricing policy for the conveyance of capital interests in overseas facilities between U.S. carriers and foreign PTTs, should a PTT's home
country allow one or more U.S. firms to land a cable. We encourage parties to provide specific proposals concerning the implementation of any such actions they believe appropriate, including the question of when such regulatory actions should be considered.

12. We also seek initial comment on whether we can and should exercise our ancillary jurisdiction under Title I of the Act to consider actions that might include requiring foreign-owned enhanced services providers to obtain a certificate before offering enhanced services within the United States or between the United States and foreign points. We encourage parties to comment on possible alternatives to a Title I certificate, including whether we should consider applying reciprocity criteria under Title II of the Act to determine the extent to which telecommunications entities from countries that engage in restrictive practices towards U.S. telecommunications entities have benefited from the liberalization of the U.S. market. We tentatively conclude that a determination by this Commission whether we should propose actions that limit or further liberalize foreign access to the U.S. market will require further information concerning the present nature and extent of foreign participation in the U.S. market. Therefore, we propose the adoption of the following rule changes that would provide us with information on the following four telecommunications and related market sectors: (1) Common carrier services; (2) enhanced services; (3) terminal equipment; and (4) core equipment.

13. Similarly, we seek initial comment on whether we can and should consider applying reciprocity criteria to our regulatory program for terminal equipment, including whether we should consider the denial of certification under Part 68 for terminal equipment produced by manufacturers from countries that are not "open" to U.S. suppliers. We also encourage parties to comment on our ability to enforce this or any other requirement concerning the supply of terminal equipment by foreign-owned firms in the United States.

14. We continue by making it clear that we wish to identify those regulatory measures that we can and should consider that might encourage foreign countries that are closed to U.S. core equipment manufacturers to open their markets. We request that parties specifically address our authority to consider measures under section 214 or other provisions of Title I or II of the Act that would limit the introduction into the U.S. network of telecommunications equipment from certain foreign-owned telecommunications entities. We also encourage parties to address the question of any discriminatory treatment or continuing barriers to entry that remain for foreign-owned core equipment providers from countries that have "opened" their markets to U.S. firms.

15. The rulemaking portion of the Notice states that our rules currently do not require the filing of detailed information concerning the nature and extent of the activities of foreign-owned equipment manufacturers, enhanced service providers, and carriers in the domestic U.S. market. As a result, we have insufficient information before us to determine the extent to which telecommunications entities from countries that engage in restrictive practices towards U.S. telecommunications entities have benefited from the liberalization of the U.S. market. We tentatively conclude that a determination by this Commission whether we should propose actions that limit or further liberalize foreign access to the U.S. market will require further information concerning the present nature and extent of foreign participation in the U.S. market. Therefore, we propose the adoption of the following rule changes that would provide us with information on the following four telecommunications and related market sectors: (1) Common carrier services; (2) enhanced services; (3) terminal equipment; and (4) core equipment.

16. First, we seek comment on the desirability of reinstating a section 214 authorization requirement for foreign-owned carriers as well as requiring these carriers to provide us with information concerning their ownership, as well as the nature and extent of their common carrier operations in the United States. Second, we request comment on the desirability of proposing the adoption by the Department of State of a mandatory RPOA certification policy. We also encourage parties to comment on whether a mandatory RPOA certification procedure might be useful in identifying foreign-owned enhanced service providers within the United States. Third, we seek comment on whether we should require the filing of annual reports of sales within the United States of all terminal equipment registered under our Part 68 program. Finally, we invite parties to comment on a proposed requirement that carriers file Annual Procurement Reports detailing the nature and extent of their purchases of telecommunications code equipment from foreign-owned telecommunications entities during the preceding year, as well as their planned purchases of such equipment for the coming year.

17. We believe that we possess authority under the Communications Act to require the information filings we propose. We invite parties to comment, however, on our legal authority under Titles I and II to require such filings. We also encourage parties to comment on the specific nature and extent of each of our proposed information filing requirements, including the need for, or desirability of, confidential treatment of this information. Finally, we invite parties to comment on the legal and policy issues associated with applying these information gathering requirements to all firms offering telecommunications goods and services within the United States or only to foreign-owned firms.

19. The collection of information requirements contained in these proposed rules have been submitted to OMB for review under section 3506(b) of the Paperwork Reduction Act. Persons wishing to comment on these collection of information requirements should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attention: Desk Officer for Federal Communications Commission.

Provisional Rule Changes
21. The proposed rule changes would affect Parts 63 and 68 of the Commission's rules. For brevity, the text of the proposed rules is not set out here.

List of Subjects
47 CFR Part 63
Communication common carriers, Reporting and recordkeeping requirements.

47 CFR Part 68
Communications common carriers, Communications equipment, Telephones.
Federal Communications Commission.
William J. Tricarico, Secretary.
[FR Doc. 87-3481 Filed 2-19-87; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION
49 CFR Part 1039
[Ex Parte No. 367 (Sub-No. 960)]
Railroad Transportation Contacts—Exemption—Department of Defense
AGENCY: Interstate Commerce Commission.
ACTION: Notice of proposed rulemaking and exemption.
SUMMARY: The Commission is instituting a proceeding under 49 U.S.C. 10505(b) to exempt all Department of Defense (DOD) contracts (other than agricultural commodity contracts) from 49 U.S.C. 10713. DOD seeks the exemption to prevent public release of information about sensitive DOD shipments. The proposed rule is set forth below.

DATES: Comments are due March 23, 1987.

ADDRESS: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7246.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC metropolitan area) or toll free (800) 424-5403.

The Commission certifies that the proposed rule, if adopted, will not have a significant impact on a substantial number of small entities because the proposed rule affects movements for the government, which ships on its own behalf. However, comments on this issue are invited.

This decision will not significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Railroads.

Accordingly, Title 49 is amended as follows:

1. The authority citation for 49 CFR Part 1039 is proposed to be revised to read as follows:


2. A new § 1039.22 is proposed to be added as follows:

§ 1039.22 Exemption from filing rail contracts.

Railroad transportation contracts (other than agricultural commodity contracts) made by the U.S. Government, Department of Defense, are exempt from the requirements of 49 U.S.C. 10713.

Decided Date: February 9, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,
Secretary.

[FR Doc. 87-3629 Filed 2-19-87; 8:45 am]
NOTICES

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 COMMERCE

International Trade Administration

[A-405-069]

Kraft Condenser Paper From Finland; Final Results of Antidumping Duty; Administrative Review and Revocation of Antidumping Duty Finding.

AGENCY: Import Administration, International Trade Administration, Commerce.


SUMMARY: On December 9, 1986, the Department of Commerce published the preliminary results of its administrative review and intent to revoke the antidumping finding on Kraft condenser paper from Finland. The review covers the one known exporter of Finnish Kraft condenser paper to the United States, Tervakoski Osakeyhtio, and the period September 1, 1982 through June 23, 1983.

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments. Based on our analysis, the final results of our review are the same as the preliminary results, and we revoke the antidumping duty finding on Kraft condenser paper from Finland.


SUPPLEMENTARY INFORMATION:

Background

On December 9, 1986, the Department of Commerce ("the Department") published in the Federal Register (51 FR 44233) the preliminary results of its administrative review and intent to revoke the antidumping finding on Kraft condenser paper from Finland (44 FR 54066, September 21, 1979). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Kraft condenser paper from Finland, currently classifiable under items 522.4000, 522.4200, and 526.3080, of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of Finnish Kraft condenser paper to the United States, Tervakoski Osakeyhtio, and the period September 1, 1982 through June 23, 1983.

Final Results of the Review and Revocation

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments or request for a hearing. Based on our analysis, the final results of our review are the preliminary results.

For the reasons set forth in the preliminary results, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Tervakoski Osakeyhtio. Accordingly, we revoke the antidumping duty finding on Kraft condenser paper from Finland. This revocation applies to all unliquidated entries of this merchandise entered, or withdrawn from warehouse for consumption, on or after June 23, 1983.

This administrative review, revocation and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1673(a)(1)(c)), and section 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a and 353.54).


Gilbert B. Kaplan,
Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-3022 Filed 2-19-87; 8:45 am]
BILLING CODE 3510-DS-M

Federal Register
Vol. 52, No. 34
Friday, February 20, 1987

[A-429-601]

Postponement of Final Antidumping Duty Determination; Urea From the German Democratic Republic

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On January 23, 1987, we received a request from the only respondent in the antidumping duty investigation of urea from the German Democratic Republic (GDR) that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1675(a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of urea from the GDR have been made at less than fair value until not later than May 18, 1987.


SUPPLEMENTARY INFORMATION: On August 12, 1986, we published a notice in the Federal Register that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of urea from the GDR are being, or are likely to be sold at less than fair value (51 FR 28854). We issued our preliminary affirmative determination on or before March 9, 1987. On January 2, 1987, this notice stated that we would issue a final determination on or before March 9, 1987. On January 23, 1987, the single respondent requested that we extend the period for the final determination until not later than the 135th day after the date of publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. This respondent accounts for a significant proportion of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an
affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than May 18, 1987.

The public hearing is also being postponed until 1:00 p.m. on April 29, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted in at least ten (10) copies to the Deputy Assistant Secretary by April 22, 1987.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,
Deputy Assistant Secretary for Import Administration.

SUPPLEMENTARY INFORMATION:

On January 30, 1987, we received a request from a respondent in the antidumping duty investigation of urea from the Union of Soviet Socialist Republics (USSR) that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of urea from the USSR have been made at less than fair value until not later than May 18, 1987.


SUPPLEMENTARY INFORMATION: On August 12, 1986, we published a notice in the Federal Register that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of urea from the Union of Soviet Socialist Republics (USSR) are being, or are likely to be sold at less than fair value (51 FR 28857). We issued our preliminary affirmative determination on December 23, 1986 (52 FR 124, January 2, 1987). This notice stated that we would issue a final determination on or before March 9, 1987. On January 20, 1987, the respondents requested that we extend the period for the final determination until not later than the 135th day after the date of publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. These respondents account for a significant proportion of exports of the subject merchandise to the United States, and thus are qualified to make this request. If qualified exporters properly request an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than May 18, 1987.

The public hearing is also being postponed until 1:00 p.m. on April 30, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted in at least ten (10) copies to the Deputy Assistant Secretary by April 23, 1987.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,
Deputy Assistant Secretary for Import Administration.

SUMMARY: On January 30, 1987, we received a request from a respondent in the antidumping duty investigation of urea from the Union of Soviet Socialist Republics (USSR) that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of urea from the USSR have been made at less than fair value until not later than May 18, 1987.


SUPPLEMENTARY INFORMATION: On August 12, 1986, we published a notice in the Federal Register that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of urea from the Union of Soviet Socialist Republics (USSR) are being, or are likely to be sold at less than fair value (51 FR 28857). We issued our preliminary affirmative determination on December 23, 1986 (52 FR 124, January 2, 1987). This notice stated that we would issue a final determination on or before March 9, 1987. On January 30, 1987, a respondent requested that we extend the period for the final determination until not later than the 135th day after the date of publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. This respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than May 28, 1987.

The public hearing is also being postponed until 1:00 p.m. on April 28, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted in at least ten (10) copies to the Deputy Assistant Secretary by April 21, 1987.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,
Deputy Assistant Secretary for Import Administration.

SUMMARY: On January 30, 1987, we received a request from a respondent in the antidumping duty investigation of urea from the Union of Soviet Socialist Republics (USSR) that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673a(b)). Pursuant to this request, we are postponing our final
Extension of the Deadline Date for the Final Countervailing Duty Determinations and Rescheduling of the Public Hearings; Industrial Phosphoric Acid From Belgium and Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, the FMC Corporation and the Monsanto Company, we are extending the deadline date for the final determinations in the countervailing duty investigations of industrial phosphoric acid from Belgium and Israel to correspond to the date of the final determinations in the antidumping investigations of the same product.

We found that the petitions contained sufficient grounds on which to initiate countervailing duty investigations, and on November 25, 1986, we initiated such investigations (51 FR 43648-43651, December 3, 1986). The preliminary determinations in these countervailing investigations will be made on or before April 14, 1987.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petitions alleged that manufacturers, producers, or exporters in Belgium and Israel of industrial phosphoric acid directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petitions contained sufficient grounds on which to initiate countervailing duty investigations, and on November 25, 1986, we initiated such investigations (51 FR 43648-43651, December 3, 1986). On January 28, 1987, we issued preliminary affirmative determinations in the countervailing duty investigations (52 FR 3661-3664, February 5, 1987).

On February 5, 1987, petitioners filed requests for extension of the deadline date for the final determinations in the countervailing duty investigations to correspond with the date of the final determinations in the antidumping investigations.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), provides that when a countervailing duty investigation... which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination in the countervailing duty investigation to the date of the final determination in the antidumping investigation.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petitions alleged that imports of industrial phosphoric acid from Belgium and Israel are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petitions contained sufficient grounds on which to initiate antidumping duty investigations, and on November 25, 1986, we initiated such investigations (51 FR 43648-43651, December 3, 1986). The preliminary determinations in these antidumping investigations will be made on or before April 14, 1987.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petitions alleged that manufacturers, producers, or exporters in Belgium and Israel of industrial phosphoric acid directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petitions contained sufficient grounds on which to initiate countervailing duty investigations, and on November 25, 1986, we initiated such investigations (51 FR 43648-43651, December 3, 1986). On January 28, 1987, we issued preliminary affirmative determinations in the countervailing duty investigations (52 FR 3661-3664, February 5, 1987).


FOR FURTHER INFORMATION CONTACT: Alain Letort or Mark Linscott (Belgium), David Levine (Israel), or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377-0186 (Letort), 202/377-1774 (Linscott), 202/377-1673 (Levine), or 202/377-0161 (Taverman).

SUPPLEMENTARY INFORMATION:

Case History

On November 5, 1986, we received antidumping and countervailing duty petitions filed by the FMC Corporation and the Monsanto Company against industrial phosphoric acid from Belgium and Israel.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petitions alleged that imports of industrial phosphoric acid from Belgium and Israel are being, or are likely to be, sold in the United States at

Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code) provides that provisional measures (i.e., suspension of liquidation) may not be imposed on another signatory to the Subsidies Code for a period longer than four months. To comply with the requirement of article 553 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigations on June 5, 1987, which is 120 days from the date of publication of the preliminary determinations in these cases. No cash deposits or bonds for potential countervailing duties will be required for any such merchandise entered, or withdrawn from warehouse, for consumption, after June 5, 1987. The suspension of liquidation will not be resumed unless and until the Department publishes countervailing duty orders in these cases. The Department will also direct the U.S. Customs Service to hold any entries suspended prior to June 5, 1987, until the conclusion of these investigations.

In addition, due to the extension of the final determinations in the countervailing duty investigations, we are rescheduling the date of the public hearings, originally set for March 3, 1987 (Belgium) and March 12, 1987 (Israel), if requested, these hearings will now be held at 10:00 a.m. (Belgium) and 2:00 p.m. (Israel) on May 13, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearings must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party’s name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the prehearing briefs must be submitted to the Deputy Assistant Secretary by May 7, 1987. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, all written views will be considered if received not less than 30 days before the final determinations are due, or, if hearings are held, within 10 days after the hearing transcripts are available.
This notice is published pursuant to section 705(d) of the Act.

Gilbert B. Kaplan,
Deputy Assistant Secretary for Import Administration.
[FR Doc. 87-3636 Filed 2-19-87; 8:45 am]
BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on Wednesday, March 4, 1987, at 10:30 a.m., Herbert C. Hoover Building, Room H6052, 14th Street and Constitution Avenue, NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1983 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 168) and listed in U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference Room 6628, U.S. Department of Commerce. (202) 377-3031.

For further information or copies of the minutes contact Alfreda Burton, (202) 377-9737.


Ronald L. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Telecommunications Equipment, Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held March 10, 1987, 9:30 a.m. Herbert C. Hoover Building, Room 8-441, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda:

1. Introduction of attendees and opening remarks by the Chairman.
2. Review and approval of the minutes of February 4, 1986.
3. Presentation of papers or comments by the public.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes, call Betty Ferrell at (202) 377-4959.


Margaret A. Cornejo,
Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87-3566 Filed 2-19-87; 8:45 am]
BILLING CODE 3510-DT-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 301.5(a) (3) and (4) of the regulations and be filed within 30 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230.

Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85–200R. Applicant: University of Minnesota, Mineral Resources Research Center, 56 East River Road, Minneapolis, MN 55455.

Instrument: Scanning Electron Microscope, Model QS–1. Manufacturer: CSIRO, Australia. Intended Use: The instrument is intended to be used for studies of mineral products to determine the conditions in which the maximum amount of the ore is recovered while minimizing the amount of waste material in the concentrate and what degree of grinding of the ore and gangue is needed to achieve this goal. Another investigation will involve identification of the rocks by mineralogy and determination of the abundance and association of valuable minerals in the rocks. Original notice of this resubmitted application was published in the Federal Register of June 26, 1985.

Docket Number: 85–205. Applicant: LDS Hospitals, Division of IHC Hospitals Inc., 8th Avenue and "C" Street, Salt Lake City, UT 84143.
Instrument: Kidney Lithotripter. Manufacturer: Dornier System GmbH, West Germany. Intended Use: The instrument is intended to be used for the study of etiology, behavior, possible treatments (including an intense focus on the advantages of lithotripsy as opposed to alternative forms of treatment) and prevention of urinary tract calculi (kidney stones). In addition, the instrument will be used to provide training in extracorporeal shock wave lithotripsy. Application received by Commissioner of Customs: January 9, 1987.

Docket number: 87–086. Applicant: The Pennsylvania State University, University Park, PA 16802.
Instrument: Gas Isotope Ratio Mass Spectrometer, Model 251 EM with Accessories.
National Oceanic and Atmospheric Administration

[PDF]

Marine Mammals; Application for Permit; National Zoological Park
Smithsonian Institution

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1351-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).


2. Type of Permit: Scientific Research.

3. Summary of Activity: A total of 10 adult female Hawaiian monk seals (Monachus schauinslandi) and 180 suckling pups will be bleach, dye or paint marked at French Frigate Shoals, Hawaii over a 3 year period. An additional take by accidental harassment of 200 animals may occur during movement by boat and behavioral observations.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service. Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.


Nancy Foster,
Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-3627 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Steven L. Swartz and Randall S. Wells

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1351-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222)

1. Applicant: Dr. Steven L. Swartz, Cetacean Research Associates, P.O. Box 7990, San Diego, California 92107

2. Type of Permit: Scientific Research.

3. Summary of Activity: A total of 10 whales from the following species: humpback (Megaptera novaeangliae), blue (Balaenoptera musculus) and fin (Balaenoptera physalus), will be radio tagged annually over a 5-year period in Monterey Bay and along the Central California coast.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service. Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and
would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service. Documents submitted in connection with the above application are available for review by interested persons in the following offices:
Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW, Rm. 805, Washington, DC; and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Nancy Foster,
Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

DEPARTMENT OF ENERGY
Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) [Pub. L. 95–621] signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective March 1, 1987. These prices are based on the prices of alternative fuels.


Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia’s ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule on April 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU’s). The method used to determine the price ceilings is described in Section III.

<table>
<thead>
<tr>
<th>State</th>
<th>Per million BTU’s</th>
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<tbody>
<tr>
<td>Alabama</td>
<td>2.17</td>
</tr>
<tr>
<td>Arizona</td>
<td>1.82</td>
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<tr>
<td>Arkansas</td>
<td>2.03</td>
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<tr>
<td>California</td>
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<tr>
<td>Colorado</td>
<td>1.87</td>
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<td>Connecticut</td>
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<td>Delaware</td>
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<td>Florida</td>
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<td>Georgia</td>
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<tr>
<td>Idaho</td>
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<tr>
<td>Illinois</td>
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<td>Indiana</td>
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<td>Iowa</td>
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<td>Kansas</td>
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<td>Kentucky</td>
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<tr>
<td>Louisiana</td>
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<tr>
<td>Maine</td>
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<tr>
<td>Maryland</td>
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<td>Massachusetts</td>
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<td>Michigan</td>
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<td>Minnesota</td>
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<td>Mississippi</td>
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<td>Missouri</td>
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<td>Utah</td>
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<td>Vermont</td>
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<td>Virginia</td>
<td>2.37</td>
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Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during December 1986 was $18.08 per barrel. The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which the incremental pricing threshold becomes effective. The prices found in Platt’s Oilgram Price Report are given for each trading day in the form of high and low prices for No. 2 fuel oil in Metropolitan New York and Northern New Jersey. A lag adjustment factor was calculated using the average of the low posted price for these two areas for the ten trading days ending February 13, 1987, and dividing that price by the corresponding average price computed from prices published by Platt’s for the month of December 1986. This lag adjustment factor was applied to the December price yielding $20.63 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU’s by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective March 1, 1987, is $4.62 per million BTU’s.

Section III. Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 187, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on November 6, 1981, in Docket No. RM81–27, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.
A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of October 1986, November 1986, and December 1986. All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used To Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective March 1, 1987, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, October 1986, November 1986, and December 1986. Repotted prices for sales in October 1986 were adjusted by the percent change in the nationwide volume-weighted average price from October 1986 to December 1986. Prices for November 1986 were similarly adjusted by the percent change in the nationwide volume-weighted average price from November 1986 to December 1986. The volume-weighted 3-month average of the adjusted October 1986 and November 1986, and the reported December 1986 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B.1 above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.2) was compared to this average low price, and the higher of the two was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 8.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of October 1986, November 1986, and December 1986. The alternative fuel price ceiling for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that Platt's Oilgram Price Report provides timely information relative to the subject. The prices found in Platt's Oilgram Price Report are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending February 13, 1987, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of December 1986. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.3.

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A
Connecticut New Hampshire
Maine Rhode Island
Massachusetts Vermont

Region B
Delaware New York
Maryland Pennsylvania
New Jersey Tennessee

Region C
Alabama North Carolina
Florida South Carolina
Georgia Tennessee
Mississippi Virginia

Region D
Illinois Ohio
Indiana West Virginia
Kentucky Wisconsin
Michigan

Region E
Iowa Nebraska
Kansas North Dakota
Missouri South Dakota
Minnesota

Region F
Arkansas Oklahoma
Louisiana Texas
New Mexico

Region G
Colorado Utah
Idaho Wyoming
Montana

Region H
Arizona Oregon
California Washington
Nevada


L.A. Pettis,
Deputy Administrator, Energy Information Administration.

[FR Doc. 87-3778 Filed 2-19-87; 8:45 am]

BILLING CODE 6450-01-M
Federal Energy Regulatory Commission

[Docket Nos. ER87-183-000 et al.]

Electric Rate and Corporate Regulation Filings; Boston Edison Co. et al.


Take notice that the following filings have been made with the Commission:

1. Boston Edison Co.

[Docket No. ER87-183-000]

Take notice that on January 30, 1987, Boston Edison Company (BECO) submitted additional data as part of its filing in this docket. The data is part of an answer, including an attachment, submitted by BECO in response to separate motions to intervene in the proceeding by the Town of Belmont, Massachusetts, and Cambridge Electric Light Company. The Director of the Division of Electric Power Application Review, acting pursuant to a delegation of authority in § 375.306(c) of the Commission's regulations, notified BECO by a deficiency letter dated February 11, 1987, that its original filing was deficient insofar as it lacked the data later supplied to the Commission as an attachment to BECO's response. The Director's letter further stated that the data provided in the attachment to BECO's response would be treated as a proper response to the deficiency letter, so that BECO's filing in Docket No. ER87-183-000 would be assigned a filing date of January 30, 1987.

BECO certified that it served copies of its response upon each person designated on the official service list.

Comment date: February 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. City of Holyoke Gas and Electric Department, City of Westfield Gas and Electric Department, Marblehead Municipal Light Department, Middleborough Municipal Gas and Electric Department, North Attleboro Electric Department, Peabody Municipal Light Plant, Shrewsbury Electric Light Department, Templeton Municipal Light Plant, Town of Boylston Municipal Light Department, Town of Hudson Light and Power Department, Town of Littleton Municipal Light and Water Department, Town of Wakefield Municipal Light Department, and West Boylston Municipal Lighting Plant v. Boston Edison Co.

[Docket No. EL87-13-000]

Take notice that on February 3, 1987, the City of Holyoke Gas and Electric Department and the other above-named entities (Complainants) filed a complaint and motion for summary judgment against Boston Edison Company (BECO) concerning an alleged violation of filed rate schedules. The Complainants further allege that since January 1, 1983 or thereabouts, BECO has violated the terms of its filed rate schedules by charging the Complainants certain costs that are not permitted to be charged under those rate schedules. The Complainants also seek summary disposition of the matter and an order directing BECO to refund with interest the charges already collected. The Complainants seek consolidation of the proceeding with the proceeding in Docket No. ER86-645-000.

The Complainants certify that a copy of their complaint has been served on BECO.

Comment date: March 16, 1987, in accordance with Standard Paragraph E at the end of this document.

3. Idaho Power Co.

[Docket No. ER87-248-000]

Take notice that on February 6, 1987, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No 1 (Supersedes Original Volume No 1) during December, 1986, along with cost justification for the rate charged. This filing includes the following supplements:

- Utah Power & Light Co. Supplement No. 61.
- Sierra Pacific Power Co. Supplement No. 58.
- Pacific Gas & Electric Supplement No. 20.

Comment date: February 28, 1987, in accordance with Standard Paragraph E at the end of this notice.


Docket No. ER85-990-004


NEP states that appropriate refunds under the above referenced settlement rates were made on January 22, 1987.

Comment date: February 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. North Carolina Municipal Power Agency

[Docket No. EL87-11-000]


Comment date: March 16, 1987, in accordance with Standard Paragraph E at the end of this notice.


[Docket No. ER87-153-000]

Take Notice that on February 9, 1987, Pacific Gas and Electric Company (PGandE) submitted for filing an amendment consisting of supplementary information on the Firm System Sales Agreements between itself and each of the Southern California Cities of Anaheim, Azusa, Banning, Colton and Riverside [Cities] which was noticed by the Commission on December 17, 1986.

Copies of the amendment have been served upon each of the Cities.

Comment date: February 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. City of Vernon, California v. Southern California Edison Co.

[Docket No. EL87-14-000]

Take notice that on February 4, 1987, the City of Vernon, California (Vernon) tendered for filing a complaint and petition for declaratory order against Southern California Edison Company (SCE). Vernon states in its filing that it requests a declaratory order to resolve a controversy that exists between Vernon and SCE in connection with SCE's obligation to furnish certain transmission and related services under an SCE rate schedule on file with the Commission. Vernon also states that it is filing a complaint against SCE, alleging that SCE is in violation of its rate schedule and contractual obligation to transport certain energy that Vernon has contracted to purchase from the California Department of Water Resources. Vernon states that it is seeking a Commission order directing SCE to provide such services.
Vernon states that it has served copies of its complaint and petition for declaratory order on attorneys for SCE and upon a corporate employee of SCE.

Comment date: March 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corp.
[Docket No. EC87-9-000]

Take notice that Wisconsin Public Service Corporation, a public utility incorporated under the laws of the State of Wisconsin (Applicant), on February 9, 1987, tendered for filing an application pursuant to section 203 of the Federal Power Act for authority to sell certain facilities to Sturgeon Bay Utilities, an electrical utility operated by the City of Sturgeon Bay, a Wisconsin municipal corporation.

Applicant indicates that the purchase price of the facilities being sold which are subject to the jurisdiction of the Federal Energy Regulatory Commission is $257,821.92.

The facilities subject to the jurisdiction of FERC which are to be sold consist of certain portions of Applicant's Transmission Lines 1-87 and K-89 and Applicant's 69kV OCB switch sold.

Applicant's Transmission Lines 1-87 and jurisdiction of FERC which are to be sold consist of certain portions of Applicant's 69kV OCB switch.

Applicant indicates that the purchase price of the facilities being sold which are subject to the jurisdiction of the Federal Energy Regulatory Commission is $257,821.92.

The facilities subject to the jurisdiction of FERC which are to be sold consist of certain portions of Applicant's Transmission Lines 1-87 and K-89 and Applicant's 69kV OCB switch located at Applicant's Sawyer switching station and associated facilities, located in Door Counties, Wisconsin.

Comment date: February 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corp.
[Docket No. ER87-249-000]

Take notice that Wisconsin Public Service Corporation, a public utility incorporated under the laws of the State of Wisconsin (Applicant), on February 9, 1987, tendered for filing an application pursuant to section 203 of the Federal Power Act for authority to sell certain facilities to Sturgeon Bay Utilities, an electrical utility operated by the City of Sturgeon Bay, a Wisconsin municipal corporation.

Applicant indicates that the purchase price of the facilities being sold which are subject to the jurisdiction of the Federal Energy Regulatory Commission is $257,821.92.

The facilities subject to the jurisdiction of FERC which are to be sold consist of certain portions of Applicant's Transmission Lines 1-87 and K-89 and Applicant's 69kV OCB switch located at Applicant's Sawyer switching station and associated facilities, located in Door Counties, Wisconsin.

Comment date: February 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph
E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.
[FR Doc. 87-3598 Filed 2-19-87; 8:45 am] BILLING CODE 6171-01-M

[Docket No. RP87-17-000]

East Tennessee Natural Gas Co.; Application To Withdraw Suspended Rate Change Filing

Take notice that on January 30, 1987, East Tennessee Natural Gas Company (East Tennessee) applied to the Federal Energy Regulatory Commission for permission to withdraw its rate change filing in this proceeding and that such proceeding be terminated.

East Tennessee states that at the time of its filing, it reasonably expected the new facilities certified in Docket No. CP85-875 to be in service prior to April 30, 1987, the end of the test period.

However, East Tennessee has recently determined that such facilities cannot be placed in service within the test period, except by incurring substantial additional construction costs. More specifically, due principally to unexpected winter construction delays, East Tennessee will not be able to place the facilities in service within the test period without expending an additional $1.5 million in construction costs.

Accordingly, East Tennessee intends to extend its construction schedule for the subject facilities in order to avoid such additional expenditures. In the interest of avoiding the expenditure of time and resources by East Tennessee and the other parties to this proceeding, as well as by the Commission and its staff, East Tennessee applies for permission to withdraw its October 31, 1986 rate filing.

East Tennessee has served copies of this filing upon each person on the official service list in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before February 20, 1987. 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.

Kenneth F. Plumb, Secretary.
[FR Doc. 87-3590 Filed 2-19-87; 8:45 am] BILLING CODE 6171-01-M

[Docket No. RP87-15-006]

Trunkline Gas Co.; Compliance Filing

Take notice that on February 2, 1987, Trunkline Gas Company (Trunkline) tendered for filing revised tariff sheets to its Original Volume Nos. 1 and 2, and a compliance cost and revenue study pursuant to the Commission's November 28, 1986 order in this proceeding.

Trunkline states that this filing is without prejudice to its application for rehearing dated December 18, 1986 and is being made under protest. It is Trunkline's position that by requiring these items to be filed, the Commission was exceeding its authority and that the November 28, 1986 order misinterprets the Commission's regulations. Trunkline further states that these materials are being provided under compulsion of the Commission's order which the Commission has refused to stay even pending resolution of the matters raised in Trunkline's application for rehearing.

Copies of this filing were served upon Trunkline's customers, applicable state regulatory agencies, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or
Environmental Impact Statements; Availability


EIS No. 870052, Draft, FHW, ME, Fore River Bridge (Million Dollar Bridge)/ ME-77 Rehabilitation or Replacement, Broadway to York Street, Fore River, Cumberland County, Due: April 6, 1987, Contact: William Richardson (207) 622-8467

EIS No. 870053, Final, BLM, ID, Fergus County to Uptown Charlotte, US 74/Independence Boulevard Corridor Improvements, Mecklenburg County to Uptown Charlotte, Additional Alternatives, Mecklenburg County, Due: April 6, 1987, Contact: John Caruolo (215) 987-4179

EIS No. 870057, DSuppl, UMT, FHW, NC, US 74/Independence Boulevard Corridor Improvements, Mecklenburg County to Uptown Charlotte.

EIS No. 870058, Final, BLM, CA, North Central California Wilderness Study Areas, Timbered Crater and Lava Wilderness Study Areas, Wilderness Recommendations, Due: March 23, 1987, Contact: Richard Drehobl (916) 233-4665

EIS No. 870059, Final, BLM, CA, Central California Study Area, Wilderness Recommendations, Caliente, Folsom and Hollister Resource Areas, Due: March 23, 1987, Contact: Bob Rheiner (805) 861-4191

EIS No. 870060, Final, BLM, CA, Alturas Resource Area, Pit River Canyon and Tule Mountain Wilderness Study Areas, Wilderness Recommendation, Lassen and Modoc Counties, Due: March 23, 1987, Contact: Rex Cleary (916) 257-5381

EIS No. 870061, Draft, FHW, AK, Eagle River Loop Road Connection to Hiland Drive/Glen Highway Interchange, Anchorage, Due: April 15, 1987, Contact: Tom Neuner (907) 588-7428

Amended Notice

EIS No. 870024, Draft, BLM, ID, Pocatello Permit MS, Due: March 23, 1987, Contact: Lloyd Ferguson (208) 529-1020

EIS No. 870054, Final, COE, CA, Coyote Creek Flood Control Project, Facilities Construction, Section 10 and 404 Permits, Santa Clara County, Due: March 23, 1987, Contact: Richard Stratford (415) 974-0445

EIS No. 870055, Final, SCS, IA, MO, Upper Locust Creek Watershed, Protection and Flood Prevention, Due: March 23, 1987, Contact: Pual Larson (314) 675-5241

EIS No. 870056, Final, FRC, AR, OK, Creek Hydroelectric and Water Supply Project, Construction and Operation, License, Due: March 23, 1987, Contact: Dianne Rodman (202) 382-0045

EIS No. 870057, DSuppl, UMT, FHW, NC, US 74/Independence Boulevard Corridor Improvements, Mecklenburg County to Uptown Charlotte.

EIS No. 870058, Final, BLM, CA, North Central California Wilderness Study Improvement Plan, MO. SUMMARY: EPA had no objections to the project. The Corps of Engineers was asked to consider the presence of hazardous waste sites in the project area.

ERP No. D—FHW—E40699—NC, Rating EC2, Silas Creek Parkway Completion, Silas Creek Parkway to N. Point Blvd., 404 Permit, NC. SUMMARY: EPA requests that the final EIS provides additional information regarding air quality, water quality, and noise impacts. Noise mitigation for substantial impacts should also be reconsidered.

ERP No. D—FHW—E40699—NC, Rating EC2, US 311 Bypass Improvement, US 311 North of High Point to US 311 South of Archdale, High Point Eastbelt, Possible 404 Permit, NC. SUMMARY: EPA's primary concern is the potential contamination of primary and secondary raw drinking water supply sources attributable to the proposed action. EPA requested that the final EIS commit to implementing protective measures and structures. EPA is also concerned about projected wetland losses and noise impacts and requests their mitigation.

ERP No. D—SCS—E36159—MS, Rating EC2, South Delta Watershed Protection and Flood Prevention Plan, Possible 404 Permit, MS. SUMMARY: EPA is pleased with the overall design of the structural proposals with the overall design of the structural proposals noted in this document. The draft EIS largely reflects the input provided by the EPA during the technical scoping meeting and on-site inspection, as well as subsequent consultation and compromise measures worked out via telephone. However, EPA is still concerned that watershed projects involving flood control and/or drainage elements have the potential for water quality degradation and wetland habitat loss.

ERP No. D—VAD—K09022—CA, Rating LO, Northern California Veteran Administration Nat'l Cemetery Development, CA. SUMMARY: EPA expressed its lack of objections to the proposal, but requested additional information on water quality impacts from increased sedimentation and use of pesticides and herbicides. EPA also requested a discussion of water quality mitigation measures.

Final EISs

ERP No. D—COE—K32022—CA, Sacramento River Deep Water Ship Channel, Widening/Deepening, Environmental Impact Description Update, CA. SUMMARY: EPA noted that the final supplemental (FS) EIS addressed concerns expressed over the draft supplemental EIS, but requested that the Record of Decision include...
commitments made in the FS EIS to monitor and mitigate for water quality impacts from salinity and dredge disposal leachate. EPA also asked to be kept informed of water quality impacts and associated mitigation efforts.

**Regulation**

ERP No. R-FAA-A51917-00, 14 CFR Part 150, Expansion of Applicability of 150 to Heliports (Docket No. 25117; Notice No. 86-17) [51 FR 40037].

**SUMMARY:** EPA has no objection to the expansion of applicability of 150 to Heliports (Docket No. 25117; Notice No. 86-17) [51 FR 40037].

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460, (202) 554-1305.

**SUPPLEMENTARY INFORMATION:** This is a notice in accordance with the Federal Advisory Committee Act (FACA) [5 U.S.C. App. I (1982)] which requires that timely notice of each meeting of an advisory committee be published in the Federal Register. This notice announces that the EPA will convene a 1-day meeting of the Biotechnology Science Advisory Committee (BASC) Subcommittee on Premanufacture of Notification Review on March 23, 1987.

**I. Announcement of the Receipt of Premanufacture Notifications**

Elsewhere in this issue of the Federal Register a notice announcing the receipt of three PMNs designated as P-87-568, P-87-569, and P-87-570 appears as part of the weekly notice of PMNs received. These PMNs are the subject of this meeting of the Subcommittee on Premanufacture Notification Review of the BASC. Please consult that notice for specific information on the PMNs to be discussed. Copies of the PMNs from which confidential business information has been deleted are available in the public file identified with the docket control number OPTS-00076, and copies available on request from the TSCA Assistance Office by calling (202) 554-1404.

**II. Purpose of the Meeting**

The Subcommittee on Premanufacture Notification Review of the BASC will meet to advise EPA in its review of three PMNs designated as P-87-568, P-87-569, and P-87-570. The review will be extended by agreement between EPA and BTI. EPA has 90 days to review the PMNs. The review period may be extended by agreement between EPA and BTI, or unilaterally by EPA under section 8(c) of TSCA. As discussed above, EPA maintains a public file for each PMN. EPA has also established a file, OPTS-00076, that specifically concerns the meeting of the Subcommittee on Premanufacture Notification Review.

**III. Open Session of the Meeting**

Part of the meeting will be open to the public. During this period members of the BSAC Subcommittee will have the opportunity to hear the comments of individuals who have requested the opportunity to speak. EPA will also describe the potential hazards and will not be discussed.

**IV. Reasons for Closing Certain Sessions of the Meeting**

Section 10(d) of FACA provides that an advisory committee meeting may be closed to the public “in accordance with subsection (c) of section 552b of Title 5.” Portions of the meeting of the BSAC Subcommittee on March 23, 1987 are being closed because some of the material to be considered at the meeting...
has been claimed to be trade secrets and commercial or financial information pursuant to section 14(a) of TSCA and EPA’s confidentiality regulations in 40 CFR Part 2. A written determination that the meeting shall be closed was made by the FAC A because the submission from BTI contains information claimed to be confidential business information which is prohibited from unauthorized disclosure under section 14 of TSCA.

V. Subject of the Meeting
The microorganisms being reviewed by EPA in the three PMNs are three strains of *Rhizobium meliloti* that have been genetically engineered; two of them have enhanced ability to provide nitrogen to certain plants, and the third is a strain used as a comparison to evaluate the first two. BTI has claimed certain information concerning the genetic engineering of these microorganisms as confidential business information under section 14 of TSCA. EPA has briefly summarized the non-confidential data the Agency has received on the identity, use, production volume, toxicity, exposure, and environmental release of these microorganisms in the notice cited above. BTI has also submitted information concerning the genetic engineering techniques used to enhance nitrogen fixation, human health considerations, the location of the proposed field test, design and supervision of the test, methods of application, monitoring and control procedures, environmental fate and effects, and greenhouse efficacy data.

BTI submitted the PMNs on February 6, 1987, and has voluntarily cooperated with EPA by submitting the PMNs for these substances while they are still the focus of research and development (R&D) activities. The company took this action in compliance with the “Statement of Policy: Microbial Products” of the Federal Register of June 28, 1986 (51 FR 23913). In that notice, EPA stated that microbial products were subject to TSCA, and requested commercial researchers intending to release new, living microorganisms into the environment to report their activities to the Agency, rather than to conduct such activities under the exemption for R&D provided by section 5(h)(3) of TSCA.

The microorganisms being developed by BTI are subject to PMN, because they contain genetic material from more than one taxonomic genus, and are therefore new microorganisms, as defined by the Statement of Policy.

BTI has previously conducted research on these microorganisms in contained facilities such as laboratories and greenhouses. BTI now wishes to continue its R&D activities by conducting a field test of the microorganisms in a small plot of alfalfa on its Chippewa Agricultural Station in Arkansaw, Pepin County, Wisconsin. The purpose of the test in the environment is to determine if the engineered strains enhance alfalfa yield under natural field conditions. BTI will use the test results to determine subsequent research and development activities to enhance nitrogen fixation in legumes, and to determine plans for future commercialization.


John A. Moore,
Assistant Administrator for Pesticides and Toxic Substances
[FR Doc. 87-3701 Filed 2-19-87; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-51663; FRL-3159-7J

Certain Chemicals Premanufacture Notices
AGENCY: Environmental Protection Agency [EPA].

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of eighty such PMNs and provides a summary of each.

DATES: Close of Review Period:
P 87-573, 87-574, 87-575, 87-576, 87-577, 87-578, 87-579, 87-580, 87-581, 87-582, 87-583, and 87-584—May 9, 1987
P 87-606, 87-607, 87-608, and 87-609—May 11, 1987

ADDRESS: Written comments, identified by the document control number “[OPTS-51663]” and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.


SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-C004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-563
Manufacturer. Confidential. Chemical: (G) Substituted acetaldehyde. Use/Production: (G) Captive intermediate used in manufacturing a minor component in paper coatings. Prod. range: Confidential.

P 87-564
Manufacturer. Confidential. Chemical: (G) Substituted acetaldehyde. Use/Production: (G) Captive intermediate for use in the manufacture of a minor component in paper coatings. Prod. range: Confidential.

P 87-565
Use/Import. (S) Industrial smoke retardant additive for polyvinyl chloride. Import range: 5,000 to 12,000 kg/yr.

Toxicity Data. Acute oral: >10,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant.

P 87-566

Manufacturer. Confidential.

Chemical. (G) Urethane modified acid functional saturated aliphatic polyester.

Use/Production. (G) Industrically used coating having a dispersing use. Prod. range: 30,000 to 300,000 kg/yr.

P 87-567

Manufacturer. Confidential.

Chemical. (G) Rhizobium meliloti nif genetic material carried on a plasmid.

Use/Production. (G) Small-scale field trial to test ability of the strain to promote alfalfa yield increases. Prod. range: 2 × 10^13 cells/yr (0.004 kg/yr).

Toxicity data. No detrimental effects on alfalfa, peas, tendergreen beans, soybeans, clover, corn, or ryegrass; No nodules formed on peas, tendergreen beans, soybeans, or clover.

Exposure. Human. Production (maximum): 5 workers, 10 hrs/day, 30 days/yr; Transport (maximum): 2 workers, 10 hrs/day, 5 days/yr; Field application (maximum): 5 workers, 12 hrs/day, 14 days/yr.

Environmental. Persistence and survival of R. meliloti strain in soil: greenhouse experiments show less than 1% survival after 8 weeks in test-site soil and potting mix; Plasmid retention in R. meliloti strains in soil: greenhouse tests show that 39% of surviving bacteria of this strain contained the plasmid in test-site soil after 8 wks while 58% of survivors contained the plasmid in potting mix after 6 wks; Plasmid transmissibility to other bacteria: Laboratory experiments (some with test-site soil) show no transfer of the plasmid to three other bacteria.

Environmental release. Production and processing: Cultures sterilized before disposal. Media release: air and water. Small-scale fields trial: 2 × 10^12 cells (in an aqueous suspension) applied to soil in a single application immediately after planting alfalfa seeds in a plot (less than 5 acres) in a 75-acre field of the BioTechnica Chippewa Agricultural Station near Arkansaw, Pepin County, Wisconsin, in May 1987.

Method of Disposal: POTW, and soil and possible groundwater release at field site.

P 87-570


Substance. (G) Genetically engineered strain of Rhizobium meliloti, containing R. meliloti nif genetic material carried on a plasmid.

Use/Production. (G) Small-scale field trial to test ability of the strain to promote alfalfa yield increases. Prod. range: 2 × 10^12 cells/yr (0.004 kg/yr).

Toxicity data. No detrimental effects on alfalfa, peas, tendergreen beans, soybeans, clover, corn or ryegrass; No nodules formed on peas, tendergreen beans, soybeans, or clover.

Exposure. Human. Production (maximum): 5 workers, 10 hrs/day, 30 days/yr; Transport (maximum): 2 workers, 10 hrs/day, 5 days/yr; Field application (maximum): 5 workers, 12 hrs/day, 14 days/yr.

Environmental. Persistence and survival of R. meliloti strain in soil: greenhouse experiments show less than 1% survival after 8 weeks in test-site soil and potting mix; Plasmid retention in R. meliloti strains in soil: greenhouse tests show that 24% of surviving bacteria of this strain contained the plasmid in test-site soil after 8 wks while 55% of survivors contained the plasmid in potting mix after 6 wks; Plasmid transmissibility to other bacteria: Laboratory experiments (some with test-site soil) show no transfer of the plasmid to three other bacteria.

Environmental release. Production and processing: Cultures sterilized before disposal. Media release: air and water. Small-scale fields trial: 2 × 10^12 cells (in an aqueous suspension) applied to soil in a single application immediately after planting alfalfa seeds in a plot (less than 5 acres) in a 75-acre field of the BioTechnica Chippewa Agricultural Station near Arkansaw, Pepin County, Wisconsin, in May 1987.

Method of Disposal: POTW, and soil and possible groundwater release at field site.
Chemical. (G) Unsaturated polyester resin. Use/Production. (S) Industrial fabrication of pipes and tanks. Prod. range: Confidential. P 87-574

Importer. Shin-Etsu Silicones of America, Inc. Chemical. (G) Polyether modified organopolysiloxane. Use/Import (S) Surfactant for polyurethane foam, release agent for molding of rubber compounds, and textile finishing agent for fiber. Import range: 5,000 to 10,000 kg/yr. P 87-575

Manufacturer. Confidential. Chemical. (G) Carboxyamine dye. Use/Production. (G) A dye stuff intermediate for destructive use. Prod. range: Confidential. P 87-577

Manufacturer. Confidential. Chemical. (G) Alkylindolenium bromide. Use/Production. (G) A dye stuff intermediate for destructive use. Prod. range: Confidential. P 87-579

Manufacturer. Confidential. Chemical. (G) Tetraalkylammonium organoborate. Use/Production. (G) Ammonium borate salt for destructive use. Prod. range: Confidential. P 87-582


Manufacturer. Confidential. Chemical. (G) Cycloaliphatic urethane prepolymer. Use/Production. (S) Industrially used coating having a dispersive use. Prod. range: 30,000 to 300,000 kg/yr. P 87-590

Manufacturer. Confidential. Chemical. (G) Cycloaliphatic urethane prepolymer. Use/Production. (G) Dispersively used coating. Prod. range: 60,000 to 251,000 kg/yr. P 87-591

Manufacturer. Confidential. Chemical. (G) Vinyl acrylate. Use/Production. (G) Resin. Prod. range: Confidential. P 87-592

Manufacturer. Confidential. Chemical. (G) Vinyl acrylate copolymer. Use/Production. (G) Label adhesive. Prod. range: Confidential. P 87-593

Manufacturer. PMC Specialties Group. Chemical. (G) Substituted triazole. Use/Production. (S) Corrosion inhibitors. Prod. range: Confidential. P 87-594

Manufacturer. PMC Specialties Group. Chemical. (G) N alkylated benztiazole. Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential. P 87-595

Manufacturer. The Dow Chemical Company. Chemical. (G) Cycloaliphatic urethane prepolymer. Use/Production. (S) Industrial raw material for polyurethane elastomers. Prod. range: Confidential. P 87-596

Manufacturer. The Dow Chemical Company. Chemical. (G) Cycloaliphatic urethane prepolymer. Use/Production. (S) Industrially manufacture of polyurethane elastomers. Prod. range: Confidential. P 87-597

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
P 87-598
Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Use/Production. [G] Contained use. Prod. range: Confidential

P 87-599
Importer. Confidential.
Chemical. [G] Copolymer of fluoroolefin and vinyl ether.
Use/Import. [G] Coating ingredient. Import range: Confidential

P 87-600
Manufacturer. Confidential.
Chemical. [S] 3-hydroxy-2-(hydroxymethyl)-2-methyl-propanoic acid hexanedioic acid, 2,2-dimethyl-1,3-propanediol, 1,3-benzenedicarboxylic acid, 2-ethyl-(2-hydroxymethyl)-1,3-propanediol.
Use/Production. [S] Industrial polymer used to manufacture coatings for metal and plastic substrates. Prod. range: Confidential

P 87-601
Importer. The Nippon Synthetic Chemical Industry Company, Ltd.
Chemical. [G] Pthalic anhydride, propylene glycol, isooctyl alcohol.
Use/Production. [S] Industrial plasticizer. Prod. range: Confidential

P 87-602
Chemical. [S] N-stearyl (N,N"N"-polyethoxy) ammonium lactate.
Use/Import. [S] Shampoo additive. Import range: 100,000 to 150,000 kg/yr.

P 87-603
Manufacturer. Resinall Corporation.
Chemical. [G] Tall oil fractions unsaturated hydrocarbon resin, substituted alkylenebenzene, paraform dieneophile-modified polymer with pentacythrilol.

P 87-604
Manufacturer. Resinall Corporation.
Chemical. [G] Tall oil fractions unsaturated hydrocarbon resin, substituted alkylenebenzene, paraform dieneophile-modified polymer with pentacythrilol.

P 87-605
Manufacturer. E. I. du Pont de Nemours and Company Inc.
Chemical. Not available at this time.
Use/Production. [G] Open, non-dispersive use. Prod. range: Confidential

P 87-606
Manufacturer. E. I. du Pont de Nemours and Company Inc.
Use/Production. [G] Open, non-dispersive use. Prod. range: Confidential

P 87-607
Manufacturer. E. I. du Pont de Nemours and Company Inc.
Use/Production. [G] Open, non-dispersive use. Prod. range: Confidential

P 87-608
Use/Import. [G] Hot melt adhesive. Import range: 20,000 to 100,000 kg/yr.

P 87-609
Use/Import. [S] Metal decorating laquers and enamels. Import range: 180,000 to 450,000

P 87-610
Use/Import. [S] Industrial hot melt adhesive for bonding vinyl film to rigid substrates and in solution cured with an isocyanate for bonding vinyl film to rigid substrates. Import range: 30,000 to 50,000 kg/yr.

P 87-611
Use/Import. [S] Industrial base for coil-coating paint for outdoor exposure. Import range: 135,000 to 450,000 kg/yr.

P 87-612
Use/Import. [S] Industrial metal coating. Import range: Confidential

P 87-613
Use/Import. [S] Protective/decorative coatings for appliances, office furniture and decorative coating for exterior of can, caps and closures. Import range: 180,000 to 450,000 kg/yr.

P 87-614
Use/Import. [G] Resin for coil coating paint. Import range: 30,000 to 100,000 kg/yr.

P 87-615
Use/Import. [S] Protective/decorative coatings for appliances, office furniture and decorative coating for exterior of can, caps and closures. Import range: 180,000 to 450,000 kg/yr.

P 87-616
Use/Import. [S] Industrial sealant for side seams of cans. Import range: 9,000 to 45,000 kg/yr.

P 87-617
Use/Import. [S] Metal decorating and protecting laquers and enamels. Import range: 180,000 to 450,000 kg/yr.

P 87-618
Use/Import. [S] Industrial laminating adhesive mainly for the furniture and automobile industries. Prod. range: 100,000 to 450,000 kg/yr.

P 87-619
Use/Import. [S] Industrial laminating adhesive mainly for the furniture and automobile industries. Prod. range: 100,000 to 450,000 kg/yr.

P 87-620
Manufacturer. Confidential.
FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; Universal Savings Association, F.A., Chickasha, OK


By the Federal Home Loan Bank Board
John F. Ghizzoni,
Assistant Secretary.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The parties listed in this notice have filed an agreement under §225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in §225.25 of Regulation Y which is directly related to extensions of credit by other subsidiaries of Citizens Bancshares, Incorporated.

1. Trustcorp, Inc., Toledo, Ohio; to engage de novo either through itself or through a subsidiary in conducting tax planning and preparation activities and services pursuant to §225.25(b)(21) of the Board's Regulation Y. Comments on this application must be received by March 11, 1987.

2. Barnett Banks of Florida, Inc., Jacksonville, Florida; to engage de novo in providing data processing services to local small businesses and individuals pursuant to §225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the Commonwealth of Virginia. Comments on this application must be received by March 11, 1987.

C. Federal Reserve Bank of Atlanta

Robert E. Heck, Vice President
30 Marietta Street, N.W., Atlanta, Georgia 30303:
1. Alliance Financial Corporation, Dearborn, Michigan; to engage de novo through its subsidiary, Alliance Mortgage Incorporated of Michigan, Dearborn, Michigan, in providing mortgage loans pursuant to §225.25(b)(1)(ii) of the Board's Regulation Y. These activities will be conducted in the State of Michigan.

FEDERAL RESERVE SYSTEM

Citizens Bancshares, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under §225.23(a)(1) of the Board’s Regulation Y (12 CFR 225.23[a][1]) for the Board’s approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843[c][8]) and §225.21(a) of Regulation Y (12 CFR 225.21[a]) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on question whether consummation of the proposal can “reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.” Any request for a hearing on this question must be accompanied by a statement of the reason a written presentation would not suffice in lieu of a hearing.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 12, 1987.

A. Federal Reserve Bank of Cleveland

[John J. Wixted, Jr., Vice President] 1455 East Sixth Street, Cleveland, Ohio 44101:
1. Citizens Bancshares, Incorporated, Salineville, Ohio; to engage de novo through its subsidiary, Freedom Financial Life Insurance Company, Phoenix, Arizona, in acting as an underwriter and a reinsurer of credit life and credit accident and health insurance pursuant to §225.25[b][8][I] of the Board’s Regulation Y which is directly related to extensions of credit by other subsidiaries of Citizens Bancshares, Incorporated.

B. Federal Reserve Bank of Richmond

[Lloyd W. Bostian, Jr., Vice President] 701 East Byrd Street, Richmond, Virginia 23261:
1. Shawsville Bankcorp, Inc., Shawsville, Virginia; to engage de novo in providing data processing services to local small businesses and individuals pursuant to §225.25[b][7] of the Board’s Regulation Y. Comments on this application must be received by March 11, 1987.

D. Federal Reserve Bank of Chicago

[David S. Epstein, Assistant Vice President] 230 South LaSalle Street, Chicago, Illinois 60604:
1. Alliance Financial Corporation, Dearborn, Michigan; to engage de novo through its subsidiary, Alliance Mortgage Incorporated of Michigan, Dearborn, Michigan, in providing mortgage loans pursuant to §225.25[b][1][ii] of the Board’s Regulation Y. These activities will be conducted in the State of Michigan.
Decatur County Bank Employee Stock Ownership Plan; Acquisitions of Shares of Banks or Bank Holding Companies

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817[j]) and § 225.41 of the Board of Governors' Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817[j][7]).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 6, 1987.

A. Federal Reserve Bank of Chicago

David S. Epstein, Assistant Vice President

230 South LaSalle Street

Chicago, Illinois 60690:

- **Decatur County Bank Employee Stock Ownership Plan, Greensburg, Indiana;** to acquire 26 percent of the voting shares of Decatur Bancshares, Inc., Greensburg, Indiana.

B. Federal Reserve Bank of Kansas City

Thomas M. Hoening, Vice President

925 Grand Avenue, Kansas City, Missouri 64198:

- **Michael N. Fleming, Dixon, Illinois;** to acquire 20 percent of the voting shares of Mancos Bancorporation, Inc., Mancos, Colorado, and thereby indirectly acquire Mancos Valley Bank, Mancos, Colorado.
- **Federal Reserve Bank of San Francisco (Ray W. Green, Vice President); 101 Market Street, San Francisco, California 94105:**
  - **W. Clarke Swanson, Jr., Naples, Florida;** to acquire up to 45 percent of the voting shares of Napa National Bancorp, Napa, California, and thereby indirectly acquire Napa National Bank, Napa, California.
- **Board of Governors of the Federal Reserve System, February 13, 1987:**
  - **William W. Wiles, Secretary of the Board.**

[FR Doc. 87-3576 Filed 2-19-87; 8:45 am]

BILLING CODE 6210-01-M

First State Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842[c]).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 9, 1987.

A. Federal Reserve Bank of Richmond

Lloyd W. Bosstain, Jr., Vice President

701 East Byrd Street, Richmond, Virginia 23261:

- **First State Bancorporation Inc., Elkina, West Virginia;** to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank Elkina, Inc., Elkina, West Virginia, a de novo bank.
- **Montgomery Bancorp, Inc., Bethesda, Maryland;** to become a bank holding company by acquiring 100 percent of the voting shares of Montgomery National Bank, Bethesda, Maryland, a de novo bank.

B. Federal Reserve Bank of Atlanta

Robert E. Heck, Vice President

104 Marietta Street, N.W., Atlanta, Georgia 30303:

- **Totalbank Corporation of Florida, Miami, Florida;** to acquire 95 percent of the voting shares of Trade National Bank, Miami, Florida.

C. Federal Reserve Bank of Chicago

David S. Epstein, Assistant Vice President

230 South LaSalle Street

Chicago, Illinois 60690:

- **Milledgeville Bancorp, Inc., Milledgeville, Illinois;** to become a bank holding company by acquiring 100 percent of the voting shares of Milledgeville State Bank, Milledgeville, Illinois. Comments on this application must be received by March 6, 1987.

D. Federal Reserve Bank of St. Louis

Randall C. Sumner, Vice President

411 Locust Street, St. Louis, Missouri 63101:

- **CNB Bancshares, Inc., Evansville, Indiana;** to acquire 100 percent of the voting shares of The Farmers National Bank of Princeton, Princeton, Indiana.

E. Federal Reserve Bank of Minneapolis

James M. Lyon, Vice President

250 Marquette Avenue

Minneapolis, Minnesota 55402:
1. Draper Holding Company, Inc., Draper, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Draper State Bank, Draper, South Dakota. Comments on this application must be received by March 11, 1987.

2. First National Bank of Sauk Centre Profit Sharing Trust No. 1, Sauk Centre, Minnesota; to become a bank holding company by acquiring 25.51 percent of the voting shares of Sauk Centre Financial Services, Inc., Sauk Centre, Minnesota, and thereby indirectly acquire First National Bank of Sauk Centre, Sauk Centre, Minnesota. Comments on this application must be received by March 10, 1987.

3. Merchants and Miners Bancshares, Inc., Hibbing, Minnesota; to become a bank holding company by acquiring 49 percent of the voting shares of Exchange State Bank, St. Paul, Minnesota. Comments on this application must be received by March 11, 1987.

4. McLeod Bancshares, Inc., Hutchinson, Minnesota; to acquire 90 percent of the voting shares of First National Bank of Sauk Centre, Sauk Centre, Minnesota.

5. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64130:


2. LJT, Inc., Holdrege, Nebraska; to acquire an additional 0.96 percent of the voting shares of First National Bank of Holdrege, Holdrege, Nebraska.

3. Lincoln Banking Company, Steamboat Springs, Colorado; to acquire 100 percent of the voting shares of United Bank of Steamboat Springs, Steamboat Springs, Colorado. Comments on this application must be received by March 10, 1987.


William W. Wiles, Secretary of the Board.

[FR. Doc. 87-3377 Filed 2-9-87; 8:45 am]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the Poverty Income Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the poverty income guidelines to account for last year’s increase in the Consumer Price Index.

DATE: Effective upon publication.

ADDRESS: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information about the poverty income guidelines in general, contact Joan Turek-Brezina (telephone: (202) 345-6141).

Questions about applying these guidelines to a particular program should be referred to the Federal office which is responsible for that program.

For information about the Hill-Burton Uncompensated Services Program (no-fee or reduced-fee hospital care at certain hospitals for certain persons unable to pay for such care), contact the Office of the Director, Division of Facilities Compliance (telephone: (301) 443-6512). (The effective date of these guidelines for facilities obligated under the Hill-Burton Uncompensated Services Program is 60 days from the date of this publication.)

This notice provides the 1987 update of the poverty income guidelines required by sections 653 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). As required by the statute, this update reflects last year’s change in the Consumer Price Index; it was accomplished using the same methodology used in previous years.

These poverty income guidelines are used as an eligibility criterion by a number of Federal programs. The guidelines are a simplified version of the poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The poverty income guidelines issued by the Department of Health and Human Services (formerly by the Community Services Administration) are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The poverty thresholds are used primarily for statistical purposes.

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty income guidelines as only one of several eligibility criteria, or uses a modification of the guidelines (for example, 130 percent or 185 percent of the guidelines). Some other programs, while not using the guidelines as a criterion of individual eligibility, use them for the purpose of targeting assistance or services. In some cases, these poverty income guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given below are applicable to both farm and nonfarm families.

The following definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P-60, No. 152 and earlier reports in the same series) are made available for use in connection with the poverty income guidelines. Programs may use somewhat different definitions.

(a) Family. A family is a group of two or more persons related by birth, marriage, or adoption who reside together; all such related persons are considered as members of one family. If a household includes more than one family and/or more than one unrelated individual, the poverty guidelines are applied separately to each family and/or unrelated individual, and not to the household as a whole.

(b) Family unit of size one. In conjunction with the poverty income guidelines, a family unit of size one is an unrelated individual (as defined by the Census Bureau)—that is, a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the sole occupant of a housing unit, or may be residing in a housing unit (or in group quarters such as a rooming house) in which one or more persons also reside who are not related to the individual in question by birth, marriage, or adoption. (Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.)

(c) Income. Refers to total annual cash receipts before taxes from all sources. (Income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received...
during the most recent three months.) Income includes money wages and salaries before any deductions, but does not include food or rent received in lieu of wages. Income also includes net receipts from nonfarm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses). Income includes regular payments from social security, railroad retirement, unemployment compensation, workers' compensation, strike benefits from union funds, veterans' benefits, public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, and General Assistance money payments), training stipends, alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or periodic receipts from estates or trusts. For eligibility purposes, income does not include the following types of money received: capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; tax refunds; gifts, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or rent received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare, Medicaid, Food Stamps, school lunches, and housing assistance.

1987 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAI'I) AND THE DISTRICT OF COLUMBIA

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$5,250</td>
</tr>
<tr>
<td>2</td>
<td>$7,400</td>
</tr>
<tr>
<td>3</td>
<td>$9,300</td>
</tr>
<tr>
<td>4</td>
<td>$11,200</td>
</tr>
<tr>
<td>5</td>
<td>$12,100</td>
</tr>
<tr>
<td>6</td>
<td>$15,000</td>
</tr>
<tr>
<td>7</td>
<td>$16,800</td>
</tr>
<tr>
<td>8</td>
<td>$18,800</td>
</tr>
</tbody>
</table>

For family units with more than 8 members, add $1,900 for each additional member.

For family units with more than 8 members, add $2,190 for each additional member.

- **Alcohol, Drug Abuse, and Mental Health Administration**
  - **Board of Scientific Counselors; Meeting**
  - **AGENCY:** Alcohol, Drug Abuse, and Mental Health Administration, HHS.
  - **ACTION:** Notice of meeting.
  - **SUMMARY:** This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Board of Scientific Counselors, NIMH. The committee meeting will be open for a report on administrative developments. The remainder of the sessions will be devoted to a review and evaluation of intramural projects and performance of individual staff scientists and will not be open to the public in accordance with the determination by the Administrator, ADAMHA, pursuant to the provisions of section 552(b)(6) and 5 U.S.C. app. 210(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.
  - **Committee Name:** Board of Scientific Counselors, NIMH.
  - **Date and Time:** March 19-21: 9:00 a.m. Place: National Institutes of Health, 9000 Rockville Pike, Building 36, Conference Room 1B-07, Rockville, Maryland 20892.

**Status of Meeting:** OPEN—March 19: 9:00-4:30 p.m. CLOSED—Otherwise.

**Contact:** Frederick K. Goodwin, National Institute of Mental Health, 9000 Rockville Pike, Building 10, Room 4N-224, Rockville, Maryland 20892, (301) 498-3501.

**Purpose:** The Board of Scientific Counselors provides expert advice to the Director, NIMH, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

**Summaries of the meetings and rosters of committee members may be obtained from Ms. Joanna Kieffer.**

**Committee Management Officer:** Alcohol, Drug Abuse, and Mental Health Administration.

**FR Doc. 87-3567 Filed 2-19-87; 8:45 am**

**BILLING CODE 4150-04-M**

**Biological and Neurosciences Subcommittee of the Mental Health Research Education Review Committee; Meeting**

**AGENCY:** Alcohol, Drug Abuse, and Mental Health Administration, HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees. These initial review committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA. In accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. App. 210(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

**Committee Name:** Biological and Neurosciences Subcommittee of the Mental Health Research Education Review Committee, NIMH.

**Date and Time:** March 4-5: 9:00 a.m.-5:00 p.m. Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

**Status of Meeting:** Open—March 4: 8:00-10:00 a.m. Closed—Otherwise.
Contact: Shirley Maltz, Room 9C26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4436.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the area of biological sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Mental Health Small Grant Review Committee, NIMH.

Date and Time: March 5–6; 1:30 p.m. Place: The Canterbury Hotel, 1739 N Street, NW., Washington, DC 20036.

Status of Meeting: Open—March 5: 1:30–3:30 p.m. Closed—Otherwise.

Contact: Betty Russell, Room 9C05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4436.

Purpose: The committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Epidemiology Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and Time: March 9–10; 9:00 a.m. Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209.

Status of Meeting: Open—March 9: 9:00–10:00 a.m. Closed—Otherwise.

Contact: Gloria Yockelson, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1307.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained from Ms. Joanna Kieffer, Committee Management Officer, NIMH, Room 9–96, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4433.


Brenda L. Williamson,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87–3568 Filed 2–19–87; 8:45 am E D T] BILLING CODE 4160–20–M

Centers for Disease Control

Aryl Amine Adducts in Blood as Indicators of Exposure; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: March 19, 1987.

Time: 9 a.m. to 3 p.m.

Place: Auditorium, Robert A. Taft Laboratories, 4679 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: The purpose of this meeting is to review and discuss the utility of measuring blood hemoglobin or deoxyribonucleic acid (DNA) adducts as an indicator of aromatic amine exposure. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Kenneth L. Cheever, Division of Biomedical and Behavioral Science, NIOSH, CDC, 4876 Columbia Parkway, Cincinnati, Ohio 45226; telephones: FTS: 684-8193; Commercial: 513/533-8193.


Elvin Hilger,
Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87–3559 Filed 2–19–87; 8:45 am E D T] BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee 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.

Meeting: The following advisory committee meeting is announced:

Dermatologic Drugs Advisory Committee

Date, time, and place: March 16, 8:30 a.m., Conference Rooms D and E, Parklawn Bldg., 5600 Fishers Lane, 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 4:30 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee: The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in dermatologic disorders.

agenda—Open public hearing. Interested persons who wish to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss the safety and efficacy of minoxidil (Upjohn) in male pattern baldness. The committee will also discuss requirements for proof of effectiveness of broad-spectrum sunscreens. The committee's discussions and conclusions regarding requirements for testing of UVA sunscreens may be
considered by the agency in its preparation of a tentative final monograph on over-the-counter (OTC) sunscreen drug products. Such a monograph is being developed as part of the OTC drug review. The advance notice of proposed rulemaking for these products was published in the Federal Register of August 25, 1978 (43 FR 38206).

FDA public advisory committee meetings 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 other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open 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 guideline (Subpart 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. A list of committee members and summary minutes of meetings may be requested from the Docket Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–778 (5 U.S.C. App. 1)), and FDA's regulations (21 CFR Part 14) on advisory committees.


John M. Taylor,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–3599 Filed 2–19–87; 8:45 am]
BILLING CODE 4160–01–M

[Docket No. 86F–0509]

U.S. Department of Agriculture, Food Safety and Inspection Service; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the U.S. Department of Agriculture (USDA), Food Safety and Inspection Service has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sources of ionizing radiation for reduction of food-borne pathogens in poultry products.


SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1796 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP FM3974) has been filed by USDA's Food Safety and Inspection Service, Washington, DC 20250, proposing that § 179.26 Ionizing radiation for the treatment of food (21 CFR 179.26) be amended to provide for the use of sources of ionizing radiation (gamma radiation, electron radiation, and X-radiation) to control food-borne pathogens by reducing the amount of microorganisms, such as Salmonella, Yersinia, and Campylobacter in poultry products.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).


Richard J. Ronk,
Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–3573 Filed 2–19–87; 8:45 am]
National Cancer Institute; Cancer Clinical Investigations Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Clinical Investigations Review Committee, National Cancer Institute, March 30-31, 1987, at the Omni Georgetown Hotel, 2121 P Street, Northwest, Washington, DC 20037.

This meeting will be open to the public on March 30, from 8 a.m. to 8:30 a.m. for reports by the Executive Secretary and Chairman of the Cancer Clinical Investigations Review Committee. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 30 from approximately 8:30 a.m. until recess and on March 31 from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-2330) will provide information regarding the applications, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Betty J. Beveridge,
Committee Management Officer, NIH.

National Cancer Institute; Cancer Preclinical Program Project Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Preclinical Program Project Review Committee, National Cancer Institute, April 2-3, 1987, National Institutes of Health, Building 31, Conference Room 9, Bethesda, Maryland 20892.

This meeting will be open to the public on April 2 from 8:30 a.m. to 9:15 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 2 from 9:15 a.m. to recess and on April 3 from approximately 9:15 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-2330) will provide other information pertaining to the meeting.

Betty J. Beveridge,
Committee Management Officer, NIH.

National Cancer Institute; Cancer Therapeutics Program Project Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Therapeutics Program Project Review Committee, National Cancer Institute, National Institutes of Health, April 16-17, 1987, Holiday Inn-Crowne Plaza, 1750 Rockville Pike, Bethesda, Maryland 20852.

This meeting will be open to the public on April 16 from 8 a.m. to 8:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 16 from 8:30 a.m. to 5 p.m. and on April 17 from 8 a.m. to adjournment for the review, discussion and evaluation of individual program project grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Betty J. Beveridge,
Committee Management Officer, NIH.

National Cancer Institute; President's Cancer Panel; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, March 16, 1987, at the UCLA School of Medicine, School of Nursing Auditorium, Louis Factor Building, A-600, Tiverton Drive, Los Angeles, California 90024.

This meeting will be open to the public on March 16 from 8:30 a.m. to adjournment. Agenda items include reports by the Chairman, President's Cancer Panel, and the Director, National Cancer Institute; and reports and discussions from experts to obtain information regarding research.

Betty J. Beveridge,
Committee Management Officer, NIH.
programs supported by the National Cancer Institute. Attendance by the public will be limited to space available. Dr. Elliott Stonehill, Executive Secretary, President's Council Panel, National Cancer Institute, Building 31, Room 1A23, National Institutes of Health, Bethesda, Maryland 20892, will provide an agenda for the meeting, a roster of the panel members, and substantive program information upon request.

Betty J. Beveridge, Committee Management Officer, NIH.

BILeING CODE 4140-01-M

National Institute of Dental Research; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on March 5-6, 1987, in Conference Room 4, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 8:45 a.m. on March 5, and from 8:30 a.m. to 10:15 a.m. on March 6, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting of the Transplantation Biology and Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 8:45 a.m. until recess on March 5, and from 10:15 a.m. until adjournment on March 6. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Betty J. Beveridge, Committee Management Officer, NIH.

BILeING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on March 5-6, 1987, in Conference Room 4, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 8:45 a.m. on March 5, and from 8:30 a.m. to 10:15 a.m. on March 6, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting of the Transplantation Biology and Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 8:45 a.m. until recess on March 5, and from 10:15 a.m. until adjournment on March 6. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Betty J. Beveridge, Committee Management Officer, NIH.

BILeING CODE 4140-01-M

Heart, Lung, and Blood Research Review Committee A; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and
Blood Institute, National Institutes of Health, on March 26-27, 1987, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 26 from 8:30 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 52b(c)(4) and 52b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 26 from approximately 10 a.m. until adjournment of March 27 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-7265, will furnish substantive program information.


Betty J. Beveridge, Committee Management Officer, NIH.

[Billing Code 4100-01-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK 964-07-4213-15; F-21901-60] Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the FAIRBANKS DAILY NEWS-MINER. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 23, 1987 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (980), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Stan Bronczyk, Chief, Branch of Dayton, Adjudication.

[Billing Code 4210-4A-M]

[CA-930-07-4332-13; FES 87-3] Availability of Final Environmental Impact Statement; Alturas Resource Area Wilderness Susanville District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) for the Alturas Resource Area Wilderness Proposals.

SUMMARY: This EIS assesses the environmental consequences of managing the Pit River Canyon and Tule Mountain Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed in this EIS include: (1) A "no wilderness/no action" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) a "partial wilderness" alternative for the Pit River Canyon WSA.

The WSAs analyzed in the EIS, their total acreage, and the proposed actions for each are as follows:

Pit River Canyon WSA—11,575 acres; 6,646 acres suitable, 4,935 acres nonsuitable.

Tule Mountain WSA—16,950 acres; 15,950 acres nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress.

Any final decision on these proposals may be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Manager, Alturas Resource Area, 120 South Main Street, Alturas, CA 96101. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW, Washington, DC 20240

or Bureau of Land Management, California State Office, 2600 Cottage Way, Room 2841, Sacramento, CA 95825

or Bureau of Land Management, Susanville District Office, 805 Hall Street, Susanville, CA 96130

FOR FURTHER INFORMATION CONTACT: Richard J. Drehobl, Area Manager.
Alturas Resource Area Office, Bureau of Land Management, 120 South Main Street, Alturas, CA 96101. (916) 233-4666.


Bruce Blanchard,
Director, Office of Environmental Project Review.

[FR Doc. 87-3478 Filed 2-19-87; 8:45 am]
BILLING CODE 4310-40-M

[CA-930-4332-13]

Availability of Final Environmental Impact Statement; Caliente, Folsom, and Hollister Resource Areas Wilderness, Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) for the Central California Study Areas Wilderness Proposals.

SUMMARY: This EIS assesses the environmental consequences of managing seven Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed in this EIS include: (1) A "no wilderness/no action" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) three "partial wilderness" alternatives for three of the WSAs. The names of the seven WSAs analyzed in the EIS, their total acreage, and the proposed actions for each are as follows:

- Merced River—12,835 acres; 12,835 acres nonsuitable.
- Panoche Hills North—6,677 acres; 6,677 acres nonsuitable.
- Panoche Hills South—11,267 acres; 11,267 acres nonsuitable.
- Pinnacles Wilderness Contiguous—5,938 acres; 2,200 acres suitable, 3,638 acres nonsuitable.
- Caliente Mountains—19,018 acres; 19,018 acres nonsuitable.
- Piute Cypress—5,527 acres; 5,527 acres nonsuitable.
- Owens Peak—22,560 acres; 14,960 acres suitable, 7,600 acres nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10(b)(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Managers, Caliente Resource Area, 520 Butte Street, Bakersfield, CA 93305; Folsom Resource Area, 63 Natomas Street, Folsom, CA 95630, and Hollister Resource Area, P.O. Box 368, Hollister, CA 95049-0365. Copies are also available for inspection at the following locations:

- Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20420.
- Bureau of Land Management, California State Office, 2800 Cottage Way, Room 2841, Sacramento, CA 95825
- Bureau of Land Management, Bakersfield District Office, Federal Building, Room 302, 300 Truxtun Avenue, Bakersfield, CA 93301

FOR FURTHER INFORMATION CONTACT: Jim Jennings, Outdoor Recreation Planner, Bakersfield District Office, Federal Building, Room 302, 300 Truxtun Avenue, Bakersfield, CA 93301, (605) 661-4207.


Bruce Blanchard,
Director, Office of Environmental Project Review.

[FR Doc. 87-3478 Filed 2-19-87; 8:45 am]
BILLING CODE 4310-40-M

[CA-930-4332-13; FES 87-6]

Availability of Final Environmental Impact Statement; North Central California Wilderness

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) on the Wilderness Recommendations for the North Central California Study Areas.

SUMMARY: This EIS assesses the environmental consequences of managing two Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternative assessed included: (1) A "no wilderness/no action" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) a "partial wilderness" alternative for the Timbred Crater WSA.

The numbers of the two WSAs analyzed in the EIS, their total acreage, and the proposed actions for each are as follows:

- Timbred Crater—18,690 acres; 18,690 acres nonsuitable.
- Lava—11,632 acres; 11,632 acres nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10(b)(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Managers, Alturas Resource Area, P.O. Box 771, Alturas, CA 96101. Copies are also available for inspection at the following locations:

- Department of the Interior, Bureau of Land Management, 18th & C Street, NW., Washington, DC 20420.
- Bureau of Land Management, California State Office, 2800 Cottage Way, Room 2841, Sacramento, CA 95825
- Bureau of Land Management, Susanville District Office, 705 Hall Street, Susanville, CA 96130.

FOR FURTHER INFORMATION CONTACT: Richard Drehobl, Area Manager, Alturas Resource Area, Post Office Box 771, Alturas, CA 96101, (916) 233-4666.


Bruce Blanchard,
Director, Office of Environmental Project Review.

[FR Doc. 87-3478 Filed 2-19-87; 8:45 am]
BILLING CODE 4310-40-M

[UT-060-07-4331-13]

Availability of Draft Environmental Assessment


AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Notice of availability of Draft Environmental Assessment.

SUMMARY: The Bureau of Land Management proposes to conduct stabilization of one historic cultural property in the Desolation Canyon Wilderness Study Area. The purpose of this action is to maintain the structural integrity of the site thereby protecting the scientific value while at the same time allowing for continued public (recreational) use.

Anyone who wishes to comment on the proposed action can obtain a copy of
the draft environmental assessment from the Grand Resource Area Office, P.O. Box M, Moab, Utah 84532, phone (801) 259-8193. Comments should be received by April 30, 1987.

Kenneth V. Rhea, Associate District Manager.

James Fox, District Manager, Las Cruces

Associate District Manager.

Las Cruces, New Mexico.

ADDRESS:

heard by the Board at 1:15 p.m. depending on the amount of discussion by 3:30 p.m., but may run until 4:30 p.m., March 17, 1987, beginning at 10:00 a.m. It is anticipated that the meeting will adjourn by 3:30 p.m., but may run until 4:30 p.m., depending on the amount of discussion generated. Public comments will be heard by the Board at 1:15 p.m.

DATE: The meeting will be held March 26, 1987, beginning at 10:00 a.m. It is anticipated that the meeting will adjourn by 3:30 p.m., but may run until 4:30 p.m., depending on the amount of discussion generated. Public comments will be heard by the Board at 1:15 p.m.

ADDRESS: The meeting will be held in the Conference Room of the BLM Las Cruces District Office, 1800 Marquesa, Las Cruces, New Mexico.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Las Cruces District, Bureau of Land Management, 1800 Marquesa, Las Cruces, New Mexico 88005, Phone: (505) 525-8228.

Robert Calkins, Associate District Manager.

[FR Doc. 87-3591 Filed 2-19-87; 8:45 am]

BILLING CODE 4310-FB-M

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held March 17, 1987.

On March 17, the meeting will begin at 9:00 a.m., in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include:

A report from the Council's Protest & Appeal Study Committee, a Resource Management Plan staff presentation, the status of State/District organization study and a report on the District's progress in controlling competing vegetation as it relates to reforestation efforts.

The meeting of the Advisory Council is open to the public. Interested persons may make oral statements to the Council following conclusion of its other agenda items on March 17, or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by March 16, 1987. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.


David A. Jones, District Manager.

[FR Doc. 87-3597 Filed 2-19-87; 8:45 am]

BILLING CODE 4310-32-M

[CA-020-07-4332-02; CA-020-07-4321-02] Susanville District Advisory Council; Meeting

In accordance with sec. 309 of Pub. L. 94-579 (Federal Land Policy and Management Act as amended), the Susanville District Advisory Council will meet at 10:00 a.m. on March 4, 1987 and at 8:00 a.m. on March 5, 1987 in the conference room of the Susanville District Office, 708 Hall Street, Susanville, California.

The agenda agenda will include such topics as a Statewide wilderness update, High Rock Canyon ACEC/Recreation Plan, Malacha Hydroelectric Power Project, range condition update, Lassen County/Nevada interstate water issues, Hog Ranch gold mine, wild horse experiment, gifts catalog, and the California Department of Fish and Game Cooperative Program, among others.

A public comment period is scheduled for 4:45 p.m. on March 4, 1987. All those individuals wishing to offer their input to the Council may do so at that time.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction within 30 days following the meeting.

Robert J. Serve, Acting District Manager.

[FR Doc. 87-3617 Filed 2-19-87; 8:45 am]

BILLING CODE 4310-40-M

[OR-020-07-4333-10: GP7-123] Oregon; Off-Highway Vehicle Designation

AGENCY: Bureau of Land Management, Interior.

ACTION: Burns District Office: Notice giving related to off-highway motorized vehicle use on public lands.

SUMMARY: Notice is hereby given relating to the use of off-highway vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340.

The following lands under the administration of the Bureau of Land Management are designated as closed, limited, under Interim Management Policy and Guidelines for Lands under Wilderness Review, or open to off-highway motor vehicle use.

The area affected by the designations is the Burns District, which includes 3,544,612 acres of public lands in the Three-Rivers and Andrews Resource Areas located in Grant and Harney Counties, Oregon.

These designations are a result of resource management decisions made in existing Management Framework Plans and analyzed in several grazing Environmental Impact Statements. These designations are published as final until such time that changes in resource management warrant modifications.

A. Closed Designations

Areas which are closed to off-highway motor vehicle use comprise 9,930 acres. One area, South Narrows (160 acres), has been designated closed prior to this Notice. The following areas are designated closed to motorized vehicle use to protect resource and scenic values:

Malheur River—Blue Bucket Creek ... 2,000
Squaw Lake ................................... 6,500
Hat Butte ..................................... 30
Windy Point ................................... 280
Devine Canyon ................................ 1,040

B. Limited Designations

1. Wilderness Study Areas (WSAs)

Wilderness Study Areas (WSAs) comprising 829,965 acres will be managed in accordance with the nonimpairment criteria of Wilderness Interim Management Policy which allows off-highway vehicle use to
continue in the manner and degree on ways and trails where such use was occurring on October 21, 1976. The only exception to this would be the designation of future cross-country travel in specific sand dune, play and snow areas providing that such use does not impair wilderness character. The limited vehicle use designation will remain in effect until Congressional release of WSAs, if actual or unforeseeable use levels cause the nonimpairment criteria to be violated, in which case more restrictive designations may be made. The following Wilderness Study Areas are designated as limited to off-highway motorized vehicle use under Wilderness Interim Management Policy:

<table>
<thead>
<tr>
<th>WSA Unit No.</th>
<th>WSA Name</th>
<th>Acres in Burns District</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-14</td>
<td>Malheur River/Blue Bucket Creek.</td>
<td>3,480</td>
</tr>
<tr>
<td>2-23L</td>
<td>Stonehouse</td>
<td>14,825</td>
</tr>
<tr>
<td>2-23M</td>
<td>Lower Stonehouse.</td>
<td>8,090</td>
</tr>
<tr>
<td>2-72C</td>
<td>Sheephead Mountains</td>
<td>23,790</td>
</tr>
<tr>
<td>2-72D</td>
<td>Wildcat Canyon</td>
<td>8,730</td>
</tr>
<tr>
<td>2-72F</td>
<td>Heath Lake</td>
<td>20,520</td>
</tr>
<tr>
<td>2-72J</td>
<td>Table Mountain</td>
<td>40,592</td>
</tr>
<tr>
<td>2-72J</td>
<td>West Peak</td>
<td>8,555</td>
</tr>
<tr>
<td>2-73A</td>
<td>East Alvord</td>
<td>22,240</td>
</tr>
<tr>
<td>2-73H</td>
<td>Winter Range</td>
<td>15,440</td>
</tr>
<tr>
<td>2-74</td>
<td>Alvord Desert</td>
<td>97,165</td>
</tr>
<tr>
<td>2-77</td>
<td>Mahogany Ridge</td>
<td>27,940</td>
</tr>
<tr>
<td>2-78</td>
<td>Red Mountain</td>
<td>16,215</td>
</tr>
<tr>
<td>2-81</td>
<td>Pueblo Mountains</td>
<td>72,090</td>
</tr>
<tr>
<td>2-82</td>
<td>Rincon</td>
<td>100,445</td>
</tr>
<tr>
<td>2-83</td>
<td>Alvord Peak</td>
<td>16,825</td>
</tr>
<tr>
<td>2-84</td>
<td>Basque Hills</td>
<td>70,600</td>
</tr>
<tr>
<td>2-85F</td>
<td>High Steens</td>
<td>69,740</td>
</tr>
<tr>
<td>2-85Q</td>
<td>South Fork Donner and Blitzen River.</td>
<td>37,555</td>
</tr>
<tr>
<td>2-85H</td>
<td>Home Creek</td>
<td>26,590</td>
</tr>
<tr>
<td>2-86E</td>
<td>Blitzen River</td>
<td>54,280</td>
</tr>
<tr>
<td>2-86F</td>
<td>Little Blitzen Gorge</td>
<td>9,400</td>
</tr>
<tr>
<td>2-87</td>
<td>Bridge Creek</td>
<td>14,545</td>
</tr>
<tr>
<td>2-98A</td>
<td>Pine Creek (Strawberry Mtns.)</td>
<td>200</td>
</tr>
<tr>
<td>2-98C</td>
<td>Sheep Gulch (Strawberry Mtns.)</td>
<td>720</td>
</tr>
<tr>
<td>2-98D</td>
<td>Indian Creek (Strawberry Mtns.)</td>
<td>208</td>
</tr>
<tr>
<td>2-103</td>
<td>Aldrich Mountain</td>
<td>9,395</td>
</tr>
<tr>
<td>1-146</td>
<td>Hawk Mountain</td>
<td>25,380</td>
</tr>
<tr>
<td>3-152</td>
<td>Willow Creek</td>
<td>2,140</td>
</tr>
<tr>
<td>3-153</td>
<td>Disaster Peak</td>
<td>3,740</td>
</tr>
</tbody>
</table>

1 WSA 2-14: Additional 2,080 acres closed by prior management decision.
2 WSA 2-23L: Additional 6,500 acres closed by prior management decision.
3 The following WSAs have acreages within the established boundaries of the Steens Mountain vehicle management designation of September 30, 1980, which is consistent with Wilderness IMP: 2-95, 57,650 acres; 2-85, 19,005 acres; 2-85H, 22 acres: 2-86E, ALL; 2-86F, ALL; 2-87, 8,585 acres.

2. Lands Other than Wilderness Study Areas (WSAs)

Lands other than WSAs which have some type of limited designation comprise 148,843 acres. These areas are limited, in most cases, to use of motorized vehicles on designated, existing roads and trails. However, other limitations may be imposed, such as use during certain time periods, certain types of vehicles, or certain off-highway vehicle activities.

One area, Steens Mountain Recreation Lands, including a parcel of land adjacent to the western boundary for a total of 164,912 acres, was previously designated in September, 1980, and limits use of motorized vehicles to designated, existing roads and trails. This area is not included in this Notice. The following areas are designated limited to motorized vehicle use on designated, existing roads and trails:

- Steens Mountain Recreation Lands additional acreage from land exchanges: 12,362 acres
- Little Blitzen Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC): 1,253 acres
- Little Wildhorse RNA/ACEC: 1,285 acres
- South Fork Willow Creek RNA/ACEC: 1,228 acres
- Rooster Comb RNA/ACEC: 1,720 acres
- East Kiger Plateau RNA/ACEC: 1,240 acres
- Silver Creek RNA/ACEC: 640 acres
- Pueblo Foothills RNA/ACEC: 2,520 acres
- Turn Turn Lake RNA/ACEC: 3,112 acres
- Long Draw RNA/ACEC: 440 acres
- Mickey Basin RNA/ACEC: 560 acres
- Alvord Desert ACEC: 10,700 acres
- Borax Lake ACEC: 1,200 acres
- Alvord Peak ACEC: 1,200 acres
- Picket Rim ACEC: 4,000 acres
- South Steens ACEC: 60,500 acres
- Diamond Craters Outstanding Natural Area/ACEC: 16,656 acres
- Warm Springs Reserve: 23,011 acres
- Oregon Dept. of Fish & Wildlife hunting areas: 49,652 acres

These designations become effective upon publication in the Federal Register and will remain in effect until rescinded or modified by the Burns District Manager. Information and maps of areas with open, closed and limited designations are available at the Bureau of Land Management, Burns District Office, 74 South Alvord, Burns, Oregon 97720, Telephone (503) 573-5241.

Joshua L. Warburton,
District Manager.

[FR Doc. 87-3593 Filed 2-9-87; 8:45 am]
BILLING CODE 4310-33-M

[A-22531]

Receipt of Conveyance; Mineral Interest Application; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of receipt of conveyance of mineral interest application.

SUMMARY: Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, James and Jane Sasser have applied to purchase the mineral estate described as follows:

- Cila and Salt River Meridian, Arizona.
  T 1 N., R. 7 E., Sec. 3, Lots 3 and 4, 5½N W¼, SW¼.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 150 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, December 24, 1986, whichever occurs first.

Henri R. Bisson,
Acting District Manager.
Colorado; Proposed Withdrawal and Opportunity for Public Hearing


AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior has filed application for withdrawal of 357.8 acres of public land to protect archeological ruins. This notice will segregate these sites for 2 years pending final determination on this application. These lands have been and will continue to be open to mineral leasing.

DATE: Comments or requests for hearing should be received on or before May 21, 1987.

ADDRESS: Correspondence should be addressed to the State Director, Colorado State Office, 2820 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

SUPPLEMENTARY INFORMATION: On February 6, 1987, a petition was approved allowing the Department of the Interior to make application for a protective withdrawal to allow for preservation and development of archeological values on the following described lands.

Sixth Principal Meridian
T. 2 N., R. 76 W., sec. 17, SE¼SE¼; sec. 20, N½NE½ and SW¼NE¼.
T. 2 N., R. 77 W., sec. 23, lot 6; sec. 24, lot 4; sec. 25, lots 1 and 2; sec. 26, lot 1.

The areas described aggregate approximately 357.8 acres of public land in Grand County.

Effective on date of publication, these lands will be segregated from all forms of appropriation under the public laws, including the mining laws. The lands will remain open to mineral leasing, grazing, and such general uses as will not destroy archeological values. A right-of-way or a cooperative agreement will not provide adequate protection for the archeological values. Any mining, even casual use, could destroy these values. There are no suitable alternative sites as this is a unique site and protection must be afforded to these archeological ruins where they are located. Water will not be needed for this withdrawal. The segregative effect of this application will terminate 2 years from the date of publication unless final action is taken or the application is terminated prior to that date.

For a period of 90 days from the date of publication of this notice, persons who desire to make comments in connection with this action or persons who desire to be heard at a hearing on this matter should submit their comments or requests in writing to the Colorado State Director. An opportunity for public hearing is afforded in connection with this action pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976. If it is determined that a hearing should be held, notice of the time and place of such hearing will be published in the Federal Register at least 30 days prior to the hearing and would be scheduled and conducted in accordance with Bureau of Land Management Manual section 2351.16B.

The Department of the Interior’s regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources, assure that the area sought is the minimum essential to meet the needs of the applicant and provide for maximum concurrent utilization of the land and its resources. A report will be prepared for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn and reserved as requested. The determination of the Secretary on this application will be published in the Federal Register.

Richard D. Tate,
Chief, Branch of Lands and Minerals Operations.


BILLING CODE 4310-JB-M]
Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a 40.00-acre withdrawal for the Coal Mine Canyon Picnic Ground continue for an additional 18 years. The land would remain closed to location and entry under the mining laws but would be opened to surface entry, and has been and would remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by May 21, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P. O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The purpose of the withdrawal is to protect the Coal Mine Canyon Picnic Ground within the Cibola National Forest, Mount Taylor Ranger District. The area has been developed for public recreational use and is heavily utilized for this purpose. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal, except to open the land to such forms of disposition that may by law be made of National Forest lands other than under the mining laws.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.


Sarah Wisely,
Acting State Director.

[FR Doc. 87-3581 Filed 2-19-87; 8:45 am]
BILLING CODE 4310-FB-M

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a 153.53-acre withdrawal for the Sandia Ranger Station Administrative Site continue for an additional 20 years. The land would remain closed to location and entry under the mining laws but would be opened to surface entry and has been and would remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by May 21, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The purpose of the withdrawal is to protect the Sandia Ranger Station Administrative Site within the Cibola National Forest, Sandia Ranger District. The site consists of extensive permanent facilities and improvements. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal, except to open the land to such forms of disposition that may by law be made of National Forest lands other than under the mining laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.


Sarah E. Wisely,
Acting State Director.

[FR Doc. 87-3582 Filed 2-19-87; 8:45 am]
BILLING CODE 4310-FB-M

Bureau of Reclamation

Cancellation of Meetings of the Colorado River Floodway Task Force

SUMMARY: This notice cancels the scheduled open meetings of the Colorado River Floodway Task Force which were published as follows in 52 FR 4391. The meetings will be rescheduled and published in the Federal Register at a later date.

Open meetings were to be held as described below:

Date: February 26 and 27, 1987.

Time: 10 a.m.

Address: Holiday Inn, 245 London Bridge Road, Lake Havasu City, Arizona 86403 (928) 655-4071.

FOR FURTHER INFORMATION CONTACT: Robert Brose, Bureau of Reclamation, Nevada Highway and Park Street, P.O.
Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 4, 1986, a notice was published in the Federal Register (Vol. 51, FR No. 149) that an application had been filed with the Fish and Wildlife Service by Robert Brownell, USFWS, San Simeon, CA, (PRT 072024) to inject a miniature transponder under the skin of 450 California sea otters previously authorized for capture under other research permits, thus providing a permanent means of identifying the animals.

Notice is hereby given that on September 17, 1986, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Endangered Species Act of 1972 (16 U.S.C. 1539), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service’s Office in Room 601 Glebe Road, Arlington, Virginia 22201.

Note—Due to an oversight, this notice was not published within 10 days of issuance of the permit as required by 50 CFR 18.33(c).


R.K. Robinson,
Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-3661 Filed 2-19-87; 8:45 am]
BILLING CODE 4310-09-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Gulf of Mexico Regional Technical Working Group; Meeting

Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-483).

Name: Gulf of Mexico Regional Technical Working Group
Date: March 23–25, 1987
Place: Gulf of Mexico OCS Regional Office, Rooms 111–115, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123
Time: 8:30 a.m. to 5:00 p.m.

The Regional Technical Working Group (RTWG) membership consists of representatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, and other private interests. The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities.

The agenda of the meeting is as follows:

March 23—Gulf of Mexico Spring Terenary Studies Meeting
March 24–25—Regional Technical Working Group Business Meeting

Agenda items will include the following subjects: State Co-chair Elections, Current Regional Activities, Coastal Protection Task Force, Rigs to Reef, Platform Removal, Draft FY 89 Studies Plan, Data Management, and Public Comment.

This meeting is open to the public. Individuals wishing to make oral presentations to the Committee concerning agenda items should contact Eileen P. Angelico of the Gulf of Mexico Regional Office at (504) 736-2876.


Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8407, Block 315, West Cameron Area, offshore Louisiana.

Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on February 6, 1987.

Comments must be received on or before March 9, 1987, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resource Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44467, Baton Rouge, Louisiana 70805.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 30 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Services makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 38365).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

J. Rogers Peary,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-3589 Filed 2-19-87; 8:45 am]
BILLING CODE 4310-MR-M

Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6406, Block 314, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on February 6, 1987. Comments must be received on or before March 9, 1987, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44467, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties become effective December 13, 1979 (44 FR 53665). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.


J. Rogers Peary,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-3594 Filed 2-19-87; 8:45 am]
BILLING CODE 4310-MR-M

Development Operations Coordination Document; ODECO Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6401, Block 59, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on February 11, 1987. Comments must be received on or before March 9, 1987, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44467, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties become effective December 13, 1979 (44 FR 53665). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.


J. Rogers Peary,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-3590 Filed 2-19-87; 8:45 am]
BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30975]

Colorado Springs and Eastern Railroad Co.—Acquisition and Operation—Colorado and Eastern Railroad Co.; Exemption

Colorado Springs & Eastern Railroad Company has filed a notice of exemption to acquire and operate certain properties of the Colorado and Eastern Railroad Company. The properties consist of: the line and terminal railroad property of the former...
Great Northern Transportation Co.; Acquisition Exemption—Nonconnecting Railroads; Exemption

Great Northern Transportation Company (GNTC) has filed a notice of exemption under 49 CFR 1180.4(g) to acquire control of nonconnecting railroads under the provisions of 49 CFR 1180.2(c).

GNTC has entered into an agreement with Colorado and Eastern Railroad Company (C&E), which (a) is controlled through stock ownership by G.W. Flanders, and (b) owns various rail properties in Colorado, Iowa, and Oklahoma. Flanders, in turn, owns 100 percent of the capital stock of Fore River Railway (Fore). Fore leases approximately three miles of railroad line in Quincy, MA, from Fore River Railroad Company, a subsidiary of General Dynamics Corporation.

The agreement between GNTC and C&E provides that: (1) Mr. Flanders will exchange all of his shares of C&E’s stock for shares of GNTC’s stock; (2) C&E’s railroad properties will be conveyed to five newly-created railroads in exchange for all shares of stock of each of these railroads; and (3) C&E then will transfer the stock of these five railroads to GNTC, in the form of a dividend. In addition, Flanders will exchange all of his shares of Fore’s stock for additional shares of GNTC’s stock. Accordingly, C&E, Fore, and the five new railroads will be wholly-owned subsidiaries of GNTC. All of the railroads will operate independently, as separate corporate entities. Under this structuring, GNTC expects the railroads to achieve greater operating efficiencies than were afforded under the single ownership of the involved rail properties by C&E.

GNTC indicates that: (1) The lines of the involved railroads do not connect; (2) its acquisition of control of each; (3) of the new railroad, and (e) of Fore is not part of a series of anticipated transactions that could lead to a connection with each other or any other railroad in the same corporate family; and (3) the acquisition does not involve a Class I carrier. Therefore, this transaction involves the acquisition of nonconnecting carriers, and is exempt from the prior review requirements of 49 U.S.C. 10505(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979). This will satisfy the requirements of 49 U.S.C. 10505(g)(2). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.


By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 87-3632 Filed 2-19-87; 8:45 am]
BILLING CODE 7035-01-M

Great Northern Transportation Co.; Acquisition Exemption—Nonconnecting Railroads; Exemption

Great Northern Transportation Company (GNTC) has filed a notice of exemption under 49 CFR 1180.4(g) to acquire control of nonconnecting railroads under the provisions of 49 CFR 1180.2(c).

GNTC has entered into an agreement with Colorado and Eastern Railroad Company (C&E), which (a) is controlled through stock ownership by G.W. Flanders, and (b) owns various rail properties in Colorado, Iowa, and Oklahoma. Flanders, in turn, owns 100 percent of the capital stock of Fore River Railway (Fore). Fore leases approximately three miles of railroad line in Quincy, MA, from Fore River Railroad Company, a subsidiary of General Dynamics Corporation.

The agreement between GNTC and C&E provides that: (1) Mr. Flanders will exchange all of his shares of C&E’s stock for shares of GNTC’s stock; (2) C&E’s railroad properties will be conveyed to five newly-created railroads in exchange for all shares of stock of each of these railroads; and (3) C&E then will transfer the stock of these five railroads to GNTC, in the form of a dividend. In addition, Flanders will exchange all of his shares of Fore’s stock for additional shares of GNTC’s stock. Accordingly, C&E, Fore, and the five new railroads will be wholly-owned subsidiaries of GNTC. All of the railroads will operate independently, as separate corporate entities. Under this structuring, GNTC expects the railroads to achieve greater operating efficiencies than were afforded under the single ownership of the involved rail properties by C&E.

GNTC indicates that: (1) The lines of the involved railroads do not connect; (2) its acquisition of control of each; (3) of the new railroad, and (e) of Fore is not part of a series of anticipated transactions that could lead to a connection with each other or any other railroad in the same corporate family; and (3) the acquisition does not involve a Class I carrier. Therefore, this transaction involves the acquisition of nonconnecting carriers, and is exempt from the prior review requirements of 49 U.S.C. 10505(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979). This will satisfy the requirements of 49 U.S.C. 10505(g)(2). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.


By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 87-3632 Filed 2-19-87; 8:45 am]
BILLING CODE 7035-01-M

Great Northern Transportation Co.; Acquisition Exemption—Nonconnecting Railroads; Exemption

Great Northern Transportation Company (GNTC) has filed a notice of exemption under 49 CFR 1180.4(g) to acquire control of nonconnecting railroads under the provisions of 49 CFR 1180.2(c).

GNTC has entered into an agreement with Colorado and Eastern Railroad Company (C&E), which (a) is controlled through stock ownership by G.W. Flanders, and (b) owns various rail properties in Colorado, Iowa, and Oklahoma. Flanders, in turn, owns 100 percent of the capital stock of Fore River Railway (Fore). Fore leases approximately three miles of railroad line in Quincy, MA, from Fore River Railroad Company, a subsidiary of General Dynamics Corporation.

The agreement between GNTC and C&E provides that: (1) Mr. Flanders will exchange all of his shares of C&E’s stock for shares of GNTC’s stock; (2) C&E’s railroad properties will be conveyed to five newly-created railroads in exchange for all shares of stock of each of these railroads; and (3) C&E then will transfer the stock of these five railroads to GNTC, in the form of a dividend. In addition, Flanders will exchange all of his shares of Fore’s stock for additional shares of GNTC’s stock. Accordingly, C&E, Fore, and the five new railroads will be wholly-owned subsidiaries of GNTC. All of the railroads will operate independently, as separate corporate entities. Under this structuring, GNTC expects the railroads to achieve greater operating efficiencies than were afforded under the single ownership of the involved rail properties by C&E.

GNTC indicates that: (1) The lines of the involved railroads do not connect; (2) its acquisition of control of each; (3) of the new railroad, and (e) of Fore is not part of a series of anticipated transactions that could lead to a connection with each other or any other railroad in the same corporate family; and (3) the acquisition does not involve a Class I carrier. Therefore, this transaction involves the acquisition of nonconnecting carriers, and is exempt from the prior review requirements of 49 U.S.C. 10505(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979). This will satisfy the requirements of 49 U.S.C. 10505(g)(2). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.


By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 87-3632 Filed 2-19-87; 8:45 am]
BILLING CODE 7035-01-M

Iowa Southern Railroad Co.; Acquisition and Operation—Colorado and Eastern Railroad Co.; Exemption

Iowa Southern Railroad Company has filed a notice of exemption to acquire and operate certain properties of the Colorado and Eastern Railroad Company. The properties consist of: (a) the former Denver Union Stockyards terminal railroad property at Denver, CO (3.3 miles) [milepost 0.0 to milepost 0.8]; and the line and terminal railroad property of the former Chicago, Rock Island and Pacific Railroad Company at Denver (8.0 miles) [milepost 0.72 to milepost 3.98]. Any comments must be filed with the Commission and served on Alan P. Sherbrooke; Garvey, Schubert & Barer, Tenth Floor, 1011 Western Avenue, Seattle, WA 98104, telephone (206) 484-3939.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.


By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 87-3631 Filed 2-9-87; 8:45 am]
BILLING CODE 7035-01-M

Iowa Southern Railroad Co.; Acquisition and Operation—Colorado and Eastern Railroad Co.; Exemption

Iowa Southern Railroad Company has filed a notice of exemption to acquire and operate certain properties of the Colorado and Eastern Railroad Company. The properties consist of: (a) the former rail property of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Council Bluffs, IA (22.0 miles), and the former Norfolk and Western Terminal Railroad line and railroad property between Council Bluffs and Blanchard, IA (72 miles); (b) Iowa Southern Railroad Company, which will acquire and operate the former Rock Island main line and terminal railroad property at Council Bluffs, IA (4.3 miles), and the former Norfolk and Western Terminal Railroad line and railroad property between Council Bluffs and Blanchard, IA (77 miles); (c) the former Rock Island yards and facilities at El Reno, OK (60 miles). Notices of exemption under 49 CFR 1150.31 with regard to the acquisition and operation of these lines have been filed concurrently in Finance Docket Nos. 30976, 30975, 30976, 30977, and 30978, respectively.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.


By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 87-3631 Filed 2-9-87; 8:45 am]
BILLING CODE 7035-01-M
void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.


By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 87-3633 Filed 2-19-87; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 30987]

Minnesota Commercial Railway Co.; Acquisition and Operation—Minnesota Transfer Railroad Co.; Exemption

Minnesota Commercial Railway Company (MCR) has filed a notice of exemption to acquire and operate certain properties of the Minnesota Transfer Railway Company (MTR) as follows:

From a connection with the Soo Line Railroad Company’s (Soo) at St. Paul—Minneapolis main line at Merriam Park (milepost 0) in St. Paul, MN, northerly to a junction between Long Lake and Rush Lake, MN, at which point the main track turns northwesterly and the Twin Cities Arsenal spur turns northeasterly. The main track continues northwesterly, terminating just east of University Avenue NE (Minnesota Hwy. 47) (milepost 13–F), and the Arsenal spur continues northeasterly terminating on the Arsenal grounds a short distance from the intersection (milepost 13N) of Highways I-35W, U.S. 8, and U.S. 10. A total of 13 miles of main running track and approximately 50 miles of auxiliary yard and industrial side tracks are being acquired by MCR.

This transaction will also involve the issuance of securities by MCR, which will be a Class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1150.31.

Any comments must be filed with the Commission and served on Robert H. Wheeler, Isham, Lincoln & Beale, Three First National Plaza, Suite 5200, Chicago, IL 60602.


By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 87-3634 Filed 2-19-87; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 30978]

Ottumwa Terminal Railroad Co.; Acquisition and Operation—Colorado and Eastern Railroad Company

Ottumwa Terminal Railroad Company has filed a notice of exemption to acquire and operate certain properties of the Colorado and Eastern Railroad Company. The properties consist of: (a) The “city track” and railroad property of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Ottumwa, IA (4.3 miles; milepost 0.0 to milepost 2.3); and (b) the property of the former Norfolk & Western Terminal Railroad at Ottumwa, IA (2.4 miles; milepost 276.92 to milepost 278.81). Any comments must be filed with the Commission and served on Alan P. Sherbrooke; Garvey, Schubert & Barer, Tenth Floor, 1011 Western Avenue, Seattle, WA 98104, telephone (206) 464-3939.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.


By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 87-3635 Filed 2-19-87; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; International Paper Co., Inc.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on January 27, 1987, a proposed consent decree in United States v. International Paper Company, Inc., Civil Action No. CV87-0176, was lodged with the United States District Court for the Western District of Louisiana. This consent decree settles a lawsuit filed January 27, 1987, pursuant to section 309 of the Clean Water Act ("the Act"), 33 U.S.C. 1318, for injunctive relief and for assessment of a civil penalty against International Paper Company, Inc. ("International Paper"). The complaint alleged, among other things, that International Paper made unauthorized discharges of pollutants to navigable waters from a leaking pipeline at its paper plant in Bastrop, Louisiana. The complaint alleged that these emissions constituted a violation of the Clean Water Act. The consent decree incorporates a consent judgment and a consent decree with the United States that provide for a corporate settlement involving International Paper and its subsidiaries and a corporate settlement involving Star Forest Industries, Inc. The consent decree provides that International Paper: (1) will pay a civil penalty of $7.45 million; (2) will begin a six-year program of mill modifications and process improvements designed to substantially reduce or eliminate future discharges of pollutants; (3) will implement a comprehensive monitoring, reporting, and public disclosure program; and (4) will implement a compliance program designed to ensure its ongoing compliance with the Clean Water Act.

[Finance Docket No. 30977]

[FR Doc. 87-3636 Filed 2-19-87; 8:45 am]
BILLING CODE 7035-01-M
EPA Region VI
Assistant Attorney General of the Land
violations of the Clean Water Act
penalty of $170,000 with respect to the
minimize unpermitted discharges from
20530. All comments should refer to
Comments should be addressed to the
alleged in the complaint.
International Paper to pay a civil
the effluent limitations set by the decree.
the existing pipeline during construction
and imposes effluent limits that shall apply if International Paper must bypass
failure to meet any of the deadlines set
All new pipeline. The proposed consent
decree also calls for stipulated penalties
against the International Paper for failure to meet any of the deadlines set
by the decree or failure to meet any of the effluent limitations set by the decree.
Also, the proposed decree calls for
pay a civil penalty of $170,000 with respect to the
violations of the Clean Water Act
 alleged in the complaint.
The Department of Justice will receive
comments relating to the proposed
consent decree for a period of 30 days
from the date of this publication.
Comments should be addressed to the
Assistant Attorney General of the Land
and Natural Resources Division.
Department of Justice, Washington, DC
20530. All comments should refer to
United States v. International Paper
Company, Inc., D.J. Ref. 90-5-1-1-2810.
The proposed consent decree may be
examined at the following offices of the
United States Attorney and the
Environmental Protection Agency
("EPA"): EPA Region VI
Contact: Paul Wendel, Office of
Reginal Counsel, U.S. Environmental
Protection Agency, Region VI, 1201
Elm Street, Dallas, Texas 75270. (214)
767-6552
United States Attorney’s Office
Contact: John P. Lydick, Assistant
United States Attorney, Western
District of Louisiana, Room 3B12,
Federal Building, Shreveport,
Louisiana 71101, (318) 229-5277.
Copies of the proposed consent decree
may also be examined at the
Environmental Enforcement Section,
Land and Natural Resources Division,
United States Department of Justice,
Room 1515, Ninth Street and
Pennsylvania Avenue, NW.,
Washington, DC 20530. A copy of the
proposed consent decree may be
obtained by mail from the
Environmental Enforcement Section,
Land and Natural Resources Division
of the Department of Justice. In requesting a
copy of the decree, please enclose a
check for copying costs in the amount of
$1.20 payable to Treasurer of the United
States.
F. Henry Habicht II,
Assistant Attorney General, Land and
Natural Resources Division.
[FR Doc. 87-3868 Filed 2-19-87; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR
Employment and Training Administration
[TA-W-18,459]
Alpha Consulting, Inc.; Pintex Petroleum Corp.; Boulder, CO; Revised Determination on Reconsideration
The petitioner’s application for administrative reconsideration states that Alpha Consulting and Pintex Petroleum produced crude oil which was directly affected by increased imports of crude oil.

Findings and reconsideration show that Pintex Petroleum produced crude oil and natural gas and marketed these products to other firms. Production and sales of crude oil and natural gas ceased by March 31, 1986 when both companies closed and all employees were laid off. The major share of Alpha Consulting, Inc., business was with Pintex Petroleum Corporation. Both companies had a common ownership.
U.S. imports of crude oil increased absolutely and relative to domestic shipments in the first half of 1986 compared with the same period in 1985. The ratio of imports to domestic crude oil shipments was approximately forty percent in the first half of 1986. Imports of natural gas liquids and liquefied refinery gases increased relative to domestic shipments in the first half of 1986 compared with the same period in 1985.

A Department of Labor survey revealed that the major customer of Pintex Petroleum increased purchases of imported crude oil in 1986 compared to the same period in 1985 while reducing purchases from Pintex Petroleum.

Conclusion
After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of crude oil produced at Alpha Consulting, Inc., and Pintex Petroleum, Corporation, Boulder, Colorado, contributed importantly to the decline in production and sales and to the total or partial separation of former workers at Alpha Consulting, Inc., and Pintex Petroleum Corporation, Boulder, Colorado. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Alpha Consulting, Inc., and Pintex Petroleum Corporation, Boulder, Colorado engaged in employment related to the production of crude oil and natural gas who became totally or partially separated from employment on or after January 1, 1986 and before June 1, 1986, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 11th day of February 1987.
Robert O. Deslongchamps,
Director, Office of Legislation and Actuarial Services, USI.
[FR Doc. 87-3869 Filed 2-19-87; 8:45 am]
BILLING CODE 4510-50-M

[TA-W-17,552]
Carr-Lowrey Glass Co.; a Division of Anchor Hocking Corp. Baltimore, MD; Negative Determination Regarding Application for Reconsideration
By an application dated January 13, 1987, the American Flint Glass Workers Union (AFLGWWU) requested administrative reconsideration of the Department of Labor’s Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of Carr-Lowrey Glass Company, Division of Anchor Hocking Corporation, Baltimore, Maryland. The denial notice was published in the Federal Register on January 9, 1987 (52 FR 872).
Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:
(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;
(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or
(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.
The union states that there was no stabilization or increase in employment at Carr-Lowrey in Baltimore from January through September 1986 as stated in the Department’s denial notice.

Signed at Washington, DC, this 11th day of February 1987.
Robert M. Perdue,
Director, Office of Legislation and Actuarial Services, USI.
In order for a worker group to be certified eligible to apply for adjustment assistance, all three of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. The Department reviewed its findings in the investigative case file for the January through September 1986 period mentioned in the union’s application. Those findings show that the company not only had increased average employment and hours but had increased sales and production in the first nine months of 1986 compared to the same period in 1985. Further, company sales and production did not decrease for the full year of 1986 compared to 1985. Company officials reported that potential sales and production have been hurt because of a shift to plastic packaging and a decline in the toiletries market.

The ratio of U.S. imports of glass containers to domestic shipments has been around the 2 percent level since 1983. U.S. domestic shipments of glass containers increased in every year since 1983.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor’s prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of February 1987.

Stephen A. Wander,
Deputy Director, Office of Legislation and Actuarial Services, UIS.

Employment Standards
Administration, Wage and Hour Division

Minimum Wages for Federal and, Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and
fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled “General Wage Determinations Issued Under the Davis-Bacon and Related Acts” being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Maryland:

Pennsylvania:

Illinois:

Indiana:

Kansas:

Missouri:

Ohio:

Oklahoma:

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled “General Wage Determinations Issued Under The Davis-Bacon And Related Acts”. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 13th day of February 1987.

Gordon L. Claucherty
Acting Assistant Administrator

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Washington State Standards; Approval

1. Background: Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the Federal Register (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.
In response to Federal standards changes, the State has submitted by letter dated September 26, 1986, from C. David Hutchins, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to the Federal standard amendment to 29 CFR 1910.1029, Coke Oven Emissions, as published in the Federal Register (50 FR 37352) on September 31, 1985. The Federal amendment deleted certain terms from the standard to conform to a United States Court of Appeals decision regarding the development of new technology and the requirements for quantitative fit testing of certain respirators. The State standard amendment adopts the Federal deletions and renumbers two subsections using the State's codification system. The State standards amendment is contained in WAC 296-62-20009 and WAC 296-62-20011. It was adopted on July 25, 1985, and became effective on August 25, 1986, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order No. 86-26.

2. Decision. The above State standard amendment has been reviewed and compared with the relevant Federal standard amendment and OSHA has determined that the State standard amendment is at least as effective as the comparable Federal standard amendment, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standards amendments are minimal and that the standards are thus substantially identical. OSHA therefore approves this amended standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of supplement for inspection and copying. A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Room N-3476, 200 Constitution Avenue NW., Washington DC 20210.

4. Public participation. Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are substantially identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective February 20, 1987.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 [29 U.S.C. 667]).

Signed at Seattle, Washington this 1st day of December, 1986.

James W. Lake,
Regional Administrator.

[FR Doc. 87-3671 Filed 2-19-87; 8:45 am]

BILLING CODE 4510-25-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment on the Arts; Dance Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Challenge Section) to the National Council on the Arts will be held on March 9, 1987, from 9:00 a.m.—5:30 p.m. in room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1966, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National...
Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.
John H. Clark,
Director, Council and Panel Operations,
National Endowment for the Arts.


[FR Doc. 87-3585 Filed 2-19-87; 8:45 am]
BILLING CODE 7537-01-M

National Endowment for the Arts; Dance Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Overview Meeting) to the National Council on the Arts will be held on March 10-11, 1987, from 9:00 a.m.-5:30 p.m. in room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 10, 1987, from 9:00 a.m.-5:30 p.m. and on March 11, 1987, from 10:00 a.m.-5:30 p.m. on a space available basis. The topics for discussion will include policy issues.

The remaining sessions of this meeting on March 11-12, 1987, from 9:00 a.m.—6:00 p.m., and on March 13, 1987, from 1:00 p.m.—3:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1987, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/682-5433.

John H. Clark,
Director, Office of Council and Panel Operations National Endowment for the Arts.


[FR Doc. 87-3586 Filed 2-19-87; 8:45 am]
BILLING CODE 7537-01-M

National Endowment for the Arts; Inter-Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Art Section) to the National Council on the Arts will be held on March 11-12, 1987, from 9:00 a.m.—6:00 p.m., and on March 13, 1987, from 9:00 a.m.—3:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/682-5433.

John H. Clark,
Director, Office of Council and Panel Operations National Endowment for the Arts.


[FR Doc. 87-3586 Filed 2-19-87; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL REGULATORY COMMISSION

[DOCKET NO. 50-245]

Northeast Nuclear Energy Co., Millstone Nuclear Power Station, Unit No. 1; Issuance of Facility Operating License No. DPR-21

The U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. DPR-21 to Northeast Nuclear Energy Company, acting for itself and as agent for the Connecticut Light and Power Company, Western Massachusetts Electric Company, authorizing operation of the Millstone Nuclear Power Station, Unit 1 (Millstone Unit 1) at steady-state reactor core power levels not in excess of 2011 megawatts (thermal), in accordance with the provisions of the license and the technical specifications. Millstone Unit 1 is a boiling water reactor located in Waterford, Connecticut. The Millstone Unit 1 reactor has operated since October 7, 1970, under Provisional Operating License No. DPR-21. Facility Operating License No. DPR-21 supersedes Provisional Operating License No. DPR-21 in its entirety.

Notice of Consideration of Conversion of Provisional Operating License to Full-
RAILROAD ACCOUNTING PRINCIPLES BOARD

Establishment of Cost Accounting Principles for Rail Carriers

AGENCY: Railroad Accounting Principles Board.

ACTION: Request for comments on proposed principles and recommendations, and other matters discussed in exposure draft.

SUMMARY: The Railroad Accounting Principles Board (RAPB) is soliciting comments on an exposure draft containing proposed principles and recommendations to the Interstate Commerce Commission (ICC). The RAPB developed the exposure draft as part of its continuing effort to obtain public input into the principles and recommendations the RAPB should issue. By this notice, the RAPB invites interested parties to participate in this process by commenting on the principles, recommendations, and other matters presented in the exposure draft.

DATE: Written comments must be received on or before April 20, 1987.

ADDRESS: Comments should be sent to: Railroad Accounting Principles Board, P.O. Box 50068, Washington, DC 20004.

To receive this exposure draft and for further information contact: Charles R. Yager, Executive Director, (202) 275-1635.

SUPPLEMENTARY INFORMATION: The Railroad Accounting Principles Board has the statutory responsibility to establish, for rail carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission, principles governing the determination of economically accurate railroad costs associated with the movements of goods. In developing these principles, the Board must take into account, among other things, the specific regulatory purposes for which railroad costs are required, the degree of accuracy of the required cost information, the benefits and costs of requiring the data, and the means of maintaining confidentiality, of railroad information.

The RAPB will establish principles and report to Congress in 1987. After the principles are established, the Interstate Commerce Commission is responsible for promulgating the rules necessary to implement and enforce the principles. For a more detailed explanation of the history, status, and responsibilities of the RAPB, see 50 FR 7153 (Feb. 20, 1985).

The RAPB prepared the exposure draft to solicit public comment on proposed principles, recommendations to the ICC, and other matters relevant to cost determinations made in regulatory proceedings. The exposure draft is comprised of two volumes. Volume 1 contains an executive summary, introduction, and chapters on the principles, the effects of the principles on specific regulatory applications and general-purpose costing systems, and the effects of the principles on existing ICC practices. Volume 2 is a detailed report with a separate chapter on each of the eight proposed principles and six specific regulatory applications which will be most affected by these principles. Volume 2 also contains four chapters on various matters relating to general-purpose costing systems. The chapters in Volume 2, contain detailed discussions of the proposed principles, their application to specific regulatory determinations, alternatives the RAPB considered, and the rationale for the principles and recommendations proposed in the exposure draft.

By notices in the Federal Register, the RAPB invited interested parties to suggest the issues the RAPB should address (50 FR 7153, Feb. 20, 1985) and to comment on a discussion memorandum presenting issues and questions relevant to regulatory measurement and costing principles, among other things (51 FR 4051, Jan. 31, 1986). The exposure draft is being mailed directly to parties who responded to either notice or are otherwise known to the RAPB to be
interested in commenting on the exposure draft. This notice invites other interested parties to submit written comments on the exposure draft. Further instructions are contained in the exposure draft.


Charles A. Bowsher,
Chairman, Railroad Accounting Principles Board.

[FR Doc. 87-3052 Filed 2-19-87; 8:45 am]
BILLING CODE 1610-01-M

Establishment of Cost Accounting Principles for Rail Carriers

AGENCY: Railroad Accounting Principles Board.

ACTION: Public Hearing.

SUMMARY: The Railroad Accounting Principles Board (RAPB) will conduct a public hearing on April 30, 1987. The subject of the hearing will be the proposed principles and recommendations and other matters contained in the exposure draft which the RAPB will make available to the public for comment on February 20, 1987.


Interested parties who wish to testify at the hearing shall notify the RAPB by March 20, 1987. A brief summary not to exceed five pages of the testimony to be given shall be provided to the RAPB by April 15, 1987. Because hearing time is limited, the RAPB will notify those testifying of the time allotted to them. The RAPB reserves the right to hold a second day of hearings on May 1, 1987, and to schedule parties for that date if needed to accommodate the number of people testifying.


Charles A. Bowsher,
Chairman, Railroad Accounting Principles Board.

[FR Doc. 87-3053 Filed 2-19-87; 8:45 am]
BILLING CODE 1610-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24085; File No. SR-Amex-86-31]

Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 1986, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Amex proposes to amend Article IX of the Exchange Constitution to increase the amount of the Gratitude Fund death benefit from $75,000 to $100,000. The Exchange's Gratuity Fund provides a lump sum amount to the family of a regular member upon the member's death. Each member of the Exchange contributes a fixed amount upon becoming a member and is assessed a similar amount each time a member dies. Member assessments to the fund are currently $115. Under the proposal that assessment would be increased to $182.

The Amex states that the proposed rule change is consistent with section 6(b) of the Act in that it is intended to provide financial assistance to the families of deceased Exchange members.

The foregoing change has become effective, pursuant to section 19(b)(9)(A) and subparagraph (e) of Rule 19b-4 under the Act because it establishes or changes a due, fee or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. Copies of the submission, all subsequent amendments, all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-86-31 and should be submitted by March 13, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.


Jonathan G. Katz,
Secretary.

[FR Doc. 87-3053 Filed 2-19-87; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.


The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:
Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange Relating to MSE Rules to Accommodate the Trading on the MSE of NASDAQ/NMS Securities Pursuant to Being Listed on the Exchange or the Granting of Unlisted Trading Privileges Under Section 12(f) of the Securities Exchange Act of 1934

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(1), notice is hereby given that on February 10, 1987, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A are proposed changes to the MSE Rules to accommodate the trading of NASDAQ/NMS Securities pursuant to being listed on the Exchange or the granting of unlisted trading privileges under section 12(f) of the Securities Exchange Act of 1934 (“Act”) as amended. This filing is being made in connection with the submission by the MSE and the NASD of a joint reporting plan governing the collection, consolidation and dissemination of quotation and transaction information for NASDAQ/NMS Securities traded on the MSE (“Plan”).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule changes is to adapt the MSE Rules to accommodate the trading of NASDAQ/NMS Securities on the MSE on a listed or unlisted trading privilege basis. The majority of the proposed rule changes result from modifications necessitated by providing telephonic access between NASDAQ market makers and Exchange specialists to accommodate trading between them in NASDAQ/NMS Securities, and conforming MSE rules to accommodate MSE’s participation in the above referenced Plan.

The following is a listing of the substantive rule changes along with a statement of the purpose in respect thereto:

1. Article XX, Rule 3. “Hours of Dealing” The purpose of this change is to make it clear that orders transmitted from the Exchange Floor in NASDAQ/NMS Securities are subject to the presently existing prescribed time parameters.

2. Article XX, Rule 3. “Interpretations and Policies”. The purpose of this rule change is to provide, where appropriate, the ability to effect transactions at times other than those prescribed in Article XX, Rule 3 as presently exists in respect to NASDAQ/NMS Securities.

3. Article XX, Rule 5. “Security Transaction” Interpretations and Policies.01. “The purpose of this rule change is to clearly indicate that transactions in NASDAQ/NMS issues effected with NASDAQ System market makers are not subject to the limitations specified in Article XX, Rule 5 which prohibit transactions on the Floor with non-members.

4. Article XX, Rule 8. “Recognized Quotations” The purpose of this rule change is to indicate that quotes from other market centers displayed on the Exchange Floor, have no standing in the trading crowd. This exception currently exists in respect to quotations displayed from other market centers in the Intermarket Trading System.

5. Article XX, Rule 8. “Interpretations and Policies”01. “The purpose of this rule change is to specifically exempt MSE specialists from being required to input their quote to the quotation system in situations where the processor has imposed a quotation halt in respect to NASDAQ/NMS Securities.

6. Article XX, Rule 31. “Acting for or on Behalf of Another” Interpretations and Policies. The purpose of this rule change is to exempt telephone orders received on the Floor from NASDAQ market makers from the requirement of having to be in writing.

7. Article XX, Rule 33. “Authority of Committee on Floor Procedure”. The purpose of this rule change is to indicate that the Committee’s authority shall extend to cover the oversite and
supervision of transactions made on the Exchange Floor between MSE members and NASDAQ System market makers.

8. Article XX, Rule 34 "Guaranteed Execution System." The purpose of the proposed changes to this rule is to extend in certain circumstances, the guarantees currently afforded Dual Trading System issues to include NASDAQ/NMS Securities.

A. Paragraph 1, 2, and 3—The purpose of the proposed changes is to clearly indicate that agency market orders in NASDAQ/NMS Securities will be guaranteed similar fills as Dual Trading System issues but that limit order protection vis-a-vis other markets, will not be provided until such time as greater experience is gained in the trading of NASDAQ/NMS Securities.

B. Paragraph 4. The purpose of this change is to specify that pre-opening orders and orders on re-openings (in trading halt situations) will be filled at the Exchange opening and re-opening price respectively.

C. "Interpretation and Policies." The purpose of this change is to distinguish between all automated agency market orders up to 1000 shares in NASDAQ/NMS Securities placed with a specialist, which are entitled to receive a guarantee at the best bid or offer, from manually placed agency market orders placed with a specialist by a Floor member, which are not entitled to receive a guarantee, other than the first one placed, at any given price. This change is designed to decrease the likelihood of professional orders receiving the same guarantees afforded to customer orders.

9. Article XX, Rule 40, "Trading in NASDAQ/NMS Securities". The purpose of this rule change is to limit the trading of NASDAQ/NMS Securities pursuant to the requirements set forth in Securities Exchange Act Release Nos. 34-22412 and 34-22413 (September 18, 1985) and the joint reporting Plan submitted pursuant thereto between the MSE and the NASD which requires telephonic access be provided between NASDAQ System market makers and Exchange specialists in the same issues.

10. Article XXX, Rule, "Interpretations and Policies". 01 (b)(c) Mandatory Posting" The purpose of this change is to exclude from this rule, specialists registered in NASDAQ/NMS Securities until such time as greater experience is gained in evaluating specialist performance in these issues.

11. Article XXXI, Rule 5, "Interpretations and Policies" The purpose of this change is to specify that the specialist will also function as the Odd lot Dealer. This conforms the MSE rules to current over-the-counter practice.

12. Section C (1)(a) of the Blue Book Rules (Rules and Practices for Trading on the Midwest Trading Floor). The purpose of this change is to indicate that transactions in NASDAQ/NMS Securities will be treated as local issues with the exception that under certain circumstances where unusual variations exist, as frequently occurs today in the over-the-counter market, the transaction may be completed without having first received approval from a member of the Committee on Floor Procedure.

13. The purposes of the remainder of the rule changes are general in nature and are needed to facilitate the trading of NASDAQ/NMS Securities pursuant to Article XX, Rule 40.

The proposed rule changes are consistent with section 6(b)(5) in that they are designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were solicited and received from a sub-committee made up of floor brokers and specialists of the Floor Procedure Committee, which included the co-specialists who will be trading NASDAQ/NMS Securities.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 13, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.


Jonathan G. Katz,
Secretary.
settlement by book-entry on or after, the interest payment date of the security. A dealer receiving such an interest payment claim would be required under Rule G-12(l) to respond within ten business days (20 business days if the claim relates to an interest payment scheduled to be made more than 60 days prior to the date of the claim).

Notice of the proposed rule change was given in Securities Exchange Act Release No. 23953 (52 FR 889, January 9, 1987). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

Jonathan G. Katz,
Secretary.

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Clearing Corporation Amending Its Securities Collection Division Agreement

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 2, 1987, the Pacific Clearing Corporation ("PCC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PCC's proposed rule change amends its current Securities Collection Division ("SCD") Agreement. The amended Agreement includes a change in terminology from SCD "Participant" to SCD "User". PCC states that "User" would be a more appropriate term as not all SCD users are necessarily PCC members (participants).

PCC's proposed rule change also adds two new sections to the Agreement. One section provides for the delivery and acknowledgment of a copy of the SCD User Procedures. The other additional section provides PCC with protection against liabilities for the collection and delivery industry practice currently characteristic only in New York.

Furthermore, PCC states that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act in that the proposal promotes the prompt and accurate clearance and settlement of securities transactions, assures the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PCC. All submissions should refer to File No. SR-PCC-86-10 and should be submitted by March 13, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Application and Opportunity for Hearing; Associates Corporation of North America


Notice is hereby given that Associates Corporation of North America (the "Company") has filed an application pursuant to clause (ii) of section 301(b)(1) of the Trust Indenture Act of 1939 (hereinafter sometimes referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trustee of Harris Trust and Savings Bank (the "Bank") under indentures dated as of January 1, 1980 (the "1980 Indenture"), as supplemented as of November 15, 1981 (the "1981 Supplement") and June 15, 1981 (the "1981 Indenture") between the Company and Bank which were herefore qualified under the Act, and the trustee of the Bank as successor trustee under an indenture dated as of June 15, 1982 (as supplemented as of December 1, 1986) between the Company and The First National Bank of Chicago, ("First Chicago"), as trustee (the "1982 Indenture"), which was herefore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as successor trustee under the 1982 Indenture.

Section 301(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges

1. Pursuant to the 1980 Indenture, the Company has outstanding approximately (i) $97,500,000 aggregate principal amount of its 127/8 percent Senior Debentures Due February 1, 2000 (the "121/8 percent Senior Debentures"), and (ii) $100,000,000 aggregate principal amount of 141/4 percent Senior Notes Due February 1, 1990, issued under the 1980 Indenture as supplemented by the 1981 Supplement (the "141/4 percent Senior Notes"). The 121/8 percent Senior Debentures and 141/4 percent Senior Notes
Notes were registered under the Securities Act of 1933 (the "1933 Act"), and the 1980 Indenture was qualified under the Act. The Bank is currently acting as trustee under the 1980 Indenture and 1981 Supplement thereto.

(2) Pursuant to the 1981 Indenture, the Company has outstanding approximately $150,000,000 aggregate principal amount of its 6 percent Senior Debentures Due June 15, 2001 (the "6 percent Senior Debentures"). The 6 percent Senior Debentures were registered under the 1933 Act, and the 1981 Indenture was qualified under the Act. The Bank is also trustee under the 1981 Indenture.

(3) Pursuant to the 1982 Indenture, the Company has outstanding approximately (i) $100,000,000 aggregate principal amount of its One-Year Extendible Senior Notes Due August 1, 1987 (the "One-Year Extendible Senior Notes"), (ii) $125,000,000 aggregate principal amount of its 12 percent Senior Notes Due November 1, 1999 (the "12 percent Senior Notes"), (iii) $100,000,000 aggregate principal amount of its 12.55 percent Senior Notes Due 1991 (the "12.55 percent Senior Notes"), (iv) $100,000,000 aggregate principal amount of its 11.85 percent Senior Notes Due February 1, 1989 (the "11.85 percent Senior Notes"), (v) $100,000,000 aggregate principal amount of its 11.45 percent Senior Notes Due November 15, 1992 (the "11.45 percent Senior Notes"). The 1982 Indenture was qualified under the Act.

(4) After receipt of written notice to the Company by First Chicago of its intention to resign as trustee under the 1982 Indenture, the Company requested that the Bank accept appointment as successor trustee under the 1982 Indenture. The Bank has accepted the appointment effective as of December 29, 1986, subject to the lapse of 90 days from December 29, 1986 without a favorable determination by the Commission as requested in this Application or the earlier issuance of an unfavorable determination by the Commission in this matter.

(5) The Company's obligations with respect to the 12 percent Senior Debentures, the 14 percent Senior Notes, the 6 percent Senior Debentures, the One-Year Extendible Senior Notes, the 12 percent Senior Notes, the 12.55 percent Senior Notes, the 11.85 percent Senior Notes, the 11.45 percent Senior Notes, and the 11.85 percent Senior Notes are in each case wholly unsecured and rank pari passu with each other.

(6) There is no default under the 1980 Indenture, the 1990 Indenture as supplemented by the 1981 Supplement, the 1981 Indenture or the 1982 Indenture.

(7) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as principal obligor under the 1980 Indenture, the 1990 Indenture as supplemented by the 1981 Supplement, the 1981 Indenture and the 1982 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as successor trustee under the 1982 Indenture.

The Company has waived notice of hearing, hearing on the issues raised by this application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application on file in the Offices of the Commission's Public Reference Section, File Number 22-16374, 450 Firth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than March 9, 1987, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Firth Street, NW., Washington, DC 20549.

Notice is hereby given that the application(s) and/or declaration(s) as filed or as amended may be granted and/or permitted to become effective.

Mississippi Power Company (70-7204)

Mississippi Power Company ("Mississippi"), a subsidiary of The Southern Company, a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a), 7 and 12(d) of the Act and Rules 42 and 50 thereunder.

By order dated May 21, 1986 (HCA 212360), Mississippi was authorized to issue $75 million of first mortgage bonds and jurisdiction was reserved with regard to the issuance and sale of up to $40 million of first mortgage bonds and $10 million of preferred stock pending completion of the record. Mississippi now requests that such authorization with regard to the issuance and sale of preferred stock be increased by an additional $10 million, which additional amount would increase the remaining authority on preferred stock to up to $20 million.

Columbia Gas System, Inc., et al. (70-7339)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its wholly owned subsidiaries, Columbia Gas System Service Corporation, Columbia Hydrocarbon Corporation, Columbia Coal Gasification Corporation and The

[Release No. 35-24317]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

February 12, 1987

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 amendment(s) 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 March 9, 1987, 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 addresses 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.

Mississippi Power Company (70-7204)

Mississippi Power Company ("Mississippi"), a subsidiary of The Southern Company, a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a), 7 and 12(d) of the Act and Rules 42 and 50 thereunder.

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Columbia Gas System, Inc., et al. (70-7339)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its wholly owned subsidiaries, Columbia Gas System Service Corporation, Columbia Hydrocarbon Corporation, Columbia Coal Gasification Corporation and The
Inland Gas Company, Inc., all of 20 Montchanin Road, Wilmington, Delaware 19807, Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Virginia, Inc., all of 200 Civic Center Drive, Columbus, Ohio 43215, Columbia Gulf Transmission Company, 3805 West Alabama Avenue, Houston, Texas 77027, Columbia Gas Development of Canada, Ltd., 639 5th Avenue, SW., Calgary, Alberta, Canada T2P 0M9, Columbia Gas Development Corporation, Commonwealth Gas Pipeline Corporation and Commonwealth Gas Services, Inc., all of 800 Moorefield Park Drive, Richmond, Virginia 23236 (collectively "Subsidiaries") have filed a joint application-declaration pursuant to section 6(b), 9, 10 and 12(f) and Rule 43 thereunder.

Columbia proposes, during the years 1987 and 1988, to refund certain of the Subsidiaries' installment promissory notes, up to an aggregate principal amount of $334,979,466, with interest rates from 10.2% to 15.6%, for a like amount of lower cost, unsecured installment promissory notes to be issued by the Subsidiaries to Columbia at an interest rate to approximate that of the corresponding portion of the Bonds.

The Agreement would be issued in lieu of a prior loan agreement pursuant to a proposed term loan agreement ("Agreement"). The Agreement would be issued subject to the Consent of the Rating agencies, such consent to be given to the extent that the overall cost of the Bonds is not more than one series. It may seek to sell one or more series on a competitive basis and one or more series on a negotiated basis. Any Notes issued pursuant to the Agreement would be issued in lieu of a portion of the Bonds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-3613 Filed 2-19-87; 8:45 am]
BILLING CODE 8070-01-M

[Release No. 33-6690, File No. S7-3-87]

Securities Uniformity; Annual Conference on Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing issues to be considered at conference concerning uniformity of securities laws, announcing a hearing and requesting written comments.

SUMMARY: In conjunction with a Conference to be held on April 7–8, 1987, the Commission and the North American Securities Administrators Association, Inc. today announced public hearings and published a request for comments on the proposed agenda for the Conference. This inquiry is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, adopted as part of the Small Business Investment Incentive Act of 1980, to increase uniformity in matters concerning state and federal regulation of securities, maximize the effectiveness of securities regulations in promoting investor protection, and reduce burdens on capital formation through increased cooperation between the Commission and the state securities regulatory authorities.

DATES: The Conference will be held on April 7–8, 1987. A public hearing will be held on March 16, 1987 commencing at 10:00 a.m. All witnesses are requested to submit 15 copies of their prepared statements no later than March 4, 1987. Written comments not prepared in connection with an oral presentation must be received on or before March 20, 1987 in order to be considered by the conference participants.

ADDRESSES: The public hearing will be held at the headquarters of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, Room 1C–40, on March 16, 1987. All witnesses should notify Richard K. Wulff or John D. Reynolds in writing of their desire to testify as soon as possible and submit 15 copies of their prepared statements by March 4, 1987. Written submissions not prepared in connection with an oral presentation should be submitted in triplicate by March 20, 1987 to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC. 20549. Comments should refer to File No. S7–3–87. All written submissions, including the written texts submitted in connection with oral presentations and the transcripts of such oral presentations, will be available for public inspection at the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or John D. Reynolds, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Discussion

A dual system of federal-state securities regulation has existed since the adoption of a federal regulatory structure in the Securities Act of 1933 (the "Securities Act").1 Issuers attempting to raise capital through securities offerings, as well as participants in the secondary trading markets, are responsible for complying with federal securities laws as well as all applicable state regulations. In recent years it has been recognized that there is a need to increase uniformity between federal and state regulatory systems and to improve cooperation among those regulatory bodies so that capital formation can be made easier while investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980 (the "Investment Incentive Act").2 Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of section 19(c). The declared policy of the section is that there should be greater federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) Maximum uniformity in federal and state standards; (3) minimum

1 15 U.S.C. 77q et seq.
interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small business, and to diminish the costs of the administration of the government programs involved. In order to establish methods to accomplish these goals, the Commission is required to conduct an annual conference. The first such conference was held in September 1983, the second in February 1985 and the third in March 1986.

II. 1987 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA") are planning the 1987 Conference on Federal-State Securities Regulation (the "Conference") to be held April 7-8, 1987 in Baltimore, Maryland. At the Conference, representatives from the Commission and NASAA will meet to discuss methods of enhancing cooperation in securities matters in order to improve the efficiency and effectiveness of both federal and state securities regulation. Attendance will be limited to representatives from the Commission and NASAA in an effort to maximize the ability of Commission and state representatives to engage in frank and uninhibited discussion.

Representatives from the Commission and NASAA currently are in the process of formulating an agenda for the Conference. As part of that process, the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate through the submission of written comments or by making oral presentations to a panel of Commission and NASAA representatives at a public hearing on March 16, 1987 which will later be considered by the Conference attendees, on the issues set forth below. In addition, comment is requested on other appropriate subjects that commentators wish to be included in the Conference agenda.

III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following topics in the areas of corporation finance, investment management, market regulation and oversight and enforcement.

(1) Corporation Finance Issues

a. Uniform Limited Offering Exemption

Congress specifically acknowledged the need for a uniform limited offering exemption in enacting section 19(c) of the Securities Act and authorized the Commission to cooperate with NASAA in its development. Working with the states, the Commission developed Regulation D, the federal regulation governing exempt limited offerings. Regulation D was adopted by the Commission in March 1982. On September 21, 1983 NASAA endorsed a revised form of the Uniform Limited Offering Exemption ("ULOE") that is intended to coordinate with Regulation D.

ULOE provides a uniform exemption from state registration for certain issuers. An issuer raising capital in a state which has adopted ULOE may take advantage of both a state registration exemption and a federal exemption under Regulation D. To date, more than half of the states have adopted some form of ULOE; both the Commission and NASAA continue to make a concerted effort toward the universal adoption of ULOE. During 1986, the Commission, with the cooperation of NASAA, adopted several changes to Form D, the notice used to report offerings pursuant to Regulation D. At its 1987 annual Spring meeting, NASAA plans to consider adoption of Form D revisions as part of ULOE.

Recently, the Commission also proposed for comment several additional revisions to Regulation D. Again, the cooperation of representatives of NASAA in connection with these proposals is acknowledged.

The Commission and NASAA hope to achieve the goal of uniformity envisioned by the statute. Comment is requested on approaches to achieve this goal and on other issues relating to uniformity of exemptions.

b. Disclosure Policy and Standards

The Commission has an ongoing program of considering, reviewing and revising its policies with regard to the disclosure of material information to the public. Coordination with the states has been beneficial. For example, such cooperation was helpful in the development of guidelines for real estate offerings. Pursuant to this program, the Commission in 1986 amended several rules to increase the total assets threshold for registration and reporting under the Securities Exchange Act of 1934 (the "Exchange Act") to $5 million. As a result, issuers are now required to register classes of their equity securities pursuant to section 12(g) of the Exchange Act only when such securities are held of record by at least 500 security holders and the issuer has at least $5 million in total assets. At the time these rule amendments were adopted, the Commission also issued a separate release seeking information and suggestions as to other appropriate criteria for entry into and exit from the Exchange Act reporting system which would complement or substitute for the present size criteria of 500 shareholders and $5 million total assets. Since certain states exempt offerings by issuers which are in the Exchange Act reporting system, comment is specifically requested on whether changes in the present criteria should be adopted, and if so, which approaches would further both federal and state regulatory objectives.

Commentators are invited to discuss other areas where federal-state cooperation could be of particular significance as well as any ways in which such federal-state coordination could be improved.

c. Takeover Regulations

The continuing high level of corporate tender offers and takeover techniques makes discussion of state and federal issues relating to takeovers appropriate at the Conference. A federal response, if any, to the various anti-takeover devices currently in use requires an evaluation and balancing of competing federal and state interests. For example, among the various anti-takeover measures now in use are recapitalization plans which provide for the authorization and issuance of a second class of common stock, typically with enhanced voting rights and reduced rights to receive dividends. In many instances, the effect of these recapitalization proposals is to assure the voting control of a principal shareholder or group of shareholders. This topic is presently before the Commission in the context of the New York Stock Exchange’s proposal to amend its rules to permit the listing of common stock with unequal voting rights under certain circumstances.

The Commission is currently soliciting comments on the proposal to amend its rules to permit the listing of common stock with unequal voting rights under certain circumstances.

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3 NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, the Canadian provinces and territories, and Mexico.

4 Release No. 33-6663 (October 2, 1986) [51 FR 36035].

5 Release No. 33-6663 (January 18, 1987) [51 FR 30155].

6 Release No. 33-6652 (April 23, 1986) [51 FR 13222].

7 Release No. 33-6652 (July 9, 1986) [51 FR 25300].

8 Release No. 34-23724 (October 17, 1986) [51 FR 37529].

9 Release No. 34-23400 (July 8, 1986) [51 FR 23400].
Under section 19(b) of the Exchange Act, the Commission must approve or disapprove any proposed rule change made by a national securities exchange. The Commission's decision on this issue requires evaluation and consideration of the states' interests and federal-state comity.

The public is invited to comment on the appropriate role of state and federal regulators in the context of these and other corporate takeover topics.

d. Multinational Securities Offerings

In light of the increasing internationalization of securities markets the Commission published a release in 1985 soliciting comments on methods of harmonizing disclosure and distribution practices for multinational offerings by non-governmental issuers. The comments received on that release will be discussed, particularly those relating to the impact on U.S. firms if a reciprocal approach to foreign offerings is adopted and whether there should be minimum standards with such reciprocal approach and if so, what they should be. Each of the fifty states has securities statutes which must be considered when attempting to institute multinational offerings. Comment is specifically requested on ways of assuring input from the states regarding multinational offerings. Comments generally about the dual federal/state regulation of foreign securities offerings are also requested.

e. Other Rulemaking Initiatives

Participants at the Conference will also consider rulemaking proposals of the Commission initiated over the past year, including proposed revisions to Rule 174 and proposed Rule 430A.

(2) Investment Management Issues

a. Investment Companies

In 1984 and 1985 NASAA adopted resolutions supporting more uniform federal and state regulation of mutual funds and unit investment trusts. The resolutions encourage states to eliminate expense limitations and adopt uniform, streamlined approaches to investment company registration and renewal procedures. Since the resolutions were adopted, state expense limitations have been substantially eliminated and significant progress toward uniformity of registration and renewal procedures has been made. The conferences will consider what additional efforts should be made to encourage state to implement the NASAA resolutions and whether federal and state substantive investment company regulation also can be made more uniform. Commentators are invited to address these matters and any other issues that should be addressed by NASAA and the Commission in the next year with respect to regulation of open and closed-end management investment companies and unit investment trusts.

b. Investment Advisers

(i) Possible Federal Registration Exemptions

In March, 1986 the Commission authorized its staff to seek NASAA's views on possible rulemaking to exempt certain smaller investment advisers from federal regulation, other than antifraud prohibitions, if the advisers were registered in all states in which they do business. The purpose of the exemptions would be to place primary regulatory responsibility for certain smaller advisers with states that actively regulate advisers. Although it authorized the staff to discuss specific drafts of possible exemptive rules, the Commission has reached no conclusions about the desirability or feasibility, or appropriate conditions, of any such rules.

The drafts under discussion would determine eligibility for the exemption by reference to the size of the adviser's business, whether the adviser has custody of clients' funds or securities, and whether the adviser is registered as an adviser in all states in which it does business. The staff has given NASAA data from Form ADV, the uniform federal and state adviser registration form, on the estimated number of registrants that might be exempted from federal regulation under the draft rules.

The conferences will continue their discussions of such possible exemptions. It is anticipated that this spring NASAA will provide its views on the exemptions to the Commission.

(ii) Central Registration Depository

In October, 1985, NASAA and the Commission adopted a uniform adviser registration form for advisers registering with the Commission and those states that register advisers. At that time NASAA and the Commission indicated that a clearing house procedure, such as the Central Registration Depository ("CRD") developed by NASAA and the National Association of Securities Dealers, Inc. ("NASD"), would be considered to process adviser registration filings. The CRD is a computerized system used to register securities industry personnel with the NASD and the states. The conferences will discuss how a central registration system for advisers can be developed, whether it should be developed in connection with the CRD or the Commission's Edgar system, and what cost-savings for advisers and regulatory benefits would result from a central registration processing system. In addition, conferences will discuss whether cost-effective means can be developed for Commission participation in any central processing system using CRD. As discussed below, participants in the sessions on Market Regulation issues will also discuss the use of CRD in connection with broker-dealer registrations and other related matters.

(iii) Inspections

The conferences also expect to discuss ongoing efforts of the Commission and the states to increase the level of routine surveillance over the advisory industry, including the encouragement of state initiatives to inspect advisers and greater cooperation and coordination between the states and the Commission's regional offices in identifying advisers for inspection and sharing inspection findings.

A joint Commission-state inspection and training program was instituted in 1984 to coordinate and share information, increase inspection coverage and reduce duplication. To date this program has provided training to more than 50 inspectors from 20 states.

(iv) Investment Adviser Self-Regulatory Organizations

In other areas for which the Commission has responsibility, self-regulatory organizations (e.g., the NASD and securities exchanges) have been delegated regulatory functions. It has been suggested that in the investment advisory and financial planning fields, one or more self-regulatory organizations ("SROs") would be useful. These organizations might assume responsibility for establishing and administering proficiency standards, conducting routine inspections and disciplining members. In March, 1986 NASAA adopted a resolution supporting the establishment of one or more investment adviser SROs provided any SRO was responsive and accountable to the states and adequately funded.

Conferences will continue to explore the concept of self-regulatory organizations for investment advisers and financial planners.

(v) Financial Planner Study

The Commission is conducting a study of investment advisers and financial planners at the request of the House of Representatives Subcommittee on Telecommunications, Consumer Protection and Finance. The subcommittee requested that the study (i) address client demographics and...
planner-adviser characteristics including compensation arrangements, (ii) address the extent to which advisers and planners are subject to regulatory oversight, (iii) address the nature, frequency and findings of regulatory inspections, and (iv) evaluate the pilot program of the NASD to become a self-regulatory organization for the investment advisory activities of its members and their associated persons.

As part of the study, the Commission's staff is conducting a series of special examinations of financial planners. The examinations focus on whether the systems of regulation provided by the securities laws are effective in addressing conflicts of interest faced by planners that sell products to clients and provide for adequate supervision over the activities of financial planners that also are registered representatives of broker-dealers. The Commission intends to seek NASDA's views on matters relating to the study and to invite state securities personnel to participate in any special examinations conducted in their states. The conference will discuss how federal-state cooperation can assist the Commission in conducting the study.

(3) Market Regulation and Oversight Issues

a. Government Securities Regulation

In October, 1986, Congress passed the Government Securities Act of 1986. This Act, adopted in response to the failure of a number of unregistered government securities dealers in recent years that resulted in substantial losses to investors, is intended to create a limited regulatory structure for government securities broker-dealers. Currently, unregistered government securities broker-dealers will be required to register with the Commission: registered broker-dealers and financial institutions, such as banks and savings and loan associations, that act as government securities brokers or dealers will be required to file notice of their activities with their existing regulators. In addition, the Secretary of the Treasury has been given rulemaking authority regarding dealers in the areas such as financial responsibility, recordkeeping, and reporting. The Commission is preparing rules governing the registration of unregistered government securities dealers; in addition, the Commission and NASDA are preparing revisions of Form BD to provide for the registration of these dealers and the provision of notice of government securities activities by currently-registered broker-dealers on Form BD.

Commentators are asked to address the appropriate means of implementing the Government Securities Act and any additional actions that should be taken on the national and state level as to ensure the integrity of the government securities markets.

b. Central Registration Depository ("CRD")

The NASD and NASDA have jointly developed the CRD, a computerized filing system for securities industry registration. The NASD, forty-nine states, the District of Columbia, Puerto Rico and the New York Stock Exchange presently approve or register broker-dealer agents by means of the CRD. Persons filing applications for agent registration file a Form U-4 and any required fees with the CRD, which disseminates the information contained on the forms and fees electronically to the appropriate jurisdictions. This agent phase of CRD, known as Phase I, similarly provides for the filing of U-4 amendments and for the transfer of agent registration under certain circumstances. Work is proceeding on the implementation of the final stage of Phase II, which, completed, will enable the CRD to effect the initial registration of a broker-dealer upon the filing of a Form BD with CRD and to update the information on the Form BD when the broker-dealer files a Form BD amendment.

During the sessions, participants will focus on the present efficacy of the CRD, future uses of the CRD by the states and the relationship of the Commission to the CRD (including the possible processing of broker-dealer registrations with the Commission through the system).

Commentators are requested to address the effectiveness and efficiency of the CRD (including any suggestions for improving the system) as well as the future direction of the system.

c. National Market System Exemption from registration

Most state securities laws currently provide an exemption from their securities registration requirements to issuers that list on the New York ("NYSE") or American ("Amex") Stock Exchanges, or, in some cases, certain regional stock exchanges. Recently, some states have extended these exemptions to include over-the-counter ("OTC") securities designated as National Market System ("NMS") securities, while other states and legislatures have rejected such proposals. The Commission recently has proposed to designate as NMS securities all listed and OTC equity securities for which real time last sale reporting is required by a transaction reporting plan, and the NASD has proposed to add corporate governance standards to its transaction reporting plan. The effect of these amendments would be to designate as NMS securities all NYSE and Amex listed equity securities and all equity securities listed on regional exchanges that meet Amex's listing standards. In addition, all current OTC NMS securities would continue to be designated as NMS securities, if they satisfy the proposed corporate governance standards. The Amex, NYSE and NASD have proposed to waive their corporate governance standards for certain foreign issuers and the NYSE has proposed to relax its one share, one vote requirements. Commentators are asked to address whether the states generally should continue to exempt from registration securities, particularly in light of possible changes to company listing standards with respect to corporate governance and foreign issuers. Also, commentators are requested to address whether the NASDA should develop objective exemptive standards to replace the "status" exemptions in light of increasing competition between NASDAQ and the exchanges and the Commission's proposed amendments to its NMS Designation Rule and the NASD's proposed corporate governance standards.

d. Forms Revision

During 1986 the Commission and NASDA proposed changes to Form BDW, the form used to withdraw from broker-dealer registration. These changes were intended to simplify the form and to conform to changes made in 1985 to Form BD, the broker-dealer registration form. In 1987, the Commission and NASD have proposed to adopt revisions to Form BDW. They also will work on revisions to Form BD to implement aspects of the Government Securities Act of 1986. Commentators are encouraged to address any aspect of the forms revisions that have been adopted or are contemplated.

e. Internationalization of the Securities Markets

The world's securities markets are increasingly becoming international in orientation, with securities being issued simultaneously in different countries, and with securities trading concurrently in the securities markets of more than one country. In view of these developments, the Commission has sought comment on the direction of the internationalization of the trading markets. Commentators are asked to
The Commission has designated by
NASAA Three states, California, Georgia and
Wisconsin, were designated by NASAA to
participate in the Edgar pilot, and
they began receiving access to public
filings in their offices in February
1985.

The Commission is proceeding to
develop the operational Edgar system in
which most filings with the Commission
will be made electronically. The
conference will discuss the relationship of
NASAA to this system and the goal
of one-stop filing. Since participation of
the states is essential to one-stop filing, the
conferences will explore the particular
needs of the states and discuss methods
to accommodate such needs.

Commentators are invited to address
approaches to achieving this goal.

(6) General

There are a number of matters which
are applicable to all or a number of the
disciplines noted above. These include
the coordination of Commission
rulemaking procedures with the states,
the training and educating of staff
examiners and analysts, the sharing of
information, and prospects delivery.

The Commission and NASAA request
specific public comments and
recommendations on the above-
mentioned topics. Commentators should
focus on the agenda but may also
discuss or comment on other areas in
which the existing scheme of state and
federal regulation can be made more
uniform while high standards of investor
protection are maintained.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-3657 Filed 2-19-87; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

National Small Business Development
Center Advisory Board; Meeting

The National Small Business
Development Center Advisory Board
will hold a public meeting on Tuesday
and Wednesday, March 10th and 11th,
from 9:00 a.m. to 9:00 p.m. (Tuesday) and
9:00 a.m. to 1:00 p.m. (Wednesday). The
meeting will be held in the Office of
General Counsel’s conference room at
the U.S. Small Business Administration,
1441 L Street, NW., Washington, DC
20416. The purpose of the meeting is to
discuss such matters as may be
presented by Advisory Board Members,
staff of the U.S. Small Business
Administration, or others present.

For further information, write or call
Hardy Patten, SBA, Room 317, U.S.
Small Business Administration, 1441 L
Street, NW., Washington, DC 20416;
telephone number: (202) 653-6315.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 87-3639 Filed 2-19-87; 8:45 am]
BILLING CODE 8025-01-M

[License No. 09/09-5176]

United Business Ventures, Inc.;
Application for Change in Ownership
and Control

Notice is hereby given that an
application has been filed with the
Small Business Administration (SBA)
pursuant to § 107.601 of the Regulations
governing small business investment
companies (13 CFR 107.601 (1987)) for
change in ownership and control of
United Business Ventures, Inc., 711 Van
Ness Avenue, Fifth Floor, San Francisco,
California 94102, a Federal Licensee
under the Small Business Investment
et seq.). The proposed change in control
of United Business Ventures, Inc., which
was licensed November 1, 1974, is
subject to the prior written approval of
SBA.

United Business Ventures, Inc., is a
wholly owned subsidiary of First
California Business and Industrial
Development Corporation (First Cal
Bidco), United Savings Bank F.S.B.,
which owned a majority interest in First
Cal Bidco, was the subject of a
Federally assisted acquisition. On
March 28, 1986, the Federal Home Loan
Bank appointed the Federal Savings and
Loan Insurance Corporation as receiver
of United Bank, F.S.B. Concurrent with
this action, the new mutual association
was sold to Hibernia Bancshares
Corporation, the holdings company of
Hibernia Bank.

United Savings Bank, F.S.B. operates
independently of Hibernia Bank, United
Business Ventures, Inc. will continue to
operate under a management contract
with First Cal Bidco. The management of
First Cal Bidco is being provided by
United Savings Bank, F.S.B. which
follows through to United Business
Ventures, Inc.

Officers, Directors and Shareholder are
as follows:

James Ng, Chairman of the Board
Paul H. Quinn, President and Director
Gary L. Roberts, Chief Executive Officer
and Director
Percy Duran, Secretary and Director
George Byciph, Chief Financial Officer
and Director
Sau Wing Lam, Director
May Ngai, Director
Cleet Snyder, Director
Ninh Lawhon, Director
First Cal Bidico, 100 percent.

Matters involved in SBA’s consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 “L” Street, NW, Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in San Francisco, California.

[Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies]

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 87-3640 Filed 2-19-87; 8:45 am]
BILLY CODE 4710-10-M

DEPARTMENT OF STATE
[Public Notice 1003]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted a proposed collection of information to the Office of Management and Budget for review.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

Title of information collection—Medical History and Examination for Foreign Service.

Form numbers—OF-264 & DS-1622.

Originating office—Office of Medical Services.

Type of request—Existing collection.

Frequency—On occasion.

Respondents—Applicants for employment in the Foreign Service and their dependents.

Estimated number of responses—3,677.

Estimated number of hours needed to respond—919.

Section 504(h) of Pub. L. 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed form and supporting documents may be obtained from Gall J. Cook (202) 647-4080. Comments and questions should be directed to (OMB) Francine Picoult (202) 595-7350.


John R. Burke,
Acting Assistant Secretary for Administration.

[FR Doc. 87-3640 Filed 2-19-87; 8:45 am]
BILLY CODE 4710-10-M

PUBLIC NOTICE 1002]

Determination Under the Foreign Missions Act Concerning the Acquisition of Goods and Services by Soviet Diplomatic and Consular Missions in the United States

I. Authorities

Pursuant to the Foreign Missions Act of 1982, as amended [22 U.S.C. 4301 et seq.], the Secretary of State, or his delegate, is authorized to require a foreign mission: (A) To obtain benefits from or through the Director of the Office of Foreign Missions on such terms and conditions as the Secretary may approve; or (B) to forgo the acceptance, use or relation of any benefit or to comply with such terms and conditions as the Secretary may determine as condition to the execution or performance in the United States of any contract or other agreement, the acquisition, retention, or use of real property, or application for or acceptance of any benefit (including any benefit from or authorized by any Federal, State or municipal governmental authority, or any entity providing public services). 22 U.S.C. 4304(b). Among the terms and conditions that the Secretary may impose are the requirements to pay the Director of the Office of Foreign Missions a surcharge or fee. 22 U.S.C. 4304(c).

The Act defines the term “benefit” to include the acquisition of public services, including services relating to customs, importation, and utilities, and the processing of applications or requests relating to public services; supplies, maintenance, and transportation; locally engaged staff on a temporary or regular basis; travel and related services; and such other benefits as the Secretary may designate. Section 4302(a)(1).

Department of State Delegation of Authority No. 147, dated September 13, 1982, delegates to the Under Secretary of State for Management certain authorities under the Act, including authority to make the above-described determinations and designations of benefits.


Pursuant to the above authorities, I hereby make the following designations of benefits and determinations applicable to the diplomatic and consular missions of the Soviet Union in the United States, and to the personnel of such missions. For purposes of this Determination, personnel of the Soviet diplomatic and consular missions includes members of such missions and members of the family forming part of the household of such individuals. A member of the diplomatic mission means the head of the mission (in this case the Embassy) and members of the staff of the mission (Vienna Convention on Diplomatic Relations, Article 1(b), 21 U.S.T. 3227). A member of a consular mission means consular officers and employees of the consular establishment (Consular Convention and Protocol Between the United States and the Union of Soviet Socialist Republics, signed at Moscow June 1, 1964, Article 1, 19 U.S.T. 5018).

II. Designation of Benefits

In addition to the benefits specifically enumerated in the Act, I hereby designate as “beneits” for the purposes of the Act the acquisition within the United States by the diplomatic and consular missions of the Union of Soviet Socialist Republics, and the personnel of such missions, from any person of entity subject to the jurisdiction of the United States (other than a member of such missions) of the following services and goods:

Services

(1) Public utilities and services, including public recreational facilities and sanitation services; and

(2) Personal services of individuals engaged within the United States for whatever purpose, whether on a temporary or regular basis. Such personal services include:

(a) Services relating to public relations, information, publishing, printing, advertising, distribution of literature, or mailing;

(b) Plumbing, electrical, construction, maintenance, engineering, architectural or related services;

(c) Recreational, entertainment, party catering, or like services, including the provision of facilities.
(d) Automotive maintenance and repair services;
(e) Packing, shipping, cartage and related services, including provision of packing materials;
(f) Educational services, including classes or coursework of any type and without regard to the character of the institution furnishing the same; and
(g) Financial services.

III. Determination

I hereby determine it to be reasonably necessary to accomplish the purposes set forth in section 4304(b) of the Act to require the diplomatic and consular missions of the Union of Soviet Socialist Republics (not including the Soviet Mission to the United Nations), and members thereof, to acquire any of the following benefits as may hereafter be specified by the Director of the Office of Foreign Missions either solely and exclusively from or through the Director of the Office of Foreign Missions, or upon such terms and conditions as the Director of the Office of Foreign Missions may direct.

(A) Services

The acquisition of services available from commercial, governmental or other sources within the United States (other than personnel of the mission), to include:
(1) Public utilities and services, including public recreational facilities and sanitation services; and
(2) Personal services of individuals engaged within the United States for whatever purpose, whether on a temporary or regular basis.

Such personal services to include:
(a) Services relating to public relations, information, publishing, printing, advertising, distribution of literature, or mailing;
(b) Plumbing, electrical, construction, maintenance, engineering, architectural or related services;
(c) Recreational, entertainment, party, catering, or like services, including the provision of facilities;
(d) Automotive maintenance and repair services;
(e) Packing, shipping, cartage and related services, including provision of packing materials;
(f) Educational services, including classes or coursework of any type and without regard to the character of the institution furnishing the same; and
(g) Financial services.

Provided that nothing in the Determination shall prevent diplomatic and consular missions of the Union of Soviet Socialist Republics and their personnel from obtaining medical services.

B. Goods

Acquisition of the following categories of goods within the United States, irrespective of the source or manner of acquisition:
(a) Motor vehicles;
(b) Construction equipment and materials;
(c) Computers and automated data processing equipment; and
(e) Furnishings for offices and residences.

IV. Administrative Provisions

A. It is unlawful for any person subject to the jurisdiction of the United States directly to supply, or contract to supply the aforementioned goods and services to the aforementioned foreign missions, or any member thereof, other than in accordance with section 4311(a) of the Act, this Determination and any determination issued hereunder.

B. Date of Effect: A determination issued by the Director of the Office of Foreign Missions shall be effective at such time as the Director may prescribe.

C. Persons wishing clarification as to the applicability of this Determination or information on subsequent Determinations may contact the Office of Foreign Missions, US Department of State, Washington, DC 20520; or by telephone: (202) 647-3416.

George P. Schultz,
Secretary of State.


Ronald I. Spiers,
Under Secretary for Management.
[FR Doc. 87-3620 Filed 2-19-87; 8:45 am]
BILLING CODE 4710-35-M

Shipping Coordinating Committee, Sub-Committee on Safety of Navigation; Open Meeting

The Working Group on Safety of Navigation of the Sub-Committee on Safety of Life at Sea (SOLAS) will hold an open meeting at 9:30 a.m. on Thursday, March 12, 1987, in Room 4234 of Department of Transportation Headquarters, 400 7th Street, SW., Washington, DC.

The purpose of the meeting will be to report on developments relating to the below listed agenda items considered at the 33rd session of the Sub-Committee on Safety of Navigation of the International Maritime Organization held in London, January 15–16, 1987, and to begin preparations for the 34th session.

Decisions of other IMO bodies.
Routing of Ships.
Problems related to deep-draft vessels.
Matters concerning search and rescue.
Amendment of regulations V/2(a) and V/2(b) of SOLAS.
Removal of disused offshore platforms.
Infringement of safety zones around offshore structures.
Method of supplying heading information at the emergency steering position.
World-wide navigation system.
Electronic chart display systems.
Navigational aids and related equipment.
Work program.
Any other business.
Members of the general public may attend up to the seating capacity of the room.

For further information contact Mr. Edward J. LaRue, Jr., U.S. Coast Guard.

[Public Notice 1001]

Foreign Missions Act Determination; Amtorg Trading Corp.

Pursuant to the authority vested in me by the Foreign Missions Act, 22 U.S.C. 4301 et seq. (the "Act"), including section 202(b) of the Act (22 U.S.C. 4302(b)), and the Department of State Delegation of Authority No. 147 of September 13, 1982, I hereby determine:
1. That Amtorg Trading Corporation, with offices at 750 Third Avenue, New York, New York (hereinafter referred to as "Amtorg") is a "foreign mission" within the meaning of section 202(a)(4) of the Act (22 U.S.C. 4302(a)(4)), as amended by Pub. L. 99–569;
That section 205 of the Act (22 U.S.C. 4305) is applicable to the acquisition of real property by Amtorg and its employees who are nationals of the Soviet Union.


Edward J. LaRue, Jr., U.S. Coast Guard
DEPARTMENT OF TRANSPORTATION
Office of the Secretary

Privacy Act of 1974: Matching Program—Federal Aviation Administration General Air Transportation Records on Individuals/Federal Bureau of Investigation Identification Records

AGENCY: Department of Transportation.

ACTION: Notification of Matching Program—Federal Aviation Administration General Air Transportation Records on Individuals/Federal Bureau of Investigation Identification Records.

SUMMARY: The Department of Transportation is providing notice that the Office of Inspector General intends to conduct a match of Federal Aviation Administration General Air Transportation Records on Individuals, more specifically the Automated Medical Certification Data Base, with Federal Bureau of Investigation Identification Records. A matching report is set forth below.

DATE: The match will begin in February 1987.

FOR FURTHER INFORMATION CONTACT: John W. Lainhart IV, Director, Office of ADP Audits and Technical Support, Office of Inspector General, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20593, or call (202) 366-1496.

SUPPLEMENTARY INFORMATION: The Office of Inspector General has initiated a project to assist the Federal Aviation Administration in identifying pilots who have failed to declare their drug- or alcohol-related convictions, if any, on medical certification applications. Set forth below is the information required by paragraph 5.F(1) of the Revised Supplemental Guidance for Conducting Matching Programs issued by the Office of Management and Budget, 47 FR 21665 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.


Jon H. Seymour,
Assistant Secretary for Administration.

United States Department of Transportation, Office of Inspector General, Computer Matching Program

Report of Matching Program: Federal Aviation Administration, General Air Transportation Records on Individuals/Federal Bureau of Investigation Identification Records

Authority: The legal authority under which this match is being conducted is the Inspector General Act of 1978 (Pub. L. 95-452).

Position Description and Purpose: The Office of Inspector General plans to conduct a one-time match of Federal Aviation Administration General Air Transportation Records on Individuals, more specifically the Automated Medical Certification Data Base, against Federal Bureau of Investigation Identification Division records of criminal history information to determine whether pilots with alcohol- or drug-related criminal convictions have falsified Federal Aviation Administration Form 8500-8. Application for Airman Medical Certificate, which all pilots complete in connection with medical certification. Physically, a tape of information from the above FAA records will be provided to the FBI, which will match this tape with the FBI's Identification Division records. Criminal history records resulting from this match will be reviewed and verified as necessary with Federal, state, and local law enforcement agencies. The purpose is to assist the Federal Aviation Administration in identifying pilots who have failed to declare their drug- or alcohol-related convictions, if any, on medical certification applications.


Disclosure of Records: The record subjects have not consented to this match. However, Item I of the Department of Privacy Act General Routine Uses states that the Department may make available to another agency or instrumentality of any governmental jurisdiction, including state and local governments, listings of names from any system of records in the Department for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records.

Follow-up Procedures: After it has been verified that material omissions or false statements, if any, have been made by individual pilots on the Federal Aviation Administration Form 8500-8, the facts regarding these individuals will be furnished to the Federal Aviation Administration for administrative disposition and to the Justice Department for possible criminal action. These cases may also be referred within the Department of Transportation for possible administrative action.

Period of Match: This match is projected to begin in February 1987 and be completed within 9 months.

Safeguards: Records used in this match will be maintained under strict security. Access to the computer files and printed information is restricted to only those persons associated with the matching program on a "need-to-know" basis. The records will be kept in secure areas and under the control of the Office of Inspector General. The FBI will return the Department's computer source tape after the match. All computer files relating to the match will be protected by security systems to prohibit unauthorized access.

Retention and Disposition of Records: Records on individuals produced in the match will only be maintained where the information meets predetermined criteria indicating a failure to declare drug- or alcohol-related convictions, if any, on medical certification applications. All records not required for administrative actions or criminal prosecution will be destroyed.

[FR Doc. 87-3663 Filed 2-19-87; 8:45 am]

BILLING CODE 4910-62-M

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on February 13, 1987

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists the forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on February 13, 1987, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or
Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

Supplementary Information:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the “For Further Information Contact” paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on February 13, 1987.

DOT No: 2857
OMB No: 2125-0034
Administration: Federal Highway Administration
Title: Application for Bridges on Dams Projects

Need for Information: To meet the FHWA requirements contained in 23 CFR 630 subpart H

Proposed Use of Information: For FHWA to ensure that bridges across Federal dams are built in conformance with current highway and safety standards, and that the construction employs the most economical construction alternative.

Frequency: On occasion

Burden Estimate: 50 hours

Respondents: State and local governments

Form(s): N/A.

DOT No: 2859
OMB No: 2115-0038
Administration: United States Coast Guard
Title: Application for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures

Need for Information: This application is essential for safe navigation. Such vital information as the private aid’s position, signal characteristics, and structure description is then disseminated to the public via the media, light list and nautical charts.

Proposed Use of Information: The Coast Guard reviews the application and ensures that the private aid is adequately marked for navigational purposes.

Frequency: On occasion

Burden Estimate: 250 hours

Respondents: Petroleum related companies

Form(s): CG-4143.

DOT No: 2860
OMB No: 2115-0105
Administration: United States Coast Guard
Title: Evidence of Competency; Person-In-Charge

Need for Information: Waterfront facilities handling "dangerous cargoes" must supply documentary evidence to the competence of persons-in-charge. This is needed to control accidents due to inexperience or lack of knowledge.

Proposed Use of Information: Coast Guard captain of the port (COTP) uses this information to assure that persons-in-charge of bulk liquid dangerous cargo transfer operations are properly qualified.

Frequency: On occasion

Burden Estimate: 160 Hours

Respondents: Operators of waterfront facilities which transfer dangerous cargo to or from vessels

Form(s): None.

DOT No: 2861
OMB No: 2115-0120
Administration: United States Coast Guard
Title: Oil Transfer Procedures

Need for Information: Coast Guard uses this information in three ways: (1) as a means to indicate compliance with standards, (2) as a vehicle for transmitting specific information on special designs not covered by regulations and (3) to obtain information necessary to schedule a Certificate of Compliance examination.

Frequency: On occasion

Burden Estimate: 4,369 hours

Respondents: Shipbuilders and door manufacturers

Form(s): N/A.

DOT No: 2862
OMB No: 2115-0109
Administration: U.S. Coast Guard
Title: Plan Approval and Records for Access Openings (Watertight Doors)

Need for Information: Coast Guard uses this information to determine if the access openings meet the standards mandated by the Convention and promulgated in the regulations.

Frequency: On occasion

Burden Estimate: 32 hours

Respondents: Shipbuilders and door manufacturers

Form(s): N/A.

DOT No: 2863
OMB No: 2115-0113
By: United States Coast Guard
Title: Self-Propelled Liquefied Gas Vessels

Need for Information: This information collection is needed to evaluate the hazards associated with the carriage of liquid bulk dangerous cargoes.

Proposed Use of Information: Coast Guard uses this information in three ways: (1) as a means to indicate compliance with standards, (2) as a vehicle for transmitting specific information on special designs not covered by regulations and (3) to obtain information necessary to schedule a Certificate of Compliance examination.

Frequency: On occasion

Burden Estimate: 5,289 hours

Respondents: Builders, owners/operators of flag liquefied gas vessels

Form(s): N/A.

DOT No: 2864
OMB No: 2115-0541
By: United States Coast Guard
Title: Barges Carrying Bulk Hazardous Materials

Need for Information: This information collection is needed to determine that a barge carrying bulk hazardous materials meets prescribed safety standards and to ensure that the likelihood of oil spills during the transfer operations.

Frequency: Recordkeeping

Burden Estimate: 62.5 hours

Respondents: Vessel owners/operators

Form(s): None.

DOT No: 2865
OMB No: 2115-0039
Administration: U.S. Coast Guard
Title: Self-Propelled Liquefied Gas Vessels
barges' crew members have the information necessary to operate the barges safely.

Proposed Use of Information: This information is used by: (1) Coast Guard technical offices to evaluate barge design; (2) Coast Guard port safety and main inspection personnel to enforce safety regulations; (3) crew members for safe operations relative to the cargoes; and, (4) other people boarding the barges to avoid danger from cargo operations.

Frequency: On occasion
Burden Estimate: 22,685 hours
Respondents: Barge operators
Form(s): N/A.

DOT No: 2866
OMB No: 2138-0013
Administration: United States Coast Guard
Title: Application for Formal Admeasurement and Subapplications
Need for Information: Formal admeasurement is required for all commercial vessels over 79.0" in length, and those less than 79.0" engaged in the foreign trade. Owners of pleasure or commercial vessels (under 79.0" in length in domestic trade) may request formal admeasurement as an option.

Proposed Use of Information: Application is made for formal admeasurement when new vessels are built so that the register tonnages, gross and net, and a legal description of the vessels may be determined as a prerequisite to documentation.
Frequency: One-time
Burden Estimate: 4,845 hours

Respondents: Owners, builders or their agents
Form(s): None.

DOT No: 2867
OMB No: 2120-0500
Administration: Federal Aviation Administration
Title: Supplemental Qualification Statement/Aviation Safety Inspector GS-1825-0
Need for Information: This information is needed to determine if the applicant is qualified for the aviation safety inspector position for which he/she is applying.

Proposed Use of Information: The information will be used to rate and rank applicant on registers.
Frequency: On occasion
Burden Estimate: 10,000 hours
Respondents: Individuals applying for positions as safety inspectors
Form(s): FAA Form 3330-47.

DOT No: 2868
OMB No: 2138-0013
Administration: Research and Special Programs Administration
Title: Report of Financial and Operating Statistics for Certificated Air Carriers
Need for Information: To provide basic financial and traffic data which are used extensively by DOT in its ongoing programs, i.e., international negotiations, fitness, safety, airport planning, etc.

Proposed Use of Information: Information is placed into data banks to be used by program personnel in performance of their assigned tasks.
Frequency: Monthly, quarterly, semiannually and annually
Burden Estimate: 35,539 hours
Respondents: Large certificated air carriers
Form(s): RSPA Form 41.

Issued in Washington, DC, on February 13, 1987.

John E. Turner,
Director of Information Resource Management.

[FR Doc. 87-3664 Filed 2-19-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA’s rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public’s awareness of, and participation in, this aspect of FAA’s regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: March 11, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No., 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraph (e), (f), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 13, 1987.

John H. Cavanagh, Assistant Chief Counsel, Regulations and Enforcement Division.
## Dispositions of Petitions for Exemption

<table>
<thead>
<tr>
<th>Docket No.</th>
<th>Petitioner</th>
<th>Regulations Affected</th>
<th>Description of Relief Sought</th>
<th>Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>25155</td>
<td>Pan American World Airways, Inc.</td>
<td>14 CFR 121.271(a) and 121.378</td>
<td>To allow Pan American World Airways, Inc., to permit maintenance or repair of its leased CF6 engines and components at the MTU Maintenance GmbH Facility in Langenhagen, Germany.</td>
<td>GRANTED, January 15, 1987</td>
</tr>
<tr>
<td>25188</td>
<td>Project Osiris Inc.</td>
<td>14 CFR 91.303</td>
<td>To allow petitioner to operate Stage 1 four engine turboprop aircraft for four operations in order to get a major aircraft maintenance inspection and restock medical supplies and medical equipment.</td>
<td>DENIED, December 15, 1986</td>
</tr>
</tbody>
</table>

## Petitions for Exemption

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<tr>
<td>23653</td>
<td>University of North Dakota</td>
<td>14 CFR Part 141, Appendix A</td>
<td>To allow the students of the University of North Dakota, who are enrolled in the Center for Aerospace Sciences private pilot airplane certification course conducted under Exemption No. 3625, to be exempt from the FAA Private Pilot Airplane Written Test.</td>
<td>GRANTED, January 15, 1987</td>
</tr>
<tr>
<td>25155</td>
<td>SNECMA</td>
<td>14 CFR 145.71 and 145.73</td>
<td>To allow SNECMA and its divisions and their original equipment manufacturers to repair CFM 56 engines and their components for U.S. carriers operating in the United States and overseas.</td>
<td>DENIED, December 15, 1986</td>
</tr>
</tbody>
</table>

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<tr>
<td>18881</td>
<td>Experimental Aircraft Association</td>
<td>14 CFR 91.229(a)(1)</td>
<td>Extension of Exemption No. 2689 to allow members of the International Aerobatic Club to participate in aerobatic competitions sanctioned by the International Aerobatic Club, a division of Experimental Aircraft Association, without being required to meet the fuel requirement for flight under visual flight rules.</td>
<td>GRANTED, January 15, 1987</td>
</tr>
<tr>
<td>25043</td>
<td>United Executive Jet, Inc.</td>
<td>14 CFR 91.191(a)(4) and 135.165(b)</td>
<td>To allow petitioner to operate its Learjet Model 35 aircraft with only one high frequency communications receiver and one Global/VLF Omega Long Range Navigation Receiver.</td>
<td>GRANTED, December 17, 1986</td>
</tr>
<tr>
<td>18114</td>
<td>Flying Tiger Line, Inc.</td>
<td>14 CFR 91.191(a)(4) and 135.165(b)</td>
<td>To allow petitioner to substitute a LOFT program for the pilot competency and instrument proficiency checks prescribed by those actions.</td>
<td>GRANTED, January 15, 1987</td>
</tr>
<tr>
<td>25079</td>
<td>Montex Drilling Company</td>
<td>14 CFR 61.58(c)</td>
<td>To allow its pilots to take off under IFR at any Canadian civil airport listed in its operations specifications when the visibility minimum of any airport listed is less than 1 statute mile but not less than the minimums prescribed by Transport Canada.</td>
<td>GRANTED, January 9, 1987</td>
</tr>
<tr>
<td>24440</td>
<td>American Flyers</td>
<td>14 CFR 141.91(a)</td>
<td>To allow petitioner to install on its four Boeing 727 leased aircraft certain components provided by Orion Airways, Ltd., of the United Kingdom.</td>
<td>DENIED, December 22, 1986</td>
</tr>
<tr>
<td>24279</td>
<td>Florida West Airlines, Inc.</td>
<td>14 CFR 121.6</td>
<td>To allow petitioner to install on its four Boeing 727 leased aircraft certain components provided by Orion Airways, Ltd., of the United Kingdom.</td>
<td>DENIED, December 22, 1986</td>
</tr>
<tr>
<td>16955</td>
<td>American Airlines</td>
<td>14 CFR 61.58(d)</td>
<td>To allow petitioner to install a new 24-month pilot-in-command check in an FAA-approved simulator.</td>
<td>GRANTED, December 12, 1986</td>
</tr>
<tr>
<td>25064</td>
<td>America West Airlines, Inc.</td>
<td>14 CFR 121.571(a) and 121.378</td>
<td>To allow petitioner to install on its four Boeing 727 leased aircraft certain components provided by Orion Airways, Ltd., of the United Kingdom.</td>
<td>GRANTED, January 15, 1987</td>
</tr>
<tr>
<td>24818</td>
<td>United Airlines</td>
<td>14 CFR 121, Appendix H</td>
<td>To allow petitioner to conduct Phase II training and checking in a Phase I-1,101-500 simulator under an approved Phase II program, and to extend the termination date of United's interim simulator Upgrade Plan to July 1, 1988.</td>
<td>DENIED, December 25, 1986</td>
</tr>
<tr>
<td>24765</td>
<td>Spectrum Aircraft Corporation</td>
<td>14 CFR 21.198(b)(1)</td>
<td>To allow the Cessna 337 to conduct Phase II training and checking in a Phase I-1,101-500 simulator under an approved Phase II program, and to extend the termination date of the United's interim simulator Upgrade Plan to July 1, 1988.</td>
<td>DENIED, December 25, 1986</td>
</tr>
<tr>
<td>23752</td>
<td>Mall Airways</td>
<td>14 CFR 135.225(e)(1)</td>
<td>To allow its pilots to take off under IFR at any Canadian civil airport listed in its operations specifications when the visibility minimum of any airport listed is less than 1 statute mile but not less than the minimums prescribed by Transport Canada.</td>
<td>DENIED, December 17, 1986</td>
</tr>
<tr>
<td>20582</td>
<td>Tenecco, Inc.</td>
<td>14 CFR 61.58(e)</td>
<td>To allow the Cessna 337 to conduct Phase II training and checking in a Phase I-1,101-500 simulator under an approved Phase II program, and to extend the termination date of the United's interim simulator Upgrade Plan to July 1, 1988.</td>
<td>GRANTED, December 12, 1986</td>
</tr>
<tr>
<td>24960</td>
<td>Aero International Airlines, Inc.</td>
<td>14 CFR 121.571(a) and 121.378</td>
<td>To allow petitioner to install on its four Boeing 727 leased aircraft certain components provided by Orion Airways, Ltd., of the United Kingdom.</td>
<td>GRANTED, January 15, 1987</td>
</tr>
<tr>
<td>24558</td>
<td>Midstate Airlines</td>
<td>14 CFR 135.205(b) and 135.287</td>
<td>To allow petitioner to substitute a LOFT program for the pilot competency and instrument proficiency checks prescribed by those actions.</td>
<td>GRANTED, December 12, 1986</td>
</tr>
<tr>
<td>25095</td>
<td>Baron Aviation, Inc.</td>
<td>14 CFR 45.29</td>
<td>To permit the operation of its 1977 Cessna 172 aircraft displaying 3-inch high nationality and registration marks and numbers required by the regulations.</td>
<td>DENIED, December 15, 1986</td>
</tr>
<tr>
<td>Docket No.</td>
<td>Petitioner</td>
<td>Regulations affected</td>
<td>Description of relief sought disposition</td>
<td></td>
</tr>
<tr>
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<td></td>
</tr>
<tr>
<td>23893</td>
<td>Florida Express</td>
<td>14 CFR 91.307</td>
<td>To amend Exemption No. 3902 to add 3 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1986.</td>
<td></td>
</tr>
<tr>
<td>23419</td>
<td>Continental Airlines</td>
<td>14 CFR 91.307</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Radio Technical Commission for Aeronautics (RTCA), Special Committee 161—Minimum Aviation System Performance Standard for Radio Determination Satellite System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 161 on Minimum Aviation System Performance Standard for Radio Determination Satellite System to be held on March 5–6, 1987, in the TRCA Conference Room, One McPhereson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the First Meeting Held December 9, 1986; (3) Report on Radio Technical Commission for marine Services SC–108 Activities; (4) Briefing on Geostar Submission to Federal Communications Commission; (5) Briefing and Discussion of Geostar Accuracy Analysis; (6) Briefing and Discussion of Geostar Communications Structure; (7) Briefing by Other Potential Providers of RDSS; (8) Discussion on Content of Minimum Aviation System Performance Standards; (9) Assignment of Tasks; and (10) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

 Issued in Washington, DC, on February 13, 1987.

Wendie F. Chapman, Designated Officer.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 87–27]

Recordation of Trade Name; “Alaskan Seafood Company”

AGENCY: Customs Service, Treasury.

ACTION: Denial of Recordation.


The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than January 26, 1987. Numerous responses were received in opposition to the notice.

Upon consideration of the views of the opposition, the Customs Service has decided not to record the trade name “ALASKAN SEAFOOD COMPANY” for the following reasons:

(1) There is a likelihood of confusion on the part of U.S. purchasers of seafood if the words "Alaska or Alaskan" were included as part of a recorded trade name for fresh-frozen seafood produced in Mexico, other countries and other States.

(2) The recordation of the trade name “ALASKAN SEAFOOD COMPANY” by an Arizona company would mislead the public to believe that the products or the company are of Alaskan origin or affiliation, and would thus unfairly compete with genuine Alaskan products or companies.

(3) The recordation by the Customs Service of the trade name “ALASKAN SEAFOOD COMPANY” may have the result of depriving other firms located in Alaska of the right to import merchandise bearing designations accurately identifying their Alaska origin or affiliation.

For the foregoing reasons the Customs Service has determined that the recordation of the subject trade name by the applicant is contrary to the public interest, and accordingly, the application is denied.


FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC. 20229 (202–566–5705).


Steven Pinter,
Chief, Entry, Licensing and Restricted Merchandise Branch.

[FR Doc. 87–3562 Filed 2–19–87; 8:45 am]

BILLING CODE 4910–13–M
Sunshine Act Meetings

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(c)(3).

COMMODITY FUTURES TRADING COMMISSION
"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 3524.
PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., February 19, 1987.
CHANGE IN THE MEETING: The oral arguments in Grabarnick v. NFA and Sansom v. Drexel have been postponed.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.
Jean A. Webb, Secretary of the Commission.
[FR Doc. 87-3695 Filed 2-18-87; 10:39 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION
"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 3524.
PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:00 a.m., February 18, 1987.
CHANGE IN THE MEETING: The meeting of the Enforcement quarterly goals will be held on February 24, 1987 at 11:45 a.m.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.
Jean A. Webb, Secretary of the Commission.
[FR Doc. 87-3696 Filed 2-18-87; 10:39 am]
BILLING CODE 6351-01-M

FEDERAL MARITIME COMMISSION
TIME AND DATE: 10:00 a.m., February 25, 1987.
PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.
STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.
MATTERS TO BE CONSIDERED:
Portion open to the public:
Portion closed to the public:
1. Controlled Carrier Status of Various Carriers.
CONTACT PERSON FOR MORE INFORMATION: Daniel J. T. Polking, Secretary (202) 532-5725.
Daniel J. T. Polking, Secretary (202) 532-5725.
[FR Doc. 87-3699 Filed 2-18-87; 10:58 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM
TIME AND DATE: 10:00 a.m., Wednesday, February 25, 1987.
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 announcement of bank and bank holding company applications scheduled for the meeting.
James McAfee, Associate Secretary of the Board.
[FR Doc. 87-3739 Filed 2-18-87; 2:58 pm]
BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION
Agency Meetings
"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (52 FR 4237 February 10, 1987).
STATUS: Closed meetings.
PLACE: 450 Fifth Street, NW., Washington, DC.
CHANGE IN THE MEETINGS: Additional items.
The following items were considered at a closed meeting on Tuesday, February 10, 1987, at 1:00 p.m.
Settlement of administrative proceeding of an enforcement nature.
Regulatory matter bearing enforcement implications.

Federal Register
Vol. 52, No. 34
Friday, February 20, 1987
The following item was considered at a closed meeting on Thursday, February 12, 1987, at 10:30 a.m.

Regulatory matter bearing enforcement implications.

Commissioner Fleischman, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272-2092.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-3768 Filed 2-18-87; 3:57 pm]
BILLING CODE 8010-01-M
This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR
Bureau of Land Management
[ID-030-07-4212-14]

Realty Action; Idaho Falls District; Bonneville County

Correction
In notice document 87–778 appearing on page 1534 in the issue of Wednesday, January 14, 1987, make the following correction:
On page 1534, in the table, in the second column, the fifth line should read "Sec. 17: E½ W½ SW¼ SE¼ SW¼ SE¼ W¼ SE¼ SE¼".

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
Generalized System of Preferences (GSP); Information on Imports During First 10 Months of 1986 and Invitation of Comments

Correction
In notice document 87–2485 beginning on page 3897 in the issue of Friday, February 6, 1987, make the following correction:
On page 3897, in the second column, in the second complete paragraph, in the 16th line, "1974" should read "1984".

BILLING CODE 1505-01-D
Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3160
Onshore Oil and Gas Operations; Amendment Revising the Regulations Implementing the Federal Oil and Gas Royalty Management Act and the Mineral Leasing Acts; Final Rule
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

43 CFR Part 3160

[AA-630-07-4111-02; Circular No. 2592]

Onshore Oil and Gas Operations; Amendment Revising the Regulations Implementing the Federal Oil and Gas Royalty Management Act and the Mineral Leasing Acts

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking revises the existing regulations on site security; noncompliance with the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation, order or notice issued thereunder, or the terms of any lease or permit issued thereunder; the assessments and penalties for such noncompliance or nonabatement; and the procedures for notice, review or relief. The final rulemaking also makes technical corrections to the regulations in Part 3160.


ADDRESS: Inquiries or suggestions should be sent to: Director (630), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Frank A. Salwerowicz, (303) 230-3750
or
Stephen Specter, (202) 653-2147
or
Robert C. Bruce, (202) 343-8735

SUPPLEMENTARY INFORMATION: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), was designed to assure proper and timely revenue accountability for production from onshore Federal and Indian oil and gas leases, to address Outer Continental Shelf matters, to address lease reinstatement, to prescribe onshore field operations requirements for inspections and enforcement actions, to establish the basis for cooperation with States and Indian tribes for onshore Federal leases, and to establish duties of lessees, operators and others involved in the production, storage, measurement and transportation or sale of oil and gas from Federal onshore and Indian leases.

A final rulemaking implementing the site security provisions of the Federal Oil and Gas Royalty Management Act was published in the Federal Register on July 11, 1983 (48 FR 31978), with an effective date of September 9, 1983. A final rulemaking implementing the penalty and other provisions of the Act as they related to onshore operations on Federal and Indian leases was published in the Federal Register on September 21, 1984 (49 FR 37356), with an effective date of October 22, 1984. On January 4, 1985, the Director, Bureau of Land Management, by the issuance of a policy directive instituted a cap on assessments provided by the final rulemaking on onshore operations.

As a result of the numerous concerns expressed by Department of the Interior and Bureau of Land Management officials and representatives of the oil and gas industry, the Bureau held a series of public meetings during January and February 1985, to allow the interested public an opportunity to identify the specific issues which they felt needed review. Approximately 145 members of the public, mostly representatives of the oil and gas industry, appeared at the eight public meetings and gave their comments on the impacts of the final rulemaking implementing the penalty provisions of the Federal Oil and Gas Royalty Management Act.

The comments received on the final rulemaking on penalties resulted in the Bureau of Land Management establishing certain interim procedures for carrying out the purposes of the regulations and the Federal Oil and Gas Royalty Management Act which was noted in a Federal Register publication on March 22, 1985 (50 FR 11717). This publication also included a Notice of Intent to Propose Rulemaking. The Notice requested comments regarding the extent to which the existing regulations needed to more clearly define operational requirements of the Federal Oil and Gas Royalty Management Act and other oil and gas leasing laws, as well as comments on the development of a list of potential violations. A total of 68 comments were received in response to the Notice of Intent, including transcripts of the views presented at the public meetings.

A proposed rulemaking that would revise the existing oil and gas operating regulations was published in the Federal Register on January 30, 1986 (51 FR 3682), with a 60-day comment period. During the original comment period, the Bureau of Land Management held seven public meetings for the purpose of obtaining public comments on the proposed rulemaking. On March 3, 1986, the Bureau extended the comment period for an additional 15 days and scheduled four additional public meetings. The comment period resulted in written comments from 109 sources, while 45 individuals presented comments at the 11 public meetings. Fifty-three of the written comments were a form letter. Most of the comments presented at the public meetings were reflected in the written comments received by the Bureau. All comments, both those presented at the public meetings and the written comments, were given careful consideration as part of the decisionmaking process on the issuance of this final rulemaking. In discussing the comments, the preamble discusses all of the applicable comments and the action taken on them. Those comments that raised related issues are grouped for discussion in this preamble and are not individually discussed. Those comments that raised issues not directly related to the proposed rulemaking will be referred to the appropriate Bureau office for review and appropriate action.

Comments

Definitions

The vast majority of the comments and a significant number of the speakers at the public meetings recommended revisions of the definitions in the existing regulations as well as those contained in the proposed rulemaking. The comments, in most instances, offered specific language for amending the definitions with the aim of meeting the stated objectives without the perceived adverse consequences.

The term “authorized officer” was the subject of several comments, with many recommending that the term be broadened to include specific organizational levels below which actions could not be delegated. Some of the comments suggested that the term be replaced in the regulations with specific organizational titles. These comments have not been adopted by the final rulemaking. The term “authorized officer” is a generic term that is used throughout Title 43 of the Code of Federal Regulations as that Title relates to the Bureau of Land Management. The definition of this term for Groups 3000 and 3100 is set forth in § 3000.0-5. In its use of the term “authorized officer,” the Bureau delegates actions required by the regulations to its officials at various organizational levels. As an example, an action delegated to an official at an area office might, in another State, be delegated to an official at the State office. The delegations for each State office are available for the public’s information.

Several comments argued that the definition of the term “knowingly or willfully” used in the proposed
rulemaking does not follow the intent of Congress as set forth in section 109 of the Federal Oil and Gas Royalty Management Act and is inconsistent with the views of the Associate Solicitor. Energy and Resources, in a memorandum dated April 29, 1985, which discussed the interpretations of that phrase. The phrase “disregard or indifference” was the focus of some specific comments which recommended that this phrase should be qualified by the use of the term “reckless.” Comments also argued either that “repeated” violations should not be the sole basis for establishing that conduct is “knowingly or willfully” performed, or, in the alternative, that a consistent scheme must be shown. The comments further stated that the provision in the proposed rulemaking that specific intent is not required for a finding of “knowingly and willfully” is without basis in law and that the phrase “not negated or mitigated by a belief that the behavior is reasonable or legal” should be removed by the final rulemaking. After careful review of the comments, the Federal Oil and Gas Royalty Management Act and its legislative history, and the views of the Office of the Solicitor, the final rulemaking has revised this term.

The final rulemaking revises the first sentence of the proposed rulemaking to clarify how violations are committed “knowingly or willfully.” The first requirement for having “knowingly or willfully” committed a violation is notice of the standard of behavior required by law. The duties and prohibited acts are set out in section 109 of the Federal Oil and Gas Royalty Management Act, and in § 3165.2 of the final rulemaking. The issuance of this final rulemaking constitutes the third notice to lessees and operators of these duties and prohibited acts. The enactment of the Federal Oil and Gas Royalty Management Act being the first notice and the publication of the final rulemaking on September 21, 1984, being the second notice. Lessees should be well aware of their duties and of what is prohibited.

The key issue then becomes the establishment of appropriate standards for determining whether conduct is done “knowingly or willfully.” Although several of the comments refer to Congressional intent, the legislative history of the Federal Oil and Gas Royalty Management Act does not indicate that Congress intended any different standards than those applicable under other civil penalty provisions. These standards are set out in various judicial decisions interpreting “knowingly or willfully,” many of which were analyzed by the Associate Solicitor in the memorandum of April 29, 1985. The memorandum identified “the mere act or failure to act, honest mistake, mere inadvertance, intentional act, knowledge that actions are contrary, plainly indifferent, intentional disregard, consistent pattern, premeditation, manipulative scheme, and bad intent or evil motive” as indicia to establish “intent.” The memorandum concluded that the lower range—mere act, honest mistake and mere inadvertance—will not support a finding of “knowingly or willfully.” The memorandum went on to conclude that the upper range, from “premeditation” to “evil motive,” is used for assessing criminal penalties and is not required in a civil case. The standards of “knowingly or willfully” are conduct that fall within the middle range identified in the memorandum. In a recent decision, a Department of the Interior administrative law judge interpreted “knowingly or willfully” as used in section 109 of the Federal Oil and Gas Royalty Management Act for a royalty civil penalties case (Marathon Oil Co. v. MMS, No. MMS–5–1–P (April 23, 1986)). The administrative law judge conducted an analysis of case law similar to the one by the Associate Solicitor in the memorandum and reached similar conclusions.

Based on these analyses and the comments, the final rulemaking revises the proposed rulemaking to clarify what type of conduct constitutes conduct done “knowingly or willfully.” First, the reference to “belief that action is reasonable or legal” is being revised to clarify that this concept only applies once the “knowing or willful” nature of the conduct is established. While this concept was not discussed by the Associate Solicitor, Energy and Resources, in the memorandum of April 29, 1985, it was recognized in the Marathon decision and is clearly established by judicial precedent (United States v. McIntyre, 582 F. 2d 1221 (9th Cir. 1978)). Second, the fact that a showing of “specific” intent is not required by the proposed rulemaking has been retained in the final rulemaking. This concept is clearly supported by the case law as not necessary for cases involving civil penalties. The suggestion in one of the comments that the decision of the Supreme Court in Morissette v. United States (342 U.S. 246 (1952)), controls this issue is misdirected. The Morissette case involved a criminal statute and penalty, not, as here, a civil statute and penalty. The Supreme Court clearly recognized this difference in decisions involving civil penalties (United States v. Illinois Central Railroad Co. (303 U.S. 239 (1938))). Third, the final rulemaking has amended the proposed rulemaking to qualify both “indifference” and “disregard” in order to reflect common judicial use of these standards. Finally, as one comment suggested, the final rulemaking has amended “repeated violation” to be a “consistent pattern” instead, again in order to reflect more accurately judicial use of this standard.

Twenty comments expressed the view that the definition of the term “major violation” used in the proposed rulemaking was too broad and that this term was critical to the regulations as well as to the Onshore Oil and Gas Orders that are currently being developed. Of particular concern to those making comments was the inclusion of the word “potential” when describing resultant consequences. The comments also recommended inclusion of some qualifier to indicate that a major violation is one where the impact will be more than slight and that such impact must be adverse. The final rulemaking amends the proposed rulemaking by replacing the phrase “has the immediate potential to affect” with the phrase “causes or threatens immediate, substantial and adverse impact.” As used in the final rulemaking, this phrase will apply to all types of impacts.

A few of the comments suggested simplifying the definition of the term “minor violations” that appears in the proposed rulemaking and to have it relate more closely to the term “major violations.” The final rulemaking has adopted this suggestion.

Three of the comments addressed the term “new or resumed production” as it is used in the proposed rulemaking, with one finding it appropriate as it appears in the proposed rulemaking, another recommending a slight modification of the definition and the third finding the definition totally inappropriate. This definition was developed in response to specific comments made to the Notice of Intent to Propose Rulemaking published on March 22, 1985. The critical comments have raised no new issues. Therefore, the final rulemaking retains this definition as proposed.

The review of the existing regulations revealed an inconsistency between the definition of the term “onshore oil and gas order” as it is used in the definition section and § 3164.1(a). The final rulemaking has adopted a technical amendment to the definition section to remove the inconsistency.
Jurisdiction

Several comments on this section suggested that the effect of these regulations should not be extended to cover operations conducted on private or fee lands within units and communitized areas. These comments suggested that a Federal or Indian interest of less than 10 percent of a unit or participating area be the basis for exempting those operations from Federal regulation. The proposed rulemaking contains language requiring that, unless specifically modified in any agreement, the regulations relating to site security, measurement, reporting of production and operations, and assessments of penalties for noncompliance with such requirements are applicable to all wells or facilities on State or privately-held mineral lands which affect Federal or Indian interests through agreements. The fact that Federal or Indian lands are committed to agreements for the purpose of drilling and development of those lands in the most beneficial manner is all that is needed to establish the responsibility of the Bureau of Land Management to ensure that the intent of the Federal Oil and Gas Royalty Management Act and other mineral leasing laws as to royalty accountability is carried out on those lands. Therefore, the suggestions in the comments have not been accepted and the final rulemaking has adopted the language of the proposed rulemaking without change.

Well and Facility Identification

Several of the comments suggested that the final rulemaking adopt a grandfather clause for this section that provides for the utilization of existing signs, even if required information such as communitization and agreement numbers is not included on the sign, until such time as there is a need for replacement. The final rulemaking adopted these suggested changes to the proposed rulemaking by adding language to § 3162.6(b) that allows the information to be included upon future replacement of the sign, unless the authorized officer specifically requires its addition. Other comments on this section of the proposed rulemaking suggested that there should not be a requirement for the placement of signs on abandoned wells. The final rulemaking has adopted this change and requires a sign for each well, other than those wells that have been permanently abandoned. Finally, the final rulemaking makes a change in the title of § 3162.6 for clarification.

Measurement of Oil

While none of the comments on § 3162.7-2 of the proposed rulemaking suggested changes in this section, four comments recommended that the final rulemaking add specific authority for approval of off-lease activities. While approval of off-lease activity is currently granted under the general provisions of subpart 3161, the final rulemaking has adopted this suggested change to clarify the issue of approval of off-lease activity for oil and gas.

Site Security

Approximately 25 written comments were received on § 3162.7-4 of the proposed rulemaking and its requirements for minimum standards, site security plans, site facility diagrams, as well as other provisions. The final rulemaking has amended § 3162.7-4(a) by revising the terms "effectively sealed" and "seal" to make it clear that seals will be required on appropriate valves as opposed to fittings such as bullplugs. The final rulemaking also amends the definition of the term "production phase" to make it clear that this phase includes all operations not included in the term "sales phase."

The final rulemaking amends § 3162.7-4(b) to clarify that equipment, other than seals, used to effectively seal necessary valves must be on the site. The words "or connections" are being removed by the final rulemaking to make the section conform to the other portions of the section that seals on valves are only to assure the integrity of tanks used to store oil; i.e., any production removed through these valves requires the breaking of a seal. Additional discussion and clarification of the Bureau of Land Management's site security requirements, including the term "appropriate valves," will be contained in the applicable Onshore Oil and Gas Orders.

Section 3162.7-4(b)(2) of the proposed rulemaking is amended by the final rulemaking to remove the term "Automatic Custody Transfer" and replace it with the term "Lease Automatic Custody Transfer," since the term "Automatic Custody Transfer" commonly refers to pipeline and loading systems and not lease measurement systems.

The final rulemaking amends § 3162.7-4(b)(4) of the proposed rulemaking by removing the first sentence of the section because it serves no useful purpose and imposed a restriction on the operator as to when sales must be made from the lease. The second sentence of the section also has been modified by the final rulemaking to remove the phrase "including sales and equalizer lines" since the term "appropriate valves" already includes valves located on equalizer lines.

The final rulemaking deletes § 3162.7-4(b)(6) of the proposed rulemaking since oil in pits is covered by § 3162.7-1, Disposition of production. As a result of the deletion made by the final rulemaking, the remaining paragraphs of the section have been renumbered.

The final rulemaking has not adopted the suggestions of a few of the comments on § 3162.7-4(b)(9) of the proposed rulemaking, renumbered as § 3162.7-4(b)(8) by the final rulemaking, that theft or mishandling of oil need not be reported until "reasonably verified." The intent of this provision is for the authorized officer to receive initial notification of such suspected incidents as soon as discovered. Operators may submit amended, supplemental, or final reports as soon as their internal verification of the incident has been completed.

The final rulemaking adopts the comments made on § 3162.7-4(c) and makes a change to the proposed rulemaking to clarify that site security plans are required only for those leases which produce oil or condensate. Leases which produce only dry gas are not required to have a site security plan because they have no storage facilities.

The suggested comments on § 3162.7-4(d) of the proposed rulemaking concerning time frames for development of site security plans have not been adopted by the final rulemaking. The section requires site security plans within 60 days after completion of construction or first production, whichever occurs first. Any situations requiring variances of the minimum standards can be adequately handled by § 3162.7-4(b)(9) of the final rulemaking.

The final rulemaking, as recommended in a comment on § 3162.7-4(d) of the proposed rulemaking, amends the section to make it clear that facility diagrams do not have to be drawn to scale.

Assessments

Section 3163.3 of the proposed rulemaking, which has been retitled and renumbered by the final rulemaking, was the focus of several comments which questioned the authority of the Bureau of Land Management to establish assessments other than the civil penalties authorized in the Federal Oil and Gas Royalty Management Act. The comments raised serious concerns about the automatic nature of some of the assessments, arguing that notice and an opportunity to correct the
noncompliance must be provided before an assessment can be made. The comments noted that the Linowes Commission indicated that the Bureau had no meaningful civil enforcement authority and questioned why Congress considered the Federal Oil and Gas Royalty Management Act civil penalty provisions necessary if the Bureau possesses independent authority. A few of the comments questioned the Bureau's use of the decision in *Forbes v. United States* (125 F. 2d 404 [9th Cir. 1942]), as recognition of assessment authority. Finally, one comment on this section of the proposed rulemaking stated that the Bureau has "repeatedly declined to define the statutory source" of its assessment authority.

The Bureau of Land Management appreciates the thoughtful concern exhibited in the comments on this point. However, the Bureau is of the view that it has strong support for the assessments, as well as a historical basis for their use. This support has been repeatedly referenced in the preambles to the proposed and final rulemakings published in the *Federal Register* on October 27, 1982 (46 FR 47756), on September 16, 1983 (48 FR 41739), on September 21, 1984 (49 FR 37386), and on January 30, 1986 (51 FR 3682).

The provisions of the regulations providing assessments have been promulgated under the Secretary of the Interior's general authority set out in section 32 of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 169), and under the various other mineral leasing laws. Specific authority for the assessments is found in section 31(a) of the Mineral Leasing Act (30 U.S.C. 159(a)), which states in part "... the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof." All Federal onshore and Indian oil and gas lessees must, by the specific terms of their leases, which incorporate the regulations by reference, comply with all applicable laws and regulations.

Failure of the lessee to comply with the law and applicable regulations is a breach of the lease, and such failure may also be a breach of other specific lease terms and conditions. Under section 31(a) of the Act and the terms of its leases, the Bureau may seek cancellation of the lease in these circumstances. However, since at least 1942, the Bureau (and formerly the Conservation Division, U.S. Geological Survey), has recognized that lease cancellation is too drastic a remedy except in extreme cases. Therefore, a system of liquidated damages was established to set lesser remedies in lieu of lease cancellation. None of the comments challenged the authority of the Secretary under section 31(a) of the Act to make such assessments.

The Bureau of Land Management recognizes that liquidated damages cannot be punitive, but are a reasonable effort to compensate as fully as possible the offended party, in this case the lessor, for the damage resulting from a breach where a precise financial loss would be difficult to establish. This situation occurs when a lessee fails to comply with the operating and reporting requirements. The rules therefore establish uniform estimates for the damages sustained, depending on the nature of the breach.

As noted above, the concept of liquidated damages was established as early as 1942 for breach of the operating regulations. In November 1981, a proposed rulemaking that, among other things, would have increased the amount of the various liquidated damages assessments and would have provided a penalty of up to $1,000 per day for serious violations was published in the *Federal Register* (46 FR 56564). That proposed rulemaking also would have changed the label from "liquidated damages" to "assessments," although the discussion in the preamble made it clear that the purpose had not changed. In January 1982, the Linowes Commission recommended that Congress give the Department of the Interior civil penalty authority of up to $10,000 per day per violation. In November 1982, the increased assessments and the regulations incorporating them became effective. In January 1983, the Federal Oil and Gas Royalty Management Act was fully enacted. Neither the Linowes Commission nor the Congress recognized, or commented on, the proposed or final rulemakings, although the Linowes Commission noted that the then-existing liquidated damages regulations were "very small." The Commission did provide a draft of their report during the comment period and asked that it be considered in preparing the final rulemaking. Similarly, none of the comments on the 1981 proposed rulemaking challenged the authority of the Secretary of the Interior to issue such regulations. Thus, at the time of enactment of the Federal Oil and Gas Royalty Management Act there was no Congressional intent to supersede or override the Secretary's existing authority, as implemented in the final rulemaking of October 1982.

Congress generally indicated its intention not to affect any existing authorities in section 304(a) of the Federal Oil and Gas Royalty Management Act. The Bureau, therefore, retained the Mineral Leasing Act assessments and penalty provisions of the then existing regulations when it issued final regulations for the Federal Oil and Gas Royalty Management Act in September 1984. In this proposed rulemaking, the penalty provisions of the Mineral Leasing Act would have been changed to an assessment when a lessee or operator fails to abate a major violation in a timely manner. The Bureau must continue to provide some remedy for the breach of the terms and conditions of a lease. The final rulemaking has retained the assessment process provided in the proposed rulemaking as a more equitable remedy than lease cancellation for initial enforcement efforts.

The comments specifically criticized the provision of the proposed rulemaking that would permit the assessment of damages without notice. Lessees and operators, of course, are expected to know the obligations and requirements of a Federal or Indian oil and gas lease. In essence, the comments complain that the proposed rulemaking fails to provide provisions for notifying them that they are failing to comply with requirements which are contained in their lease or the regulations that control their operations. The inconsistency of this argument is clear because the only violations assessed without notice and an opportunity to abate are set out in paragraph (b) of this section and cover only a failure to install blowout preventers, a failure to obtain approval prior to drilling, and a failure to obtain approval for well abandonment. These three enumerated requirements for Federal and Indian leases could not be clearer or more widely known. The Bureau finds that additional notice prior to the assessment is not warranted due to the serious nature and potential consequences of a breach of these requirements. With regard to the comments on the "automatic" assessment for multiple major violations contained in the proposed rulemaking, the Bureau agrees that each violation should be handled on its own merits and that the imposition of an automatic assessment, other than for those specific violations discussed above, is not appropriate. Accordingly, the final rulemaking has deleted this provision of the proposed rulemaking.

Those comments that criticized the use of the decision in *Forbes v. United States* as support for Mineral Leasing Act assessments are correct that this case does not involve liquidated
damages. However, the Bureau of Land Management correctly used this decision as general support for the Secretary of the Interior's authority under the Mineral Leasing Act to collect damages for failure to comply with the orders of the authorized officer.

Finally, one comment expressed the view that the Bureau of Land Management has declined to explain its authority for Mineral Leasing Act assessments. While the preambles to the 1981, 1982, and 1983 rulemakings did not explain this authority beyond a reference to the Mineral Leasing Act, the preamble to the final rulemaking of September 1984, provides references to the appropriate sections of the Mineral Leasing Act. More importantly, the preamble to this proposed rulemaking provided a complete explanation of the Secretary of the Interior's authority. The explanation has been expanded in this preamble to provide better understanding as to the Bureau's position on this point. Although no comments were received regarding the Secretary's authority to impose assessments for violations occurring on Indian leases, this authority was recently upheld in the decision of the Interior Board of Land Appeals in William Perlman (93 I.D. 159, 91 IBLA 208 [1986]).

A number of the comments were concerned with the Bureau of Land Management's intention to enforce other agency safety and environmental requirements under both the assessment and penalty provisions of the proposed rulemaking. Although the final rulemaking makes changes in these provisions of the proposed rulemaking, it is intended that these provisions apply to violations of the regulations in 43 CFR Part 3160 or for violation of any notice, order or instruction or terms of a permit issued by the Bureau under the regulations in Part 3160.

Several of the comments suggested that the final rulemaking should modify § 3163.3(a)(2) of the proposed rulemaking, drilling without approval, to make it apply only to actual drilling operations, not to preliminary actions. The suggested change has not been adopted by the final rulemaking because the administrative review procedures in § 3165.3 provide that the effect of the assessment on the continued availability of a well and potential for damage can be considered upon review.

Section 3163.3(b)(1) of the proposed rulemaking has been modified by the final rulemaking to clarify that assessments apply only when a site specific notice, order, or instruction is not abided by within the time allowed. Violation of the requirements contained in a Notice to Lessees, Onshore Oil and Gas Order, or general conditions of approval on a drilling permit are not considered a failure to comply with the written orders of the authorized officer for the purposes of an assessment under this section.

Four comments on the January 30, 1986, proposed rulemaking recommended that the final rulemaking provide that the failure to submit the Monthly Report of Operations, Form 3160-6, be a minor violation. Because an automatic assessment seems inappropriate for failure to submit the Monthly Report of Operations, the final rulemaking has amended the proposed rulemaking to provide that where reports are not submitted within the time allowed by specific notice from the authorized officer, the provisions for nonabatement of a minor violation would be applicable.

Several comments on the proposed rulemaking suggested that the final rulemaking provide clarification of the authority of the State Director to reduce assessments. The final rulemaking has adopted this suggestion and has added a new paragraph (e) to § 3163.1 to provide the requested clarification.

Finally, the Bureau of Land Management's enforcement actions or remedies for noncompliance are located in three separate sections of the existing regulations and the proposed rulemaking: Sections 3163.1, 3163.2, and 3163.3. For clarification and simplification, the final rulemaking combines these three sections into a single section, § 3163.1. However, this change is not intended to modify the enforcement authority currently in effect, except as identified earlier in this preamble.

Penalties

The final rulemaking has renumbered § 3163.4 of the proposed rulemaking, as § 3163.2.

Many of the comments on this section of the proposed rulemaking object to provisions which were taken directly from the Federal Oil and Gas Royalty Management Act. Since the section restates provisions of the statute, the final rulemaking has not made changes in this section.

Several of the comments on this section of the proposed rulemaking expressed concern over possible duplication of penalties being used for a single instance of noncompliance. As discussed earlier in this preamble in connection with § 3163.1, the rulemaking is not intended to provide for duplicate enforcement.

Several of the comments suggested that this section of the proposed rulemaking be amended by the final rulemaking to remove the word "maximum" and replacing it with the phrase "up to" to allow local Bureau of Land Management offices to exercise judgment in establishing penalties for noncompliance. This suggested change has not been adopted by the final rulemaking. While the Bureau supports the exercise of local judgment and discretion, consistency of initial application of penalties is also important. Accordingly, rather than have over 100 local offices deciding on the amount of penalties, discretion to reduce assessments and penalties upon review is delegated to the State Directors.

Notice, Review and Appeal

Approximately 19 comments were received on the Notice provisions of the proposed rulemaking and 28 comments were received on the provisions on review and appeal.

Those comments on the Notice generally were of the view that the provisions in the proposed rulemaking were inadequate to assure that operators timely received notice so that necessary corrective action could be taken. The comments made the point that the presumption that notice is received within five days of mailing is not accurate considering the many small, isolated communities where some Bureau of Land Management offices are located. The final rulemaking finds merit in this view and has adopted a change that extends the time to seven days.

The comments also suggested that in order to assure prompt correction of major violations, a good faith effort should be made to telephone the operator's representative. The final rulemaking has adopted this suggested change since it aids the Bureau of Land Management's objective of prompt correction of violations.

The comments suggested that the final rulemaking provide for multiple "designated representatives" and "alternatives" for notification purposes. The final rulemaking has not adopted this suggestion. As discussed earlier in
this preamble, it is reasonable to contact
such designated representative
concerning the correction of violations. Rather than require the Bureau of Land
Management field employees to attempt
to contact multiple parties, it should be
the responsibility of the operator to assure that Internal procedures are in
place so that appropriate company
personnel know to whom to refer such
matters.

The comments on § 3165.3 (b) and (c)
of the proposed rulemaking were of the
view that the time allowed for filing of a Request for Administrative Review was
too short in light of the fact that an
appeal or hearing on the record is
precluded unless such review is
requested. It was agreed that the 30-day
period from the receipt of a notice of
violations for the filing of a Request for
Administrative Review by the State
Director was too short. Since the intent
of this provision of the proposed
rulemaking was to provide an operator
with an opportunity for quick review but
not to cut off any rights, the final
rulemaking achieves this objective by
extending this period to 20 days and by
clarifying that further extension can be
granted when justified. The phrase "oral
argument" has been replaced with "oral
presentation" to reflect more closely the
desire to avoid overly formal
procedures.

Many comments wanted the authority for "stopping-the-clock" clarified.
Although some of the comments
requested an automatic suspension of
assessments and penalties upon the
filing of a Request for Administrative Review, most of the comments
recognized that automatic tolling of
assessments or penalties during review
could result in nearly all notices of
noncompliance being taken to review.
The final rulemaking has modified this
section of the proposed rulemaking to
provide that, upon request and a
showing of good cause, the State
Director may suspend the accumulation of
assessments or penalties during the
period of administrative review. This
authority will be exercised only in those
instances where the operator provides
reasonable grounds in the request for
such tolling.

Several comments suggested that the
proposed rulemaking misinterpreted the
Federal Oil and Gas Royalty
Management Act by providing that the
right of review by a District Court may be
lost by not first requesting a hearing on
the record. Section 109(f) of the
Federal Oil and Gas Royalty
Management Act expressly precludes
judicial review unless the aggrieved
party has requested a hearing on the
record.

The comments on § 3165.3(d) of the
proposed rulemaking stated that the
accumulation of assessments or
penalties should be automatically
suspended during hearing on the record
regarding a proposed penalty or during
any appeal to the Interior Board of Land
Appeals. Due to the length of time
involved in the hearing and appeal
process, it is agreed that the clock
should be stopped on the accumulation
of penalties during a hearing on the
record or of assessments or
penalties during the period the lessee
exercises the right to appeal the
decision to the Interior Board of Land
Appeals. The final rulemaking has
adopted the recommended changes
subject to a determination by the
Director, Bureau of Land Management,
without the right to appeal to the
Interior Board of Land Appeals. The final rulemaking has
adopted the recommended changes
to reinstate them. This proposal differs from that
provided in the proposed rulemaking
following the Minerals
Management Service in cases related to
royalty. In those royalty cases where
there is no harm to the lessor, the lessee
may, if permitted by the Service, post a
bond for the disputed amount in lieu of
immediate payment and thereby satisfy
the order to abate the violation.

Generally, a similar interim
compliance procedure is not available
for violations of the Bureau's operations
procedures. Because of the difference in
the way the Service and the Bureau
handle the abatement of violations, this
final rulemaking will provide for a
continuation of the suspension of
violations or assessments during the
period of administrative review. This
issue was raised to determine what changes, if
any, should be adopted. If a
determination is made that the
provisions of the final rulemaking need
to be changed, a proposed rulemaking
will be issued making those changes.
The other comment noted it was difficult
to visualize a reasonable approach for
phasing in of this final rulemaking, but
that it would be appropriate to phase in
the onshore operating orders that will be
issued later. The Bureau of Land
Management has delayed the
publication of the proposed orders until
after this final rulemaking has been
published.

Operator's Self Compliance

There were three comments on the
request in the preamble of the proposed
rulemaking for suggestions for self
compliance, including allowing an
operator certain benefits or incentives.
The comments supported the concept,
with one of the comments adding that
"penalties or assessments be made" or
that no accumulation of such
penalties or assessments be considered.
One of the comments recommended the
creation of a formal recognition program
for those operators who practice
effective self compliance.

Even though the final rulemaking has
not adopted any changes based on these
comments, the Bureau of Land
Management continues to encourage
operator self compliance. This final
rulemaking should provide enough of an
opportunity for reasonable abatement
times and consideration of various
factors in the administrative review
process for field personnel to take such
a factor into consideration. If, at a later
date, there is a need to provide
additional encouragement for self
compliance, steps will be taken to
provide that encouragement.

Priority for Development of Onshore Oil
and Gas Orders

Six comments were received in
response to the request for public views
on the development of Onshore Oil and
Gas Orders which recommended that
the Orders be phased in only after this
final rulemaking has become effective.
The comments also recommended a priority for issuance of the Orders, recommending the order in which they should be published. While the final rulemaking makes no changes in response to these comments, the Bureau of Land Management will not publish any of the Orders until after publication of this final rulemaking and the suggested priority for the publication of the Orders will be followed, with the Orders being phased in over time.

Sealing of Thief Hatches

Four comments were received in response to the request in the preamble to the proposed rulemaking on whether additional access points, such as thief hatches, should require sealing. The comments suggested that the sealing of thief hatches was unnecessary and unworkable because of the need for frequent access. Based on these suggestions, the final rulemaking has not made any change in the provisions of the proposed rulemaking relating to the sealing of additional access points.

Editorial and grammatical corrections as needed have been made.

The principal authors of this final rulemaking are Frank Salwerowicz, Deputy State Director for Minerals for the Colorado State Office, Tom Lashendok, Deputy State Director for Minerals for the Nevada State Office, and Gene Daniel, retired Deputy State Director for Minerals for the Montana State Office, all of the Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and that it 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.). The cost or economic effect of the final rulemaking will be minimal or nonexistent so long as operators comply with the requirements or take corrective action in a timely manner.

There are no additional information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands—mineral resources, Mineral royalties, Oil and gas production, Public lands—mineral resources, Reporting and recordkeeping requirements.


J. Steven Gries, Assistant Secretary of the Interior.

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:


2. Note 1, Operating Forms, is amended as follows:

A. In the first column, the number "9-330" is removed and replaced with the number "3160-4", the number "9-329/329A" is removed and replaced with the number "3160-6" and the number "9-331C" is removed and replaced with the number "3160-6".

B. In the middle column, in the second paragraph, the word "production" is removed and replaced with the word "operation" and in the fourth paragraph the word "Due" is removed and replaced with the word "Filled"; and

C. In the third column, the number "1010-0004" is removed and replaced with the number "1004-0137", the number "1010-0005" is removed and replaced with the number "1004-0130" and the number is "1010-0003" is removed and replaced with the number "1004-0136".

3. Note 1, Other Operating Requirements, is amended by removing from where it appears the phrase "Clearance Number 1010-0001" and replacing it with the phrase "Clearance Number 1004-0134".

§ 3160.0-5 [Amended]

4. Section 3160.0-5 is amended by:

A. Amending the term "avoidably lost" by removing from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer";

B. Amending the term "notice to lessees and operators (NTLf)" by removing from where it appears the word "DM" and replacing it with the phrase "authorized officer" and by removing from where it appears the phrase "Region or portion thereof" and replacing it with the phrase "State, District, or Area";

C. Amending the term "waste of oil or gas" by removing from where it appears the word "DM" and replacing it with the phrase "authorized officer";

D. Adding the following terms to read:

"Knowingly or willfully". A violation is "knowingly or willfully" committed if it constitutes the voluntary or conscious performance of an act which is prohibited or the voluntary or conscious failure to perform an act or duty with is required. It does not include performances or failures to perform which are honest mistakes or which are merely inadvertent. It includes, but does not require, performances or failures to perform which result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or terms of the lease.

A consistent pattern of performance of law is sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistake or mere inadvertency. Conduct which is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

"Major violation. Noncompliance which causes or threatens immediate, substantial and adverse impacts on public health and safety, the
environment, production accountability, or royalty income;"

"Minor violation. Noncompliance which does not rise to the level of a major violation."

"New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act. The date on which a well commences production, or resumes production after having been off production for more than 90 days, is to be construed as follows:

(a) For an oil well, the date on which liquid hydrocarbons are first sold or shipped from a temporary storage facility, such as a test tank, or the date on which liquid hydrocarbons are first produced into a permanent storage facility, whichever first occurs;

(b) For a gas well, the date on which gas is first measured through sales metering facilities or the date on which associated liquid hydrocarbons are first sold or shipped from a temporary storage facility, whichever first occurs.

For purposes of this provision, a gas well shall not be considered to have been off of production unless it is incapable of production;" and

E. Amending the term "Onshore Oil and Gas Royalty Management Act" by removing from where it appears the phrase "production month" and replacing it with the phrase "Form 3160-3."

§3162.3 [Amended]

8. Section 3162.3(b) is amended by removing the last two sentences.

§3162.3-1 [Amended]

9. Section 3162.3-1(d) is amended by removing from where it appears the phrase "Form 9-331c" and replacing it with the phrase "Form 3160-3."

§3162.3-2 [Amended]

10. Section 3162.3-2 is amended by removing from where it appears in paragraphs (a) and (b) the phrase "Form 9-331" and replacing it with the phrase "Form 3160-5" and further amending paragraph (a) by removing the phrase "shut off conversion" and replacing it with the phrase "shut off, commingling production between intervals and/or conversion".

§3162.3-3 [Amended]

11. Section 3162.3-3 is amended by removing from where it appears the phrase "Form 9-331" and replacing it with the phrase "Form 3160-5".

§3162.4-1 [Amended]

12. Section 3162.4-1(b) is amended by removing from where it appears the phrase "Form 9-330" and replacing it with the phrase "Form 3160-4".

§3162.4-3 [Amended]

13. Section 3162.4-3 is amended by:

A. Amending the title by removing from where it appears the phrase ("Form 9-329 Public; Form 9-329A Indian") and replacing it with the phrase ("Form 3160-6"); and

B. Amending the initial paragraph of the section by removing from where it appears the phrase "Form 9-329" and replacing it with the phrase "Form 3160-6", by removing from where it appears the phrase "in duplicate" and replacing it with the phrase "Form 3160-6", by removing from where it appears the phrase ("Form 3160-6") and replacing it with the phrase ("Form 3160-6") and replacing it with the phrase "Form 3160-6".

14. Section 3162.6 is revised to read:

§3162.6 Well and facility identification.

(a) Every well with a Federal or Indian lease or supervised agreement shall have a well identification sign. All signs shall be maintained in a legible condition.

(b) For wells located on Federal and Indian lands, lessees shall properly identify, by a sign in a conspicuous place, each well, other than those permanently abandoned. The well sign shall include the well number, the name of the operator, the lease serial number, the surveyed location (the quarter-quarter section, township and range or other authorized survey designation acceptable to the authorized officer; such as metes and bounds). When approved by the authorized officer, individual well signs may display only a unique well name and number. When specifically requested by the authorized officer, the sign shall include the unit or communization name or number. The authorized officer may also require the sign to include the name of the Indian allottee lessor(s) preceding the lease serial number. In all cases, individual inspection in place on the effective date of this rulemaking which do not have the unit or communization agreement number or do not have quarter-quarter identification will satisfy these requirements until such time as the sign is replaced. All new signs shall have identification as above, including quarter-quarter section.

(c) All facilities at which Federal or Indian oil is stored shall be clearly identified with a sign that contains the name of the operator, the lease serial number or communization or unit agreement identification number, as appropriate, and in public land states, the quarter-quarter section, township, and range. On Indian leases, the sign also shall include the name of the appropriate Tribe and whether the lease is tribal or allotted. For situations of 1 tank battery servicing 1 well in the same location, the requirements of this paragraph and paragraph (b) of this section may be met by 1 sign as long as it includes the information required by both paragraphs. In addition, each storage tank shall be clearly identified by a unique number. All identification shall be maintained in legible condition and shall be clearly apparent to any person at or approaching the sales or transportation point. With regard to the quarter-quarter designation and the unique tank number, any such designation established by state law or regulation shall satisfy this requirement.

(d) All abandoned wells shall be marked with a permanent monument containing the information in paragraph (b) of this section. The requirement for a
permanent monument may be waived in writing by the authorized officer.

§ 3162.7-2 and 3162.7-3 [Amended]

15. Section 3162.7-2 is amended by removing from where it appears the phrase "measured by" and replacing it with the phrase "measured on the lease by", and by adding at the end of the section the sentence, "Off-lease storage or measurement, or commingling with production from other sources prior to measurement may be approved by the authorized officer." and § 3162.7-3 is amended by adding at the end of the section the sentence, "Off-lease measurement or commingling with production from other sources prior to measurement may be approved by the authorized officer."

§ 3162.7-4 [Amended]

16. Section 3162.7-4 is amended by:

(a) Amending paragraph (a) by removing in their entirety from where they appear the terms "closed system" and "open system" and the term "appropriate valves" is revised to read "Appropriate valves. Those valves in a particular piping system, i.e., all lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines that shall be sealed during a given operation."

"Effectively sealed. The placement of a seal in such a manner that the position of the sealed valve may not be altered without the seal being destroyed.", by amending the term "sealed" by removing from where it appears the word "fitting" and replacing it with the word "valve", and by amending the term "production phase" by removing the period at the end thereof and adding the phrase "and includes all operations at the facility other than those defined by the sales phase."; and

(1) Minimum Standards. Each operator of a Federal or Indian lease shall comply with the following minimum standards to assist in providing accountability of oil or gas production:

(1) All lines entering or leaving oil storage tanks shall have valves capable of being effectively sealed during the production and sales phases of operation. Any equipment needed for effective sealing, excluding the seals, shall be located at the site. For a minimum of 6 years the operator shall maintain a record of seal numbers used and shall document on which valves or connections they were used as well as when they were installed and removed. The site facility diagram(s) shall show which valves will be sealed in which position during both the production and sales phases of operation.

(2) Each Lease Automatic Custody Transfer (LACT) system shall employ meters that have non-resettable totalizers. There shall be no by-pass piping around the LACT. All components of the LACT that are used for volume or quality determinations of the oil shall be effectively sealed. For systems where production may only be removed through the LACT, no sales or equalizer valves need be sealed. However, any valves which may allow access for removal of oil before measurement through the LACT shall be effectively sealed.

(3) There shall be no by-pass piping around gas meters. Equipment which permits changing the orifice plate without bleeding the pressure off the gas meter run is not considered a by-pass. For oil measured and sold by hand gauging, all appropriate valves shall be sealed during the production or sales phase, as applicable.

(4) Circulating lines having valves which may allow access to remove oil from storage and sales facilities to any other source except through the treating equipment back to storage shall be effectively sealed as near the storage tank as possible.

(5) The operator, with reasonable frequency, shall inspect all leases to determine production volumes and that the minimum site security standards are being met. The operator shall retain records of such inspections and measurements for 6 years generation. Such records and measurements shall be available to any authorized officer or authorized representative upon request. The operator, with reasonable frequency, shall inspect all leases to determine production volumes and that the minimum site security standards are being met. The operator shall retain records of such inspections and measurements for 6 years generation. Such records and measurements shall be available to any authorized officer or authorized representative upon request.

(7) Any person removing oil from a facility by motor vehicle shall possess the identification documentation required by applicable NTL’s or onshore Orders while the oil is removed and transported.

(8) Theft or mishandling of oil from a Federal or Indian lease shall be reported to the authorized officer as soon as discovered, but not later than the next business day. Said report shall include an estimate of the volume of oil involved. Operators are also expected to report such thefts promptly to local law enforcement agencies and internal company security.

(9) Any operator may request the authorized officer to approve a variance from any of the minimum standards prescribed by this section. The variance request shall be submitted in writing to the authorized officer who may consider such factors as regional oil field facility characteristics and fenced, guarded sites. The authorized officer may approve a variance if the proposed alternative will ensure measures equal to or in excess of the minimum standards provided in paragraph (b) of this section will be put in place to prevent internal and external theft, and will result in proper production accountability.

(c) Site security plans. (1) Site security plans, which include the operator’s plan for complying with the minimum standards enumerated in paragraph (b) of this section for ensuring accountability of oil/condensate production are required for all facilities and such facilities shall be maintained in compliance with the plan. For new facilities, notice shall be given that it is subject to a specific existing plan, or a notice of a new plan shall be submitted, no later than 60 days after completion of construction or first production or following the inclusion of a well on committed non-Federal lands into a federally supervised unit or communization agreement, whichever occurs first, and on that date the facilities shall be in compliance with the plan. At the operator’s option, a single plan may include all of the operator’s leases, unit and communitized areas, within a single BLM district, provided the plan clearly identifies each lease, unit, or communitized area included within the scope of the plan and the extent to which the plan is applicable to each lease, unit, or communitized area so identified.

(1) The operator shall retain the plan but shall notify the authorized officer of its completion and which leases, unit and communitized areas are involved. Such notification shall include the location and normal business hours of the office where the plan will be maintained. Upon request, all plans shall be made available to the authorized officer.

(3) The plan shall include the frequency and method of the operator’s inspection and production volume recording. The authorized officer may, upon examination, require adjustment of the frequency of inspection.

(d) Site facility diagrams. (1) Facility diagrams are required for all facilities which are used in storing oil/condensate produced from, or allocated to, Federal or Indian lands. Facility diagrams shall be filed within 60 days after new measurement facilities are installed or existing facilities are modified or
following the inclusion of the facility into a federally supervised unit or
communitization agreement.

No format is prescribed for facility diagrams. They are to be prepared on
8½" × 11" paper, if possible, and be legible and comprehensible to a person
with ordinary working knowledge of oil field operations and equipment.
The diagram need not be drawn to scale.

(3) A site facility diagram shall accurately reflect the actual conditions
at the site and shall, commencing with the header if applicable, clearly identify
the vessels, piping, metering system, and pits, if any, which apply to the handling
and disposal of oil, gas, and water. The diagram shall indicate which valves
shall be sealed and in what position during the production or sales phase.
The diagram shall clearly identify the lease on which the facility is located
and the site security plan to which it is subject, along with the location of the
plan.

§3163.1 [Amended]
17. Section 3163.1 is revised to read:
§3163.1 Remedies for acts of noncompliance.
(a) Whenever a lessee fails or refuses to comply with the regulations in this
part, the terms of any lease or Permit, or the requirements of any notice or order,
the authorized officer shall notify the lessee in writing of the violation or
default. Such notice shall also set forth a reasonable abatement period:
(1) If the violation or default is not corrected within the time allowed, the
authorized officer may subject the lessee to penalties described
in § 3163.2 of this title.
(b) If the violation specified in
paragraph (a) of this section is not
corrected within 20 days of such notice, the lessee shall be subject to penalties described
in § 3163.2 of this title. If the violation is
serious nature as to warrant the
imposition of immediate assessments upon discovery. Upon discovery the
following violations shall result in immediate assessments, which may be
retroactive, in the following specified amounts per violation:
(1) For failure to install blowout
preventer or other equivalent well
corporate equipment, as required by the
approved drilling plan, $500 per day
for each day such violation continues
prior to discovery, not to exceed $5,000;
(2) For drilling without approval or for
causing surface disturbance on Federal
or Indian surface preliminary to drilling
without approval, $500 per day for each
day that the violation existed, including
days the violation existed prior to
discovery, not to exceed $5,000;
(3) For failure to obtain approval of a
plan for well abandonment prior to
commencement of such operations, $500.
(c) Assessments under paragraph
(a)(1) of this section shall not exceed
$1,000 per day, per operator, per lease.
Assessments under paragraph (a)(2) of
this section shall not exceed a total of
$500 per operator, per lease, per inspection.
(d) Continued noncompliance shall
subject the lessee to penalties described
in § 3163.2 of this title.
(e) On a case-by-case basis, the State
Director may compromise or reduce
assessments under this section. In
compromising or reducing the amount of
the assessment, the State Director shall
state in the record the reasons for such
determination.
§§3163.2 and 3163.3 [Removed]
18. Sections 3163.2 and 3163.3 are
removed in their entirety.
19. Section 3163.4–1 is redesignated as
§3163.2 and is revised to read:
§3163.2 Civil penalties.
(a) Whenever a lessee fails or refuses to comply with any applicable
requirements of the Federal Oil and Gas Royalty Management Act, any mineral
leasing law, any regulation thereunder, or the terms of any issue or permit
issued thereunder, the authorized officer shall notify the lessee in writing of the
violation, unless the violation was discovered and reported to the
authorized officer by the liable person or
the notice was previously issued under
§ 3163.1 of this title. If the violation is
not corrected within 20 days of such
notice or report, or such longer time as
the authorized officer may agree to in
writing, the lessee shall be liable for a
civil penalty of up to $500 per violation
for each day such violation continues,
from the date of such notice or report.
Any amount imposed and paid as
assessments under the provisions of
§ 3163.1(a)(1) of this title shall be
deducted from penalties under this
section.
(b) If the violation specified in
paragraph (a) of this section is not
corrected within 40 days of such notice
or report, or a longer period as the
authorized officer may agree to in
writing, the lessee shall be liable for a
civil penalty of up to $5,000 per violation
for each day such violation continues,
from the date of such notice or report.
Any amount imposed and paid as
assessments under the provisions of
§ 3163.1(a)(1) of this title shall be
deducted from penalties under this
section.
(c) In the event the authorized officer
agrees to an abatement period of more
than 20 days, the date of notice shall be
deeded to be 20 days prior to the end of
such longer abatement period for the
purpose of civil penalty calculation.
(d) Whenever a transporter fails to
permit inspection for proper
documentation by any authorized
representative, as provided in § 3162.7–
1(c) of this title, the transporter shall be
liable for a civil penalty of up to $500
per day for the violation, not to exceed
a maximum of 20 days, dating from the
date of notice of the failure to permit
§ 3163.1 Definitions of Penalty

Amounts for this section are as follows:

(a) For major violations, all initial proposed penalties shall be at the maximum rate provided in paragraphs (a), (b), and (d) through (f) of this section. For paragraphs (d) through (f) of this section, the rate shall be $500, $10,000, and $5,00, respectively.

(b) For minor violations, no penalty under paragraph (a) of this section shall be assessed unless:

(i) The lessee has been notified of the violation in writing and did not correct the violation within the time allowed; and

(ii) The lessee has been assessed a penalty for each day such violation continues, not to exceed a maximum of $250 per day if he/she:

(1) Fails or refuses to permit lawful entry or inspection authorized by § 3162.1(b) of this title; or

(2) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, Form 3160-5 or orally to a lease site, of the date on which such production began or resumed.

(f) Any person shall be liable for a penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Knowingly or willfully prepares, maintains, or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

(2) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any Federal or Indian lease without having valid legal authority to do so; or

(3) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal or Indian lease site.

(g) Determinations of Penalty

22. A new § 3163.4 is added to read:

§ 3163.4 Failure to pay.

If any person fails to pay an assessment or a civil penalty under § 3163.1 or § 3163.2 of this title after the order makes such assessment or penalty become a final order, and if such person does not file a petition for judicial review in accordance with this subpart, or, after a court in an action brought under this subpart has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period provided by § 3163.5(d)(2) of this title. The Federal Oil and Gas Royalty Management Act requires that any judgment by the court shall include an order to pay.

§ 3163.5 [Amended]

22. Section 3163.5 is amended by removing from where it appears in paragraph (b) the citation “3163.4-1” and replacing it with the citation “3163.2.” and by removing from where it appears in paragraph (c) the citation “3163.4-1(b)” and replacing it with the citation “3163.2.”

23. Section 3163.5 is revised to read:

§ 3163.5 Notices State Director review and hearing on the record.

(a) Notice. Whenever a lessee fails to comply with any provisions of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, written notice shall be given the lessee to remedy any defaults or violations. Written orders or a notice of violation, assessment, or proposed penalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 7 business days after the date it is mailed, whichever is earlier. Any person may designate a representative to receive any notice of violation, assessment, or proposed penalty on his/her behalf. In the case of a major violation, the authorized officer shall make a good faith effort to contact such designated representative by telephone to be followed by a written notice. Receipt of notice shall be deemed to occur at the time of such verbal communication and the time of notice and the name of the receiving party shall be confirmed in the file. If the good faith effort to contact the designated representative is unsuccessful, notice of the major violation may be given to any person authorized by the lessee to conduct or supervise operations subject to the regulations in this part. In the case of a minor violation, written notice shall be provided as described above. A copy of all orders, notices, or instructions served on any contractor, or field employee shall also be mailed to the lessee or the lessee’s designated representative as described above. Any notice involving a
Parties. Any party, including the United
Administrative Law Judge in accordance
with part 4 of this title. A decision shall
Appeals for a hearing before an
the record is requested, the State
jurisdiction over the lands covered by
the lease within 30 days of receipt of the
office of the State Director having
request shall be filed in
the record before an Administrative
proposed penalty, may request a hearing
Royalty Management Act. Therefore,
been given the opportunity for a hearing
shall be assessed under this part until
before the State Director under the
adversely affected by the
Director's decision may appeal that
case. Any party who is
affected by the State
Director's decision may appeal that
decision to the Interior Board of Land
as provided in § 3165.4 of this part.
(c) Review of proposed penalties. Any
adversely affected party wishing to
contest a notice of proposed penalty
shall request an administrative review
before the State Director under the
procedures set out in paragraph (b) of
this section. However, no civil penalty
shall be assessed under this part until
the party charged with the violation has
been given the opportunity for a hearing
on the record in accordance with section 109(e) of the Federal Oil and Gas
Royalty Management Act. Therefore,
any party adversely affected by the
State Director's decision on the
cumulation, an extension for submitting
supporting date may be granted by the
State Director. Such review shall include
all factors or circumstances relevant to the
particular case. Any party who is
adversely affected by the State
Director's decision may appeal that
decision to the Interior Board of Land
Appeals as provided in § 3165.4 of this part.
(e) Effect of request for State Director
review or for hearing on the record.
(1) Any request for review by the
State Director under this section shall not
result in a suspension of the
requirements for compliance with the
notice of violation or proposed penalty,
or stop the daily accumulation of
assessments or penalties, unless the
State Director to whom the request is
made so determines.
(2) Any request for a hearing on the
record before an administrative law
judge under this section shall not result
in a suspension of the requirement for
compliance with the decision, unless the
administrative law judge so determines.
Any request for hearing on the record
shall stop the accumulation of additional
daily penalties until such time as a final
decision is rendered, except that within
10 days of receipt of a request for a
hearing on the record, the State Director
may, after review of such request,
recommend that the Director reinstate
the accumulation of daily civil penalties
until the violation is abated. Within 45
days of the filing of the request for a
hearing on the record, the Director may
reinstate the accumulation of civil
penalties if he/she determines that the
public interest requires a reinstatement
of the accumulation and that the
violation is causing or threatening
immediate, substantial and adverse
impacts on public health and safety, the
environment, production accountability,
or royalty income. If the Director does
not reinstate the daily accumulation
within 45 days of the filing of the request
for a hearing on the record, the
suspension shall continue.
24. Section 3165.4 is revised to read:
§ 3165.4 Appeals.
(a) Appeal of decision of State
Director. Any party adversely affected
by the decision of the State Director
after State Director review, under
§ 3165.3(b) of this title, of a notice of
violation or assessment or of an
instruction, order, or decision may
appeal that decision to the Interior
Board of Land Appeals pursuant to the
regulations set out in Part 4 of this title.
(b) Appeal from decision on a
proposed penalty after a hearing on the
record. (1) Any party adversely affected
by the decision of an Administrative
Law Judge on a proposed penalty after a
hearing on the record under § 3165.3(c)
of this title may appeal that decision to
the Interior Board of Land Appeals
pursuant to the regulations in Part 4 of this
title.
(2) In lieu of a hearing on the record
under § 3165.3(c) of this title, any party
adversely affected by the decision of the
State Director on a proposed penalty
may waive the opportunity for such a
hearing on the record by appealing
directly to the Interior Board of Land
Appeals under Part 4 of this title.
However, if the right to a hearing on the
record is waived, further appeal to the
District Court under section 109(j) of the
Federal Oil and Gas Royalty
Management Act is precluded.
(c) Effect of appeal on compliance
requirements. Except as provided in
paragraph (d) of this section, an appeal
shall not result in a suspension of the
requirements for compliance with the
order or decision from which the appeal
is taken unless the Interior Board of
Land Appeals determines that
suspension of the requirements of the
order or decision will not be detrimental
to the interests of the lessee or upon
submission and acceptance of a bond
deemed adequate to indemnify the
lessee from loss or damage.
(d) Effect of appeal on assessments
and penalties. (1) Except as provided in
paragraph (3) of this paragraph, an
appeal filed pursuant to paragraph (a) of
this section shall suspend the
accumulation of additional daily
assessments. However, the pendency of
an appeal shall not bar the authorized
officer from assessing civil penalties
under § 3163.3 of this title in the event
the lessee has failed to abate the
violation which resulted in the
assessment. The Board of Land Appeals
may issue appropriate orders to
coordinate the pending appeal and the
pending civil penalty proceeding.
(2) Except as provided in
paragraph (3) of this paragraph, an
appeal filed pursuant to paragraph (b) of
this section shall suspend the
accumulation of additional daily civil
penalties.
(3) When an appeal is filed under
paragraph (a) or (b) of this section, the
State Director may, within 10 days of
receipt of the notice of appeal,
recommend that the Director reinstate
the accumulation of assessments and daily civil penalties until such time as a final decision is rendered or until the violation is abated. The Director may, if he/she determines that the public interest requires it, reinstate such accumulation(s) upon a finding that the violation is causing or threatening immediate substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not act on the recommendation to reinstate the accumulation(s) within 45 days of the filing of the notice of appeal, the suspension shall continue.

(e) Judicial Review. Any person who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States District Court for the judicial district in which the alleged violation occurred. Because section 109 of the Federal Oil and Gas Royalty Management Act provides for judicial review of civil penalty determinations only where a person has requested a hearing on the record, a waiver of such hearing precludes further review by the district court. Review by the district court shall be on the administrative record only and not de novo. Such an action shall be barred unless filed within 90 days after issuance of final decision as provided in § 4.21 of this title.

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Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3430

Noncompetitive Leases; Amendment
Providing Detailed Procedures for Processing Preference Right Lease Applications for Coal; Proposed Rulemaking
The Federal Coal Leasing Amendments Act of 1976 (90 Stat. 1083) eliminated the prospecting permit—noncompetitive lease system for Federally owned coal by requiring that all Federal coal be leased competitively. However, the Act permitted the processing of the preference right lease applications existing on the date of its enactment.

The Litigation

Two environmental organizations brought suit against the Bureau of Land Management in 1975 in Natural Resource Defense Council et al. v. Berklund, claiming that the Secretary of the Interior had the discretionary authority to reject preference right leases for coal, even if the applicants for those leases had demonstrated discoveries of commercial quantities of coal. The two organizations also contended that the Department of the Interior's processing procedures did not comply with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

In June 1978, the court issued an order that ruled that the Secretary of the Interior did not have discretionary authority to reject a preference right lease to an applicant who had demonstrated commercial quantities of coal. At the same time, the court ruled that, in the process leading to the leasing decision, the Department of the Interior must comply with the provisions of section 102(2)(C) of the National Environmental Policy Act.

In an opinion accompanying the order, the court described specific standards by which to judge whether the environmental impacts of issuing a preference right lease had been adequately considered. These standards included the environmental impact statements or environmental analyses that must be submitted along with the application, a discussion and analysis of all alternatives to issuing a preference right lease for coal, a set of recommended and alternative mitigating measures, and cost estimates of compliance with the recommended measures for mitigating environmental impacts.

The Negotiations

In February 1983, the plaintiffs in the suit and several other environmental organizations expressed concern that the documents prepared by the Bureau of Land Management pursuant to the National Environmental Policy Act did not adequately address key elements of the 1978 court order and opinion. The Department of the Interior maintained that it was adequately complying with the court order and opinion. The interpretation of the requirements of the order and opinion by the Department differed substantially from the interpretation given to them by the environmental groups. In an effort to resolve these differences, the Department negotiated for 3 years with the environmental groups. This proposed rulemaking is the result of the negotiations.

After the first period of negotiation between the environmental groups and the Bureau of Land Management, the Bureau issued directives to the four relevant State Directors that environmental impact statements would be prepared for all pending preference right lease applications except certain limited ones (Memorandum dated June 28, 1983, to Wyoming, Colorado, Montana and Utah State Directors). After the second period of negotiations, the Bureau issued an instruction memorandum supplementing and refining the procedures and standards governing applicants' "final showings" and commercial quantities determinations (IM 83-822 dated September 9, 1983). While the environmental groups regarded these directives as substantial improvements over prior practice and field instruction, they still maintained that they were incomplete and inadequate. One point emphasized by the environmental groups was the failure of these directives to comply literally with the language in the 1976 court opinion that the Secretary of the Interior, in deciding "to set lease terms... should have before him a comprehensive EIS which includes a careful examination of possible lease standards, alternative methods for meeting those standards, and estimated costs of compliance." (485 F. Supp. at 938). Another point raised by the environmental groups was the failure of these directives to list possible lease standards, alternative methods for meeting those standards, and estimated costs of compliance.

In a third phase of the negotiations, the environmental groups agreed to compromise that "costing" did not have to be detailed in a comprehensive environmental impact statement as long as the costing process was "public" in the sense of public notice and comment. Also, a listing of "costs" was drafted to be detailed in a comprehensive environmental impact statement.

TheNegotiations
policy disputes the environmental groups have raised about preference right lease applications and the processing of those applications that were not litigated in Berkland. The tentative concessions and waivers made by both sides were formalized and ultimately were incorporated into this proposed rulemaking and related settlement documents.

It became necessary at this point to focus on specific preference right lease applications or groups of preference right applications that the Bureau did not believe required the preparation of an environmental impact statement, or on which the environmental statement work completed by the Bureau was felt to be adequate. This phase of the negotiation process resulted in the exclusion of certain preference right lease applications from the proposed environmental impact statement procedures as provided in §3430.3-2(c) of this proposed rulemaking, although the environmental groups are free to challenge the environmental analysis supporting these preference right lease applications, if they so choose.

The Department of Justice recommended that the results of these negotiations be implemented through a proposed rulemaking promulgated by the Bureau of Land Management which contains the procedures agreed to in the negotiations. Use of a proposed rulemaking to implement the results of the negotiations has the benefit of: (1) Nullifying any assertion that the settlement has divested any of the Secretary of the Interior’s ultimate discretion with respect to the structure and detail of the procedures and standards for preference right lease application adjudication as a result of a court determination; and (2) providing the public, and especially the lease applicants, an opportunity under the Administrative Practices Act to comment on the proposed rulemaking implementing the agreements reached in the negotiations.

The completed settlement reached in these negotiations includes the following documents and is intended to be effectuated as follows: (1) The Department of the Interior and the environmental groups have signed an agreement (Settlement Agreement) that no preference right leases for coal will be issued until 30 days after publication in the Federal Register of the final rulemaking entered into pursuant to the Settlement Agreement; (2) after review of the public comments, the Department will publish the final rulemaking which incorporates all necessary or appropriate changes resulting from the review of the comments, including the comments of any preference right lease applicants; and (3) if that final rulemaking is satisfactory to the environmental groups, the environmental groups and the Department will jointly file a motion to amend the order entered in the case on June 30, 1978, by substituting the Proposed Amended Order incorporated by reference in the Settlement Agreement. The third step will require a motion to reopen the case (as the case is closed on the court’s docket) as well as a motion to allow intervention of the environmental groups that were party to the Settlement Agreement but not to the original case on June 30, 1978. The Proposed Amended Order provides, among other things, that the conservation groups are bound not to litigate in court determination; and (2} providing an opportunity under the Administrative Practices Act to comment on the final rulemaking on any National Environmental Policy Act or public participation grounds as reflected in the Settlement Agreement.

Proposed Rulemaking

The proposed rulemaking would supplement and clarify the procedures in 43 CFR Subpart 3430 for processing preference right lease applications for coal. It would not change these existing basic processing steps: (1) Submission of the preference right lease application by the applicant and acceptance of the application by the Bureau of Land Management; (2) submission of “initial showing” data by the applicant and determination by the Bureau either that the applicant has found a workable deposit of coal, that the application should be rejected; (3) environmental analysis by the Bureau of the applicant’s proposal; (4) preparation by the Bureau of a proposed lease containing stipulations and mitigation measures; (5) submission by the applicant of the “final showing” of financial data demonstrating that the coal deposit can be mined at a profit; and (6) determination by the Bureau either that the applicant has discovered commercial quantities of coal, in which case a preference right lease is issued, or that the applicant has failed to demonstrate the presence of commercial quantities of coal, in which case the preference right lease application is rejected.

This proposed rulemaking would address procedures involved in steps 3 through 6 of the process. It identifies specific opportunities for public review and comment on the Bureau of Land Management’s processing actions and spells out what would be required to be included in the environmental documents prepared to support the decision either to issue a preference right lease or to reject a preference right lease application for failure of the applicant to demonstrate commercial quantities of coal.

The proposed rulemaking would require in step 3 that the Bureau of Land Management must discuss and analyze the following in all environmental impact statements prepared on preference right lease applications: “no action” proposal, action, that is, the applicant’s proposal; the Bureau’s proposed action, if that action is different from the applicant’s which will usually arise from treatment of any additional mitigation measures or alterations in the proposed mine that may arise from the environmental analysis or the environmental impact statement; and exchange, which examines any reasonable opportunities for exchange; and (5) environmental compensation, in which the Secretary of the Interior would, under appropriate circumstances, withdraw the lands encumbered by the preference right lease application and would recommend that Congress compensate the applicant for the lease cancellation.

The existing regulations describing the final showing would be refined by the proposed rulemaking to require that the Bureau of Land Management document its decisions on mitigation measures before incorporating them as site-specific, special stipulations in the proposed lease to be sent to the applicant. This document would not be the record of decision required by the National Environmental Policy Act, but would provide documentation for the special stipulations to be included in the lease. The proposed rulemaking would then require the applicant to provide an explanation of the means that would be used in complying with the proposed special stipulations.

The only new procedures provided by the proposed rulemaking are those relating to the procedures for processing preference right lease applications in step 5, when the Bureau of Land Management analyzes the applicant’s final showing data. The procedures set forth in the proposed rulemaking would provide a for public review and comment on the costs of complying with all environmental stipulations in the lease and on the costs that the Bureau proposes to use in the determination of commercial quantities. This Bureau documentation would be published in the Federal Register with a 60-day comment period. Any comments received would be addressed and,
where appropriate, incorporated in the record of decision on whether a preference right lease should be issued or the preference right lease application rejected. The record of decision would include the Bureau's final estimates on the costs of complying with environmental stipulations and a justification for the decision.

Although the proposed rulemaking does not address the subject, as a matter of practice, preference right lease applicants would be asked by the Bureau of Land Management if they consented to the release of the cost estimates they submitted for public review. If the applicant did not consent to the release of the cost estimate, then that data would be protected as proprietary, and the Bureau would release its own cost estimates for public review. This procedure is in accordance with the provisions of 43 CFR Part 2.

Finally, the proposed rulemaking would list a number of the relevant cost categories which must be considered in the commercial quantities determination. Examples for each category are also provided.

The proposed rulemaking also clarifies three other provisions currently in the existing regulations. First, the proposed rulemaking would explain the process for rejecting those preference right lease applications for coal that show no likelihood of passing the commercial quantities test. Under the procedures in the existing regulations, the Bureau of Land Management may evaluate the available resource and mining data and, without developing or analyzing additional environmental costing, reject the preference right lease application because the applicant has no reasonable prospect of discovering coal in commercial quantities. If, after the preliminary analysis, the Bureau determines that the applicant was not likely to demonstrate the discovery of coal in commercial quantities, the proposed rulemaking would require the applicant be sent a notice of intent to reject the preference right lease application. The applicant would be invited to submit additional information showing that the Bureau's preliminary analysis was incorrect. If the additional data submitted by the applicant was sufficient to change the Bureau's preliminary analysis, the Bureau would reject the preference right lease application. The rejection would be subject to appeal by the applicant.

Second, this proposed rulemaking would amend Subpart 3430 to eliminate the language of the existing regulations in §3430.3-1(a), which states that, as a matter of policy, the Department of the Interior is committed to completing the processing of all remaining preference right lease applications by December 1, 1984. When the existing regulations were adopted in 1979, the Department did not foresee the planning and other delays that would affect preference right lease application processing, even apart from the lengthy negotiations with the environmental groups described in this preamble. Further, the provision is obsolete.

Third, this proposed rulemaking would correct an incorrect reference in §3430.5-1(a)(2) of the existing regulations. As it now reads, that section refers to a time period specified in §3430.2-3 of the existing regulations, except there is no §3430.2-3. The proposed rulemaking would change the reference to §3430.2-2, where it currently appears.

The principal author of this proposed rulemaking is Carolle Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The environmental impacts of this proposed rulemaking were analyzed and addressed in the Federal Coal Management Program Final Environmental Impact Statement Supplement (October 1985), and indirectly in the environmental assessment prepared for the regulatory changes made in 1985 in response to the Linowes Commission report, and which resulted in a finding of no significant impact for these and other changes considered for the leasing component of the Federal coal management program.

Since this proposed rulemaking falls within the scope of the program actions studied in the environmental impact supplement, that analysis as well as the 1979 environmental impact statement and more recent environmental analyses are incorporated by reference. Furthermore, the proposed rulemaking contemplates additional environmental analysis of the pending preference right lease applications which will be subject to this rulemaking. Thus, no action will be taken without an adequate environmental analysis under the provisions of the National Environmental Policy Act.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it 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.)

The proposed rulemaking procedures that would be provided by the proposed rulemaking would not affect small entities to any greater extent than it would affect other entities engaged in the mining industry. The greater opportunities for public comment on the costing process for environmental stipulations would not interfere with any preference right lease applicant's ability or opportunity to consult with the Bureau of Land Management or to provide comments on the Bureau's estimated compliance costs, when the Bureau's cost estimates are released for public review.

The proposed rulemaking contains no new information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects 43 CFR Part 3430

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources.


PART 3430—(AMENDED)

1. The authority citation for Part 3430 continues to read:


§3430.3-1 (Amended)

2. Section 3430.3-1(a) is amended by removing from where it appears at the end thereof the phrase "by December 1, 1984".

3. Section 3430.3-2 is amended by adding new paragraph (c) to read:
§ 3430.3-2 Environmental analysis.

(c) Except for the coal preference right lease applications analyzed in the San Juan Regional Coal Environmental Impact Statement (March 1984), the Savery Coal EIS (July 1983), and the Final Decision Record and Environmental Assessment of Coal PALAs (Bonne Spring, Table, and Black Butte Creek Projects) (September 1982), or covered by serial numbers C-0127832, C-0123475, C-0128699, C-8424, C-8425, W-234111, C-0127834, U-1363, NM-3099, F-014996, F-029746, F-033619, and C-0120075, the authorized officer shall prepare environmental impact statements for all preference right lease applications for coal for which he/she proposes to issue a lease, in accordance with the following procedures:

(1) The authorized officer shall prepare adequate environmental impact statements and other National Environmental Policy Act documentation, prior to the determination that commercial quantities of coal have been discovered on the lands subject to a preference right lease application, in order to assure, inter alia, that the full cost of environmental impact mitigation, including site-specific lease stipulations, is included in the commercial quantities determination for that preference right lease application.

(2) The authorized officer shall prepare and evaluate alternatives that will explore various means to eliminate or mitigate the adverse impacts of the proposed action. The impact analysis shall address each numbered subject area set forth in § 3430.4-4 of this title, except that the impact analysis need not specifically address the subject areas of Mine Planning or of Bonding. At a minimum, each environmental impact statement shall include:

(i) A “no action” alternative that examines the impacts of the projected development without the issuance of leases for the preference right lease applications;

(ii) An alternative setting forth the applicant's proposed action. This alternative shall examine the applicant's proposal, based on information submitted in the applicant's initial showing and standard lease stipulations;

(iii) An alternative setting forth the authorized officer's own proposed action. This alternative shall examine:

(A) The impacts of mining on those areas encompassed by the applicant's proposal that are found suitable for mining after the unsuitability review provided for by Subpart 3461 of this title; and

(B) The impacts of mining subject to appropriate special stipulations designed to mitigate or eliminate impacts for which standard lease stipulations may be inadequate. With respect to mitigation of significant adverse impacts, alternative lease stipulations shall be developed and preferred lease stipulations shall be identified and justified. The authorized officer shall state a preference between standard lease stipulations and special stipulations (performance standards or design criteria).

(iv) An exchange alternative, examining any reasonable alternative for exchange that the Secretary would consider were the applicant to show commercial quantities, and, in cases where, if the lands were to be leased, there is a finding that the development of the coal resources is not in the public interest.

(v) An alternative exploring the options of withdrawal and just compensation and examining the possibility of Secretarial withdrawal of lands covered by a preference right lease application (assuming commercial quantities will be shown) while the Secretary seeks congressional authorization for purchase or condemnation of the applicant's property, lease or other rights.

(3) The authorized officer shall prepare a cumulative impact analysis in accordance with 40 CFR 1508.7 and 1508.25 that examines the impacts of the proposed action and the alternatives when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or nonfederal) or person undertakes such other actions.

(i) The cumulative impact analysis shall include an analysis of the combined impacts of the proposed preference right leasing with the mining of currently leased coal and other reasonably foreseeable future coal development, as well as other preference right leasing in the area under examination.

(ii) The cumulative impact analysis shall also examine the impacts of the proposed preference right leasing in conjunction with impacts from non-coal activities, such as mining for other minerals, other projects requiring substantial quantities of water, and other sources of air pollution.

(4) When information is inadequate to estimate impacts reasonably, an analysis shall be performed as provided by 40 CFR 1502.22(b).

(5) Each environmental impact statement shall be prepared in accordance with the Council of Environmental Quality's National Environmental Policy Act regulations, 40 CFR Part 1500.

§ 3430.4-1 (Amended)

3. Section 3430.4-1 is revised by:

(a) Renumbering paragraphs (c), (d), and (e) as paragraphs (d), (e) and (f), respectively;

(b) Adding a new paragraph (c) to read:

(c) The authorized officer shall process all preference right lease applications, except for those preference right lease applications numbered F-029746, F-033619, and C-0120075, in accordance with the following standards and procedures:

(1) The authorized officer shall transmit a request for final showing to each applicant for each preference right lease application for which it proposes to issue a lease.

(2) Copies of each such request shall be sent to all interested parties.

(3) The request shall contain proposed lease terms and special stipulations;

(c) Amending the renumbered paragraph (d){c), formerly paragraph (c)2), by removing from where it appears at the beginning of the paragraph the word "The" and replacing it with the phrase "The proposed means of meeting the proposed lease terms and special conditions and the".

4. A new § 3430.4-3 is added to read:

§ 3430.4-3 Costing document and public review.

(a) The authorized officer shall prepare a document that estimates the cost of compliance with all laws, regulations, lease terms, and special stipulations intended to protect the environment and mitigate the adverse environmental impacts of mining.

(1) The costs shall be calculated for each of the various numbered subject areas contained in § 3430.4-4 of this title.

(2) The authorized officer's estimated costs of compliance may be stated in ranges based on the best available information. If a range is used, he/she shall identify the number from each range that the authorized officer proposes to use in making the determination whether a particular applicant has identified coal in commercial quantities.

(b) The authorized officer shall provide for public review of the costs of environmental protection associated with the proposed mining on the preference right lease application area.

(1) The authorized officer shall publish in the Federal Register notice of the availability of the Bureau's cost estimation document.
(2) The authorized officer also shall send the cost estimation document to all interested parties, including all agencies, organizations, and individuals that participated in the environmental impact statement or the scoping process.

(3) Copies of the cost estimation document shall be submitted to the Environmental Protection Agency.

(4) The public, including all agencies, organizations, and individuals that participated in the scoping process, shall be sent the cost estimation document to comment on the Bureau’s cost estimates.

(5) No preference right lease shall be issued sooner than 30 days following publication of the notice of availability of each Record of Decision in the Federal Register.

5. A new § 3430.4-4 is added to read:

§ 3430.4-4 Environmental costs.

Prior to determining that a preference right lease applicant has discovered coal in commercial quantities, the authorized officer shall include the following listed and any other relevant environmental costs in the adjudication of commercial quantities (parenthetical examples are illustrative and not necessarily inclusive):

(a) Permitting.

(1) Surface water—costs of monitoring water quality and discharges (collection and analysis of samples, construction and maintenance of monitoring facilities, purchases of any equipment needed for surface water monitoring and preparation of baseline impact reports).

(2) Groundwater—costs of monitoring all domestic or test wells and other water sources (drilling and maintenance of test wells, collection and evaluation of samples, purchases of well casing, screening, monitoring equipment, and preparation of baseline and impact reports).

(b) Environmental mitigation required by law or proposed to be imposed by the authorized officer.

(1) Surface water protection—costs of mitigating impacts to quantity (replacement water purchase and transportation costs) and quality (construction of sedimentation ponds, neutralization facilities, and diversion ditches).

(2) Groundwater protection—costs of mitigating impacts to quantity and quality of groundwater (replacement of diminished supply or of water rendered unfit for its prior use(s), compensation for damage to water rights, treatment of pumped mine water, sealing sedimentation ponds).

(c) Reclamation.

(1) Topsoil removal and replacement (stockpiling or continuous method)—costs of removing (and stockpiling, if applicable) and replacing topsoil.
(protecting the stockpile, if applicable, from erosion and compaction).

(2) Subsoil removal and replacement (stockpiling or continuous method)—
costs of removing (and stockpiling, if applicable) and replacing topsoil
(protecting the stockpile, if applicable, from erosion and compaction).

(3) Grading—costs of grading soil banks to their approximate original
contour prior to replacing topsoil, subsoil (if applicable), and revegetating
the affected area.

(4) Revegetation—costs of restoring vegetative cover to the affected area
after grading and replacement of topsoil and subsoil, if applicable (liming,
planting, irrigating, fertilizing, cultivating, and reworking, if first efforts
are unsuccessful).

(5) Bonds—costs of bonds required by Federal, State, and local governments.

§ 3430.5-1 [Amended]
5. Section 3430.5-1 is amended by:

(a) Amending paragraph (a)(2) by removing from where it appears therein
the citation "§ 3430.2-3" and replacing it with the citation "§ 3430.3-2"; and
(b) Adding a new paragraph (c) to read:

(c) The authorized officer may reject any preference right lease application
that clearly cannot satisfy the commercial quantities test without
preparing additional National Environmental Policy Act
documentation and/or a cost estimate
document as described in §§ 3430.3-2,
3430.4-3 and 3430.4-4 of this title. The
following procedures apply to rejecting these preference right lease
applications.

(1) When an applicant clearly fails to
meet the commercial quantities test as
provided in this part, the authorized
officer may notify the applicant:

(i) That its preference right lease
application will be rejected;

(ii) Of the reasons for the proposed
rejection;

(iii) That the applicant has 60 days to
provide additional information as to
why its preference right lease
application should not be rejected; and

(iv) Of the type, quantity, and quality
of additional information needed for
reconsideration.

(2) If, after the expiration of the 60-
day period, the authorized officer has no
basis on which to change his/her
decision, the authorized officer shall
reject the preference right lease
application.

(3) If the authorized officer
reconsiders and changes the decision to
reject the preference right lease
application, he/she shall continue to
adjudicate the preference right lease
application in accordance with
§§ 3430.3-2, 3430.4-3, and 3430.4-4 of
this title.

J. Steven Griles,
Assistant Secretary of the Interior.
[FR Doc. 87-3572 Filed 2-19-87; 8:45 am]
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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 357
Benign Prostatic Hypertrophy Drug Products for Over-the-Counter Human Use; Proposed Rulemaking
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 82N-0168]

AGENCY: Food and Drug Administration.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) benign prostatic hypertrophy drug products (drug products used to relieve the symptoms of enlarged prostate gland) are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by April 21, 1987. New data by February 22, 1988. Comments on the new data by April 20, 1988. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs (21 CFR 330.10). Written comments on the agency's economic impact determination by June 22, 1987.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to be written, ordered, received, and considered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 1, 1982 (47 FR 3566), FDA published, under §330.10(a)(6) [21 CFR 330.10(a)(6)], an advance notice of proposed rulemaking that would classify OTC drug products to treat the symptoms of benign prostatic hypertrophy as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based upon the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by December 30, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 31, 1983.

In accordance with §330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information.

In response to the advance notice of proposed rulemaking, 3 manufacturers, 16 congressmen, and 112 individuals submitted comments. In addition, hundreds of individuals sent form letters requesting that these drug products not be removed from the OTC market. Copies of the comments and letters received are on public display in the Dockets Management Branch.

In order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10), the present document is designated as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Subpart L of Part 357 (21 CFR Part 357, FDA states for the first time its tentative conclusions and recommendations it would propose that OTC benign prostatic hypertrophy drug products be eliminated from the OTC market effective 6 months after the date of publication of a final rule in the Federal Register. However, in this document the agency is proposing a monograph that would establish conditions under which OTC benign prostatic hypertrophy drug products would be generally recognized as safe and effective and not misbranded. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and
incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect before 12 months after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the Federal Register. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

1. The Agency's Tentative Conclusions on the Comments

1. One comment maintained that the review of benign prostatic hypertrophy drug products was improperly conducted because the firms marketing these products were not given adequate notification that the products were going to be reviewed. The comment stated that if drug products to treat the symptoms of benign prostatic hypertrophy were not included in the call-for-data notices, which were published in the Federal Register on November 16, 1973 (38 FR 31998) and August 27, 1975 (40 FR 36179). Therefore, the comment argued that appropriate notification was not given to those concerned. The comment also contended that the evaluation of these products by the Miscellaneous Internal Panel was too hasty and

suggested that another panel be convened to conduct a proper review.

Although the comment is correct that the November 16, 1973 and August 27, 1975 call-for-data notices did not specifically mention benign prostatic hypertrophy drug products, those notices did advise that monographs resulting from the OTC drug review would be applicable to every OTC drug, regardless of whether a submission was made for a particular product. The purpose of the two notices was to invite submissions of data and information on any OTC drug product that was not previously part of the OTC drug review. In addition, a notice appearing in the Federal Register of July 21, 1981 (46 FR 37564) announced that the Miscellaneous Internal Panel invited comments on benign prostatic hypertrophy drug products, as well as other drug products, and stated that the agency would use these comments to develop proposed rulemakings for the drug categories listed. The notice also announced that the Panel might be discussing benign prostatic hypertrophy drug products, among others, at its meeting on August 21, 22, and 23, 1981. Time was provided at that meeting for interested persons to present data and information to the Panel on any of the drug categories listed in the notice.

Subsequent to publication of the advance notice of proposed rulemaking on benign prostatic hypertrophy drug products in the Federal Register, interested persons had an opportunity to submit comments on the Panel's recommendations. Additional opportunities continue to exist for interested persons to express their opinions and submit additional data. For example, time will be provided following publication of this proposed rule for submissions to comments, objections, new data, or requests for oral hearing.

No submissions on benign prostatic hypertrophy drug products were made to the agency in response to either of the call-for-data notices mentioned above, nor did anyone express interest in appearing before the Panel at its meeting on August 21, 22, and 23, 1981. Based on the limited amount of data available to the Panel, the agency does not believe that Panel's review was unduly hasty. FDA does not believe it is necessary to convene another panel to review these drug products, because ample opportunity has existed and continues to exist for interested persons to express their views or submit data to the agency on benign prostatic hypertrophy drug products.

2. One comment objected to including benign prostatic hypertrophy drug

products in the OTC drug review. The comment stated that a judicial proceeding, previously invoked by FDA, found that these products were safe and effective in providing relief of certain symptoms of prostate disorder. (See United States v. Metobolic Products Corp. and Edward Y. Domina, 1964 Food Drug Cosm. L. Rep. (CCH) ¶ 80,079 at 80,202 (D. Mass. Jan. 25, 1962).) The comment stated that expert witnesses for both the defendant and the government testified that patients with certain symptoms related to prostate disorders obtain relief from use of these products. Therefore, the comment contended that it was improper for the agency to invite a contrary finding in this rulemaking.

This court case was brought by the government to seek a permanent injunction against the introduction into interstate commerce of three particular benign prostatic hypertrophy drug products. The drug products were found to be in violation of the misbranding provisions of the 1938 act (section 502 (a) and (f)) because the labeling indicated these products to be a substitute for prostate surgery. The decision in the case was limited to granting a permanent injunction against the products as labeled.

The case was decided prior to the 1962 amendments to the act, which for the first time required drugs to be shown prior to marketing not only to be safe, but also to be effective for their intended uses. One of the purposes of the OTC drug review is to determine those ingredients that are generally recognized as both safe and effective for OTC use. Although the court found that many doctors had observed that the drug products provide relief from certain symptoms of prostate disorder, the court did not determine whether the drug products might be generally recognized as safe and effective if labeled differently. The requirements for establishing general recognition of safety and effectiveness are set forth in §330.10(a)(4) of the OTC drug review procedural regulations.

Based on the discussion above, the agency concludes that the prior judicial proceeding does not preclude the inclusion in the OTC drug review of particular drug products that were the subject of the litigation. Nor does that litigation in any way preclude a rulemaking proceeding on OTC benign prostatic hypertrophy drug products.

3. Two comments objected to benign prostatic hypertrophy ingredients being placed in Category II based on the Panel's determination that the condition being treated is not self-diagnosable.
The comments stated that many OTC drug products treat symptoms of conditions that are not self-diagnosable. The comments pointed out that the labeling of the OTC benign prostatic hypertrophy drug products reviewed by the Panel specifies that before using the product the user should confirm by medical diagnosis that his symptoms are due to benign prostatic hypertrophy. The comments contended that in view of this labeling the Panel's concern that a prostatic malignancy may go undiagnosed was irrelevant.

The agency recognizes that a number of OTC drug products are used to treat symptoms of conditions that are not self-diagnosable, e.g., bronchodilators for asthma and pancreatic enzymes for pancreatic enzyme deficiency. Although consumers must be able to recognize the symptoms they intend to relieve with an OTC drug product, self-diagnosis of the condition causing the symptoms is not a necessary prerequisite to the OTC availability of drug products. Under section 503(b)(1)(B) of the act (21 U.S.C. 353(b)(1) [B]), a drug may be dispensed only upon prescription when "because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, [it] is not safe for use except under the supervision of a practitioner licensed to law administer such drug."

As the Panel stated in its report, there is no evidence of any potential harm from ingestion of the combination of the three ingredients contained in benign prostatic hypertrophy drug products (glycine, alanine, and glutamic acid) (47 FR 43568). Benign prostatic hypertrophy is a fairly common condition, occurring in about 50 percent of all men over the age of 50. The agency believes that once the prostatic condition is diagnosed as benign, there is no reason why the symptoms of this condition, i.e., urinary urgency and frequency, excessive urinating at night, and delayed urination, could not be self-treated provided the products are effective. (See comment 4 below for effectiveness discussion.)

However, because the Panel's concern regarding the potential for a prostatic malignancy going undiagnosed is a valid one, the agency believes that the following warnings should appear in the labeling of OTC benign prostatic hypertrophy drug products: (1) "Do not take this product unless a diagnosis of benign prostatic hypertrophy (enlarged prostate) has been made by a doctor" and (2) "Because this drug relieves only the symptoms of enlarged prostate without affecting the disease itself, periodic reexamination by a doctor is strongly recommended."

4. Two comments submitted a total of nine published references (Refs. 1 through 9) as evidence of the safety and effectiveness of benign prostatic hypertrophy drug products. The comments contended that these studies existed in the scientific literature during the Panel's deliberations and should have been considered by the Panel in its review of these products. The comments argued that these studies as well as the market experience with benign prostatic hypertrophy drug products and the thousands of testimonials received from satisfied consumers over the years provide sufficient evidence to generally recognize these drug products as safe and effective for OTC use. In addition, close to 5000 comments and letters were submitted to the agency by concerned consumers in testimony that these drug products are safe and effective.

The agency has reviewed the submitted studies (not available to the Panel) and tentatively concludes that the evidence remains insufficient to support the general recognition of safety and effectiveness of amino acid therapy, specifically the combination of glycine, alanine, and glutamic acid, for OTC use in relieving the symptoms of benign prostatic hypertrophy.

Details about study design, conduct, and analysis of the studies are lacking and, therefore, the available data and information cannot be used to establish effectiveness. For example, the study by Feinblatt and Gant (Ref. 1) lacks information regarding evaluation of the effectiveness parameters so that the question of bias cannot be eliminated. In addition, the blindness of this study is compromised by assigning different treatment times for the drug group (3 months) and the placebo group (2 months). In the Damrau study (Ref. 2), no placebo group was employed; the results of this study were compared to the placebo results from the Feinblatt and Gant study. Valid conclusions cannot be drawn by comparing the results of the effectiveness parameters monitored with observations made by different investigators in different patient populations. The seven studies reported in the Japanese medical literature (Refs. 3 through 9), likewise, do not provide sufficient details to make a proper evaluation.

The Panel had stated that it was not aware of any definitive clinical trials with appropriate controls to support effectiveness (47 FR 43568). In view of the studies submitted, the agency has classified the mixture of amino acids in Category III. The agency has determined that additional data are necessary before the combination of glycine, alanine, and glutamic acid can be generally recognized as safe and effective for OTC use in relieving the symptoms of benign prostatic hypertrophy.

References


5. One comment argued that products containing the combination of the amino acids glycine, alanine, and glutamic acid should not be part of the OTC drug review because such products are grandfathered under provisions of the 1962 Kefauver-Harris amendments to the act. The firm submitting the comment stated that it had a letter from FDA in its files stating that the products in question are "not new drugs."

On May 28, 1968, FDA revoked all previous opinions stating that any product was "not a new drug" or "no longer a new drug" (33 FR 7758). This reversion of letters, such as the one referred to by the commenting firm, has been codified in 21 CFR 310.100. Consequently, the letter referred to by the comment has no legal significance.

Under the 1962 grandfather clause of the act, a drug product which on October 9, 1962, (1) was commercially used or sold in the United States, (2)
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was not a "new drug" as defined in the 1938 act and (3) was not covered by an approved new drug application (NDA) under the 1938 act, would not be subject to the added requirement of effectiveness "when intended solely for use under conditions prescribed, recommended, or suggested in the labeling with respect to such drugs." Pub. L. 87-781, section 701(c)(4), 76 Stat. 788, note following 21 U.S.C. 321.

The person seeking to show that a drug comes within a grandfather exemption must prove every essential fact necessary for invocation of the exemption. See United States v. Article of Drug..., "Bentex Ulcerine," 469 F.2d 875, 878 (5th Cir. 1972), cert. denied, 412 U.S. 938 (1973). Furthermore, the grandfather clause will be strictly construed against one who invokes it. See id.; United States v. Allan Drug Corp., 377 F.2d 713, 719 (9th Cir.), cert. denied, 385 U.S. 899 (1966). A change in composition or labeling precludes the applicability of the grandfather exemption. (See USV Pharmaceutical Corp. v. Weinberger, 412 U.S. 655, 663 (1973).) Evidence was not provided by the firm to demonstrate that no changes had occurred in the composition or labeling of the products from October 9, 1962, until the present. Furthermore, it should be noted also that the grandfather clause applies only to the new drug provisions of the act and not to the adulteration and misbranding provisions. The OTC drug review was designed to implement both the misbranding and the new drug provisions of the act. (See 21 CFR 330.10; 37 FR 9466 (May 11, 1972).) The grandfather clause does not preclude the agency from reviewing any currently marketed OTC drug, regardless of whether it has grandfather protection from the new drug provisions, in order to ensure that the drug is not misbranded. The agency concludes that the products referred to by the comment are subject to this proposed rulemaking.

II. The Agency's Tentative Conclusions on OTC Benign Prostatic Hypertrophy Drug Products

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. Summary of ingredient categories

FDA has considered the comments and other relevant data and information available at this time and concludes that the combination of glycine, alanine, and glutamic acid can be generally recognized as safe and effective for OTC use to relieve the symptoms of benign prostatic hypertrophy.

2. Testing of Category II and Category III conditions

Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any benign prostatic hypertrophy ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the Federal Register of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement included procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes in the Panel's Recommendations

1. Based on new data previously unavailable to the Panel, the agency is classifying the combination of glycine, alanine, and glutamic acid in Category III. (See comment 4 above.)

2. The agency has proposed labeling in the tentative final monograph in the event that new data are submitted to establish "monograph conditions" for OTC benign prostatic hypertrophy drug products. (See comment 3 above.)

In the event that no new data are submitted to the agency during the allotted 12-month new data period or if submitted data are not sufficient to establish "monograph conditions" for OTC benign prostatic hypertrophy drug products, the final rule will declare these products to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act), for which applications approved under section 505 of the act and 21 CFR Part 314 are required for marketing. Such rule will also declare that in the absence of an approved application, these products would be misbranded under section 502 of the act. The rule will then be incorporated into 21 CFR Part 310, Subpart E—Requirements for Specific New Drugs or Devices, instead of into an OTC drug monograph in Part 357.

In the Federal Register of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under the final rule, the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; or (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All required OTC drug labeling other than indications for use (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under an OTC drug monograph. The proposed rule in this document is subject to the final rule revising the labeling policy.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that not one of these rules, including this proposed rule for OTC benign prostatic hypertrophy drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. The analysis identified the possibilities of reducing burdens on small firms through the use of relaxed safety and efficacy standards or labels acknowledging unproven safety or efficacy. However, the analysis concluded that there is no legal basis for any preferential waiver, exemption, or tiering strategy for small firms compatible with the public health requirements of the Federal Food, Drug, and Cosmetic Act.

The agency invited public comment in the advance notice of proposed rulemaking regarding any substantial or significant economic impact that this rulemaking would have on OTC benign prostatic hypertrophy drug products. One comment stated that if these products were removed from the OTC...
market, the result would be financial disaster to the firm. As stated above, there is no legal basis for any preferential waiver or exemption from the requirements of the act.

Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by June 22, 1987. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 10636) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before April 21, 1987, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before June 22, 1987. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may also be seen in the office of the Dockets Management Branch (HFA-305) [address above]. Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final rule, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on April 20, 1988. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final rule is published in the Federal Register unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 357

Labeling, Over-the-counter drugs, Benign prostatic hypertrophy drug products.

There are, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 357 to read as follows:

1. The authority citation for Part 357 continues to read as follows:


2. Subpart L is added to Part 357 to read as follows:

PART 357—MISCELLANEOUS INTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart L—Benign Prostatic Hypertrophy Drug Products

§ 357.1001 Scope.

§ 357.1003 Definition.

§ 357.1010 Benign prostatic hypertrophy active ingredients. [Reserved]

§ 357.1050 Labeling of benign prostatic hypertrophy drug products.

(b) References in this subpart to regulations the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 357.1003 Definition.

As used in this subpart:

Benign prostatic hypertrophy. A benign (not malignant) enlargement of the prostate gland.

§ 357.1010 Benign prostatic hypertrophy active ingredients. [Reserved]

§ 357.1050 Labeling of benign prostatic hypertrophy drug products.

(a) Statement of identity. The labeling of the product contains the established name of the drug, if any, and identifies the product as an enlarged prostate symptom reliever.

(b) Indications. The labeling of the product states, under the heading "Indications," the following: "For relief of urinary urgency and frequency, excessive urinating at night, and delayed urination associated with benign prostatic hypertrophy (enlarged prostate)." Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) Warnings. The labeling of the product contains the following warnings under the heading "Warnings":

1. "Do not take this product unless a diagnosis of benign prostatic hypertrophy (enlarged prostate) has been made by a doctor."

2. "Because this drug relieves only the symptoms of enlarged prostate without affecting the disease itself, periodic reexamination by a doctor is strongly recommended."

(d) Directions. [Reserved]

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

Dated: December 6, 1986.

Frank E. Young,
Commissioner of Food and Drugs.
Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 358
Corn and Callus Remover Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking
HUMAN SERVICES
DEPARTMENT OF HEALTH AND 
Food and Drug Administration
Corn and Callus Remover Drug
Products for Over-the-Counter Human
Use; Tentative Final Monograph
AGENCY: Food and Drug Administration.
ACTION: Notice of proposed rulemaking.
SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) corn and callus remover drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.
DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by April 21, 1987. New data by February 20, 1988. Comments on the new data by April 20, 1988. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs [21 CFR 330.10]. Written comments on the agency's economic impact determination by June 22, 1987.
ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5000 Fishers Lane, Rockville, MD 20857.
FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5000 Fishers Lane, Rockville, MD 20857, 301-295-8000.
SUPPLEMENTARY INFORMATION: In the Federal Register of January 5, 1982 (47 FR 522), FDA published, under § 330.10(a)(6) [21 CFR 330.10(a)(6)], an advance notice of proposed rulemaking to establish a monograph for OTC corn and callus remover drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by April 5, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by May 5, 1982.
In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information.
In response to the advance notice of proposed rulemaking, one manufacturer submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.
In order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10), the present document is designated as a “tentative final monograph.” Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Subpart F of Part 358 (21 CFR Part 358, Subpart F), FDA states for the first time its position on the establishment of a monograph for OTC corn and callus remover drug products. Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC corn and callus remover drug products.
This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC corn and callus remover drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.
The OTC procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms “Category I” (generally recognized as safe and effective and not misbranded), “Category II” (not generally recognized as safe and effective or misbranded), and “Category III” (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms “monograph conditions” (old Category I) and “nonmonograph conditions” (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.
The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the Federal Register. On or after that date, no OTC drug product, regardless of whether it is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.
In the advance notice of proposed rulemaking for OTC corn and callus remover drug products (published in the Federal Register of January 5, 1982, 47 FR 522), the agency suggested that the conditions included in the monograph (Category I) be effective 6 months after the date of publication of the final monograph in the Federal Register. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 6 months after the date of publication of the final monograph.
Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.
In addition, some products will have to be reformulated to comply with the
monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the Federal Register. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the Federal Register of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Tentative Conclusions on the Comments

A. Comments on Ingredients

The agency has evaluated these studies and concludes that they are sufficient to support the safe and effective use of salicylic acid for the removal of soft corns. In a double-blind, placebo-controlled dose range study, adhesive disks impregnated with salicylic acid at concentrations of 12, 20, 30, and 40 percent were compared with a placebo (Ref. 2). Over a 10-day study period with a 2-day post treatment evaluation, four applications of the appropriate concentrations were made to subjects at 48-hour intervals (72 hours, if an application occurred on a Friday). One soft corn per subject was treated. Results of the study indicated that all four concentrations of salicylic acid were statistically superior to the placebo in removing the soft corns, but not statistically significantly different from each other in efficacy. All active treatment groups required 8 days of treatment (three applications) to obtain maximum response. No clinically significant adverse reactions were reported during the study. The safety of treatments was measured by the incidence of erythema before and after attempted removal of the corn. Analysis of the data indicated that the different concentrations of salicylic acid and placebo had no direct effect on erythema. The erythema reported in the study was primarily a function of physical response to the corn removal and was not accompanied by discomfort.

In another double-blind, placebo-controlled study (Ref. 1), 12 percent salicylic acid impregnated in a disk plaster was evaluated for the removal of soft corns and subsequent relief of pain. Sixteen subjects provided 20 cases of soft corns. Ten cases were treated with 12 percent salicylic acid and 10 cases were treated with placebo. A maximum of three 48-hour applications was made to each subject. Statistical analysis of the salicylic acid data showed a significant difference between pretest and post test values for the parameters studied, i.e., lesion size, hyperkeratosis, and pain. No significant difference between pretest and post test values for the parameters analyzed was shown for placebo. No adverse reactions were noted in any of the subjects during the study.

A third double-blind, placebo-controlled study (Ref. 3) was designed to evaluate the safety and efficacy of adhesive disks impregnated with 20 percent salicylic acid and to evaluate the effect of soaking the corn (after treatment and prior to attempted removal) as a means of increasing efficacy. Treatment consisted of four 48-hour applications over a 10-day period with a 2-day post-treatment evaluation. Sixty-three subjects using either drug or placebo were divided into three groups with Group I soaking the corn for 5 minutes; group II soaking for 15 minutes; and group III soaking for 5 minutes, after which a soft bristle brush was used in an attempt to loosen the corn. The corns soaked the corns after each 48-hour treatment (72 hours, if an application occurred on a Friday). Efficacy was assessed on the bases of rate of corn removal, clinical grade, and size of corn. Sixty patients, 20 in each of the three groups, completed the study. Results of the study indicated that 19 out of 30 (63.3 percent) using the 20 percent salicylic acid had their corns completely eliminated by the end of the treatment period, regardless of the soaking technique. Of the patients on the placebo, one (3.3 percent) obtained complete removal. No consistently significant soaking effects were found for any efficacy parameter assessed. No clinically significant adverse reactions were reported during the study. The degree of erythema was assessed before and after attempted removal as a measure of irritation or safety of the treatment. Although erythema was greater for the 20-percent salicylic acid group than for the placebo group, it appears that the erythema is a result of the removal of the corn and exposure of underlying tissue rather than due to the reaction to salicylic acid. Based on the results of the studies cited above, the agency concludes that salicylic acid is safe and effective for the removal of soft corns. Thus, the warning recommended by the Panel in § 358.550(c)(1)(v) against the use of salicylic acid on soft corns is being deleted.

The agency notes that hard and soft corns differ only in their anatomical location. The etiology, pathology, and physiology for hard corns and soft corns are basically the same (Ref. 4). Thus, the agency can find no rationale for distinguishing between hard and soft corns with respect to drug treatment and labeling based solely on their anatomical location. In addition, based on the new data reviewed by the agency establishing the safety and effectiveness of salicylic acid for the removal of soft corns, the Panel's recommended limitation to "hard" corns in the definition of a corn and callus remover drug product (§ 358.503(a)) and in the labeling indications (§358.550(b)) is not being included in the tentative final monograph. Accordingly, the definition of a corn and callus remover drug...
product has been revised to read, "A topical agent used for the removal of corns and calluses," and the indication for use for these products has been revised to read, "For the removal of corns and calluses.

Based on the studies discussed above, the agency is proposing that salicylic acid 12 to 40 percent in medicated plaster vehicles and salicylic acid 12 to 17.6 percent in a collodion-like vehicle be generally recognized as safe and effective for the removal of corns and calluses. It should be noted that the agency is proposing to revise the descriptive terms for the vehicles of administration. Because medicated disks, pads, and plasters are similar in nature, the agency does not see a need to have separate definitions in the monograph. Thus, the agency is combining these definitions into a single definition that includes all three dosage forms and is proposing in this tentative final monograph to use the term "plaster" to include "disk" and "pad.”

The agency notes that the Panel designated collodion as the vehicle for liquid formulations of salicylic acid. Collodion is an official article in the United States Pharmacopeia (U.S.P.) (Ref. 5). In reviewing the labeling of marketed corn/callus remover drug products, the agency has determined that some formulations (Refs. 6, 7, and 8) contain flexible collodion, which is also an official U.S.P. article, and which contains camphor and castor oil in collodion (Ref. 5). In addition, the agency has determined that some formulations contain other inactive ingredients or varying amounts of solvent (e.g., ether, alcohol, acetone, castor oil) which provide for increased spreadability and increased pliability of the product after it dries on the skin (Refs. 6, 9, 10, and 11). Therefore, the agency is proposing to use the term "collodion-like" instead of "collodion" in specifying the vehicle for liquid formulations and is defining "collodion-like vehicle" as follows: "A solution containing pyroxylin (nitrocellulose) in an appropriate nonaqueous solvent that leaves a transparent cohesive film when applied to the skin in a thin layer.”

References
(9) OTC Volume 160003.
(10) OTC Volume 160133.
(11) OTC Volume 160233.

B. Comments on Labeling
2. One comment suggested the following as examples of other appropriate labeling indications for corn and callus remover drug products: (1) "For treatment of hard corns and calluses," and (2) "For relief of pain associated with hard corns and calluses." With respect to the second suggested indication, the comment stated that it seems appropriate to inform consumers that if the corn is removed, the pain associated with the corn will also be relieved. The comment added that many corn and callus remover drug products are sold with a variety of nonmedicated pads that are used to cushion the area surrounding the corn. The comment contended that these pads, which are actually medical devices, also help to relieve pain by a mechanism unrelated to the actual removal of the corn.

With respect to the first suggested indication, the agency recognizes that the intended result from use of the product is the "removal" of the affected skin rather than the "treatment" or cure of the condition; thus, the word "treatment" does not clearly convey to the consumer the intended action of the product. In comment 1 above, the agency is proposing to remove the Panel's recommended restrictions on using these products only on hard corns. Therefore, the agency believes that the indication "For removal of corns and calluses" is more clear in describing the intended action of corn and callus remover drug products than is the wording proposed by the comment.

With regard to the second suggested indication, "For relief of pain associated with hard corns and calluses," the agency is unaware of any data to demonstrate that, when applied externally, these products act to relieve pain by exerting an analgesic or anesthetic effect. However, the agency acknowledges that pain is a symptom of the condition and may be indirectly relieved when corns and calluses are removed (see comment 1, Ref. 1).

Therefore, the agency is proposing that the secondary indication "Relieves pain by removing corns and calluses" be permitted only in conjunction with the primary indication "For removal of corns and calluses" discussed above. Because OTC drug monograph labeling covers only the drug use of the active ingredient in the product, the indication included in the monograph does not apply to the use of nonmedicated pads included with the product because nonmedicated pads are regulated as devices under the Federal Food, Drug, and Cosmetic Act.

In the Federal Register of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for the indications for use of OTC drug products. Under the final rule, the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. The proposed rule in this document is subject to the final rule revising the labeling policy. Accordingly, the restrictive statement...
adverse reactions; and claims against unsafe use, side effects, and allowable labeling for the following OTC drug monographs establish labeling found in OTC drug products. FDA has determined that it is not practical—in the agency on a product-by-product basis, to set standards for all considerations—to set standards for all names of active ingredients; indications use of covered products by lay persons. The agency agrees that the statements other uses for . . . corn pads, brushing, tendons spots on sole of foot, instep ridges" is a proper statement for the additional "intended uses" of the medical device and, therefore, is not a Category II condition. Regarding the statement "Sure to stay in place," the comment maintained that this statement relates to the physical attributes of the adhesive used to secure the pads, and is not a condition for which the product should be judged safe or effective. The OTC drug review program establishes conditions under which OTC drugs are generally recognized as safe and effective and not misbranded. Two principal conditions examined during the review are allowable ingredients and allowable labeling. FDA has determined that it is not practical—in terms of time, resources, and other considerations—to set standards for all labeling found in OTC drug products. Accordingly, OTC drug monographs regulate only labeling related in a significant way to the safe and effective use of covered products by lay persons. OTC drug monographs establish allowable labeling for the following items: product statement of identity; names of active ingredients; indications for use; directions for use; warnings against unsafe use, side effects, and adverse reactions; and claims concerning mechanism of drug action. The agency agrees that the statements required by the comment do not relate in a significant way to the drug's safe and effective use and are outside the scope of the OTC drug review. Such statements will be evaluated by the agency on a product-by-product basis, under the provisions of section 502 of the act (21 U.S.C. 352) relating to labeling that is false or misleading. Moreover, any statement that is outside the scope of the monograph, even though it is truthful and not misleading, may not appear in any portion of the labeling required by the monograph and may not detract from such required information. However, statements and terms outside the scope of the monograph may be included elsewhere in the labeling, provided they are not false or misleading.

5. One comment suggested that the recommended warnings for products containing collodion, in §358.550(c)(2)(i), "Highly flammable, keep away from fire or flame," and (ii), "Store at room temperature away from heat," could be easily combined. The comment also suggested that, even though 16 CFR 1500.81(a) specifically exempts drugs from hazardous substances labeling, an appropriate "signal word" similar to those in 16 CFR 1500.3(b)(10) (extremely flammable, flammable, or combustible) should be used depending on the actual flashpoint of the product. The comment recommended that the combined warning read as follows: "signal word, keep away from fire, or excessive heat." FDA believes that the warning statements are intended to convey two distinct messages, i.e., (1) the proper use of the product because of its flammable nature and (2) the proper storage conditions because of the volatile nature of the product. For these reasons and because the comment does not provide sufficient reason for combining the warnings, FDA believes that the warning statements on flammability and on storage at room temperature should be stated separately. FDA does agree, however, with the comment that labeling may be reduced by using hazardous substances labeling (16 CFR Part 1500) is appropriate for OTC corn and callus remover drug products formulated in a flammable vehicle. Even though the regulations in 16 CFR 1500.81(a) provide an exemption for drugs, FOR concurs with the definitions of "signal words," i.e., extremely flammable, flammable, and combustible, based on the flashpoint of the product as defined in 16 CFR 1500.3(b)(10). Therefore, the agency is proposing that the labeling of OTC corn and callus remover drug products formulated in a flammable vehicle contain an appropriate flammability warning consistent with the requirements of 16 CFR Part 1500 and an appropriate "signal word" based on the flashpoint of the product as defined in 16 CFR 1500.3(b)(10) be used. In addition, the agency is proposing that the warning section of the labeling also include the statement "Keep away from fire or flame."

6. One comment suggested that the warnings recommended by the Panel in §358.550(c) could be combined to avoid duplicative phrases and to give more prominence to their substance by eliminating excess replication of common phrases. The comment requested that §358.550(c) be recorded to be similar to the warnings language recommended in the advance notice of proposed rulemaking for OTC internal analgesic, antipyretic, and anti-inflammatory drug products ([2 FR 35493] which states that "the labeling of the product contains the appropriate warnings under the heading 'Warnings' which may be combined to eliminate duplicative words or phrases so the resulting warning is clear and understandable as follows: . . . ."

The agency has reviewed the Panel's recommendations in §358.550(c) and is proposing to combine, revise, or delete a number of the warnings (see comments 1 above and 7 and 8 below). In addition, the agency is proposing to combine the warnings on storage and keeping (§358.550(c)(2)(ii) and (iii)) to read "Caution, store tightly and store at room temperature away from heat." The agency is also proposing to shorten the warning in §358.550(c)(2)(v) from "If product gets into the eye, flush with water for 15 minutes." The agency believes that in light of these proposed revisions in the warning section, it is unnecessary to include the statement on allowing warnings to be combined to eliminate duplicative words or phrases, as requested by the comment. The agency is also proposing to add the term "doctor." This approach is similar to
including the term "dentist" in addition to the term "doctor" in the labeling of products intended primarily for dental use.

8. Agreeing in substance that the recommended warning in § 358.550(c)(1)(i), i.e., "Do not use this product if you are a diabetic or have poor blood circulation because serious complications may result," is appropriate, one comment suggested that the words "because serious complications may result," be deleted. The comment contended that the latter part of the warning did not add anything and was unnecessary because it did not specify what complications may result. The comment asserted that any warning, if ignored, would result in serious complications.

The agency agrees with the comment that the phrase "because serious complications may result" is unnecessary. Further, the agency believes that the special health needs of people with diabetes or poor blood circulation can best be evaluated by trained health professionals. Therefore, the agency is proposing to revise the warning in § 358.550(c)(1)(i) to read as follows: "Do not use this product if you are a diabetic or have poor blood circulation except under the advice and supervision of a doctor or podiatrist." (See also comment 7 above.)

9. One comment stated that the Panel's recommended directions in § 358.550(d) (1) and (2) are generally acceptable for these products, but in some respects do not reflect the findings of recent data and are not representative of actual product use. For example, the comment stated that although soaking may enhance the efficacy of salicylic acid in removing corns, study results indicated that the efficacy of salicylic acid is not dependent on soaking. Therefore, there is no need for extended soaking periods before or after treatment. Likewise, recent data show that there is no need when using a collodion-like salicylic acid product to encircle the corn or callus with petrolatum because salicylic acid does not harm normal skin (Refs. 1, 2, and 3). The comment added that the petrolatum ring would add a messy (and perhaps unnecessary) step that would reduce patient compliance and suggested instead that the directions be modified to instruct the consumer to immediately wipe off any excess product which may spread to the tissue surrounding the corn/callus.

Additionally, the comment stated that the once-a-day, 14-day treatment regimen for collodion-like products should be changed to twice-a-day treatment for no more than 4 days. The comment referred to a study discussed in the Panel's report at 47 FR 527, as well as the marketing experience of a product, in support of this request.

After review and evaluation of the comment's suggestions, along with the submitted data, the agency agrees that the directions should be revised. The directions for use in this tentative final monograph will not include recommendations for soaking. The results of a double-blind placebo-controlled study, in which the effect of soaking as a means of increasing efficacy of salicylic acid was evaluated, demonstrated no clinically or statistically significant differences between the soaking and the nonsoaking groups (Ref. 4). (See also comment 1 above.)

The Panel's recommended directions requiring the corn or callus to be encircled with petrolatum are also not included in this tentative final monograph. Recent studies on the effect of salicylic acid on normal skin have demonstrated that salicylic acid primarily reduces the intercellular cohesion of the horny cells and has no effect on the mitotic activity of the normal epidermis (Refs. 2 and 3). Thus, the Panel's recommended warning in § 358.550(c)(1)(iv) regarding avoiding contact with surrounding skin is not being included in this tentative final monograph. In addition, the vehicles of corn/callus remover drug products are designed to deliver the drug to the affected site. Therefore, the agency believes it is sufficient to instruct consumers to apply the product to the affected site and, based on the data discussed above, does not believe that a statement regarding wiping off excess from tissue surrounding the corn/callus is necessary for collodion-like products, as the comment suggested. Additionally, because corn and callus remover drug products may be used on areas other than the feet, e.g., calluses that occur on the hands, the directions for use are being modified to delete specific reference to the feet.

After a review of submitted data and marketed products, the agency has revised the dosage regimen for salicylic acid in collodion-like drug products from once-a-day for no more than 14 days to once or twice a day as needed for no more than 14 days. Although the comment suggested a much shorter time, no data were submitted to support the request. The agency notes that the study referred to by the comment and cited at 47 FR 527 in support of the twice-a-day, 4-day regimen, was actually a twice-a-day, 14-day study, with efficacy assessed at the end of 14 days, not at 4 days.

Based on the discussion above, the directions proposed in this tentative final monograph are as follows:

(1) For products containing salicylic acid formulated in a plaster vehicle. "Wash affected area and dry thoroughly." (If appropriate: "Cut plaster to fit corn/callus.") Apply medicated plaster. Repeat this procedure every 48 hours as needed (until corn/callus is removed) for up to 14 days.

(2) For products containing salicylic acid formulated in a collodion-like vehicle. "Wash affected area and dry thoroughly. Apply one drop at a time to sufficiently cover each corn or callus. Let dry. Repeat this procedure once or twice daily as needed (until corn/callus is removed) for up to 14 days.

References


II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. Summary of ingredient categories. The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and has made no changes in the categorization of corn and callus remover active ingredients recommended by the Panel. As a convenience to the reader, the following list is included as a summary of the categorization of corn and callus remover active ingredients recommended by the Panel and the proposed categorization by the agency.

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<tr>
<th>Corn and callus remover active ingredients</th>
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<tbody>
<tr>
<td>Acetic acid, glacial</td>
<td>II</td>
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<td>Allantoin (5-ureidohydrantoin)</td>
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</table>
The agency is proposing that the labeling of corn and callus remover drug products formulated in a flammable vehicle, such as collodion, contain an appropriate flammability warning consistent with the requirements of 16 CFR Part 1500. (See comment 5 above.)

5. The agency is proposing to shorten and clarify the warnings for these products by combining, revising, or deleting a number of the Panel's recommended warnings. (See comments 1 and 6 through 8 above.) In addition, the agency is adding the statement "For external use only" to the warnings section. Use of this statement is consistent with a number of other OTC drug monographs for topical drug products. (See, for example, the tentative final monograph for OTC external analgesic drug products (February 8, 1983; 48 FR 5852); the tentative final monograph for OTC skin protectant drug products (February 15, 1983; 48 FR 6820); and the final monograph for OTC topical otic drug products [August 8, 1986; 51 FR 28656].)

6. The agency is proposing to revise the directions for use to delete references to using the product on the feet, soaking before treatment with the product, and encircling the corn or callus with petrolatum, and to revise the dosage regimen for products formulated in a collodion-like vehicle from once a day for no more than 14 days to once or twice daily as needed for up to 14 days. (See comment 9 above.)

7. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for the word "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and any applicable OTC drug regulation will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option. In addition, the agency is proposing to include the term "podiatrist" together with the term "doctor" throughout the labeling. (See comment 7 above.)

8. The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5006), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC corn and callus remover drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act,Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC corn and callus remover drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC corn and callus remover drug products. No comments on economic impacts were received. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by June 22, 1987. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.32(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before April 21, 1987, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5000 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on

### Table: Corn and callus remover active ingredients

<table>
<thead>
<tr>
<th>Ingredient</th>
<th>Panel</th>
<th>Agency</th>
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<tbody>
<tr>
<td>Chlorbutanol</td>
<td>II</td>
<td>II</td>
</tr>
<tr>
<td>Diphenylhydrochloride</td>
<td>II</td>
<td>II</td>
</tr>
<tr>
<td>Iodoform (iodine)</td>
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</tr>
<tr>
<td>Iodine</td>
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<td>II</td>
</tr>
<tr>
<td>Methylbenzethionium chloride</td>
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<td>II</td>
</tr>
<tr>
<td>Methyl salicylate</td>
<td>II</td>
<td>II</td>
</tr>
<tr>
<td>Panthenol</td>
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<td>II</td>
</tr>
<tr>
<td>Phenyl salicylate (salol)</td>
<td>II</td>
<td>II</td>
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<tr>
<td>Phenoxyacetic acid</td>
<td>III</td>
<td>III</td>
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<tr>
<td>Phenylethanol</td>
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<tr>
<td>Panthenol</td>
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<td>III</td>
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<td>Phenylacetate</td>
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<tr>
<td>Zinc chloride</td>
<td>III</td>
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<tr>
<td>Ichthammol (ichthyol)</td>
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<td>Dioecodon hydrochloride</td>
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<td>Ichthammol (icthyol)</td>
<td>II</td>
<td>II</td>
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<td>Dichlorobutane</td>
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<tr>
<td>Methylbenzethionium chloride</td>
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<td>II</td>
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the agency’s economic impact determination may be submitted on or before June 22, 1987.

Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the Federal Register.

Interested persons, on or before February 20, 1988, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before April 20, 1988. These dates are consistent with the time periods specified in the agency’s final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the Federal Register of September 29, 1981 (46 FR 47730).

Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA-305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on April 20, 1988. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the Federal Register, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 358

Labeling, Over-the-counter drugs, Corn and callus remover drug products, plaster vehicle.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding Part 358, consisting of Subpart F, to read as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart F—Corn and Callus Remover Drug Products

§ 358.501 Scope.

(a) An over-the-counter corn and callus remover drug product in a form suitable for topical application is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this subpart and each of the general conditions established in § 330.1.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 358.503 Definitions.

As used in this subpart:

(a) Corn and callus remover drug product. A topical agent used for the removal of corns and calluses.

(b) Collodion-like vehicle. A solution containing pyroxylin (nitrocellulose) in an appropriate nonaqueous solvent that leaves a transparent cohesive film when applied to the skin in a thin layer.

(c) Plaster vehicle. A fabric, plastic, or other suitable backing material in which medication is usually incorporated for topical application to the skin.

§ 358.510 Corn and callus remover active ingredients.

The active ingredient of the product consists of any of the following when used within the specified concentration and in dosage form established for each ingredient:

(a) Salicylic acid 12 to 40 percent in a plaster vehicle.

(b) Salicylic acid 12 to 17.6 percent in a collodion-like vehicle.

§ 358.550 Labeling of corn and callus remover drug products.

(a) Statement of identity. The labeling of the product contains the established name of the drug, if any, and identifies the product as a "corn and callus remover."

(b) Indications. The labeling of the product states, under the heading "indications," any of the phrases listed in this paragraph, as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) "For the removal of corns and calluses."

(2) "Relieves pain by removing corns and calluses." This indication is permitted only in conjunction with the indication identified in paragraph (b)(1) of this section.

(c) Warnings. The labeling of the product contains the following warnings under the heading "Warnings":

(1) For products containing any ingredient identified in § 358.510. (i) For external use only.

(ii) "Do not use this product if you are diabetic or have poor blood circulation, except under the advice and supervision of a doctor or podiatrist."

(iii) "Do not use on irritated skin or on any area that is infected or reddened."

(iv) "If discomfort persists, see your doctor or podiatrist."

(2) For any product formulated in a flammable vehicle. (i) The labeling should contain an appropriate flammability signal word, e.g., "extremely flammable," "flammable," "combustible," consistent with 16 CFR 1500.3(b)(10).

(ii) "Keep away from fire or flame."

(iii) "Keep away from children."

(iv) "Keep out of reach of children."

(iii) "Do not use near open flame or other sources of ignition."

(3) For any product formulated in a volatile vehicle. "Cap bottle tightly and store at room temperature away from heat."

(4) For any product formulated in a collodion-like vehicle. (i) "If product gets into the eye, flush with water for 15 minutes."

(ii) "Avoid inhaling vapors."

(d) Directions. The labeling of the product contains the following information under the heading "Directions":

(1) For products containing salicylic acid identified in § 358.510. "Wash affected area and dry thoroughly." (If appropriate: "Cut plaster to fit corn/ callus.") "Apply medicated plaster. Repeat this procedure every 48 hours as needed (until corn/callus is removed) for up to 14 days."

(2) For products containing salicylic acid identified in § 358.510(b). "Wash affec
affected area and dry thoroughly. Apply one drop at a time to sufficiently cover each corn or callus. Let dry. Repeat this procedure once or twice daily as needed [until corn/callus is removed] for up to 14 days."

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

Dated: December 6, 1986.
Frank E. Young,
Commissioner of Food and Drugs.
[FR Doc. 87–3574 Filed 2–19–87; 8:45 am]
BILLING CODE 4160–01–M
Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121
Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins and Petition of Air Transport Association (ATA) and Aerospace Industries Association (AIA); Final Rule and Petition for Rulemaking
DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration
14 CFR Parts 25 and 121
(Docket No. 24594, Amendments 25-61 and 121-189)

Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Request for additional comments; reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period for Amendments 25-61 and 121-189 to the Federal Aviation Regulations (FAR). These amendments, which were adopted on July 21, 1986 (51 FR 26206), upgrade the fire safety standards for cabin interior materials in transport category airplanes. The final rule adopting these amendments included a request for public comments and provided a 6-month comment period. This action extends that comment period for an additional 90 days. This reopening is necessary to afford all interested parties an opportunity to present their views on the recently adopted rulemaking.

DATE: Comments must be received on or before April 21, 1987.

ADDRESS: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24594, 800 Independence Avenue SW., Washington, DC 20591; or delivered in duplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591; or by calling Information Center (APA-230), 800 / Vol. 52, No. 34 / Friday, February 20, 1987 / Rules and Regulations 68966, Seattle, Washington 98168; telephone (206) 431-2112.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such additional written data, views, or arguments concerning Amendments 25-61 and 121-189 as they may desire. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or amendment number and submit comments in duplicate, to the Rules Docket address above. All comments received on or before the closing date will be considered by the Administrator before determining whether further action on this rulemaking is warranted. All comments will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. Commenters wishing the FAA to acknowledge receipt of their comments must submit with these comments a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket No. 24594.” The postcard will be date/time stamped and returned to the commenter.

Availability of Amendments

Any person may obtain a copy of Amendments 25-61 and 121-189 by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must include identification Amendments 25-61 and 121-189.

Background

On July 21, 1986, the FAA adopted Amendments 25-61 and 121-189 (51 FR 26206; July 21, 1986), to upgrade the fire safety standards for cabin interior materials in transport category airplanes by: (1) Establishing new fire test criteria for type certification; (2) requiring that the cabin interiors of airplanes manufactured after a specified date and used in air carrier service comply with these new criteria; and (3) requiring that the cabin interiors of all other airplanes type certificated after January 1, 1958, and used in air carrier service comply with these new criteria upon the first replacement of the cabin interior. These amendments are based on Notice of Proposed Rulemaking (NPRM) No. 85-10 (50 FR 15038; April 16, 1985).

As discussed in the preamble to Amendments 25-61 and 121-189, some of the commenters responding to Notice 55-10 stated that the FAA was moving too rapidly in the rulemaking. Nevertheless, the FAA did not consider the comments received by that time to warrant abandoning the rulemaking or delaying it further, considering the increases in fire safety that would be achieved. Amendments 25-61 and 121-189 were adopted accordingly; however, the FAA did request further comments on both the test procedure and the appropriateness of the performance criteria. The closing date for the further comments was January 21, 1987. The FAA stated that a document discussing all comments received, presenting FAA responses and proposing any necessary further revisions to the new standards of Amendments 25-61 and 121-189, would be published in the Federal Register by July 21, 1987.

Following issuance of the final rule, the Aerospace Industries Association of America (AIA) and Air Transport Association of America (ATA) jointly petitioned for further rulemaking that would substitute different test methodologies and acceptance criteria. This petition was published in the Federal Register on July 21, 1986 (51 FR 26196).

As also discussed in the preamble to Amendments 25-61 and 121-189, some commenters expressed concerns regarding the repeatability of test results using the FAA OSU test apparatus and procedures. The commenters note that, in addition to the initial type certification testing, succeeding material lots would have to be tested from a production standpoint to ensure that their heat release characteristics are not degraded from those of the material lot originally tested for type certification. Variations in test results would, therefore, necessitate the use of materials that nominally exceed the new standards of Amendments 25-61 and 121-189 to ensure that the results of individual tests are satisfactory. Such variations in test results could also create a situation in which a given material is found acceptable in the testing conducted by one manufacturer while the material is found unacceptable by another manufacturer. As a result of these concerns, the FAA conducted a third series of round-robin tests to determine whether the test requirements in the apparatus and procedures would improve the repeatability of test results. These tests were conducted at the FAA Technical Center, the facilities of two airplane manufacturers, and Ohio State University using common test specimens. Based on the results of these tests, the FAA Technical Center has recommended certain adjustments in the
test apparatus and procedures as follows:

1. The thermopile should be constructed of five 24-gauge thermocouples instead of three 32-gauge thermocouples.

2. The thermal inertia compensator should no longer be used.

3. The use of a "blank" sample burn correction should be deleted.

4. The flow rate of methane during calibration should be 1 liter/minute baseline and flow rates of 4, 6, 8, 6, 4 liters/minute. The time at a given flow rate should be reduced from 4 minutes to 2 minutes.

5. Collection speed of data should be at least one data point per second, instead of continuous which would allow for digital data acquisition.

These recommendations are contained in a memorandum developed by the Fire Safety Branch, FAA Technical Center, dated January 9, 1987, entitled Memorandum: Recommended Modifications to Part 25, Appendix F, Part IV. A copy of this memorandum has been placed in the Rules Docket for public inspection and comment. Comments on these recommendations are specifically requested. Following receipt and analysis of comments, the FAA may determine that the recommended revisions are appropriate. If so, the final rule will be revised accordingly.

Reopening of Comment Period

In consideration of the need for public participation in determining future action regarding this rulemaking and requests for such reopening contained in letters from the AIA and ATA, both dated November 12, 1986, and the Suppliers of Advanced Composite Materials Association (SACMA) dated December 29, 1986, the FAA concludes that the comment period should be reopened.

Accordingly, the comment period for Amendment 25-61 and 121-189 is reopened until April 21, 1987. In their letters, the AIA and ATA also request that the comment period for their joint petition for further rulemaking be granted a corresponding extension. This request is being granted through separate notice.

Conclusion: This document reopens the comment period on a final rule to afford the public and industry additional time in which to review and respond. The FAA has determined that this document involves rulemaking which is considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). This document is not major as defined in Executive Order 12291. The FAA certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Lit of Subjects

14 CFR Part 25
Aviation safety, Aircraft, Air transportation, Safety, Tires.

14 CFR Part 121
Aviation safety, Safety, Air transportation, Aircraft, Airplanes, Cargo, Flammable materials, Hazardous materials, Transportation Common carriers.


Wayne J. Barlow,
Director, Northwest Mountain Region.

[FR Doc. 87-3564 Filed 2-19-87; 8:45 am]
DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration
14 CFR Parts 25 and 121

[Docket No. 25003; Petition Notice PR–86–12B]

Petition of Air Transport Association (ATA) and Aerospace Industries Association (AIA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for rulemaking; reopening of comment period.

SUMMARY: This notice announces the second reopening of the comment period for Petition Notice PR–86–12 (51 FR 26166; July 21, 1986) which invited comments relative to a joint petition of ATA and AIA to amend §§ 25.853 and 121.312 of the FAR to require different test procedures from those proposed in Notice of Proposed Rulemaking (NPRM) 85–10 (50 FR 15038; April 16, 1985) relative to acceptance criteria for materials used in the interiors of transport category airplane cabins. This reopening is necessary to afford all interested parties an opportunity to present their views on the petition for rulemaking.

DATE: Comments must be received on or before April 21, 1987.

ADDRESSES: Send comments on Petition Notice PR–86–12 in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–204), 800 Independence Avenue SW., Washington, DC 20591, or deliver in triplicate to Room 915G, 800 Independence Avenue SW., Washington, DC. Comments must be marked: Docket No. 25003. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM–7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.


SUPPLEMENTARY INFORMATION

Discussion

The ATA and the AIA petition was published in the Federal Register on July 21, 1986, (51 FR 26166) with a 4-month comment period which closed on November 19, 1986. Amendment 25–61 (which resulted from NPRM 85–10) was also published in the Federal Register on July 21, 1986, (51 FR 26206). This amendment, as adopted, provided a 6-month comment period on the final flammability criteria for the purpose of possibly refining either the test procedures or acceptance criteria. The comment period closed on January 21, 1987. Because of the interrelationship between the subject petition and Amendment 25–61, the FAA determined that reopening the comment period on the petition to be consistent with the closing date for comments on Amendment 25–61 was in the public interest. Therefore, the comment period on Petition Notice PR–86–12 was reopened until January 21, 1987, as well (51 FR 42583; November 25, 1986). Since that time the FAA has received further requests to extend the comment period on Amendment 25–61 to allow more time in which to review results of additional testing conducted by the FAA which were recently released. By separate notice, the comment period on Amendment 25–61 is being reopened until April 21, 1987. The FAA has determined that it would be in the public interest to further reopen the comment period on Petition Notice PR–86–12 until April 21, 1987. This will allow the public an equal amount of time to comment on these interrelated regulatory activities. The agency’s final decision on the petition will, of course, be consistent with any action taken with respect to Amendment 25–61.

Issued in Washington, DC, on February 13, 1987.

John H. Cassady,
Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 87–3563 Filed 2–19–87; 8:45 am]

BILLING CODE 4910–13–M
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List of Public Laws

Note. No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List February 18, 1987